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Sustainable Solutions: The Future of Labour Supply in the Australian Vegetable Industry

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Chapter 1

Introduction

1.1 Introduction

This report seeks to future-proof the Australian vegetable industry from labour supply challenges — an industry of critical importance to Australia’s economic development and food security. The vegetable industry forms a central part of Australian horticulture, with farms producing 93% of the total volume of food consumed and is part of an agriculture industry contributing \$48.7 billion to GDP.¹ It also supports an agricultural export market valued at \$2.1 billion per annum.²

The vegetable industry has grown substantially in recent decades. From 1979–80 to 2014–15 the gross value of vegetable crops increased by 833% (see Figure 1.1). The industry has needed a greater number of workers in order to enable this expansion.

While the Australian market remains important, vegetable growers have found growing demand for their produce overseas, as signified by an increase in the value of vegetable exports by 452% between 2005 and 2015 (see Figure 1.2). Despite this success in export markets, labour costs in Australia are much higher than in most competitor countries. To compete with growers in these countries, access to a productive and reliable workforce is imperative for Australian growers.

Local growers remain dominant in the Australian market. However, there has been a rapid increase in imports (Figure 1.3), further underscoring the importance of Australian growers being able to meet their labour needs efficiently in order to stay competitive.

Although there is potential for further mechanisation in the vegetable industry, it will remain labour intensive into the foreseeable future. The industry is heavily reliant on workers to pick, pack and grade vegetables.

This report was commissioned by Horticulture Innovation Australia to investigate the labour supply options for the Australian vegetable industry.

There are currently three main sources of labour for the Australian vegetable industry:

1. Australian workers who are citizens or permanent residents, many of whom are recent migrants to Australia;
2. temporary migrant workers who are in Australia under the Seasonal Worker Programme (SWP); and
3. temporary migrant workers on Working Holiday Maker (WHM) visas.

Notably, both the SWP and the WHM program do not have a central purpose of being a labour supply solution for the vegetable industry. Although the SWP was established to meet low-skilled labour needs in horticulture, its primary purpose is as a foreign aid program providing development opportunities in the Pacific. The WHM program was originally conceived as a cultural exchange

¹ Australian Bureau of Statistics, *4102.0 — Australian Social Trends, Dec 2012* (9 April 2013) <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features10Dec+2012>>.

² Department of Agriculture and Water Resources, Australian Government, *Horticulture Fact Sheet* (12 January 2016) <http://www.agriculture.gov.au/ag-farm-food/hort-policy/horticulture_fact_sheet#trade-statistics>.

program but has transformed into the major source of temporary migrant labour in the vegetable industry in the last 10 years.

WHMs on the 417 visa form the bulk of the vegetable industry's workforce at harvest time. However, there have been many reports in government inquiries, the media and academic studies of growers and labour hire firms underpaying and mistreating workers.³ The high incidence of exploitation suggests that, without serious reform, the visa is not a sustainable long-term solution to the labour supply challenges confronting growers. We propose various reforms to protect the rights of workers while ensuring that the vegetable industry's labour needs are met.

Two complicating factors are the presence of undocumented migrant workers, defined as visa holders overstaying their visa or breaching a work condition of their visa, and ongoing non-compliance with labour standards in the Australian vegetable industry, particularly in situations where growers engage labour hire firms to act on their behalf and organise the recruitment and payroll for staff. The extent to which growers employ undocumented migrant workers in the vegetable industry is not known. A report by Stephen Howells in 2010 estimated the total number of migrants who entered Australia on temporary visas working in Australia illegally to be 50 000 in all industries. This represents 0.2% of the population, and is low by international standards.⁴ It is also apparent that non-compliant work, which is done by both locals and migrant workers receiving below-award cash-in-hand payments, is a persistent problem facing the industry. An official inquiry by the Australian workplace regulator, the Fair Work Ombudsman (FWO), into the 417 Working Holiday Program found endemic practices of wage underpayments, non-compliance with the Horticulture Award and other exploitative treatment of workers, particularly involving WHMs.⁵

For some time now, vegetable growers have attested to difficulties in accessing workers to pick, pack and grade vegetables. Around 25% of growers we surveyed have left vegetables unpicked because of a lack of available workers. Many other vegetable growers have chosen not to increase the scale of production because of an uncertainty of workers being available in the future.

It should be noted that while vegetable growers report challenges in accessing workers for critical jobs, this does not necessarily represent a labour shortage. Sometimes, a labour supply challenge can mask what is really a recruitment difficulty. If this is the case, one explanation for the difficulty in accessing workers is that vegetable growers need to be better equipped to attract workers into the industry and to manage job and career opportunities in more effective ways to retain them.

Increasing wages may not be realistic for most vegetable growers who are award-compliant. The industry reports the dominance of the large retailers who play growers off against each other in a battle to source the cheapest fresh produce. Growers attest to an ever-competitive environment both

³ Elsa Underhill and Malcolm Rimmer, 'Layered Vulnerability: Temporary Migrants in Australian Horticulture' (2015) 58 *Journal of Industrial Relations* 608; Caro Meldrum-Hanna and Ali Russell, *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>>; 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/>>.

⁴ Stephen Howells, Report of the 2010 Review of the *Migration Amendment (Employer Sanctions) Act 2007* (2011) 27 <https://www.border.gov.au/ReportsandPublications/Documents/government-response/howells_report.pdf>.

⁵ Fair Work Ombudsman, 'Inquiry into Wages and Conditions of People Working under the 417 Working Holiday Visa Program' (Report, October 2016).

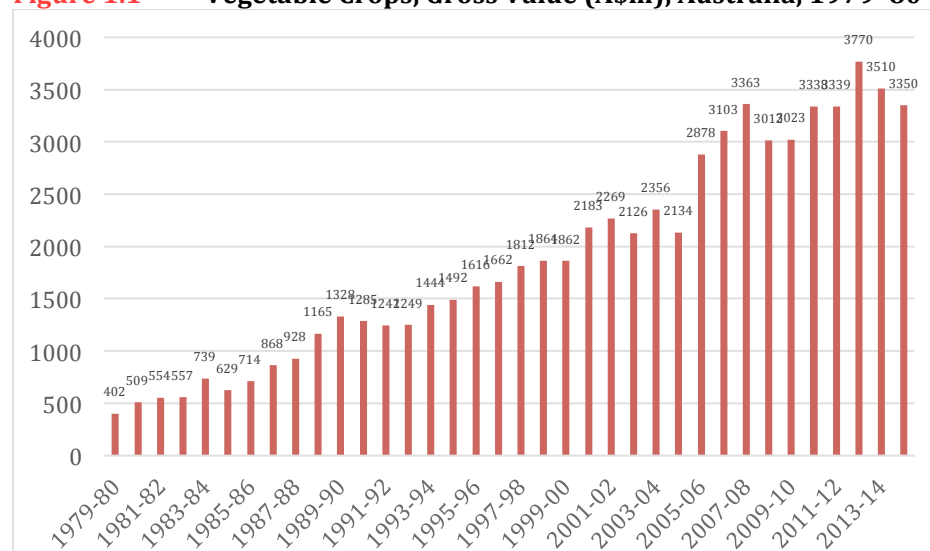
in Australia and also abroad, from exports originating from countries with much lower per-unit labour production costs. This research report confirms what the industry has long claimed, that wage pressure is a real issue in the industry, and increasing wages beyond the minimum award rate is not a realistic option for many growers.

That being said, if a grower is only viable because of non-compliant employment practices, then it needs to reform its business or close. The practice of growers who are paying wages below the award not only hurts workers but undermines the competitiveness of legally compliant growers in the Australian vegetable industry.

The vegetable industry is a magnet for intermediaries. Hostel operators, labour hire firms and migration agents often play a pivotal role in helping vegetable growers to access workers. In some cases, these intermediaries offer a ‘one-stop shop’, presenting themselves to growers as providing a simple, attractive and integrated service — involving everything from the recruiting and organising stage to transporting and paying workers on behalf of the grower and, in some cases, to organising workers’ accommodation. Although many of these intermediaries operate legally, several accounts have identified the significant role played by labour hire firms exploiting workers in the Australian vegetable industry, which we discuss in detail in Chapter 4. Among these accounts is a recent official inquiry report into the labour hire industry commissioned by the Victorian Government.⁶ Although this report was into the labour hire industry throughout the Victorian industry, it made specific and extensive reference to the regulatory challenges arising from the use of labour hire in the Australian horticulture industry.

Given this situation, it is difficult to understand how there can be *both* an undersupply of workers *and* the mistreatment and exploitation of workers employed in the Australian vegetable industry. Usually when a labour source is in short supply it is more highly prized by those whose profits are reliant on it. This does not appear to be the case in the vegetable industry.

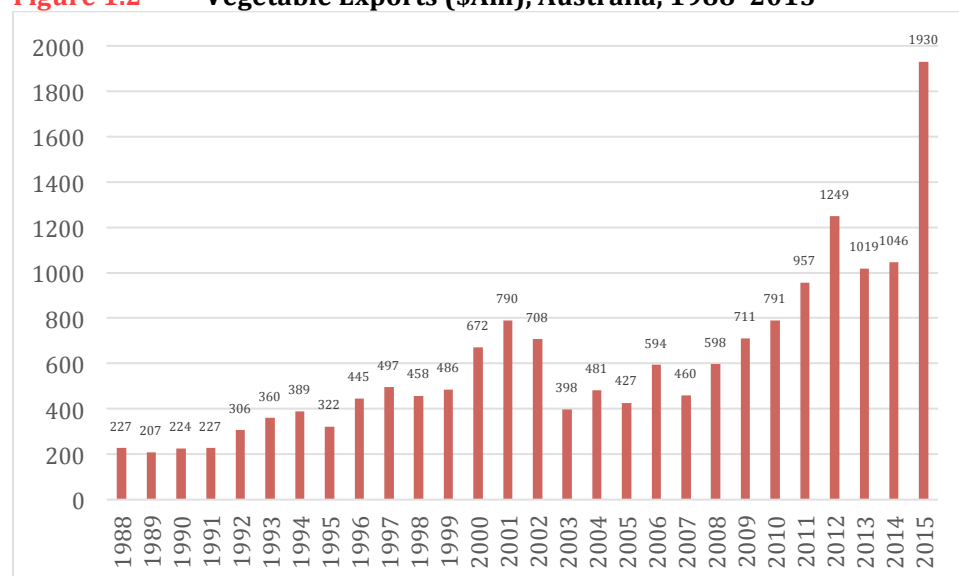
Figure 1.1 Vegetable Crops, Gross Value (A\$m), Australia, 1979-80 – 2014-15



⁶ Industrial Relations Victoria, Victoria State Government, *Victorian Inquiry into the Labour Hire Industry and Insecure Work* (31 August 2016) 52 <http://economicdevelopment.vic.gov.au/__data/assets/pdf_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf>.

Source: Australian Bureau of Statistics (2016), Value of Agricultural Commodities Produced, Australia, ABS Cat. 7503.0. Canberra: Australia

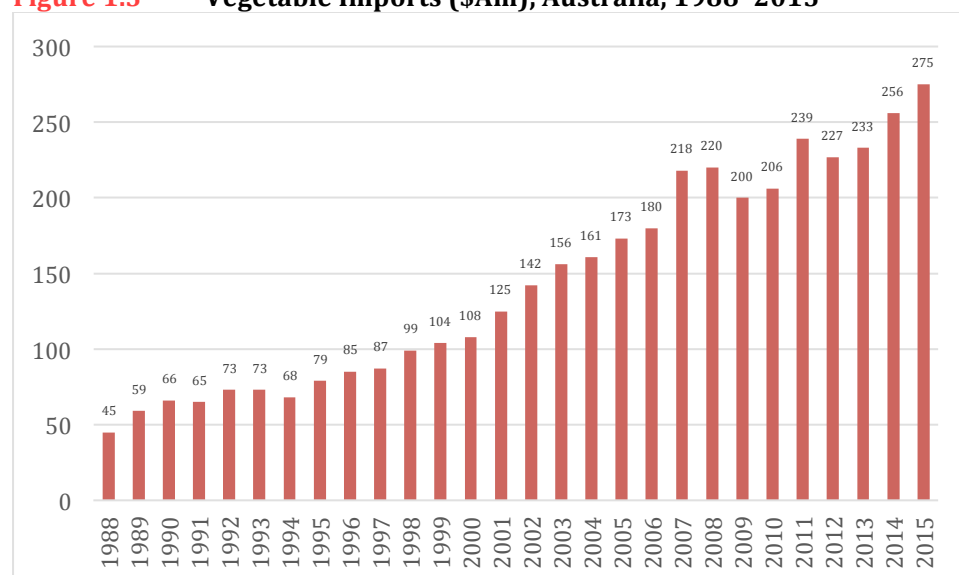
Figure 1.2 Vegetable Exports (\$Am), Australia, 1988–2015



Source: Australian Bureau of Statistics (2016) International Trade in Goods and Services, Australia: Merchandise Exports, Standard International Trade Classification (3 digit), Free On Board Value, ABS Cat. 5368.0. Canberra: Australia.

Note: Includes vegetables within Standard International Trade Classification (SITC) 054, ie vegetables that are fresh, chilled, frozen or simply preserved (including dried leguminous vegetables) and roots, tubers and other edible vegetable products, not elsewhere specified, fresh or dried. Does not include roots and tubers, prepared or preserved (SITC 056).

Figure 1.3 Vegetable Imports (\$Am), Australia, 1988–2015



Source: Australian Bureau of Statistics (2016), Australia: Merchandise Imports, Standard International Trade Classification (3 digit), Free On Board Value, ABS Cat. 5368.0. Canberra: Australia.

Note: Includes vegetables within Standard International Trade Classification (SITC) 054, i.e. vegetables that are fresh, chilled, frozen or simply preserved (incl. dried leguminous vegetables) and roots, tubers and other edible vegetable products, not elsewhere specified, fresh or dried. Does not include roots and tubers, prepared or preserved (SITC 056).

1.2 Foundational Principles

This report sets out a comprehensive reform agenda for meeting the future labour supply needs of the Australian vegetable industry which is underpinned by the following core principles:

1. The vegetable industry should be a level playing field.

The continued operation of a sub-set of growers who do not comply with Australian workplace standards presents a danger to the future viability of the industry. These growers are able to undercut labour costs and sell produce to retailers at a lower price. Such growers exploit workers and take advantage of vulnerable groups in the labour market such as undocumented migrant workers or WHMs. Non-compliance erodes the integrity of the law and the principle of fair competition that the efficiency of the market relies upon. Importantly, this undermines the ability of honest businesses that do the right thing to compete with unscrupulous businesses that profit on the basis of undercutting.

2. There is an urgent need to regulate the role of intermediaries, in particular, labour hire firms, who are a key source of worker exploitation, in the vegetable industry.

Growers have expertise in producing vegetables but are less experienced in managing complex and fluctuating labour needs, making outsourcing of labour recruitment and management commonplace. However, the labour hire industry has attracted highly damaging criticism that has led to growing calls to improve regulatory oversight that ensures protection for both growers and workers. This mitigates the risk of growers engaging unscrupulous intermediaries and of workers being exploited by them.

Another key intermediary in the vegetable industry, which has the opportunity to produce vulnerability for workers, are hostels. Further research is required to ensure hostels are not also exploiting temporary migrant workers by providing both substandard and expensive accommodation, and channelling WHMs into exploitative work as part of a mutually dependent package encompassing accommodation and employment.

3. The vegetable industry workforce is a vulnerable one.

Picking, packing and grading work is low-skilled, physically demanding, occurs in challenging weather conditions and is often characterised by long hours and a low level of trade union oversight and representation. The remote location of many vegetable farms compounds the inability of local workers to access jobs on these farms and the vulnerability and isolation of temporary migrant workers employed on them. As much of the vegetable industry's workforce is temporary migrants on either a WHM visa or a SWP visa, they are less likely to be informed and to report instances of exploitation to the authorities for fear of losing their source of income or visa extension.

4. Local workers should be given greater opportunities to become integrated into the vegetable industry's *skilled* workforce and should be given access and encouraged into ongoing low-skilled jobs in the industry.

Where possible, labour in the vegetable industry should be sourced from existing Australian citizens and permanent residents. The long-term viability of the vegetable industry depends on developing sustainable strategies for addressing workforce shortages and skills gaps. Creating long-term and sustainable career pathways for local workers, where possible, is an important aspect of this. The supply of temporary migrants is dependent on global and political factors out of the control of the industry. Therefore, the industry's sustainability depends on being able to rely on local workers for its labour needs where feasible, particularly when these are in core, ongoing and skilled jobs. For this reason, temporary migrant workers should, if possible, only be used to meet demand for low-skilled work during the harvest, recognising that for some vegetable commodities this is year-long

and for others this more seasonal in nature. However, it must also be acknowledged from the outset, that many growers have a poor perception and have often had a poor experience of the skills, aptitude and attitude of local workers, in particular unemployed youth. Additionally, most government programs and industry initiatives targeting the recruitment of local workers into the industry have not proven successful in the past.

Our research and earlier submissions of grower organisations to government inquiries have asserted that there is little or no room for wage movement for local workers in the industry. In our view, this assertion requires further research to verify it. Wage rates are the primary mechanism for increasing labour supply in a competitive labour market. If labour supply is to be increased through opening the industry to migrant workers, it is incumbent on the industry to make the economic case for why an increase in wages will not attract locals to the industry. This requirement reflects a fundamental underpinning of Australia's labour immigration program that local workers be given preferential access to jobs. When growers (like any other category of Australian employer) access a temporary migrant workforce, it must be acknowledged that this is a *special* opportunity permitted by federal government policy

If the case against a rise in wages is made, there should nonetheless be a cost premium built into the system so that employing temporary migrant workers is more expensive than employing local workers. This premium serves a four-fold purpose. It contributes to covering the cost of managing visa pathways and maintaining their integrity, ensuring oversight and enforcement of temporary migrant workers' workplace rights and communicating via a price signal to employers that local workers should be recruited in the first instance where feasible. Importantly, it also fosters greater public and community confidence that temporary migrant workers are not being used to replace local workers as a cheap and compliant labour source.

5. The inherent nature of low-skilled work in the vegetable industry is a special case, posing serious challenges in developing a consistent and dominant core local workforce.

Many low-wage industries claim a need for temporary migrant workers. The care sector and the hospitality sector, in particular, are two frequent proponents of the view that Australia develop dedicated and liberal low-skilled labour immigration pathways. However, the fact that employers attest to a skill or labour shortage and request access to a temporary migrant workforce, does not mean it is in the national interest for governments to respond by increasing the numbers of temporary migrant workers permitted entry into Australia. There are a number of aspects of horticultural work that make it particularly difficult to sustain a consistent and majority local workforce in low-skilled jobs. It is not just that it is casualised, low-status, low-wage work with poor conditions as is the case in the hospitality and care sectors. The *seasonal, stop-start* and *transient* nature of horticultural work means most local workers eschew it in favour of steady and consistent employment. The *physically arduous* nature of this work and the fact that it is often *outdoors* and in *inclement, extreme weather* also act as deterrents in the attraction and retention of a local workforce. That many farms are located *remotely* and in *regional areas* also plays a role as local workers often find it difficult to travel to where job vacancies exist and prefer to live in metropolitan centres where they have stronger community ties and social networks. Cumulatively, these inherent aspects of horticultural work means that it is highly challenging for the Australian vegetable industry to rely predominantly on a local workforce. This presents serious ongoing labour supply challenges for the industry that must be addressed in order to ensure its viability and sustainability.

6. Temporary migrant workers should be protected from exploitation and must benefit from the process of temporary labour migration.

It is vital that temporary migrant workers are legally engaged in the vegetable industry. If temporary migrant workers are being exploited on a widespread basis it is likely that visa pathways allowing growers to access temporary migrant workers will be closed down. There is growing public awareness of, and concern about, the exploitation of temporary migrant workers in Australia, largely resulting from a number of prominent media exposes.⁷ Although a recent survey conducted by the Lowy Institute found nearly three-quarters of Australians agree that immigration has a positive economic impact, there is increasing public concern about losing control of our borders and the management of Australia's immigration program.⁸ As a vulnerable workforce, temporary migrant workers should be made aware of their rights under Australian workplace law and should be given support in knowing how to avail themselves of Australian workplace protections. Additionally, it is important that the temporary labour migration process benefits the workers themselves through increased incomes, skills and experience.⁹

In addition to their legal obligations as employers under the *Fair Work Act 2009* (Cth), there should also be obligations on growers who employ temporary migrant workers (either via the WHM or SWP visas) and a dedicated oversight and enforcement apparatus that ensures these obligations are met (similar to the sponsorship obligations and penalties for breach under the 457 visa). These extra regulatory mechanisms are necessary for ensuring the ongoing integrity of the visa pathway and for the protection of temporary migrant workers. We discuss these recommendations in detail in Chapter 5.

7. Temporary migration pathways should be appropriately regulated to protect the interests of local and migrant workers, and should have comparable regulatory requirements.

Temporary migration pathways are created for a range of reasons, including foreign aid initiatives, deepening relations with other countries, contributing to labour supply challenges, or stimulating the Australian economy. Often a single visa type has a range of motives. It is important that the regulatory burden on the Australian vegetable industry when choosing particular visas types is comparable to avoid a substitution effect.

8. Regulatory and policy frameworks must not threaten the economic viability of the Australian vegetable industry.

An appropriate balance must be struck within government policy frameworks that provide labour supply solutions to growers. Although the policy framework must take into account the inherent

⁷ Meldrum-Hanna and Russell, above n 3; Adele Ferguson and Klaus Toft, *7-Eleven: The Price of Convenience* (30 September 2015) Four Corners <<http://www.abc.net.au/4corners/stories/2015/08/30/4301164.htm>>; McKenzie and Baker, above n 3.

⁸ Leon Berkelmans and Jonathan Pryke, 'The Development Benefits of Expanding Pacific Access to Australia's Labour Market' (Report, Lowy Institute, 2016) <<https://www.lowyinstitute.org/publications/development-benefits-expanding-pacific-access-australias-labour-market>>.

⁹ The International Labour Organization says that it is incumbent upon national governments to create 'instruments of governance which guarantee a *fair share of the prosperity* which migration helps to create' for temporary migrant workers in recognition of their contribution to the societies and economies in which they work': International Labour Organization, 'Fair Migration: Setting an ILO Agenda' (Report of the Director-General, International Labour Conference 103rd Session, 2014) 4 (emphasis added) <http://oppenheimer.mcgill.ca/IMG/pdf/a_ILO-Fair_Migration.pdf>.

vulnerability of the vegetable industry's low-skilled workforce and develop appropriate regulatory safeguards, the burden of this regulation on growers must not come at the expense of an economically viable vegetable industry. Growers are vital to the economy and our food security and must be *supported* and *enabled* by government regulations and policies to develop a sustainable and consistent workforce. Therefore, the regulatory impost associated with various visa categories must not be so significant as to stifle the role of small and medium-sized enterprises within the vegetable industry given the importance of this group of growers to the industry's dynamism and diversity. Governments also have a responsibility to address unscrupulous conduct by non-grower actors that threaten the ongoing viability of the vegetable industry, including anti-competitive, price-fixing behaviour by supermarket retailers and exploitative conduct by labour hire firms.

9. There is an important role for stakeholders to assist in coordinating labour supply solutions in the vegetable industry.

Industry associations are an important vehicle promoting the collective interests of growers. Although AusVeg is the primary national body representing Australian vegetable growers, within each state and territory there is a different peak vegetable body. In Western Australia, this is VegetablesWA; in Victoria and South Australia, this is AusVeg; in Queensland, this is predominantly Growcom, although other regional vegetable representative bodies exist like the Bowen Gumlu Growers Association; in New South Wales, this is NSW Farmers; in Tasmania, this is the Tasmanian Farmers and Graziers Association; and in the Northern Territory, this is NT Farmers. A number of different vegetable and fruit commodities have their own industry association, and the agricultural sector more broadly is represented at the national level by the National Farmers Federation. Another industry association in the mix is the Voice of Horticulture.

The fragmentation of industry voice and coordination efforts produced by these divergent representative bodies is striking. It is in stark contrast to the horticulture industry in New Zealand which specifically established a peak body to represent its interests in horticultural policy matters in the early 2000s and which has been largely successful in influencing the public policy agenda in that jurisdiction.

Bearing in mind the inherent challenges posed by the diverse array of industry associations within the Australian vegetable (and horticultural) industry, there is scope for industry associations representing growers to coordinate the activities of growers and work more extensively with government and other key stakeholders (as has occurred in New Zealand) to improve the reputation of the industry as a source of quality employment and to develop regional and state-based labour supply coordination efforts.

Although unions have historically not been a significant player in the Australian vegetable industry, in the last 12 months there has been a clear indication that both the Australian Workers Union (AWU) and the National Union of Workers (NUW) are seeking to increase their prominence and involvement in the industry. The strategies of the two unions are quite different and there appears to be a conflict between the AWU's claim as the true and traditional representative voice of Australian horticultural workers, with the NUW's clear efforts in signing up members as part of its national Fair Food campaign.

Although there appears to be a large degree of hostility between unions, growers and industry associations, it is a foundational principle of this report that industry and unions should work collaboratively to deal with issues facing the industry. The NFF's role in facilitating a joint industry, union and government roundtable to address the challenge of worker exploitation in the industry in December 2016 is an example of an important effort in this respect. Unions too, must ensure their

role is *constructive*, rather than *destructive*. It is important that union claims of underpayments and exploitation are accurate and not merely an attempt to support recruitment drives of members, as these claims have the potential to cause serious and long-standing damage to the reputation of the industry and the individual growers involved.

10. Supermarkets must not compromise the economic viability of the Australian vegetable industry and should bear some of the financial responsibility for ensuring the ethical sourcing of labour in their supply chain.

The main supermarkets (Coles and Woolworths) have the capacity to be highly influential in driving behavioural change in the Australian vegetable industry. Yet, to date, they have largely avoided this responsibility and have made the situation worse by placing enormous pressure on growers to reduce the costs of production by a fresh food price war between the two main supermarkets. Even when the supermarkets have conducted labour-related audits of their supply chain, the practice has been to pass the costs of these audits onto growers, rather than personally bearing the financial responsibility for this oversight. The best way for the supermarkets to ensure the protection of vulnerable workers in their supply chain is to ensure they pay fairer prices to growers and offer long-term certainty over the price for vegetable commodities in their contractual arrangements. Supermarkets cannot avoid worker exploitation in their supply chain. Their downward pressure on prices undermines grower profitability which produces poor labour management practices from growers looking to gain an unfair competitive advantage.

The real power to ensure grower compliance with Australian employment law is therefore squarely in their hands. With the supermarket duopoly dominating the market, these stakeholders have the power to determine ethical sourcing policies and fair pricing policies that in turn support farms employing legally and ethically. Legislators also have a role in encouraging supermarkets to play a more constructive and positive role in the Australian vegetable industry.

1.3 Methodology

This report is the outcome of a 12-month research project implementing a three-phase, mixed methodological approach analysing the nature of vegetable growers' labour needs. This approach was developed based on the knowledge that in-depth studies utilising a combination of methodological techniques are appropriate for examining the influence of regulatory, organisational and environmental factors on these needs.

1.3.1 Phase 1: Stakeholder Meetings and Secondary Documentation Analysis

In the first phase, the research team conducted background discussions with key stakeholders and gathered secondary documentation relating the characteristics of the vegetable industry in terms of employment, market structure, geography and output, and issues relating to labour needs and regulation. Each of the state and territory vegetable industry organisations were consulted in this phase and meetings were held with a number of government departments, including MigrationNT and the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) within the federal Department of Agriculture and Water Resources. The secondary documentation collected included a range of industry, government and media reports and legal decisions. A literature review was also undertaken that located the labour supply and regulation challenges of the Australian vegetable industry within an internationally comparative context. This process was informative for identifying solutions to these challenges that are potentially suitable to the local environment. While the structural features of the

Australian vegetable industry are distinct, the labour challenges it faces regarding sourcing workers and ensuring that they are treated fairly are also experienced by growers in numerous countries who rely in part on temporary and seasonal migration programs to address their workforce needs.¹⁰

1.3.2 Phase 2: National Survey of Vegetable Growers

In the second phase of the project, the research team engaged the services of OmniPoll, a professional market research company, to administer a national survey of vegetable growers assessing their ability to meet their labour needs. The survey instrument was designed in collaboration with OmniPoll and with input from industry. In the early stages of the survey design in February 2016, the project team conducted four interviews with growers in various states. Subsequently, a pilot survey was conducted between 10 and 12 August 2016 to trial and review the survey instrument. OmniPoll undertook fieldwork for the main survey on behalf of the research team between 17 August and 6 September 2016.

The survey consisted of 332 telephone interviews with vegetable growers in New South Wales, Victoria, Queensland, South Australia and Western Australia. Of these, 252 were growers who had hired or paid pickers, packers or graders in the previous five years. The remaining 80 growers had instead relied exclusively on family members to perform this work.

The Australian Bureau of Statistics (ABS) estimates there are 4024 vegetable growing businesses in these states (plus another 533 business in other states/territories). Peak industry associations in these states provided contact lists for businesses registered as vegetable growers. The combined list contained telephone numbers for 1552 contacts, which after accounting for duplicate phone numbers and businesses who were identified as not being vegetable growers, resulted in a sample frame of 1012 businesses. The survey should be regarded as a survey of this population subset, rather than a survey of the entire Australian population of vegetable growing businesses.

The state in which growers operate is the only known characteristic of all records in the sample frame. This was used to weight the survey sample, so that interviews from each state were re-combined in proportions reflecting the number of growers from each state on the contact list. This means the assumed population of 1012 growers being surveyed was distributed by state as shown in Table 1.1, which also shows the raw and weighted sample profile by state.

Table 1.1 Survey Population and Weighted Sample Profile

	Assumed population		Raw sample profile		Weighted sample profile	
		%	n	%		%
NSW	517	51	123	37	170	51
QLD	124	12	69	21	41	12
SA	43	4	19	6	14	4
VIC	63	6	16	5	20	6
WA	265	26	105	32	87	26
Total	1012	100	332	100	332	100

¹⁰ OECD, 'Recruiting Immigrant Workers: Germany' (Report, OECD Publishing: Paris, 2013) 57.

Statistically significant differences between segments at the 95% level of confidence are identified throughout the report. Statistical significance testing was undertaken by comparing a particular segment or group with its complement. In the tables relating to survey data presented in this report, segments that are significantly *higher* than others are indicated using **blue** text, and segments that are significantly *lower* than others are indicated using **red** text. A comprehensive explanation of the statistical significance testing is included in the full OmniPoll report in the Appendix.

The sample of 332 growers interviewed grew over 30 different types of vegetables. A comparison with ABS population data shows the sample includes a reasonable representation of several categories, but has a substantial over-representation of businesses growing lettuces, potatoes and ‘other’ vegetables (see Table 1.2). This suggests that the growers interviewed are more likely to be growing multiple crops.

Table 1.2 **Characteristics of Sample — Vegetables Grown**

	ABS population data %	Survey sample (weighted) %
Total vegetable growers	100	100
Beans	6	5
Capsicums - Outdoor	6	10
Capsicums - Undercover	4	
Carrots	4	9
Lettuces - Outdoor	5	19
Lettuces - Undercover	2	
Melons	9	12
Mushrooms	2	0
Onions	4	8
Potatoes	14	21
Tomatoes - Processing	2	19
Tomatoes - Fresh market - Outdoor	9	
Tomatoes - Fresh market - Undercover	6	
All other vegetables	63	74

1.3.3 Phase 3: Case Studies

Using employer-based surveys alone to examine the nature of labour supply challenges is problematic because employer perceptions often reflect ‘a misunderstanding of the concepts of skills shortages, recruitment difficulties and skills gaps’ (see Chapter 2).¹¹ Therefore, it is important to supplement surveys with qualitative research, such as case studies involving interviews with a range of stakeholders, in order to verify employer claims regarding the extent and underlying causes of their labour supply challenges.¹²

¹¹ Chandra Shah and Gerald Burke, ‘Skills Shortages: Concepts, Measurement and Implications’ (Working Paper No 52, Centre for the Economics of Education and Training, November 2003) vi <<http://files.eric.ed.gov/fulltext/ED505811.pdf>>.

¹² Sam Scott, ‘Migration and the Employer Perspective: Pitfalls and Potentials for a Future Research Agenda’ (2013) 19 *Population, Space and Place* 703.

Accordingly, in the third phase the research team undertook two case studies. This allowed us to probe key issues identified in the survey findings, and to develop a more nuanced understanding of the vegetable industry's labour supply and regulatory challenges from the perspective of various industry stakeholders. Given the diversity of the vegetable industry in terms of geography and market segments, the case studies also enabled greater appreciation of the different ways in which these challenges emerge and are responded to at a local level.

The case studies were conducted at two locations in Bundaberg, Queensland and Virginia, South Australia. A total of 38 interviews were conducted in September and October 2016 for this component of the project. The Virginia case involved 21 interviews with 12 workers (eight of whom were sourced via industry and four sought through the relevant trade union), four growers/farm managers, two trade unions officials, one industry association representative, one training organisation representative, and one migration agent. For the Bundaberg case, 17 interviews were conducted with seven workers, three growers, two employment agency managers, two hostel managers, one industry association representative, one trade union official, and one government representative. To verify information obtained from the interviews, primary documents provided by stakeholders and reports from local media, industry and government were also analysed.

The two case study locations share similar characteristics that make them highly appropriate for comparison. In both cases, horticulture is among the largest industries in the local economy in terms of its contribution to gross regional product and employment. Aggregate and youth unemployment in the two regions are substantially higher than the national and state unemployment rates. However, there are some important differences. Growers across the two cases specialise in different types of vegetable produce. Importantly, while growers in both regions have relatively minimal problems recruiting workers by the standards of the industry, the solutions developed for meeting their labour needs are different. Growers in the Bundaberg case rely heavily upon WHMs recruited through intermediaries, particularly local backpacker hostels. By contrast, in the Virginia case, there is extensive recruitment of permanent residents and use of human resource strategies aimed at retaining workers. Our findings from the case studies indicate that rather than there being a single solution for the vegetable industry's labour supply challenges, there are multiple strategies potentially available to growers, each of which offer distinct advantages and drawbacks.

This report synthesises all of the research data gathered throughout the three phases of the project to analyse and identify the main challenges and potential solutions to issues regarding labour supply and regulation in the vegetable industry. As outlined in subsequent sections, the report makes policy recommendations that can be pursued by industry and associated stakeholders in light of the research findings.

1.4 Findings

This report demonstrates the deficiencies of the current suite of labour supply options available to vegetable growers. None of the three main pathways — local workers, SWP workers and WHMs — provide a comprehensive labour solution alone, although together they have been largely sufficient in meeting labour needs to date. However, given the many risks with relying on WHMs as the primary labour source for vegetable growers, in our view there are endemic labour supply challenges facing vegetable growers that need to be addressed through reform. This report makes a number of findings.

1.4.1 Labour Supply Challenges

1. Some vegetable growers do not face extensive recruitment difficulties or labour shortages.

The ample supply of WHMs, because of the steady growth of the WHM program and incentives to work in horticulture, means that many vegetable growers do not find it difficult to access workers. This is of course dependent on a number of factors, in particular, the geographic location of growers. For vegetable growers located close to urban centers or on the tourist map, accessing WHMs tends to be fairly straightforward.

2. Some vegetable growers face labour supply challenges that threaten the day-to-day viability of their business and hamper forward-planning for business development.

Even with WHMs readily available in many vegetable growing locations, the unpredictability of their labour supply and conditions in their visa make them a highly precarious labour solution for growers in developing a comprehensive and sustainable approach to workforce planning. In our national survey of vegetables growers, 38% of respondents cited the location of their farm as a reason why they have difficulty recruiting workers. This suggests that growers in more remote locations, which are hard to reach and are less desirable as a tourist destination, are more likely to face labour supply challenges.

3. WHMs are sustaining the vegetable labour force in many regions thereby preventing shortages. Therefore, any attempts to wean growers off relying on WHMs and to introduce a new source of migrant labour needs to involve well-designed transitional arrangements.

Ongoing and seemingly systemic problems with the present visa arrangements for WHMs has led us to the view that a new solution that encompasses stronger regulation is needed to protect workers from exploitation and honest growers from being undercut. As this report demonstrates, for all vegetable growers, there are serious risks to the ongoing profitability of their business in relying on WHMs as the primary labour source. This report proposes two distinct and mutually exclusive reform packages, both of which will be developed in Chapter 5 of this report. However, for present purposes it is important to identify that a key component of both reform packages is the re-regulation of the WHM visa.

- *Package One* involves recognising the role of WHMs as a key labour source for the Australian vegetable industry and introducing additional regulatory requirements to ensure the longevity, sustainability and integrity of this visa pathway.
- *Package Two* proposes phasing out the second year visa extension option for WHMs over a period of 36–48 months and expanding the SWP. Such a transition needs to be as seamless as possible to ensure that growers continue to have access to the workers they need and

thereby prevent a labour shortage arising. It can only occur if the SWP is able to meet the labour needs of a range of businesses in the industry of different size and structure.

1.4.2 The Local Workforce

- 4. Although local workers traditionally formed the bulk of the harvest workforce, they are no longer the primary source of labour for growers. It is unlikely this will change in the future given the inherent nature of horticultural work in picking, packing and grading jobs which acts as a deterrent to the engagement of local workers in the industry.**
- 5. There are two groups of local workers.**
 - Local workers who are long-term Australian residents tend to have a poor reputation with growers in terms of their commitment to working in horticulture. This reputation applies particularly to Australian youth unemployed, with many employers reluctant to take these workers on despite government incentive programs. More effort needs to be made to understand the issues the industry faces in attracting and retaining this group of local workers.
 - In some regions where migrants and asylum seekers have settled in relatively larger numbers, there is a pool of local workers whom growers consider to be reliable, committed and productive. This group has the capacity to make an important contribution to the horticulture workforce. These workers constitute a potentially vulnerable group. Although they have secure residency status, many have ended up in horticulture as a last resort, finding it hard to gain alternative employment as a result of poor English language skills and other cultural factors, or because they are not qualified to work in other industries. Migrants and asylum seekers are a group that is not well versed in their workplace rights, and are reluctant to assert their rights even when they know them.

1.4.3 The Seasonal Worker Programme

- 6. The SWP has provided a suitable workforce for some vegetable growers with predictable seasonal needs. Although it has been used by larger growers to meet their year-long needs, it has proved less suitable for small and medium-sized growers with year-long needs or periods of short-term high demand for labour.**
 - The SWP limits the period of stay for workers. Growers with labour needs for the full 12 months of the year are required to cover the gap left by the departure of SWP workers at the expiration of their visa.
 - Growers can either access the SWP either through becoming an Approved Employer or through engaging a labour hire firm who is an Approved Employer. Larger growers who are better able to meet the administrative challenges posed by the program are able to meet their year-long needs through organising two rotating teams of SWP workers on a six-monthly basis. Some smaller and medium-sized growers have used a labour hire firm who is an Approved Employer to use rotating teams of SWP workers throughout the year to meet their year-long needs, although to date, for this group, reliance on the SWP has been fairly marginal.
 - Growers with unpredictable labour needs are unable to rely on the SWP as it is difficult to deploy these workers straightaway given the time lag and forward planning required to become an approved sponsor under the SWP and to arrange for the arrival of SWP workers. As the harvest time for many growers is affected by the weather, the precise time of the harvest is often difficult to predict in advance. For these growers, the design of the SWP does

not suit their labour needs as they may arrange for a group of SWP workers to be engaged on their farm, only to find that they have no work to provide them with for a number of weeks because of unavoidable, weather-related delays in the harvest. When this occurs, growers are still responsible under the SWP for providing and arranging pastoral care and accommodation for SWP workers, which for many growers is a significant disincentive to using the SWP.

7. The SWP results in a more productive and committed workforce.

- SWP workers stay with an employer for a period of between six to nine months depending on their country of origin and they are permitted an unlimited right to return conditional upon ongoing employer sponsorship. Consequently, growers are better able to recoup the costs of investing in workers' training and upskilling through the increased productivity and commitment of return workers.

8. The SWP results in less exploitation of workers.

- The design of the SWP means that less incidences of worker exploitation have emerged when compared with other low-skilled visa pathways.
- The requirements to provide an employment contract at the outset of the employment relationship, the reporting obligations and the other regulatory infrastructure around the SWP means that employers are more aware of their legal obligations.
- Because a grower can lose 'Approved Employer' status for non-compliance with the SWP's regulatory requirements, growers are more aware of the risks involved if workers are exploited.

9. The SWP's high regulatory burden on growers has led to a strong preference by growers for WHMs to meet their labour needs.

- The use of the SWP has been undermined by the ease and cost to horticulture workers provided under the WHM program, thereby producing a substitution effect.
- The SWP requires growers to conduct labour market testing, contribute to workers' airfares, apply for 'Approved Employer' status to the Department of Employment, provide accommodation, transport and pastoral care and guarantee a financial benefit to workers. None of these regulatory requirements are present for growers who employ WHMs for equivalent work in horticulture.

1.4.4 The Working Holiday Maker Program

10. WHMs are the primary source of labour for the horticulture industry.

- WHMs are a highly mobile and effective workforce.
- Growers in certain regions have come to rely almost exclusively on WHMs at harvest time.
- The contribution of WHMs to the horticultural workforce has accelerated since the mid-2000s when incentives were created for WHMs on the 417 visa to work in the industry and through the opening up of the WHM program 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 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. This reform of the WHM visa has significant risks attached. With the exception of the United States, all of the countries in the 462 program are less economically prosperous than Australia and with far lower minimum wages and less

regulated labour markets than Australia. Therefore, the financial gain from working in horticulture through the 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.

11. The primary attribute of WHMs as a labour source for growers is their flexibility and the minimal administrative requirements associated with their employment.

- WHMs suit the stop-start nature of horticultural work at harvest time for certain commodities, and can be deployed immediately when the harvest time arrives.
- The opportunity for a second year visa extension for WHMs after the completion of an 88-day period of work in horticulture in certain postcodes has proved highly effective in deploying WHMs to regions with horticultural labour shortages who would otherwise be hard-pressed in sourcing workers during the harvest.
- The employment of WHMs does not involve any additional reporting or paperwork responsibilities for growers, although this has changed somewhat with the passage of the *Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016* (Cth) on 1 December 2016. This requires growers to register with the Australian Tax Office if they employ WHMs.

12. The WHM visa pathway has been associated with a significantly higher incidence of worker exploitation, particularly in horticulture.

- The FWO found that the regulatory incentive for WHMs to complete an 88-day period of work in order to obtain a second year visa extension on a farm contributed to the exploitation of WHMs.
- Many media, academic and other reports which we cite throughout this report have identified the exploitation of WHMs engaged in the horticulture industry.¹³

13. The heavy reliance on WHMs as the primary source of labour poses some risks to the ongoing profitability of growers.

- The risk of relying on WHMs was apparent in the debate over the so-called 'backpacker tax'. The uncertainty surrounding the level of the tax led to a significant drop in WHMs working in the horticulture industry, despite the onset of the harvest season.
- The exploitation of WHMs working in horticulture will increase pressure for the 88-day period incentive to be reformed or abolished. It may also lead to greater regulation of employers who engage WHMs on their farm.
- The exploitation of WHMs working in horticulture is likely to damage Australia's reputation as a destination of choice for WHMs and may lead to the contraction in the number of WHMs willing to work in the vegetable industry. It may also damage public faith in the scheme and in temporary labour migration more generally, which if acted upon would create new and problematic labour supply challenges for growers. It could also hurt public perceptions of the vegetable industry, which could affect consumers' purchasing decisions.
- 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, the incentive schemes in other countries, tax rates, wage rates and exchange rates.
- The opportunity for growers to realize productivity gains for training and investing in WHMs are limited because of the one-off, time-bound nature of the WHM visa.

¹³ For example, Underhill and Rimmer, 'Layered Vulnerability', above n 3; Meldrum-Hanna and Russell, above n 3; Fair Work Ombudsman, '417 Visa Inquiry', above n 5.

1.5 Recommendations

This report identifies a need for a comprehensive reform package addressing the labour supply challenges facing the Australian vegetable industry. We have identified **two** distinct and mutually exclusive reform packages in the report's final chapter.

It is critical that the recommendations in the two packages be read as a whole. Each package has considered the balance between local and temporary migrant labour, and the balance between cost, worker protection and efficiency. If only some of the recommendations are pursued from either or both packages, further consideration needs to be given to the balance between these factors. Failure to do so could lead to unintended and undesirable consequences.

Both reform packages demonstrate the need for multiple simultaneous approaches to solve labour supply challenges in the Australian vegetable industry. In both packages, a combination of local workers and temporary migrant workers entering Australia on different visas are identified as the primary sources of the industry's future labour supply.

In a nutshell, and to foreshadow the development of these reform packages in Chapter 5 of the report, the two reform packages are structured in the following manner:

Package One incorporates:

- Initiatives to stimulate local worker engagement and employment in the industry;
- An effective registration and licensing scheme for labour hire firms engaged in the industry;
- A re-regulated WHM visa to ensure that these visa holders are less vulnerable to exploitation by labour hire farms, hostels and growers, and to ensure that WHMs can be employed on an ongoing basis by the same employer in the vegetable industry. This encompasses a number of recommendations regulating the use of labour hire, reducing the role of employer sign-off for the 88-day period, ATO registration, worker-induction and greater oversight and enforcement mechanisms. Growers who wish to retain the same WHM visa holder for the full 12 months, rather than just for 88 days or six months, as is presently permitted under the visa, shall be permitted to do so under our reform package without the current requirement that additional paperwork be completed. This process will be streamlined to ensure it operates more efficiently for the grower and WHM worker involved. This aspect of our reform package also advocates greater official recognition of the important contribution WHMs play in meeting the industry's labour supply to minimise the risk of the WHM being used a political football (like during the backpacker tax debate in 2015 and 2016); and
- A re-designed and more accessible SWP to ensure that the program is regulated more simply to allow for greater uptake by growers of different sizes, commodities and labour needs. We propose reducing the time taken to achieve 'Approved Employer' status, improvements in the worker-induction process, greater use of registered labour hire firms to meet growers' year-long labour needs and to minimise the present burden on individual growers to provide pastoral care and accommodation.

Package Two incorporates:

- Initiatives to stimulate local worker engagement and employment in the industry;
- An effective registration and licensing scheme for labour hire firms engaged in the industry;
- The phasing out of the second year visa extension following an 88-day period of work in horticulture in certain locations for WHMs over a period of 36–48 months; and
- The substantial re-design of the SWP so that it incorporates two distinct visa streams.

- Stream 1 is for Pacific nations and Stream 2 is for nations who are currently eligible for the 417 WHM visa, 462 WHM visa and for Pacific nations. Stream 1 will largely replicate the existing SWP, although we advance recommendations around streamlining the process of becoming an 'Approved Employer', improving worker-induction and minimising the obligations on individual growers to provide accommodation and pastoral care by advocating greater use of Approved Employers who are labour hire firms.
- Stream 2 permits a two-year, non-renewable stay in Australia for the specific purpose of working in the vegetable industry. Stream 2 visa holders are not sponsored by individual employers and are free to move between growers in the industry. Stream 2 has been designed to largely replicate the ease in which growers can presently access WHMs but to include a number of distinct, additional regulatory requirements aimed at ensuring the protection of Stream 1 visa holders from labour market exploitation and to ensure the longevity of this visa pathway.

There are three core principles underlying the two reform packages.

First, local workers should be *encouraged* and *enabled* to participate more fully in the Australian vegetable industry. This should occur through a collaboration of the many stakeholders in the industry, led by vegetable industry associations, but inclusive of government at national and local levels, unions and education and training providers. The aim of the collaboration should be to improve the reputation and attractiveness of the industry amongst prospective local workers, to strengthen links between growers and training providers and to develop genuine, long-term career pathways in the industry for local workers. We recommend that the myriad vegetable industry associations work more cohesively (as well as regionally) to foster greater collaboration and coordination amongst growers to coordinate labour supply and to create the possibility of more full-time, permanent positions for local workers, particularly in skilled jobs. Because it is essential that local workers have preferential access to the horticulture labour market, we recommend that greater efforts be made to ensure that registering prospective job vacancies with the National Harvest Trail website occurs on a more universal and widespread basis.

Second, it is in the best interests of the vegetable industry to ensure that its reliance on WHMs as the industry's core labour source during the harvest is transparent and sustainable. As indicated in the 'Findings' section above, the WHM visa is subject to a number of ongoing threats, not least because it is officially a visa for 'cultural exchange' and may be subject to parliamentary reform to ensure it returns to its roots rather than as a vehicle to meet labour shortages in horticulture. Its potential to produce worker exploitation is also another risk for growers, both to the reputation of the WHM visa abroad and to prompt calls for its reform or curtailment by Australian legislators.

Third, the labour supply needs of the vegetable industry are better addressed through a dedicated labour migration pathway for horticulture workers. This is the approach favoured internationally because it provides better outcomes for growers and workers. The current formulation of Australia's SWP does not meet the needs of most growers and requires substantial reform if it is to provide the dominant labour source for growers. In reform *Package One* we advance ways to improve the regulatory design of the SWP to foster greater use by growers. More substantial and fundamental reform to the SWP is recommended in *Package Two*. In this package we recommend the SWP incorporate two distinct streams: Stream 1 is limited to workers from Pacific Island countries that are currently partners under the SWP and Stream 2 is limited to workers from partner countries in the 417 WHM program and Pacific Island countries. Stream 1 provides visa

holders with an unlimited number of seasons, with seasons defined as six to nine months in any 12-month period, depending on the worker's country of origin. Stream 2 provides for a maximum of 24-month, non-renewable visa for horticulture work. In Chapter 5 we develop the regulatory infrastructure for how both Streams could operate, recognising the importance of minimising the substitution effect between the two Streams and ensuring that the regulatory burden on growers for accessing both Streams is not too high. We recommend removing the SWP's current labour market testing requirement and enabling stronger industry involvement and ownership of this program as a key ingredient to its take-up by growers. We also advocate more targeted and effective regulation incorporating involvement from the FWO and relevant unions to ensure the opportunity for worker exploitation under the SWP is reduced.

It is essential that the three aspects of either Package One or Package Two be implemented as a package rather than as isolated initiatives because each package addresses distinct aspects of the labour supply challenges facing the industry. The set of recommendations advanced with respect to local workers seeks to ensure not only that Australians have preferential access to horticulture jobs but also that this access is sustained and improved over time. The proposed reforms in relation to re-regulating (in the case of Package One) or phasing out (in the case of Package Two) the second year visa extension for WHMs and expanding and redesigning the SWP need to occur in tandem. For instance, abolishing the second year visa extension for WHMs without corresponding reforms to the SWP to ensure it better meets the needs of growers' risks producing an acute labour shortage for the industry. Equally, however, if the second year visa extension for WHMs remains in place alongside an expanded SWP, there will be a surplus of temporary migrant workers available to the horticulture industry which will both substantially reduce the job opportunities for local workers and increase the opportunity for exploitation of overseas workers. The reform package has been carefully calibrated to minimise the risk of these adverse outcomes for growers and workers occurring.

1.6 Conclusion

This report demonstrates the inadequacy of current labour supply options for meeting the vegetable industry's ongoing workforce needs. There are a number of reasons for this inadequacy. The status quo leaves many growers unable to expand or properly plan for their workforce needs. It also leaves them open to changes in the regulatory or economic environment for WHMs, which may produce an unexpected contraction of backpackers coming to Australia. The current approach also creates an unacceptable level of vulnerability for many workers employed in the vegetable industry who are left without appropriate regulation and oversight of their working conditions. Currently, the industry does not operate as a level playing field, with some growers avoiding their legal obligations around minimum pay and undercutting other growers in the commodity prices offered to retailers.

However, it would be irresponsible to respond to this set of challenges by simply *increasing* labour supply by indiscriminately expanding the number of temporary migrants or liberalising existing pathways such as the WHM and SWP without having regard for the myriad challenges associated with ensuring temporary migrant workers are not exploited in the Australian labour market. Research in Australia and abroad identifies the extreme vulnerability of temporary migrants in the labour market, particularly when engaged in low-skilled, low-paid, physically demanding and short-term work. In order to create a sustainable labour supply solution for the Australian vegetable industry, it is vital that the reform package strikes a suitable balance between the needs of growers to efficiently and cost-effectively access a productive workforce for picking, packing and grading jobs, and of workers to be informed of their workplace rights and of how to enforce these.

Thus, this report does not find that we need *more* temporary migrant workers employed in the Australian vegetable industry. Rather, we recommend a reform package that will produce a *better targeted, more reliable and sustainable* labour migration program that ensures that labour supply is more effective; better able to work productively with reduced exposure to exploitation. Our core recommendation is to substantially improve and reform the WHM, or to wean growers off relying on WHMs through providing a better functioning SWP option. These reform proposals around the visa categories for temporary migrant workers are aimed to supplement existing strategies, while also enabling the development of innovative strategies to encourage local workers into the vegetable industry, particularly in core, skilled jobs. To this end, there is a clear need for industry to be appropriately resourced, supported and guided during the implementation of the reform package, whichever one is chosen, and for a more active and cooperative role for industry and other stakeholders to co-regulate the use of labour.

Chapter 2

Labour Supply Challenges in the Vegetable Industry

2.1 Introduction

The Australian vegetable industry faces a labour supply challenge. This challenge is often reported as one of *labour shortages*.¹⁴ However, as this chapter explains, for a labour shortage to exist certain preconditions need to be met. For labour economists, an important precondition is that there is an absolute shortage of workers available to do the job at the standard legally wage compliant rate typically offered within the industry, rather than a shortage of workers caused by factors within the employer's control, such as offering wages that are below this rate. Additionally, a labour shortage is *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. Whereas it is generally seen as appropriate to address a labour shortage by employing workers external to the labour market, such as migrant workers, recruitment difficulties are generally best solved by changes to human resource management practices, such as improving wages and the quality of working conditions or the job itself to attract more workers from within the labour market or from within the organisation.

Whether or not the labour supply challenges confronting the vegetable industry can be considered labour shortages, changes to immigration policy have been one of the main ways these challenges have been resolved in the recent past. While the Seasonal Worker Programme (SWP) aims to assist 'Australian employers who can demonstrate that they cannot source suitable Australian labour', the regulations of the Working Holiday Maker (WHM) visa allow employers to freely engage migrant workers for any occupation regardless of whether or not a local shortage exists.

This chapter begins by explaining what a labour shortage is, how it compares to other relevant terms namely recruitment difficulties and *skills gaps*, whether these terms are suitable for understanding the labour supply challenges in the vegetable industry, and how these challenges can be resolved. It draws upon evidence from the national survey of vegetable growers to assess the characteristics of the existing labour supply challenges. Finally, the chapter analyses the two case studies to examine the different ways that growers have addressed localised challenges specific to their regions.

2.2 What are Labour Supply Challenges and What Causes Them?

Labour economists tend to define a labour shortage as a shortage of available workers according to what employers currently offer in the form of wages and conditions, which then requires them to either wait longer to fill the vacancy, search more actively for workers, or increase wages in order to stimulate an increase in the supply of workers willing to do the job.¹⁵ Situations where employers are not willing to raise wages in order to attract more potential candidates 'should not be regarded as a true labour shortage', according to one study.¹⁶

¹⁴ 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>>.

¹⁵ See, eg, Jonathan Haskel and Christopher Martin, 'The Causes of Skill Shortages in Britain' (1993) 45 *Oxford Economic Papers* 573; P N (Raja) Junankar, 'Was there a Skills Shortage in Australia?' (Discussion Paper No 4651, Institute for the Study of Labor, December 2009) <<http://repec.iza.org/dp4651.pdf>>; Sue Richardson, 'What is a Skill Shortage?' (2009) 35 *Australian Bulletin of Labour* 326.

¹⁶ Joshua Healy, Kostas Mavromaras and Peter J Sloane, 'Skill Shortages: Prevalence, Causes, Remedies and Consequences for Australian Businesses' (Monograph, National Centre for Vocational Education Research

For the reasons explained below, this definition seems too rigid for remedying the labour supply challenges in the Australian vegetable industry. Nevertheless, if labour supply challenges are the result of employers offering wages below the 'market' or standard rates, due to unsatisfactory working conditions or because they are not searching extensively for workers across the labour market, this should be viewed as a recruitment difficulty not a labour shortage.¹⁷

In our research, we encountered regions where growers claimed to face challenges finding workers to perform picking, packing and grading jobs despite relatively high rates of local unemployment. There was widespread dissatisfaction among employers with these local workers, who were not considered by growers to be sufficiently **capable, reliable or productive**.

It is important to distinguish between these terms. Labour economists refer to the situation where the workers available to address a shortage do not have the **skills** or **capabilities** required to perform the work to the desired standard as a *skills gap*.¹⁸ The best response to a skills gap is to improve the capacity of the workforce through training. Where workers are **unreliable**, such as simply not turning up to work, despite adequate training and fair opportunity to perform the job for award wages and reasonable conditions of work, they might be considered inherently unsuitable for the job. It is reasonable for employers not to recruit workers in this situation. Where workers are **unproductive**, this may be due to a lack of training or inherent characteristics of the worker.

In the case of issues with the productivity of workers, it is important to consider whether the expectations of employers about levels of productivity are reasonable. In the case of a labour market with a mixture of local and migrant workers, as in the vegetable industry, it may be that employer perceptions have been altered due to an abundance of temporary migrant workers who are motivated by the prospect of a visa extension to work harder for a short period of time, or who are able to present as a more productive group as a result of selective recruitment practices.¹⁹ Growers' perception of local workers as unproductive may therefore be a relative one if it was formed with direct reference to temporary migrant workers who were viewed as a highly productive group.

This situation presents a challenge because if these perceptions among employers become entrenched, they may result in local workers being locked out of the job market.²⁰ According to one authoritative examination of immigration and labour supply challenges, the specific capabilities and productivity level that employers claim they need 'can be critically influenced by what employers

Monograph Series 09/2012, 2012) 13 <<https://www.flinders.edu.au/sabs/nils-files/reports/skill%20shortages%20prevalence,%20causes,%20remedies%20and%20consequences%20for%20Australian%20businesses.pdf>>.

¹⁷ Francis Green, Stephen Machin and David Wilkinson, 'The Meaning and Determinants of Skills Shortages' (1998) 60 *Oxford Bulletin of Economics and Statistics* 165; Healy, Mavromaras and Sloane, above n 16; Shah and Burke, above n 11.

¹⁸ Shah and Burke, above n 11.

¹⁹ Martin Ruhs and Bridget Anderson (eds), *Who Needs Migrant Workers? Labour Shortages, Immigration, and Public Policy* (Oxford University Press, 2010).

²⁰ Wayne A Cornelius, 'The Structural Embeddedness of Demand for Mexican Immigrant Labor: New Evidence from California' in Marcelo M Suárez-Orozco (ed), *Crossings: Mexican Immigration in Interdisciplinary Perspectives* (Harvard University Press, 1998) 115; Michael J Piore, *Birds of Passage: Migrant Labor and Industrial Societies* (Cambridge University Press, 1979).

think they can get from the various pools of available labour, while at the same time, labour supply often adapts to the requirements of demand'.²¹

Moreover, when employers claim to prefer temporary migrants over locals because of a perceived skills gap or a productivity dividend, caution needs to be taken to ensure that temporary migrants — as a group of workers more susceptible to exploitation — are not in reality being hired for another reason, namely to gain an unfair market advantage by employing workers below the market or legal minimum wage rates. This is a well-established finding among existing studies of employers' motivations for recruiting migrant workers internationally,²² particularly temporary migrants who often face challenges in exercising their rights, and those in low-paid, low-skilled occupations where the conditions of work often prove unattractive for local workers.²³ These scenarios can perpetuate low wages, poor conditions and poor job quality, thus making it more difficult to recruit locals in the future and compounding labour supply challenges.²⁴

We provide this explanation of the factors that potentially cause or contribute to labour supply challenges as context for the assessment of the survey data and case studies discussed below. Our research does not conclude definitively whether there is a national shortage of local workers in the vegetable industry. Several academic, media and government reports indicate that there is a high level of non-compliant employment practices that distort the horticulture labour market, such as underpayment of award wage rates.²⁵ This evidence of non-compliance makes it hard to distinguish genuine labour shortages from distorted expectations of employers about the capacity and productivity of its workforce at a reasonable rate of pay.

At the end of this chapter and elsewhere in the report, we develop recommendations based on the finding that there are, at present, **serious labour supply challenges** facing the Australian vegetable industry. These recommendations are based on survey and case study data, which confirm strong perceptions within the industry, regarding the problems of securing labour supply continuity particularly to meet growers' needs during peak harvest periods. In the following chapter, we present findings that these labour supply challenges are a creation of an insufficient regulatory framework governing the participation of temporary migrant workers and local workers in the vegetable industry. The heavy reliance on WHMs in particular presents challenges for vegetable growers seeking a sustainable and long-term solution for meeting their low-skilled labour needs.

²¹ Ruhs and Anderson, above n 19, 6.

²² Jelena Atanackovic and Ivy Lynn Bourgeault, 'The Employment and Recruitment of Immigrant Care Workers in Canada' (2013) 39 *Canadian Public Policy* 335; Harald Bauder, *Labor Movement: How Migration Regulates Labor Markets* (Oxford University Press, 2006); Stephen Castles and Godula Kosack, *Immigrant Workers and Class Structure in Western Europe* (Oxford University Press, 1973); Sheeren Hussein, Martin Stevens and Jill Manthorpe, 'What Drives the Recruitment of Migrant Workers to Work in Social Care in England?' (2011) 10 *Social Policy & Society* 285; Elaine Moriarty et al, "'Taking on Almost Everyone?" Migrant and Employer Recruitment Strategies in a Booming Labour Market' (2012) 23 *International Journal of Human Resource Management* 1871.

²³ Bridget Anderson, 'Migration, Immigration Controls and the Fashioning of Precarious Workers' (2010) 24 *Work, Employment and Society* 300; Judy Fudge, 'Making Claims for Migrant Workers: Human Rights and Citizenship' (2014) 18 *Citizenship Studies* 29; Piore, above n 20.

²⁴ Stephen Bach, 'Managed Migration? Nurse Recruitment and the Consequences of State Policy' (2010) 41 *Industrial Relations Journal* 249.

²⁵ Underhill and Rimmer, 'Layered Vulnerability', above n 3; Meldrum-Hanna and Russell, above n 3; Fair Work Ombudsman, '417 Visa Inquiry', above n 5; McKenzie and Barker, above n 3; Cat Rodie, 'Horror in the Outback', *Marie Claire* (March 2017) 52–6.

We therefore recommend that pathways for migrant workers to work in the industry be maintained, but that these be modified to reduce market distortions created by the exploitation of migrant workers and reduce risks for growers relying predominantly on an inherently unstable, possibly unsustainable and unpredictable labour source, namely WHMs. We also recommend that continued efforts be made to train and provide incentives to local workers to work in the industry. If non-compliance in the industry is reduced significantly, and adequate pathways are provided for local workers, it will be possible to manage labour supply challenges more effectively.

2.3 How Can Labour Supply Challenges be Addressed?

There are various potential solutions for employers to address labour supply challenges, particularly those considered to be recruitment difficulties. First, employers can increase wages to stimulate an increase in the supply of labour. While some labour economists favour this solution, in certain contexts it is not always realistic. For instance, the Australian vegetable industry is characterised by narrow margins due to the constraints of operating in high-wage labour markets, price pressure imposed by retailers with monopsony control over supply chains and vagaries in demand caused by unpredictable weather patterns. In some market segments, the vegetable industry is competing in global product markets in which competitors face considerably lower wage costs. These conditions mean that employers are often reluctant or unwilling to increase wages to attract more workers because they may not be able to afford it.²⁶ Additionally, such a move will often require employers to raise wages for their existing employees, thereby adding to their total labour costs.²⁷

Second, employers can address labour supply challenges by improving the quality of jobs and the working environment. Studies have found that firms with developed human resource management strategies focused on improving job quality and fostering a highly-committed workforce are less likely to experience recruitment problems.²⁸ Such strategies include allowing independent worker representation, structured training programs and career development opportunities.

Third, there are potentially less costly shorter-term solutions to labour supply challenges such as using casual, part-time and flexible contracts more extensively, increasing overtime, changing working hours, and redesigning jobs and work arrangements. One study found that these strategies are more effective than increasing wages, investing in training or developing career pathways for smaller firms with less human resource management capabilities,²⁹ which tend to characterise the operations of many vegetable industry employers. However, despite the prevalence of casual employment due to the industry's seasonal nature, overreliance on casuals is likely to reduce the ability of firms to respond to shocks in the labour market. In situations where labour is scarce, 'workers, on short and/or casual contracts with little attachment to the firm, change employers in

²⁶ Charlotte Elisabeth Bedford, *Picking Winners? New Zealand's Recognised Seasonal Employer (RSE) Policy and its Impacts on Employers, Pacific Workers and their Island-Based Communities* (PhD Thesis, University of Adelaide, 2013) 162–3.

²⁷ Haskell and Martin, above n 15; Richardson, above n 15.

²⁸ 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.

²⁹ Tony Fang, 'Workplace Responses to Vacancies and Skill Shortages in Canada' (2009) 30 *International Journal of Manpower* 326.

pursuit of higher wages. This then creates a perception of a shortage situation among employers.’³⁰ This suggests that finding ways to retain workers, for instance by using permanent contracts or arrangements that allow workers to return each season, can provide advantages for growers seeking more sustainable solutions to addressing their labour supply challenges.

Fourth, employers can address labour supply challenges by making jobs redundant, for example by outsourcing jobs to other organisations or through automation to make production less labour-intensive. Using technology to reduce the need for manual labour can be challenging given the sensitive nature of many vegetable crops. However, recent technological advancements have resulted in increased mechanisation being a more feasible solution for some parts of the industry. Where machinery cannot substitute for workers for certain sensitive crops, the use of labour-saving technology, for instance conveyor belts in the fields, can reduce physical demands on workers and improve productivity thereby lowering labour costs.³¹

Fifth, in segments where seasonality and remoteness compound labour supply challenges, another potential solution is greater coordination between the activities of employers by an industry association. A more sustainable solution for some workers that also buffers individual employers against extensive shortages is to pool labour to allow workers to stay in the same region but move between employers as demand fluctuates, thereby maintaining continuity of employment around seasonal peaks and troughs.

Sixth, governments can also play an active role in helping to anticipate shortages by making local education and training institutions more responsive to employers’ needs, initiating changes to the welfare system to encourage inactive workers into the labour market and using immigration policy to facilitate the recruitment of workers from abroad.³² Employing immigrant workers is, therefore, one of many different solutions available to employers — and governments — for addressing labour supply challenges.

2.4 What is the Nature and Extent of Labour Supply Challenges in the Vegetable Industry? Evidence from the National Employer Survey

The national survey of the vegetable industry 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. Of the 332 vegetable growers surveyed who hire pickers, packers or graders, 70% employ a total of less than 20 people in peak season (and can therefore be classified as small businesses), 28% employ 20–199 employees in peak season (medium businesses) and 2% employ 200 or more people in peak season (large businesses). While 34% of respondents use pickers, packers or graders for less than six months of the year, 66% employ them for seven months or more, including 41% who claim to employ workers to perform these roles all year round.

³⁰ Shah and Burke, above n 11, 39.

³¹ Linda Calvin and Philip Martin, ‘The US Produce Industry and Labor: Facing the Future in a Global Economy’ (Economic Research Report No 106, United States Department of Agriculture, November 2010) <https://arefiles.ucdavis.edu/uploads/filer_public/2014/06/19/calvin-martinusdaerr106.pdf>.

³² Bridget Anderson and Martin Ruhs, ‘Migrant Workers: Who Needs Them? A Framework for the Analysis of Staff Shortages, Immigration, and Public Policy’ in Martin Ruhs and Bridget Anderson (eds), *Who Needs Migrant Workers? Labour Shortages, Immigration, and Public Policy* (Oxford University Press, 2010) 15.

Respondents were asked various questions about the working conditions for their pickers, packers and graders. Casual employment is predominant in the vegetable industry. When growers were asked about the form of employment for most of their pickers, packers and graders, 73% said on a casual basis, 14% on a part-time permanent basis and 12% on a full-time permanent basis. Fluctuations in production schedules often create a greater need for workers to be engaged on a flexible basis, which is a likely explanation for the extent of casual employment across the industry. But given that workers on casual contracts generally exhibit less commitment to their employers and are harder to retain, the high proportion of casual employment may be contributing to labour supply challenges in the vegetable industry.

During peak season, growers report that their pickers, packers or graders typically work between 31 and 40 hours per week (cited by 39% of respondents) or between 41 and 50 hours (29%). Relatively small proportions of growers said that their workers in these categories worked less than 30 hours (22%) or more than 50 hours (8%). Almost three-quarters of respondents (74%) claim that their workers work on weekends, but only 26% pay weekend penalty rates, compared to 48% who pay overtime penalty rates.

In terms of methods and rates of pay, 98% of growers surveyed pay at least some of their workers on an hourly rate; 25% of growers use piece rates, but nearly all of these use piece rates in combination with hourly rates. Based on information that respondents provided regarding the rates they pay adult workers, we calculated that most growers pay at least the award rates to their pickers, packers and graders, although this was higher among growers who pay by the hour (74%) than those paying with piece rates (65%). One-quarter of growers believe it is very or quite common for growers in their industry to pay below the award, although only 5% admit to doing so themselves in the last five years.

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% claim 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 2.1). Those employing five to 19 people are 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).

Table 2.1 **Difficulty Recruiting Pickers, Packers and Graders**

		NUMBER EMPLOYED IN PEAK SEASON			MONTHS USE WORKERS	
	TOTAL	Less than 5	5-19	20+	1-6	7-12
<i>(Sample size n=)</i>	<i>(252)</i>	<i>(59)</i>	<i>(111)</i>	<i>(82)</i>	<i>(84)</i>	<i>(168)</i>
	%	%	%	%	%	%
Always or most of the time	22	22	25	18	20	24
Sometimes	41	36	47	37	42	41
TOTAL ALWAYS/ SOMETIMES HAVE DIFFICULTY	63	58	72	54	61	64
Or, 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?’.

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

There does not appear to be any compelling evidence that recruitment difficulties are related to human resource management practices commonly associated with decent job quality,³³ including paying award rates or higher, penalty rates, accommodation assistance, training, or mechanisms for workers to ‘have a say’ over management decisions (see Tables 2.2a and 2.2b). For instance, of those growers who have difficulty getting workers always or most of the time, 80% claim to pay award hourly rates whilst 13% admit to paying below the award. Of those growers who never have recruitment difficulties, 67% claim to pay the award or higher compared to 19% who pay below the award. These figures indicate that **growers who comply with their legal obligations and who provide these conditions associated with better job quality are more likely to have difficulty finding workers than those who admit they do not.**

This finding confounds the conventional expectation that employers offering higher wages and better working conditions will find it easier to attract and retain workers. It could indicate that, in effect, a ‘dual’ labour market is operating 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 capacity 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.

³³ Angela Knox and Chris Warhurst (eds), *Job Quality in Australia: Perspectives, Problems and Proposals* (Federation Press, 2015).

Table 2.2a Factors Associated with Difficulty Recruiting Workers

	TOTAL	Always or most of the time	Sometimes	Total always/ mostly/ sometimes	Never
(Base: Growers who pay hourly rates)					
(Sample size n=)	(247)	(52)	(103)	(155)	(92)
Allocation of below/ above award for hourly rate based on reported rates of pay					
Pay below award	17	13	17	16	19
Pay award or higher	74	80	76	77	67
Not determined	9	7	7	7	14
Total	100	100	100	100	100
(Base: Growers who operate on weekends)					
	(188)	(34)	(87)	(121)	(67)
Pay penalty rates for weekends					
Yes/ do	26	31	26	28	24
No	74	69	74	72	76
Total	100	100	100	100	100
(Base: Those work 'overtime' hours - very small samples)					
	(84)	(19)	(35)	(54)	(30)
Pay penalty rates for 'overtime' hours					
Yes/ do	48	58	51	54	36
No	52	42	49	46	64
Total	100	100	100	100	100

Note. See Appendices for full results.

Table 2.2b Factors Associated with Difficulty Recruiting Workers

		FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
	TOTAL	Always or most of the time	Sometimes	Total always/ mostly/ sometimes	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
	%	%	%	%	%
Training					
Training in how to do their job	97	97	96	96	97
Occupational Health and Safety training	84	85	83	83	85
Where appropriate, English language or literacy training	13	8	20	15	9

NET ALL OTHERS (UNPROMPTED)	16	12	18	16	17
Vehicles for workers to 'have a say'					
By raising things in one-on-one discussions with manager	94	95	92	93	96
By raising things at team meetings	62	61	70	67	52
Through a suggestion box	15	15	19	18	11
Through union representatives	3	3	3	3	2
Or, some other way	6	7	6	7	3
None/ don't know	5	3	6	5	4

Note. See Appendices for full results.

2.4.2 What Factors did Growers Attribute to their Recruitment Difficulties?

As Table 2.3 shows, a total of 87% of growers surveyed attribute recruitment difficulties to the nature of work, with this response significantly higher among those employing five to 19 workers and those using pickers, packers or graders seven to 12 months of the year. Of these, 81% of respondents believe that people don't like the work that picking, packing or grading involves, while 68% said that people are put-off by having to work outside in any weather. Despite the vegetable industry being concentrated in the regions, a much smaller proportion (38%) said that the location of the farm was a reason for their recruitment difficulties. Additionally, 32% of respondents attributed these challenges to competition from other local farms and 22% to the job not paying enough. Growers surveyed were also able to provide unprompted responses. The most common unprompted reason given, which was cited by 10% of growers, for why they have recruitment difficulties is that people are lazy or don't want to work, which accounted for 10% of respondents.

Table 2.3 **Why Growers Believe They Have Difficulties Recruiting Workers**

		NUMBER EMPLOYED IN PEAK SEASON			MONTHS USE PICKERS/ PACKERS/ GRADERS	
	TOTAL	Less than 5	5-19	20+	1-6 months	7-12 months
<i>(Sample size n=)</i>	<i>(157)</i>	<i>(33)</i>	<i>(77)</i>	<i>(47)</i>	<i>(49)</i>	<i>(108)</i>
	%	%	%	%	%	%
NET NATURE OF WORK	87	83	93	80	75	93
People just don't like the type of work	81	66	91	76	65	89
People put-off by working outside in any weather	68	71	68	65	51	76
Because of where your farm is located	38	24	46	34	34	40
Competition for workers from other farms in your area	30	31	24	42	30	30
The job doesn't pay enough	22	26	24	15	22	22
NET ALL OTHERS (UNPROMPTED)	30	20	37	26	33	29
People lazy/ don't want to work	10	2	14	9	10	10
References to backpacker tax/ people put off by tax	5	4	5	6	14	1
Difficulty getting people with skills/ experience	2	2	2	2	3	1
Lack of workers/ seasonal workers	1	2	1	2	1	1
Inability to get people during holiday periods	1	0	2	2	0	2
Other	12	12	15	6	7	14

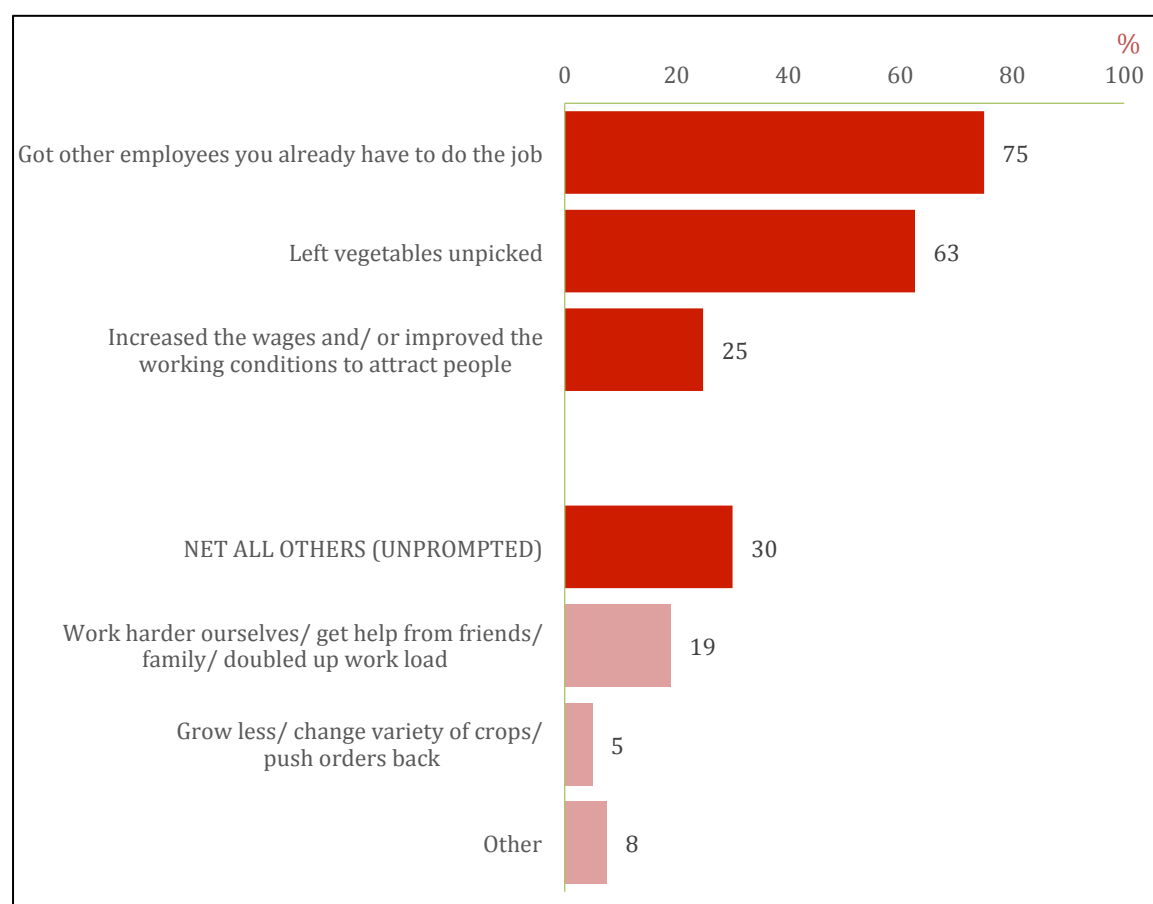
Note. Respondents were asked 'which of this list of things, do you think explain why it is difficult for you to get people? Is it because...?'.

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

A total of 40% of respondents said there have been occasions in the past five years when they were unable to get as many pickers, packers and graders as they needed (Figure 2.1). 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 (ie 25% of all respondents) left vegetables unpicked.** The response to this option is alarmingly high given the waste involved. It is also noteworthy that only 25% of respondents claiming 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 could reflect several factors including weak capacity of workers to bargain for higher wages, which high-demand conditions generally enable. 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. Regardless of the underlying causes, these contradictory results highlight the extent of labour supply challenges and the difficulties of identifying effective solutions.

Figure 2.1 **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...?’.

2.4.4 How Did Growers Respond to Recruitment Difficulties?

While growers were generally reluctant to improve wages and conditions in response to a recruitment difficulty, they were willing to use a range of other strategies (see Table 2.4). Among those that had ever faced such difficulties, recruiting workers directly was the most common response (90%), followed by using a labour hire company (40%) and through a youth hostel (27%). Only a small minority of these growers used the National Harvest Labour Information Service (11%), which suggests that **more could be done by government and industry associations to promote this service to help growers advertise vacancies to people looking for work**. Some of these, responses differed significantly among growers who faced difficulties recruiting workers ‘always or most of the time’. In particular, growers in this category were much more likely to use a labour hire company (50%) and much less likely to recruit through a youth hostel (19%).

Table 2.4 Factors Associated with Difficulty Recruiting Workers: Recruiting Channels used in the Last Five Years

	TOTAL	FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
		Always or most of the time	Sometimes	Total have difficulty	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
	%	%	%	%	%
Labour Hire Company	40	50	35	40	40
Migration agent	7	15	4	8	6
National Harvest Labour Information Service	9	9	12	11	5
Youth Hostel	29	19	32	27	31
Recruiting directly yourself	88	89	91	90	83

2.4.5 What Types of Workers did the Growers Experiencing Recruitment Difficulties Employ?

Table 2.5 shows that a total of 85% of all growers with recruitment difficulties recruited Australians, and were much more likely to recruit those from the local region (82%) than from elsewhere in Australia (29%). Similarly, 80% of those with recruitment difficulties used temporary migrants, especially WHMs (75%), international students (30%) and Pacific seasonal workers (24%). The relatively high proportion of growers recruiting international students is surprising given that this group of temporary migrants has no incentive to work in horticulture, unlike WHMs and Pacific seasonal workers. Interestingly, 73% of growers who had ‘never’ faced recruitment difficulties recruited temporary migrants, compared to 84% of these growers who recruited Australians. This may suggest that the ready availability of temporary migrants in horticulture is helping some vegetable growers to address their labour supply challenges.

Table 2.5 Factors Associated with Difficulty Recruiting Workers

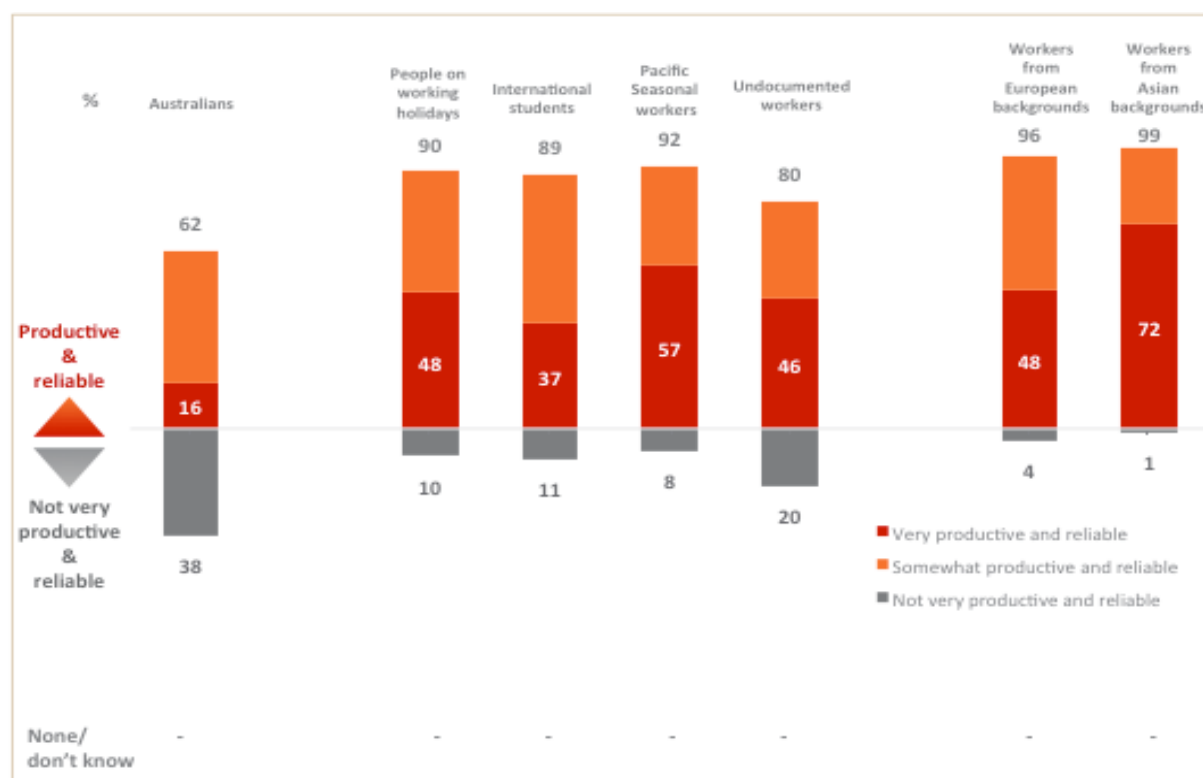
	TOTAL	FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
		Always or most of the time	Sometimes	Total have difficulty	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
	%	%	%	%	%
NET USED AUSTRALIANS	84	79	88	85	84
Australians from local region	82	77	85	82	81
Australians from other parts of Australia	26	24	32	29	21

NET USED TEMPORARY MIGRANTS	78	77	82	80	73
People on Working Holidays	72	63	81	75	67
International students	29	28	32	30	27
Pacific seasonal workers	20	28	22	24	13

2.4.6 What Were the Perceived Advantages of Different Types of Workers?

Growers' perceptions of workers' productivity and reliability provides an indication of why growers prefer certain types of workers over others (see Figure 2.2). Among all growers (not just those who have experienced recruitment difficulties), workers from Asian backgrounds (99%) are perceived as the most productive and reliable, followed by workers from European backgrounds (96%), Pacific seasonal workers (92%), people on WHM visas (90%), international students (89%), undocumented workers (80%) and Australian workers (62%). It should be acknowledged that these figures exclude the relatively high rate of respondents who answered 'none' or 'don't know' regarding their perceptions of the productivity and reliability of international students (31%), Pacific seasonal workers (34%) and undocumented workers (61%). Negative perceptions were by far most common of Australian workers, with 38% of growers claiming that these workers were not very productive or reliable, which was much higher than negative perceptions expressed regarding the productivity and reliability of all other categories of workers. **Therefore, it is clear that Australian workers are not regarded favourably compared with temporary migrants and undocumented workers. This suggests that growers are reluctant to hire locals not because of their capacity to do the job, but because of a perception of their reliability and productivity compared with temporary migrant workers.**

Figure 2.2 Perceptions about Worker Productivity/Reliability (Excluding Respondents who Answered 'None' or 'Don't Know')



Growers who claim to face difficulties recruiting are more likely than the average to be selective about the characteristics of the workers they seek to recruit (see Table 2.6). Growers with recruitment difficulties placed most importance on a workers' physical capabilities (96% compared to 90% of those who never faced recruitment difficulties), followed by ability to start work immediately (87% compared to 76%), ability to commit to a full season (80% compared to 71%), ability to work long hours each week (72% compared to 58%) and previous experience of doing the job (55% compared to 43%).

Table 2.6 Importance of Characteristics when Recruiting Workers

	TOTAL	FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
		Always or most of the time	Sometimes	Total have difficulty	Never
<i>(Sample size n=)</i>	<i>(252)</i>	<i>(52)</i>	<i>(105)</i>	<i>(157)</i>	<i>(95)</i>
	%	%	%	%	%
Previous experience of doing the job					
Very important	18	14	18	17	20
TOTAL IMPORTANT	50	59	52	55	43
Not important	50	41	48	45	57
People being able to start work immediately					
Very important	45	46	46	46	42
TOTAL IMPORTANT	83	87	87	87	76
Not important	16	13	11	12	23
Availability to work long hours each week					
Very important	33	41	33	36	29
TOTAL IMPORTANT	67	74	70	72	58
Not important	33	24	30	28	41
Availability to commit for a full season					
Very important	44	60	41	48	37
TOTAL IMPORTANT	77	92	73	80	71
Not important	23	8	27	20	29
A workers physical capabilities					
Very important	62	68	63	65	57
TOTAL IMPORTANT	94	99	95	96	90
Not important	5	1	4	3	10

2.5 Do Labour Supply Challenges Exist in Local Vegetable Growing Regions? Evidence from the Case Studies

The evidence from the survey clearly indicates that, from a national perspective, vegetable growers face extensive labour supply challenges. However, whether these exist at a local level is another matter. For instance, it could also be the case that acute shortages exist in certain regions, and conversely, that growers in regions with access to abundant supplies of labour face neither shortages, recruitment difficulties nor skills gaps. To get a clearer sense of the localised and varied nature of labour supply issues in the vegetable industry, it is informative to draw upon the qualitative research conducted in the two case study regions of Bundaberg and Virginia.

2.5.1 Case Study: Bundaberg, Queensland

With a high rate of unemployment, Bundaberg is characterised by a local labour surplus. The work schedules varied between farms due to the diversity of crops with different seasons. Several growers made annualised hours arrangements available to workers that were employed year-round to provide them with income stability around the seasonal peaks and troughs. For instance, a worker might work 60 hours per week during peak season and 20 hours during a quiet period but receive 40 hours of pay each week.

In terms of working conditions, pickers, packers and graders typically work five days per week at the award pay rate with casual loading. However, several WHMs reported that they or others they knew had worked six or seven days per week for well below award wages. All of the WHMs in the region we spoke to intended to leave once they reached the 88 days required to be eligible for a second visa; one said '95% of the people staying here will do the same thing'. However, the hostel managers we spoke with said there were exceptions to this.

Despite the high rate of unemployment, backpackers rather than locals represented the most important source of labour for the local vegetable 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 second visa offered to WHMs who had spent 88 days in the horticulture industry — or the 'six month sentence in rural Australia' in the words of one grower — was a major reason why almost all backpackers detoured to this region.

Growers articulated the advantages of WHMs in terms of their **flexibility, reliability** and **productivity**. These workers are seen as **flexible**, because the use of hostels as recruitment channels allows growers to adjust the number of workers needed on a day-to-day basis, especially for picking jobs where the labour requirements vary considerably depending on the seasonal crop cycle and the weather. For some crops, growers will need to employ dozens if not hundreds of workers in one week or month, and then much fewer workers the next. These fluctuations are well understood by hostels who generally notify backpackers of what work is coming through. The workforce of one grower interviewed fluctuated from 55, including family members, to 400 workers in peak season. Flexibility also offered the advantage of being able to recruit different workers each day to pick crops where the harvesting process was more physical and unattractive. One grower reported: 'we get the same people back every day for months and months and months but in some of

the other industries, potatoes and sweet potatoes or strawberries or capsicums or whatever else, that sheet [with the names of workers] will change every day' based on the crop being picked.

Growers also perceive WHMs as **reliable**. Growers report that WHMs are more likely to commit to work every day of the week and to keep working until the day has ended. By contrast, there were many reports from growers and other stakeholders of local workers especially those recruited through employment agencies, only showing up to work three days per week and leaving work at lunchtime. One representative recounts a common saying used in the industry that if you need 20 workers for a day then you need to recruit 30 locals because 10 will not show up or will go home early. This was attributed to the lower levels of motivation among local workers to perform arduous work; the nature of the welfare system which incentivised workers to work a limited number of days per week and to stay in employment for short periods, after which time their welfare payments are reduced or removed. As one grower recounts:

I had about 20 people packing every day, and it came Wednesday morning, and there were two places missing and I said to the lady who was running the shift for me: 'Hang on, where are those two?' She said, 'oh no, they said ... they've done their 15 hours otherwise it's going to affect their dole'. I said, 'well, you ring them and tell them not to come back. We need those chairs to be filled all the time ... We can't just suddenly vacate those two seats and then have to retrain'. No, you're here for six days, and that's it, you know. Anyway, so I've tried that, and now I just employ backpackers.

According to another grower:

[Backpackers] are normally a lot keener because they come up here to work and they don't have a safety net and what I mean by the safety net is unemployment benefits ... How a lot of the locals treat it, they go: 'the first two days I work is on top of my pay from the government. The next day that I work I get reduced 50%. So my pay from the government gets dropped 50% and after that I don't get anything ... So I'm working for nothing. So I can only work three days a week' ... The way that [unemployment benefits are] structured doesn't help ... A couple of years ago one of the recruitment agencies in town rung us up and said 'we've got some workers. We can give you 90% of the wage bill for 26 hours a week' ... We have five guys or something come out. Great. All gone within two weeks. All gone and we sacked some of them, most of them and the reason is long term unemployed, not reliable. They come out and then 'no, I've got something else on' or 'I don't feel like it today' and they don't turn up ... They become unreliable and they don't work as hard. So a lot of the time long term unemployed are a waste of time.

Growers also perceive WHMs as more **productive** than local workers. For instance, one grower said that the former would typically pick more than twice as much as local workers who had been recruited through employment agencies. Many of the WHMs were highly educated and generally more motivated than the local workers. According to one grower:

Some of those backpackers are unreal. They are well educated and they're just out for a year. They need to earn money so they can continue travelling. Some of the most intelligent people that I've met have been the backpackers that have worked here. There's been lawyers, you know, lots of engineers, accountants — having a year off and travelling the world. [They] are prepared to work hard for a short space of time to gather money. I appreciate the fact that they work hard. I look after them, by not overworking them.

Several stakeholders, including growers, told researchers that WHMs from certain countries, or of certain genders, were preferred to perform certain tasks. One grower stated:

You just ring them [the hostel] up and go we need 10 people in tomorrow ... Fit, energetic ... Whatever the criteria are that you want, or 'I want five guys because they would be strong or tall because we have to stack stuff up high. What can you arrange? Send them out here' ... Maybe you'd be going for Koreans or something like that when you're picking strawberries. Small hands, quick. They'll pick three times as much as the English ... We'll say [to the hostel] what we prefer.

The availability of migrant workers with specific physical attributes making them more productive than other workers, facilitated by the use of hostels to source labour, may have affected growers' recruitment practices in ways that marginalised other groups of workers. However, this was not the case everywhere. One grower expressed no preference for the gender or ethnic background of the workers 'as long as they're hardworking' and could understand English for health and safety reasons.

While there is a clear preference for WHMs, growers also tend to employ locals particularly to perform packing work that is ongoing rather than seasonal. Local workers generally form a small share of the overall workforce on farms but a relatively large proportion of the 'core' workforce many of whom are employed throughout the year. We spoke to 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 for the farm for 24 years.

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

Many locals were deterred by the difficult and dirty nature of horticulture work. According to a union official, 'there are a number of locals that do work in the industry ... but there are also a lot that won't work in the industry. Why? It's labour-intensive, also it's back-breaking work'. One employment agency manager concedes that locals 'don't want farming work ... It's just hard work. It's easier to get the dole than have to go out there and pick tomatoes ... Doesn't it sound terrible? But anyway, that's how it is'. Locals might work in the industry for 'short stints' but generally not for prolonged periods. There is also a perception that the farms were too far away and a reality that some locals did not have independent transport. Another local employment services manager reported that:

The sector generally is really hard for locals to get into ... They tend to use the backpackers ... You have a lot of locals that are willing and want to go and work but then there's the locals that have let people down ... So 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.

While there is a perception that local workers 'don't want to work', the **unattractive nature of the work and the limited career options in the industry** appeared to be significant barriers. An employment agency manager reported that there was limited effort on the part of growers to work with other stakeholders to address this:

The industry would need to do a lot of education around what a career path in agriculture actually looks like ... They're getting a lot more sophisticated now in [the

region], particularly around their food processing. [But] we don't even as employment providers know exactly what our local agricultural industry can offer in the way of career paths for our job seekers.

None of the growers we interviewed had used the **SWP**. One grower said that the obligations to pay for workers' accommodation and flights deterred him from using the program. However, he also said other local growers 'love' the scheme because of the advantages of workers returning year after year, and consequently 'it's something that we are contemplating' using in the future. An industry association official says that while the SWP is not used extensively, 'from the few people that I've heard do use it, they're happy with the program, but it sounds like there has to be a lot of research done by the grower themselves to do that'.

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

[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.

One local stakeholder from government claims that '**there is no labour shortage**' but this scenario would change if intermediaries did not play such an active role in channelling temporary migrants into the horticulture labour market. This indicates that the abundant supply of labour in the region is dependent on the particular incentives under the WHM program and the inadequate enforcement of labour standards. This is a risk for the vegetable 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.

2.5.2 Case Study: Virginia, South Australia

As at September 2016, the northern suburbs of Adelaide where most of Virginia's horticultural labour force live has 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%.³⁴ The region is associated with low incomes, low levels of education and jobs in relatively unskilled occupations.

The Virginia horticultural industry is diverse in terms of the size of businesses, the method of growing and the extent of technology used. Businesses range in size from small family farms to large corporate entities. Employment practices vary across farms in the region. In general, the largest businesses comply with the law, but there is a degree of non-compliance among medium-size firms, particularly in relation to payment of overtime, and also in relation to entering individual agreements with workers who are paid in cash. It was the norm in small businesses to be paying in cash and well below the award wage. All growers were concerned about wage rates, and there was a general consensus that wage rates in the industry were more than fair. One grower stated:

³⁴ WorkReady, *South Australian Labour Force Indicators* (29 November 2016) <<http://www.skills.sa.gov.au/workforce-information/labour-market>>.

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.

One grower commented, '[We] don't pay overtime because labour costs are such a significant part of the overall costs — second biggest spend. So if you increase wages, you immediately become uncompetitive if you know the competition are paying the minimum.' Despite the start-up cost of employing new workers, this grower stated that he would rather employ new workers than pay overtime.

The workers interviewed claimed to have good relations with their managers. Some were happy with their pay, while others were unhappy but believed it was a reasonable wage within the industry. A common desire among all workers was for stable and predictable work. Some were prepared to work for less pay in order to have greater certainty regarding their employment. One worker had been able to make a special arrangement with their employer in relation to the hours they worked so that they could attend to family duties. There was little consistency among the workers we spoke to in relation to the hours of work. For one picker, the period of work varied from eight to 10 hours. Another worker had negotiated steady eight hours shifts. While the hours of another worker varied from six to 14 hours. The difference in hours seemed to be based on individual arrangements with the workers' direct managers.

The industry is highly labour intensive, but **there is also significant potential to mechanise**, particularly at the sorting and packing stage. Big businesses in Virginia are already highly mechanised. Medium-size businesses are in transition. Small businesses do not have the capital for mechanisation. This may be a risk to their long-term future in the industry. An industry representative stated, 'if you are not mechanised basically you are not competitive. [A]nybody who does not bring in technology is yesterday's news.' The industry is, therefore, currently in a transition phase towards increased mechanisation. In those businesses yet to mechanise, a common narrative among growers in Virginia was that they would be 'forced' to do so if labour costs were to rise. The wage sensitivity around mechanisation was mentioned as a reason for not being able to pay overtime rates.

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 are very few WHMs or Pacific seasonal workers, although one of the bigger firms reported hiring 25 Pacific seasonal workers from Vanuatu. 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 are few from the third generation of these communities working in low-skilled work in the industry today. There are also few workers originally from the United Kingdom and Ireland.

Although there is a high level of unemployment among people from Anglo-Celtic backgrounds in the region, they do not transition into low-skilled work in the vegetable industry. A training provider indicated that there has been a range of training programs aimed at the long-term

unemployed but that the success rate of these programs is low. As was the case in regional Queensland, 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 industry representative said, '[o]ne 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'. A training provider told a similar story: '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 of recent migrants has, by contrast, been successful. One grower commented:

You do see a lot of migrants. They come to the country, and they are prepared to work very hard to get ahead. The one thing they lack is training, English and numeracy. If we had courses where a person could be skilled and work ready then you would have a pool of people that would come along with almost like a white card that are trained, employable, a basic skill set that would be the way to go.

A training provider described **the success of a series of employment programs aimed at recent migrants prepared to work in horticulture** in South Australia. Of the 250 who received training, which include some refugees and some migrants who could not find work in their areas of expertise, 240 successfully transitioned to jobs in the industry. Recent programs focus on basic language and numeracy skills. There is a recognition that many workers do not bring these skills from their own country, even in their own language. Although many Virginia growers remained open to participating in government sponsored training programs, they were sceptical about their chances of success. Several growers pointed out that even if they did not bear the cost of such training programs, there was a cost in lost productivity in training a person on the job who did not last in the job for an extended period of time. One grower stated that there are a lot of unpaid trials.

There is considerable variation in the size of businesses, and in the way they organise their workforce. The largest businesses in Virginia experience a shortage of workers at peak times, and they often use labour hire companies to help them source workers. **The workforce of these larger businesses is constituted of permanent workers**, who are needed for 12 months in the year and casual workers used during peak periods of production. Some vegetables in the region such as carrots and potatoes are grown all year round, meaning that the workforce needs are more stable. Others such as tomatoes, cucumbers, capsicums have peak periods over summer and the labour needs are much less over winter.

An on-going challenge for growers is 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 have their own human resources teams to manage their workers, and some also engage labour hire firms to source workers. Medium-sized businesses tend to rely on labour hire and do not have a human resource team.** Smaller family run businesses do not employ professional assistance with human resource management or use labour hire.

The largest businesses employ up to 200 full-time workers and the labour force increases to 600–700 workers in peak periods. Those who are permanently employed have often been in the business for many years. An important strategy available to medium to large businesses to keep people

employed is to **rotate workers across different parts of their business**, as labour needs arise. This requires workers to be multi-skilled and mobile. Workers with these characteristics are particularly valuable. For some businesses, this required moving workers across two or more locations. One of these businesses reported that low-skilled workers who were permanent residents were not in position to move to alternative locations.

A key challenge for all vegetable growers in Virginia is that even though there are predictable periods of high and low demand for workers, the labour needs of the business can vary from day to day depending on the weather, the demand of large wholesalers and retailers for extra produce (such as when they are running a promotion on certain foods). In these instances, many businesses rely on their workers to work longer hours, and balance this out against periods of less hours when demand is lower. If the permanent workforce cannot satisfy the demand, one business stated that it would sometimes need to employ 'six to 12 workers for one to two weeks' during peak demand periods, while another business stated that even in peak times, when there were not enough permanent workers, it would shut down a machine rather than hire casuals. Growers consistently commented that they prefer to meet workers before they hire them, and through the provision of on-the-job training are able to develop a clear view of whether workers will be effective workers in the business. **Businesses like the idea of return workers.** The fact that a worker has worked successfully in the business for one season makes them desirable in subsequent seasons. For this reason, some growers believed the Pacific SWP had merit. A number of growers mentioned that the biggest factor limiting expansion was a concern over labour supply. Whether or not there is a labour shortage in the industry, there is a lack of confidence in the availability of a reliable labour force to meet industry demands at all times.

2.6 Conclusions and Findings

Although it is hard to determine the extent of labour supply challenges in the two regions, there is one clear difference. In Virginia, there were examples of innovative practices to respond to labour supply challenges that were not evident in Bundaberg, such as utilising new technologies, engaging workers on a more permanent basis, investing more heavily in training, implementing job rotation strategies and developing human resource management capability more explicitly. Access to a longer-term and more committed labour force, which gave an incentive for growers in Virginia to invest in their workers to build workforce and organisational capabilities, provided a bedrock for these innovations to occur.

The absence of the same level of innovation in Bundaberg seems to suggest that the ready availability of migrant workers, particularly WHMs, provided no incentive to train workers and substituted other recruitment and retention strategies and organisational innovations from being used. This highlights the dilemma of labour supply in the vegetable industry. The more effective and efficient are migrant worker pathways into the industry, the less incentive there is to find labour supply solutions using the local labour market.

In addition, there remains a high level of non-compliance in the industry, including in both case study regions, which makes it difficult to determine the extent and nature of labour supply challenges. It is crucial that labour supply solutions address this non-compliance to protect local and migrant workers from exploitation in the industry and to provide a foundation for fair competition between growers.

Chapter 3

An Evaluation of Current Labour Supply Options for Vegetable Growers

3.1 Introduction

This chapter examines the suitability of current labour supply options for vegetable growers, and introduces comparisons with the use of migrant workers in other jurisdictions to put the use of migrant workers in Australia into an international context. Figure 3.1 provides an overview of the types of workers that vegetable growers have used in the past five years. This chapter focuses on the following sources of vegetable workers in picking, packing and grading jobs:

- Australian citizens and permanent residents, also known as ‘local workers’;
- Temporary migrants recruited under the Seasonal Worker Programme (SWP); and
- Temporary migrants recruited from the Working Holiday Maker (WHM) program.

According to the national survey, 29% of vegetable growers have used international students in the past five years to meet their labour needs. This is a surprisingly high number given that the recruitment of international students is likely to be ad hoc rather than systematic. Since international students live predominately in urban areas near their education providers, this is where they are likely to seek employment, particularly in industries such as retail and hospitality rather than horticulture.³⁵

The fact that a significant number of international students are making their way into the vegetable industry is noteworthy.

The prevalence of international students in the vegetable industry might indicate a serious labour supply challenge in the industry, which international students are filling on fair wages and conditions, or it might indicate that there are established yet unofficial pathways to non-compliant work in the industry for students who are unable to source employment near their place of study. Our research has not been able to isolate the path to employment of international students in the vegetable industry. However, the literature suggests that international students are a vulnerable workforce as a result of their youth, inexperience in the labour market, their status as temporary migrants and the high incidence of non-English speaking backgrounds among their number.³⁶ In addition, international student visas have a restriction on the amount of work they can do during study periods of 40 hours a fortnight, although this hour limit does not apply during semester breaks. Given the primary purpose of international student visas is to facilitate study in Australia predominantly in urban centres, their suitability as a source of labour in the industry is open to question and requires further investigation.

While workers engaged through the ‘Willing Workers on Organic Farms’ program are employed on vegetable farms, they are numerically insignificant and shall be excluded from the discussion in this chapter. On the other hand, undocumented workers, that is workers without a valid visa allowing

³⁵ Stephen Clibborn, Submission No DR353 to Productivity Commission, *Productivity Commission Inquiry into the Workplace Relations Framework*, September 2015 <http://www.pc.gov.au/_data/assets/pdf_file/0010/193465/subdr0353-workplace-relations.pdf>.

³⁶ See, eg, Alexander Reilly, ‘Protecting Vulnerable Migrant Workers: The Case of International Students’ (2012) 25 *Australian Journal of Labour Law* 181; Judy Fudge, ‘Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers’ (2012) 34 *Comparative Labor Law & Policy Journal* 95; Leah F Vosko (ed), *Precarious Employment: Understanding Labour Market Insecurity in Canada* (McGill-Queen’s University Press, 2006); Ian Campbell and Joo-Cheong Tham, ‘Labour Market Deregulation and Temporary Migrant Labour Schemes: An Analysis of the 457 Visa Program’ (2013) 26 *Australian Journal of Labour Law* 239.

them to work in Australia or visa holders working in breach of their visa conditions, do work in the vegetable industry.³⁷ However, as engaging undocumented growers is illegal, this group is also not considered in the assessment of labour supply options, other than in recommendations around strengthening labour and migration law compliance in the industry.³⁸

The regulatory framework for each of the three primary labour supply options — local workers, SWP workers and WHM workers — pose opportunities and challenges for vegetable growers in meeting their labour needs.

SWP workers make up a small minority of the vegetable industry's workforce. However, they are highly valued as a stable, reliable and productive source of labour.³⁹ This chapter reports research findings of how the regulatory requirements of the SWP have led to its inadequacy in meeting the labour needs of some growers. There is a 'substitution effect' whereby some growers exhibit a preference for WHM workers over SWP workers due to the additional requirements associated with employing SWP workers.

WHMs are an important element of the vegetable workforce. As early as 2006 it was noted that WHMs were the 'backbone of the harvest labour supply'.⁴⁰ In the intervening decade, their 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 a regional location. In 2015–16, 93% (33 666) of second-year visa applicants worked in agriculture to satisfy the 88-day requirement.⁴¹ Despite the significance of their contribution to the labour supply needs of the vegetable industry, WHMs' length of stay and commitment to working in the industry is often confined by their desire to meet the 88-day work period requirement in order to gain a second year on their WHM visa. The key attribute of WHMs as a labour source is their flexibility. There are no restrictions to the work entitlements in their visas, other than a restriction that they cannot work for more than six months with one employer. This means that, like local workers, they are able to move to where work is available. The flexible nature of the WHM visa complements certain types of vegetable harvesting, with the stop-start nature of harvesting for certain produce lending itself to a reserve workforce that can quickly respond to sporadic, short-notice and short-term requests for labour.

The proportion of local workers employed in the vegetable industry has decreased over time and — without significant changes in labour market conditions, management practices and employment, immigration and social policy — it is unlikely this trend will reverse. Many farms are in remote

³⁷ Although it is impossible to ascertain the extent of vegetable growers' reliance on undocumented workers, Elsa Underhill and Malcolm Rimmer estimate that between one-quarter and one-third of the total horticulture workforce is made up of undocumented workers, and in some locations it forms a majority of the workforce: Underhill and Rimmer, 'Layered Vulnerability', above n 3.

³⁸ For more on undocumented workers, see Stephen Howells, 'Report of the 2010 Review of the *Migration Amendment (Employer Sanctions) Act 2007*' (Report, Department of Immigration and Citizenship, 2011) <https://www.border.gov.au/ReportsandPublications/Documents/government-response/howells_report.pdf>.

³⁹ Robert Leith and Alistair Davidson, 'Measuring the Efficiency of Horticultural Labour: Case Study on Seasonal Workers and Working Holiday Makers' (2015) 12(2) *Farm Policy Journal* 47.

⁴⁰ Senate Standing Committee on Employment, Workplace Relations and Education, Parliament of Australia, *Perspectives on the Future of the Harvest Labour Force* (October 2016) 14 [2.6].

⁴¹ Department of Immigration and Border Protection, *Working Holiday Maker Visa Programme Report* (30 June 2016) <<https://www.border.gov.au/ReportsandPublications/Documents/statistics/working-holiday-report-jun16.pdf>>.

locations away from population centres making it difficult to find workers, which is compounded by the relatively dirty, arduous and low-paid nature of farm work and the limited career opportunities it provides.⁴² Local workers tend to prefer stable, predictable work and are generally less willing to move to regional locations for seasonal work where accommodation and transportation services are often deficient.

Demographic analysis suggests that the regions find it difficult to retain Australian young people.⁴³ Recent attempts by segments of the horticulture industry to re-engage with, and recruit, local workers have not been able to address the labour needs of the industry in anything more than a marginal way.⁴⁴ It remains to be seen whether a coordinated and well-resourced campaign launched across the entire industry would result in higher levels of participation among local workers in vegetables and across horticulture more generally. However, attempts to entice young Australians and the unemployed into the industry have not proven fruitful and many growers, unfortunately, consider these groups to be unreliable and uncommitted to harvesting work.

Although the preceding analysis regarding the role and contribution of local workers to harvest labour supply is the conventional one applying largely to young Australians and the unemployed, in our research we have encountered a distinct, second group of local workers whose involvement in the vegetable industry tells a different story. Migrants who are the partner of skilled permanent visa holders and migrants who have obtained permanent residency through the humanitarian visa route are a group of local workers who are employed in the vegetable industry in certain geographic regions. Some of these migrants are unskilled and others have not been able to obtain Australian work experience or have their overseas skills and qualifications recognised by Australian authorities and assessors. For these migrants, working for vegetable growers provides an important opportunity to earn an income, obtain Australian work experience and to develop a network of friends and colleagues. Often migrants of a similar ethnic background move to the same area and in these regions this group is an important source of productive, motivated and reliable harvest labour for the industry.

This chapter considers the suitability of each of these labour supply options by addressing four questions:

1. Does the labour supply option enable vegetable growers to efficiently meet labour needs in picking, packing and grading jobs?
2. Does it produce a stable, reliable and productive workforce for vegetable growers?
3. Does it protect workers from exploitative treatment at work?

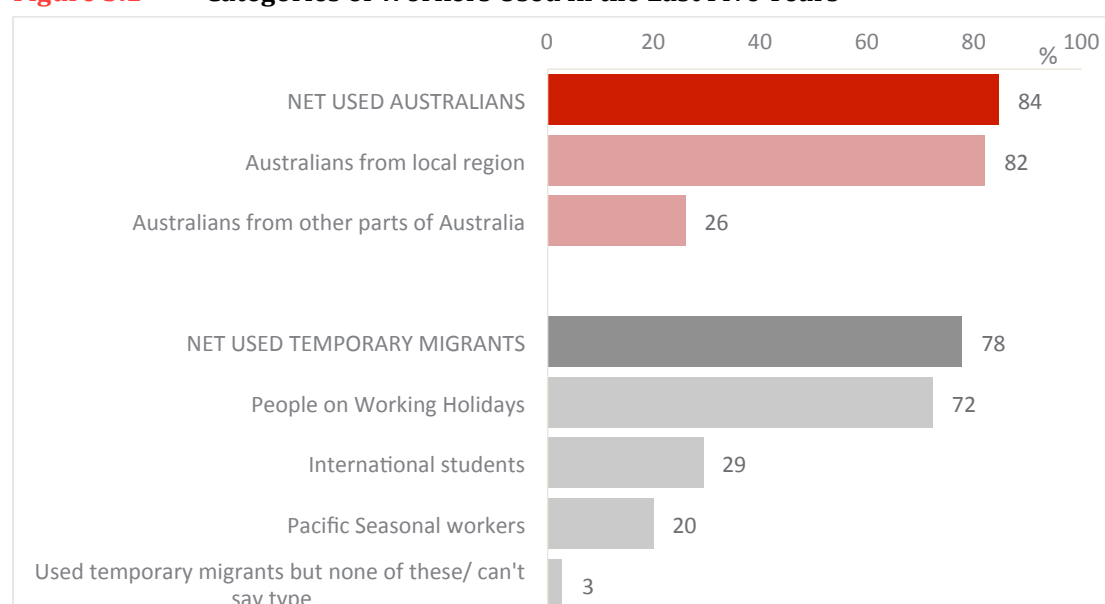
⁴² Geoff Mason and Wiemer Salverda, 'Low Pay: Living Standards and Employment' in Jérôme Gauthier and John Schmitt (eds), *Low Wage Work in the Wealthy World* (Russell Sage Foundation, 2009) 35, 47.

⁴³ This is particularly the case for young people up to their mid-20s, after which there is net migration to the regions: Regional Australia Institute, *Talking Point: An Ageing (Regional) Australia and the Rise of the Super Boomer* <<http://www.regionalaustralia.org.au/wp-content/uploads/2014/11/Talking-Point-Super-Boomers-FINAL.pdf>>.

⁴⁴ See, eg, the recent, well-orchestrated campaign by the Queensland strawberry industry to attract local workers which, although initially attracted 1000 job seekers to fill an initial screening survey to determine the applicant's availability and capacity, led to only 126 being interviewed and 52 direct placements. Within three months, approximately half of the placements had chosen not to continue with the placement. See: <http://www.thesweetestjob.com.au/>.

4. Does it serve the national interest?

Figure 3.1 Categories of Workers Used in the Last Five Years



3.2 Labour Supply Option # 1: The Local Workforce

It is difficult to quantify how many local resident workers are employed in the vegetable industry. Our survey of vegetable growers found that in the last five years, 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, relied upon multiple recruiting channels to meet their labour needs, and were more likely to use both local workers and temporary migrant workers.

It does appear, however, that reliance on local workers is declining significantly amongst growers. Traditionally, local workers were numerically dominant in the industry, with historical accounts depicting working-class families who would combine their annual holiday with fruit and vegetable harvesting in a regional location and semi-skilled rural workers who would annually gravitate to higher paid harvesting work on a seasonal basis.⁴⁵ This approach saw local workers maintain connections with the same growers year after year, combined with professional itinerant harvesters who moved across the country depending on the season. 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 15–25% were local retirees — with both groups accounting for almost three-quarters of the harvest workforce.⁴⁶

⁴⁵ 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).

⁴⁶ Hanson and Bell, above n 45.

In 2006 a Senate inquiry found that the pool of local workers was declining with WHMs accounting for 50–85% of the harvest workforce and local workers consisting of ‘grey nomads’ and ‘permanent itinerants’ making up a little over one-third of the workforce.⁴⁷ Although the specific reasons for falling numbers of local workers in this industry have not yet been identified, low wages, poor working conditions and an increasing preference for living and working in metropolitan centres have been seen to contribute to this decline.⁴⁸

At the present juncture, it is difficult to identify precisely the contribution of local workers to the industry. Although our survey found that four-fifths of vegetable growers had engaged local workers in the past five years, this does not account for the extent of reliance on a local workforce. Our case study research examined two vegetable-growing locations — one in Virginia, South Australia, which was largely reliant on local workers (mainly composed of recently settled permanent migrants and refugees) and another in Bundaberg, Queensland where WHMs were used almost exclusively to meet harvest workforce needs despite high rates of local unemployment particularly among youth. As Chapter 2 argued, these strategies offered contrasting advantages. Growers in Bundaberg saw WHMs as much more flexible, reliable and productive than local workers. In Virginia, engaging local workers (albeit, predominantly recently settled migrants) on an ongoing basis provided certain advantages such as enabling growers to respond efficiently to fluctuations in demand.

A number of state and federal government programs promote the employment of local workers in the vegetable industry. First, a federal government initiative is Harvest Labour Services (HLS), which operates in areas where the local labour pool is deemed insufficient to meet grower labour requirements during seasonal picking periods. HLS regions were identified through an open tender process as part of the jobactive 2015–20 procurement. Under this process it was the responsibility of potential HLS suppliers to demonstrate an unmet need for labour in their proposed area of operation. HLS providers screen all prospective harvest workers and ensure that they are legally entitled to work in Australia. In areas where HLS is not provided, growers may list vacancies via local jobactive providers or electronically via the jobs board on the jobactive website.⁴⁹ All vacancies listed by growers with HLS providers, jobactive providers and the jobactive website are automatically listed on the Harvest Trail jobs board.⁵⁰ Although HLS has the potential to greatly assist in meeting growers’ labour needs, its effectiveness at present is somewhat limited. As mentioned in Chapter 2, only 11% of vegetable growers that have experienced recruitment difficulties have used HLS, indicating that it is not fulfilling its potential in helping to match labour supply with grower demand. Second, 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 advertising, sourcing, shortlisting and interviewing local candidates. However, the extent to which vegetable growers systematically use the services of these agencies is questionable. Third, the Community Development Program helps businesses find staff in remote regions by providing employer incentive funding. Vegetable growers can use this funding as a wage subsidy, although this is only paid once a remote job seeker has been employed full time for 26 weeks. Fourth, wage

⁴⁷ Senate Standing Committee on Employment, Workplace Relations and Education, Parliament of Australia, above n 40, 21.

⁴⁸ Graeme Hugo, ‘International Migration and Agricultural Labour in Australia’ (Paper presented at Changing Face Workshop, California, 16–18 January 2001).

⁴⁹ Australian Government, *Jobactive* <<https://jobsearch.gov.au/>>.

⁵⁰ Australian Government, *Jobactive: Find Harvest Jobs* <<https://jobsearch.gov.au/harvest>>.

subsidies are available for employers who engage certain job seekers such as parents, youth unemployed or those from indigenous backgrounds.⁵¹ Fifth, the federal government has recently announced the development of a new employment program aimed to provide internship opportunities for youth unemployed.⁵²

Despite these government initiatives, evidence suggests that vegetable growers seem unwilling to employ local job seekers who are long-term Australian residents. This is because of concerns around these workers' commitment, motivation and work ethic. Our survey found that local workers were regarded far less favourably by vegetable growers when compared with all categories of temporary migrants. In our two case studies, growers, almost universally, were reluctant to rely on government programs to transition the unemployed into work, typified by the response of a large grower in Virginia who said:

My experience of these programs is that they are all a waste of money. The candidates aren't particularly committed; the businesses are not able to offer ongoing employment at the end of the placement and often the training providers themselves are not very good.

In Bundaberg there were barriers to local employment such as a lack of organised transportation to and from farms and perceptions from stakeholders, such as employment services agencies, that growers had developed a preference for WHMs. However, many growers in both case study locations referred to past experience using local unemployed workers accessed through government sponsored programs many of whom failed to turn up for their first day of work, and many who did not remain working for the grower for more than a handful of shifts.

Although government regulatory approaches have focussed on improving demand-side constraints by incentivising growers to employ local unemployed workers, less attention has been given to supply-side challenges. Several growers and employment agencies in both case study locations claimed there is less financial gain for local job seekers to work in the industry because of their ability to access government social security payments. For single people with no dependents the Newstart Allowance is \$528.70 per fortnight; their income support payments reduce by 50 cents in the dollar for each dollar earned between \$104 and \$254 per fortnight, and then reduce by \$75 plus 60 cents for each dollar earned over \$254; Newstart payments reduce to \$0 once this person's income reaches \$1024.84 per fortnight. This can serve as a financial disincentive to working longer hours. According to one growers' association in a recent submission to the federal government:

Australia has an issue when the harder one works, the less the reward whether this is through increased taxation for additional hours or second job or penalties for moving between unemployment and seasonal casual work. This is an opportunity to rectify the pathways for people on unemployment benefits to move easily between benefits and casual seasonal work.⁵³

⁵¹ See Department of Employment, Australian Government, *Wage Subsidies* (5 April 2016) <<http://www.employment.gov.au/wage-subsidies>>.

⁵² See Department of Employment, Australian Government, *Youth Jobs PaTH* (25 October 2016) <<https://employment.gov.au/youth-jobs-path>>.

⁵³ Fruit Growers Tasmania, Submission to Senate Standing Committees on Economics, Parliament of Australia, *Inquiry into the Working Holiday Maker Reform Package*, October 2016.

Youth access to the labour market in this rapidly changing world is proving difficult as the number of entry-level jobs declines. A recent report has noted that for every six job seekers there is only one low-skilled job vacancy.⁵⁴ Given this trend, it clearly is in the national interest to promote local workers' access to farm work. Regulatory incentives such as the recent proposal by the Nick Xenophon Team,⁵⁵ which has been accepted by the federal government in its backpacker reform package,⁵⁶ can be important in encouraging local job seekers into the industry.

Nonetheless, even with extensive changes in employment and social policy it is unlikely that across Australia local workers who are long-term residents can be used as the sole or even as the predominant source for meeting the vegetable industry's labour needs.

A key reason for this relates to inherent aspects of horticultural 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 perhaps, more importantly, relatively remote locations and limited career pathways. It is difficult to change these intrinsic factors that are likely to dissuade local job seekers from this industry.

One obvious way to attract more workers to the industry is to improve wages through adjustments to the horticulture industry award. However, given tight profit margins and cost pressures from retailers, high wage costs in Australia compared with international competitors, and strong resistance from growers to this measure, a change to the minimum wage is unlikely to be palatable, and may be highly detrimental to the viability of many participants in the industry. In both case study locations growers attested to slim margins leading them to keep the costs of production down in order to be able to competitively tender for supply contracts with retailers. As one large grower explained to us:

Our second biggest expense is labour so it's unrealistic to think we can increase people's wages because it would make a huge difference to the bottom line, and then be able to compete with other operations. If we increase our wage costs then it makes the product more expensive and our competitors will blow us out of the water.

However, this position is contested by unions who argue that although there are supply chain pressures on growers, many could afford to pay more than they do and that this would draw local workers to the industry. General Branch Secretary of the NUW, Sam Roberts states:

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. The pay these companies are offering isn't enough, if they were to offer more pay, they would have more people lining up at their door wanting to work.

⁵⁴ Anglicare Australia, *Positions Vacant? When the Jobs Aren't There* (2016) <<http://www.anglicare.asn.au/docs/default-source/default-document-library/sotf-2016a8c6d6309d6962baacc1ff0000899bca.pdf>>.

⁵⁵ Nick Xenophon, 'Relax Dole Rules to Give Aussies a Chance to Work on Farms' (Media Release, 20 September 2016) <<http://www.nickxenophon.com.au/media/releases/show/relax-dole-rules-to-give-aussies-a-chance-to-work-on-farms/>>.

⁵⁶ Colin Bettles, 'Xenophon Backpacker Tax Deal to Entice Unemployed On-Farm', *Farmonline National* (online), 28 November 2016 <<http://www.farmonline.com.au/story/4321934/xenophon-backpacker-tax-deal-to-entice-unemployed-on-farm/>>.

In developing his argument that growers can improve wages and conditions, he drew upon the tomato industry as an example, arguing:

There are four main companies in tomato (D'vine Ripe, Sundrop, Costas, Flavour Ripe) and they could easily agree to better wages and conditions, and do that as a collective, by entering into a tomato industry agreement. The tomato industry could easily raise wages.

When we put this argument to tomato growers, we were told that even if the four main tomato operations did this, they would be undercut by smaller producers who would not be parties to the enterprise agreement and who would begin supplying to the major retailers at a lower cost. Indeed, the creation of such an agreement would be highly unlikely without significant changes in the governance of industrial relations in the vegetable industry. While there are many examples of industry-wide agreements or other instruments for improving wages in Australia and internationally, these generally rely on the presence of strong unions with high membership levels and an industry association compelling all businesses in the industry to comply with the agreement.⁵⁷

Leaving aside the contentious question of whether vegetable growers have the capacity to pay their workers more, another retention strategy would be to improve the attraction of working in the industry, through developing career pathways. One young local worker we encountered in Virginia was employed as a packer but did not see any future for him in the industry. He was broadly positive about his experience working in the industry, acknowledging his development of many 'soft', employability skills. 'I've learnt general teamwork, self-awareness, understanding of how a company is run, I've learnt how to run a machine, I've learnt how to pick up 15 kg without hurting myself'. Nevertheless, he did not see a future career in the industry and was beginning to look for work in other industries. He did say, however, that if a supervisor job had been made available or seemed like an option going forward, he would have been more likely to remain with his vegetable employer.

Experience abroad suggests that the lack of resident labour willing to engage in horticultural work, particularly seasonal work, is an international issue.⁵⁸ A recent inquiry into the UK horticulture industry reviewed attempts in Germany, the United States and the United Kingdom to attract local workers to horticulture (including incentives for the unemployed) but found that these have done little to abate the declining presence of local workers or growers' reliance on temporary migrant workers to meet their labour needs. However, it should be acknowledged that low quality employment is prevalent in the horticulture industry internationally⁵⁹ and there is an argument that employers should play a more active role in addressing this scenario. Studies have found stronger preference among Australian growers for migrant workers over other groups of workers because employers perceive the former group as more reliable, 'working faster and harder' and willing to

⁵⁷ Greg J Bamber et al, *International and Comparative Employment Relations: National Regulation, Global Changes* (Sage, 6th ed, 2016).

⁵⁸ 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* (May 2013) ch 4
<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257242/migrant-seasonal-workers.pdf>.

⁵⁹ 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.

work for lower wages.⁶⁰ Writing in the UK context, Scott explains an underlying reason of this preference among horticulture employers for large-scale recruitment of migrant labour:

Immigration may make it easier for employers to control and manage all workers. This explains why in the food industry, for example, the oversupply of labour has been a common goal amongst employers and why the turn to low-wage migrants ... has been associated with intensified workplace regimes. The problem is that 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'.⁶¹

This perspective is potentially relevant for identifying potential solutions for addressing the labour supply challenges in Australia. While we lack a precise picture of management practices and working conditions in the Australian vegetable industry, studies indicate that agriculture is characterised by recruitment and retention problems, which are compounded by poor working conditions, low wages and work intensification (excessive hours and seven-day work patterns are commonplace), high employee turnover, lack of employer-provided training and minimal career development opportunities.⁶²

Employers could be encouraged to develop more sophisticated human resource management practices to attract workers more effectively. In surveys of Australian agriculture employers, the practices deemed most effective in improving retention include paying employees above the award, providing non-monetary benefits, offering flexible work hours and rostered time off, providing training and career development opportunities, use of employee engagement strategies and recognition of good performance. According to Nettle, 'the quality of jobs and the availability of real careers in agriculture is essential for building a reputation to attract people into agriculture'.⁶³

In sum, there appears to be a declining number of local workers who are long-term Australian residents attracted into the vegetable industry and a perception 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. This work provides an important opportunity 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. It also provides a valuable source of income for local retirees to supplement their superannuation and social security benefits.

Whilst recognising the importance of enabling local workers to have opportunities for work in the vegetable industry, the following two sections of this chapter consider temporary visa pathways that

⁶⁰ Justine Evesson, Michelle Jakubauskas and John Buchanan, 'Choosing a Sustainable Future: Workforce Development in Victorian Primary Industries' (Workplace Research Centre Report, University of Sydney, July 2009).

⁶¹ Scott, above n 12, 706–7.

⁶² Evesson, Jakubauskas and Buchanan, above n 60; Ruth Nettle, 'More than Workforce Shortages: How Farm Human Resources Management Strategies will Shape Australia's Agricultural Future' (2015) 12 *Farm Policy Journal* 17.

⁶³ Nettle, above n 62, 24.

seek to assist vegetable growers to meet their labour needs at harvest time. Both the SWP and the opportunity for a second year on the WHM 417 visa following an 88-day period of paid employment in certain industries were introduced, at least in part, to ameliorate labour supply challenges in horticulture, which intensified during the economic boom of the mid-2000s. It has been repeatedly asserted that a key reason behind the limited take-up of the SWP is the success of the WHM program in attracting backpackers to regional Australia to earn a visa extension. Some observers have noted a ‘substitution effect’ stemming from the low regulatory burden associated with the WHM scheme compared with the significant administrative burden and other costs inherent in the SWP’s regulatory design.⁶⁴

In order to understand why one regulation (the WHM second year extension) has proven far more effective in addressing labour supply challenges facing vegetable growers than the other (the SWP), it is essential to understand the regulatory design of both reforms, their stated purpose, the impetus for their introduction and their ongoing management and impact. With this in mind, we now turn to a detailed examination of the two programs.

3.3 Labour Supply Option # 2: The Seasonal Worker Programme

The SWP was established in 2008 and operated as a pilot until 2012 in order to create a pathway for workers from select Pacific Island nations to work in the horticulture industry. In its first iteration, the pilot program offered visas for up to 2500 workers from Kiribati, Papua New Guinea, Tonga and Vanuatu. Although in the first year only 100 visas were allocated, a little over half of these were taken up, with 56 visas issued to workers from Tonga and Vanuatu. Although this slow response was initially attributed to falling demand for horticulture workers because of the global economic downturn in 2008–09,⁶⁵ the numbers in the SWP have continued to grow steadily but are a long way off representing a significant contribution to the Australian horticulture labour force.⁶⁶ Up to March 2012, there were 2500 places available under the pilot scheme, and 1093 seasonal workers were employed under the scheme. The large majority of workers (over 80%) came from Tonga.⁶⁷

⁶⁴ See, eg, the observation from the chair of the Joint Standing Committee on Migration, Ms Louise Markus MP 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.’ Joint Standing Committee on Migration, Parliament of Australia, *Seasonal Change: Inquiry into the Seasonal Worker Programme* (2016) vii. See also Peter Mares, *Comparing Apples and Oranges* (5 July 2016) Inside Story <<http://insidestory.org.au/comparing-apples-and-oranges>>.

⁶⁵ TNS Social Research, *Interim Evaluation of the Pacific Seasonal Worker Pilot Scheme: Executive Summary* (2010).

⁶⁶ 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’ (Final Report, November 2010). Notably, in a recent analysis, Underhill and Rimmer observed that the horticulture labour force is comprised of three main groups of workers: local workers, working holiday makers and undocumented workers, with SWP visa holders constituting only a marginal and ‘numerically insignificant’ portion of the horticulture labour force: Underhill and Rimmer, ‘Layered Vulnerability’, above n 3, 612. Australia’s SWP is also much smaller than the equivalent scheme in New Zealand, which had 7855 in its Recognised Seasonal Employer scheme in 2013–14: Employment New Zealand, *Facts & Figures: RSE Financial Year Stats* <<http://employment.govt.nz/er/rse/information.asp>>.

⁶⁷ 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) 2 <https://devpolicy.anu.edu.au/pdf/papers/DP_17_Australia's_Pacific_Seasonal_Worker_Pilot_Scheme.pdf>.

During the pilot phase, three sets of regulatory reforms sought to improve the attractiveness of the scheme to employers. These included opening up the pilot scheme in order to allow direct employment of seasonal workers rather than through labour hire firms as originally designed; removing geographical constraints so that employers in areas other than Robinvale-Swan Hill and Griffith could access workers; changing employer contributions to visa holders' airfares depending on their country of origin, modifying the minimum period of work requirement and reducing employers' responsibility for domestic travel costs.⁶⁸ The government also agreed to reduce the tax rate for Pacific seasonal workers from 29% to 15% for their first \$37 000 of taxable income.⁶⁹ Cumulatively, these reforms improved the flexibility of the pilot scheme, reduced employer risks and costs for involvement and increased the amount of return for seasonal workers.

Deemed largely a success by a government-commissioned independent review,⁷⁰ the pilot scheme was replaced by the introduction of an ongoing SWP.⁷¹ With effect from 1 July 2012, the new program extended the pilot scheme in three ways. First, by expanding the number of source countries to nine Pacific states⁷² and Timor-Leste; second, by increasing its reach beyond horticulture through a trial to three new industries (aquaculture, cotton and cane) and third, with the cap on the number of workers lifted to 12 000 over the four-year period from 2012–13 to 2015–16.⁷³ In 2015 another expansion of the SWP was announced,⁷⁴ with the removal of annual limits on the number of visas issued, a reduction in the employer contribution to covering the visa holder's domestic and international transportation costs and the removal of the requirement that each visa holder be given a guaranteed minimum period of 14 weeks work.⁷⁵ This has been replaced by a less concrete stipulation that the visa holder 'will benefit financially from their participation in the program'.⁷⁶ The program has also been expanded into other occupations in agriculture, including cattle, sheep, grain and mixed enterprises.⁷⁷

Despite initiatives to improve its attractiveness, numbers under the SWP are still small, although they are increasing each year. In 2012–13, there were 1473 workers in the program, when the cap was 2000. In 2013–14, there were 2014 workers in the program. In 2014–15, the cap was increased

⁶⁸ Jesse Doyle and Stephen Howes, 'Australia's Seasonal Worker Program: Demand-Side Constraints and Suggested Reforms' (Discussion Paper, World Bank Group, 2015) 7–8.

⁶⁹ Ibid.

⁷⁰ Cheryl Reed et al, 'Final Evaluation of the Pacific Seasonal Worker Pilot Scheme' (Final Report, TNS Social Research, September 2011) <https://docs.employment.gov.au/system/files/doc/other/pswps_-_final_evaluation_report.pdf>.

⁷¹ Bill Shorten, Kevin Rudd and Martin Ferguson, 'Pacific and East Timor Workers Helping Australian Farmers and Tourism Industry' (Joint Media Release, 18 December 2011).

⁷² Australia has signed memoranda of understandings (MOUs) with the governments of Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Timor-Leste, Tonga, Tuvalu and Vanuatu to enable citizens from these countries to participate in the programme.

⁷³ Shorten, Rudd and Ferguson, above n 71.

⁷⁴ Australian Government, *Agricultural Competitiveness White Paper* (2015) 13.

⁷⁵ Department of Employment, Australian Government, *Seasonal Worker Program Expansion — Q&A* (2016) <https://docs.employment.gov.au/system/files/doc/other/expansion_of_the_seasonal_worker_programme_-_faqs.pdf>.

⁷⁶ Ibid.

⁷⁷ Department of Employment, Australian Government, *The Agriculture Sector and the Seasonal Worker Programme* (8 February 2016) <<https://docs.employment.gov.au/node/35676>>.

to 3250, and there were 3177 workers in the program.⁷⁸ The SWP is now uncapped and in 2015–16, the Department of Employment approved 4772 seasonal worker placements in the program⁷⁹

There are currently plans afoot to expand the SWP even further, as part of the development of Northern Australia.⁸⁰ The introduction of a new five-year pilot program provides up to 250 places for workers from the Pacific microstates with access to a two-year visa (with the possibility of a one-year extension) to work in lower-skilled occupations in Northern Australia.⁸¹ This pilot targets non-seasonal occupations with identified labour shortages. The first group of workers from the Pacific microstates under this scheme arrived in early October 2016 and were employed in housekeeping and stewarding roles.⁸² Subsequent groups are planned to arrive and two aged care employers are now registered with the Department of Foreign Affairs and Trade (DFAT) as eligible to access workers under the program, with a third aged care provider currently in negotiations with DFAT.⁸³ Additionally, a federal parliamentary inquiry undertaken by the Joint Standing Committee on Migration has recommended significant changes to the SWP to facilitate greater employment for Pacific Islander and Timor Leste citizens in the Australian horticulture industry as well as discussing options for expanding the SWP to other industries and with a broader range of source countries.⁸⁴

In its pilot phase, the SWP had two objectives of apparently equal importance. One objective was to contribute to the economic development of the Pacific Island countries and the other was to address labour supply challenges in the Australian horticulture industry. The pilot program was specifically established by the Australian government to test

[w]hether a seasonal work program could contribute to economic development in partner Pacific Island countries through seasonal workers' employment experience, remittances and training [and]

The benefits of seasonal workers to the Australian economy and to horticultural growers and other members of the horticulture industry who have demonstrated that they cannot source local labour.⁸⁵

⁷⁸ Department of Employment, Australian Government, *Annual Report 2014–15* (2015) 21 <https://docs.employment.gov.au/system/files/doc/other/em15-0085_emp_annual_report_2014-15_acc_20052016.pdf>.

⁷⁹ Department of Employment, Australian Government, *More Jobs. Great Workplaces. Annual Report 2015–16* (September 2016) 29 <https://docs.employment.gov.au/system/files/doc/other/final_department_of_employment_annual_report_2015-16_accessible.pdf>.

⁸⁰ Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia* (2016) <http://industry.gov.au/ONA/WhitePaper/Documents/northern_australia_white_paper.pdf>.

⁸¹ Department of Foreign Affairs and Trade, Submission No 37 to Joint Standing Committee on Migration, *Seasonal Change: Inquiry into the Seasonal Workers Programme*, 2016, 6 [2.8].

⁸² Radio Australia, 'Pacific Beat', 17 October 2016 (Concetta Fierravanti-Wells) <http://ministers.dfat.gov.au/fierravanti-wells/transcripts/Pages/2016/cf_tr_161017.aspx?w=p2wUlmE1t7kKl1%2BiOm3ggg%3D%3D>.

⁸³ Ibid.

⁸⁴ Joint Standing Committee on Migration, Parliament of Australia, above n 64.

⁸⁵ Cited in Reed et al, above n 70, 12.

Upon its introduction as a formal program, these dual objectives were maintained, although they were reprioritised with development becoming the primary focus of the SWP. The implementation arrangements for the SWP, which took effect on 1 July 2012, made it clear that the SWP aims to

[c]ontribute 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.⁸⁶

The drafting of these objectives makes it clear that meeting labour supply challenges is a subsidiary objective of the program, with the primary objective being one of contributing to the economic development of partner countries. There is an interesting comparison to be drawn with New Zealand's seasonal worker program which, in part, provided the impetus and example for the introduction of the Australian scheme. New Zealand's Recognised Seasonal Employer (RSE) program gives primacy to the labour needs of employers, with its primary objective being 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'.⁸⁷ As a result of its employer focus, the RSE has more flexibility in relation to work times, and the ability of workers to move between employer sponsors to maximise the efficient use of migrant workers during harvest periods.⁸⁸

3.3.1 *Evaluation of the SWP in Terms of Meeting the Labour Needs of Growers and Protecting Workers from Exploitation*

The primary benefit of the SWP is its ability to deliver to growers a stable, productive and committed workforce for certain periods of time. As these workers choose to temporarily migrate to Australia for the purpose of working in the horticulture industry, their commitment to their work is likely to be high. Leith and Davidson evaluated payroll data for a grower in Queensland and found notable productivity and efficiency advantages deriving from workers on the SWP when compared with WHMs.⁸⁹ In addition, seasonal workers can return year after year, which allows them to build on their experience and skills acquisition in previous years. According to Howes and Sherrell:

While the majority of labour in the horticultural industry is piece-rate, more experienced workers will help reduce spoilage and improve quality, important indirect benefits for employers which stem from faster picking. Lower employee

⁸⁶ Department of Employment, Australian Government, *Seasonal Worker Programme Implementation Arrangements* (version 3.0) (1 August 2015) <https://docs.employment.gov.au/system/files/doc/other/swp_implementation_arrangements_effective_1_august_2015.pdf>.

⁸⁷ New Zealand Immigration, *Recognised Seasonal Employers* (2016) <<https://www.immigration.govt.nz/employ-migrants/hire-a-candidate/options-for-repeat-high-volume-hiring-new/recognised-seasonal-employer>>.

⁸⁸ Richard Curtain, 'New Zealand's Recognised Seasonal Employer (RSE) Scheme and Australia's Seasonal Worker Program (SWP): Why so Different Outcomes?' (Development Policy Centre, 25 May 2016).

⁸⁹ Robert Leith and Alistair Davidson, 'Measuring the Efficiency of Horticultural Labour: Case Study on Seasonal Workers and Working Holiday Makers' (Report, ABARES, Department of Agriculture, December 2013).

turnover over the medium-term helps offset initial expenses associated with the Seasonal Worker Program.⁹⁰

In our interviews with growers in both case study locations, only one grower had firsthand experience of using the SWP. A number of growers we interviewed had not heard of the SWP at all. Tellingly, the Virginia grower that used the SWP was the largest grower we interviewed with a consistent workforce throughout the year of 250 workers, expanding to 600–700 workers during the peak harvest time. For this vegetable grower who accessed SWP workers through a labour hire agency registered as an Approved Employer under the program, the SWP afforded an opportunity to develop a stable and productive core workforce:

We bought over 25 [SWP workers] in 2015, and we have 25 currently on site. They are really keen, really motivated, they sing — they bring a good vibe to the place. They are very fast. They nearly all come from one area in Vanuatu. It's a little bit more expensive but you get great quality workers and the real big advantage of that scheme is the potential for them to return. If 70–80% workers return your training costs are halved. It takes six weeks to train a harvester and get them up to speed, in that first six week period they are only 50% speed; so when you bring on 200–300 people for a peak period, for 6 weeks they are 50% productivity which ends up costing you double. Out of 25 on the SWP, 20 are returning for a second year and they are already trained so even though you have to pay visa and travel, when they arrive they are at 100%. I would like to ramp up our SWP intake going forward. Because our picking needs are seasonal, we don't mind that the duration is not 12 months. The SWP's 6 month duration works for us as a general rule.

The extent to which the SWP in its current iteration is capable of meeting the industry's broader labour needs is contested, with critics of the SWP pointing to its additional regulatory burden, longer timeframes, greater costs and limited source countries as reasons for the slow (albeit steady) take-up. For many small- and medium-sized growers, the level of forward workforce-planning, investment and administration required by the SWP is simply beyond reach.

The SWP in its current design does not meet the workforce needs of many growers in two key ways.

A first key drawback of the SWP is that it does not allow growers to meet their *annual* labour needs. As reported in Chapter 2, around 40% of growers have labour needs which are year-long, or at least 11 months each year, and are not seasonal. Larger businesses are more likely to need workers for seven to 12 months. However, the SWP only allows workers to be employed for a maximum of six months, and for nine months if from Kirabati, Nauru or Tuvalu.

As one medium-sized grower from Virginia who employed 200 workers on a full-time annual basis, told us:

I would go with the Seasonal Workers Program 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

⁹⁰ Stephen Howes and Henry Sherrell, Submission No 27 to the Senate Standing Committees on Economics, *Inquiry into the Working Holiday Maker Reform Package*, 21 October 2016, 5.

they come and leave after nine months and you need a new workforce for two months. It just disrupts the whole season.

A second key drawback of the SWP is that it does not allow growers to meet their *immediate* labour needs. As SWP workers need to be booked onto flights for a set arrival date, growers need to have a fairly clear idea of when the harvest will occur. Given that the harvest is contingent upon the weather and other variables, it can be highly problematic, for certain growers, to predict a set start date for the harvest. This means that a group of SWP workers may have arrived and have very little productive work to do for a number of weeks prior to the harvest beginning. Or it may mean that they arrive after the beginning of the harvest. As one grower put it:

You have to have flexibility in your workforce as plants don't stop growing, public holidays and Christmas. So the hours are quite flexible it isn't like a nine to five job. If it rains today it is less work and if it is sunny tomorrow more work you got to have that flexibility all the time.

A number of growers also indicated to us that there were other drawbacks with the SWP's design. A common perception is that the SWP does not allow growers to interview workers prior to arrival. For some growers, this perceived inability to assess the suitability of the SWP participant for the work prior to giving them a job is a key risk with using the program. In actual fact, the SWP does have scope for growers to individually recruit workers. Under the SWP Approved Employers are able to select workers where participating countries have a direct recruitment method in place. Employers are encouraged to apply good selection processes to the workers they recruit either by visiting the country or skyping to speak with prospective seasonal workers. Many growers also expressed concern that SWP workers might leave early despite the investment an employer has made in recruiting them, arranging their airfares and arranging and planning for their workforce contribution. A 2015 media report noted that an asparagus grower lost \$50 000 on unpicked produce because 36 SWP workers returned early to their home country alleging claims of mistreatment which the Fair Work Ombudsman (FWO) ultimately found to be unsubstantiated.⁹¹ Another perceived drawback is the additional responsibilities faced by growers who use the SWP. As the human resources director of one grower told us: 'The administrative side of it puts us off ... having to be their caretaker and to make sure they can get to the doctor and all that. It is very time consuming. Because we would need to take on that responsibility under the program.'

An additional disadvantage for some growers pertains to the labour market testing requirement. The SWP requires growers to advertise vacancies and then give first preference to any suitable local jobseekers before filling the vacancies with seasonal workers. Proof of failed recruitment efforts must be submitted by growers with their application to become an Approved Employer under the SWP.

Although some of the aforementioned issues (in particular the reasons arising from growers' *annual* and *immediate* labour needs) would require the SWP to be redesigned, it is possible that changing grower practices or more active promotion of the SWP by industry could help improve its uptake. For instance, Hay and Howes claim that: 'For the Pacific seasonal worker program to thrive, the

⁹¹ Laura Poole, 'Asparagus Industry Relies on Seasonal Worker Programme for Labour, but Says There's Room for Improvement', *ABC News* (online), 20 November 2015 <<http://www.abc.net.au/news/2015-11-20/seasonal-worker-programme-tension-asparagus-kooweerup/6957136>>.

horticultural industry needs to be shifted from its current reliance on an unregulated, less productive labour force to a reliance on a regulated, more productive labour force.’⁹²

This shows that it is impossible to assess workers on one visa stream in isolation from another. Also, recognising the role of stakeholders and processes in and around the industry is imperative. For example, the development of more effective human resource management capability and strategies could enable growers to better utilise their investment in SWP visa holders and as argued by Curtain, supermarket chains should also play a role. He suggests that supermarket retailers, as commercially important and influential actors in the horticulture supply chain, should encourage growers who supply their produce to use the scheme more extensively:

A major increase in the take-up of the Seasonal Worker Program in Australia is only likely if corporate buyers, under pressure from domestic consumers, actively monitor the working conditions for the harvest workforce. Corporate buyers are in the best position to apply pressure on their suppliers for greater transparency and accountability for the health, safety and welfare of workers involved in the harvest.⁹³

Thus, it is clear that the regulatory design of the SWP poses a number of challenges for growers in organising their workforce needs. But what about the needs of workers? How effective is the regulatory design of the SWP in protecting participants from exploitation?

The incidences of exploitation arising under the SWP are far less than under the WHM. This is for a number of reasons.

First, the SWP requires employers to be approved by the Department of Immigration and Border Protection (DIBP). Each Approved Employer enters into a sponsorship arrangement with the DIBP, which sets out their obligations and responsibilities. Non-compliance with these can lead to the revocation of Approved Employer status under the SWP.

Second, contractors and labour hire companies are regulated under the SWP as they are required to be approved by the DIBP. Only contractors who have been in operation for at least five years and have a record of compliance with immigration and workplace relations requirements are eligible to apply to become Approved Employers.

Third, Approved Employers take on additional responsibilities under the SWP. Employers are responsible for organising seasonal workers’ flights, transport and accommodation for workers, ensuring they have access to a minimum average of 30 hours of work per week, providing pastoral care responsibilities, as well as ensuring that the seasonal workers wellbeing is managed.

Fourth, employers using the SWP are subject to reporting obligations, which keeps 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.

Fifth, SWP participants are subject to a pre-departure briefing and upon arrival they are given a briefing by the union as to their rights and entitlements under Australian workplace law.

⁹² Hay and Howes, above n 67, 30–1, 37.

⁹³ Curtain, above n 88, 9.

Despite these protections, concerns remain about the vulnerability of seasonal workers from the Pacific in agricultural labour schemes in Australia and New Zealand.⁹⁴ Their *temporariness* is a cause of vulnerability with many SWP participants wishing to return in subsequent years and reliant upon an invitation by their employer to do so. The *tied* nature of their visa creates this dependence as their employer has the dual role as their sponsor. The *low-skilled nature of horticulture work* means they are more replaceable in the labour market than more skilled workers and their status as *visa holders* means they are less able to access community support and assistance in the event of exploitation. Their *dependence on their employer as their accommodation-provider* creates another source of vulnerability particularly when exorbitant deductions are made by the employer to cover accommodation and transport. This can be contrasted to the situation under New Zealand's RSE where the exact amount of deductions from wages have to be stipulated prior to the worker's employment in the contract and provided to both the worker and the government department responsible for administering the program. Additionally, although the piece rates requirement is meant to ensure that the award operates as a statutory floor and incentivises more productive work by pickers, it can often lead to low hourly wage rates paid to SWP workers who are being remunerated in violation of the award. According to Sam Roberts from the National Union of Workers:

The biggest issue with the SWP is that it's not seasonal work. So these workers want to come back and they live in constant fear of being told they can't come back. We need to give SWP a right to return, or a right to stay — to address their fear of not being allowed back by the employer.

3.4 Labour Supply Option # 3: The Working Holiday Maker Program

The WHM program includes two types of working holiday visas (visa subclasses 417 and 462) that allow temporary migrants from 38 countries between 18 and 30 years of age to work while they holiday in Australia for up to a year.⁹⁵ Working holiday visas provide work entitlements for the full 12 months of the visa, but only for six months work with any one employer.⁹⁶ The WHM program has existed since 1975 and its purpose is to foster closer ties and cultural exchange between Australia and partner countries, with particular emphasis on young adults. The performance of work is meant to be incidental to the visa's central purpose. Indeed, the DIBP states that 'work in Australia must not be the main purpose of the visa holder's visit'.⁹⁷ However, the veracity of this statement of principle in practice is quite hollow. This section will examine how regulatory reforms to the WHM

⁹⁴ John Connell, 'From Blackbirds to Guestworkers in the South Pacific. Plus ça Change...?' (2010) 20 *Economic and Labour Relations Review* 111.

⁹⁵ The number of negotiations under way is at a historical high. In 2014–15 the government signed Work and Holiday visa (subclass 462) arrangements with China, Israel, Portugal, Slovakia, Slovenia, Spain and Vietnam. The arrangements with Portugal and Spain were implemented in 2014–15, as was the arrangement with Poland (which was signed in 2013–14). Department of Immigration and Border Protection, Australian Government, *Working Holiday Maker Visa Programme Report* (31 December 2015) 8 <<http://www.border.gov.au/ReportsandPublications/Documents/statistics/working-holiday-report-dec15.pdf>>.

⁹⁶ *Migration Regulations 1994* (Cth) regs 417.611, 462.611. See also, Department of Immigration and Citizenship, Australian Government, *Working Holiday Maker Visa Program Report* (30 June 2013) 4.

⁹⁷ Department of Immigration and Border Protection, Australian Government, *What is the Working Holiday Maker Program?* <<https://www.border.gov.au/Lega/Lega/Form/Immi-FAQs/what-is-the-working-holiday-maker-program>>.

program and its widespread use are producing a ready supply of low-skilled temporary migrant workers.

The second type of WHM visa, the subclass 462 Work and Holiday visa, was introduced in 2005. It has additional eligibility requirements, including functional English, successful completion of two years of university study and a letter of support from the visa holder's home government in the visa application. The number of subclass 462 visas from each country is capped, except for the United States. All recent WHM agreements with other countries have been for subclass 462 visas. Since 2014, there have been nine new Work and Holiday agreements, with Poland (200 places), Portugal (200), Spain (500), China (5000), Slovak Republic (200), Slovenia (200), Greece (500), Israel (500) and Vietnam (200).⁹⁸ Australia is currently negotiating a further 21 Work and Holiday visa arrangements with other countries.⁹⁹

A key reform to the subclass 417 visa occurred in 2005 when a new regulation was passed allowing visa holders who completed three months seasonal work in a regional location to receive a 12-month extension on their visa.¹⁰⁰ The *Migration Regulations 1994* (Cth) were amended in 2008 to change 'regional work' to 'specified work', to more accurately reflect which industries WHMs could work in to be eligible for a second year visa extension. These industries now include plant and animal cultivation, fishing and pearling, tree farming and felling, mining and construction. A little over 90% of WHMs use work in horticulture to gain a visa extension.¹⁰¹

The rationale for adding the option of a second year visa extension for WHMs was 'to provide an incentive to WHMs to work in the harvest industry which is experiencing severe labour shortages'.¹⁰² The Regulatory Impact Statement (RIS) accompanying changes to the Migration Regulations in 2005 stated:

Government and the industry need to make seasonal work in regional areas more attractive to the groups best suited to cater for this important market, including the young mobile unemployed and Working Holiday Makers. While young Australians are being strongly targeted by the Harvest Trail initiatives, little has been done to likewise encourage more Working Holiday Makers to undertake harvest work.¹⁰³

⁹⁸ Department of Immigration and Border Protection, Australian Government, *Working Holiday Maker Visa Programme Report*, above n 95.

⁹⁹ The countries are: Andorra, Austria, Brazil, Croatia, Czech Republic, Ecuador, Fiji, Hungary, India, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Mongolia, Peru, Philippines, San Marino, Singapore, Solomon Islands and Switzerland.

¹⁰⁰ *Migration Regulations 1994* (Cth) sch 2 reg 417.211(5).

¹⁰¹ Department of Immigration and Border Protection, Australian Government, *Working Holiday Maker Visa Programme Report* (31 December 2014) <<https://www.border.gov.au/ReportsandPublications/Documents/statistics/working-holiday-report-dec14.pdf>>. See also, Elsa Underhill and Malcom Rimmer, 'Itinerant Foreign Harvest Workers in Australia: The Impact of Precarious Employment on Occupational Safety and Health' (2015) 13 *Policy and Practice in Health and Safety* 25, 28.

¹⁰² United Working Holiday Makers in Australia, Submission No DR94 to Productivity Commission, *Migrant Intake into Australia*, December 2015, 7.

¹⁰³ Commonwealth Parliament, *Migration Regulation Amendments 2005 (No 9)* Regulatory Impact Statement: Changes to the Migration Regulations: Proposals to Expand the Working Holiday Makers Program (Supplementary Material) (2005) <<https://www.legislation.gov.au/Details/F2005L03190/Download>>.

The RIS ran through six options for responding to labour challenges in horticulture, including expanding the high-skilled subclass 457 visa, a seasonal or guest worker scheme, and a labour agreement pathway. It rejected using the subclass 457 visa because it was considered unreasonable to expect employers to 'demonstrate a satisfactory training record or use of new or improved technology' which is a requirement of this visa. The RIS also rejected a seasonal or guest worker scheme on the basis that such a scheme would be prone to worker exploitation and abuse and because of doubts that a seasonal workers scheme would produce long-term benefits to sending countries.¹⁰⁴

In 2015 the Australian government announced that the opportunity for a visa extension based on three months specified work would be expanded to include subclass 462 visa holders. However, unlike subclass 417 visa holders, subclass 462 visa holders are required to complete this work in Northern Australia.¹⁰⁵ This reform is yet to take effect but is likely to see increased labour mobility to this region and may assist in addressing labour needs of growers in Northern Australia.

As of December 2015, all applicants for a second year extension must provide evidence not just of specified work in regional Australia, but also of appropriate remuneration for that work. The most common evidence is payslips for the requisite work. This change was implemented in response to a concern that WHMs were more vulnerable to exploitation from their employers, particularly in relation to underpayment, when they relied on the employer to satisfy the work criteria for the second visa. In a media release issued in May 2015, the Assistant Minister for Immigration and Border Protection stated that volunteering would no longer be counted towards second year visa extensions, because of a view that permitting unpaid work to be used in an application for an extension created 'a perverse incentive for visa holders to agree to less than acceptable conditions in order to secure another visa'.¹⁰⁶ While this change addresses one form of exploitation, it still leaves WHMs vulnerable to exploitation in relation to the conditions of work they are prepared to undertake, and wage exploitation is still possible through falsified and inaccurate payslips. It is important to understand that the requirements for a visa extension create a structural inequality between employers and workers. The risk of non-compliant employment of WHMs in the 88-day period is particularly high because of their reliance on employers to attest to their work. It may be more important for a WHM to obtain a visa extension than to be paid award wages during the 88-day eligibility period. For this reason, a perverse incentive remains: to agree to falsified payslips or unreasonable conditions of work in order to secure a visa.

Although the Australian government does not maintain records of the work destinations of WHMs, several recent studies indicate the importance of work to WHMs and their impact on the Australian labour market. A report by the National Institute of Labour Studies in 2009 noted that about half of WHMs listed work as a 'principal reason for coming to Australia'.¹⁰⁷ It also noted that 40% of WHMs

¹⁰⁴ Ibid.

¹⁰⁵ Department of Immigration and Border Protection, Australian Government, *Working Holiday Maker Visa (Subclasses 417 and 462) Initiatives to Support Northern Australia* <<https://www.border.gov.au/Trav/Visi/Visi-1/work-holiday-visas-noth-aus>>.

¹⁰⁶ Assistant Minister for Immigration, Michaelia Cash, cited in Alex Harman, *Labour Hire Reform Required: The Shocking Truth* (6 May 2015) Byte <<http://www.thebyte.com.au/labour-hire-reform-required-the-shocking-truth>>.

¹⁰⁷ Yan Tan et al, 'Evaluation of Australia's Working Holiday Maker (WHM) Program' (Report, National Institute of Labour Studies Flinders University, 2009) 10.

spent the whole of their time in Australia in one urban location, which is a likely indication that work rather than travel was their primary activity during their time in Australia.

WHMs contribute to the economy through their work in horticulture, which is largely due to the formal incentives to work in horticulture in order to gain a 12-month extension on the visa's term.¹⁰⁸ WHMs 'consistently make up about 50–85% of the seasonal workforce' in the industry.¹⁰⁹ Our national survey of vegetable growers found that 72% had engaged WHMs in the last five years. Over 90% of WHMs electing to do an 88-day period of 'specified work' in order to obtain a second year visa extension work on a farm.¹¹⁰ A study by Hay and Howe in 2012 also found that 73% of horticulture businesses employed mainly WHMs.¹¹¹ They estimated that the number of WHMs working 'on farms' increased from 13 000 in 2001–02 to 37 000 in 2007–08. In a study of WHMs in Mildura, Jarvis and Peel found that 93–95% of WHMs in 2010 were in the town for the purpose of work and 77% intended to apply for a second WHM visa.¹¹² Furthermore, 97% in 2009 and 95% nominated employment as their primary motivation for visiting Mildura.¹¹³

On average, 24% of WHMs take-up a second Working Holiday visa, although the take-up is higher on average among those from Asian countries when compared with European countries.¹¹⁴ Among the latter, there was relatively high take-up among WHMs from the UK (23%), Ireland (38%) and Italy (26%), but low take-up for WHMs from Germany (7%), France (14%), and Sweden (11%). The take-up rate was high among all Asian countries, including Taiwan (48%), South Korea (23%), Hong Kong (33%) and Japan (25%). In an analysis conducted by an industry body of DIBP's 2015 WHM Program report, it was noted that Western European nations tended to use the visa as a holiday visa. By contrast, East and South East Asian nations were said to use the program more for its employment opportunities and associated financial benefits and were less likely to apply for a second year extension on the visa because of changes in the economic climate, such as a weakening Australian dollar.¹¹⁵

It is notable that Australia has a substantially larger WHM program than countries with comparable migration profiles, and who are partners in the WHM visa program. According to the OECD in 2013,

¹⁰⁸ In 2014–15, the vast majority (37 974) of Working Holiday applicants for a second year on their visa were employed in the agriculture, forestry and fishing industries. Although this data is not disaggregated further, given the labour-intensive nature of horticultural work, it is likely that these workers were predominantly employed on farms during the harvest: Department of Immigration and Border Protection, Australian Government, *Working Holiday Maker Visa Programme Report*, above n 95, 27 (Table 2.15).

¹⁰⁹ Yan Tan and Laurence H Lester, 'Labour Market and Economic Impacts of International Working Holiday Temporary Migrants to Australia' (2012) 18 *Population, Space and Place* 359, 373–4.

¹¹⁰ Howes and Sherrell, above n 90, 2.

¹¹¹ Hay and Howes, above n 67.

¹¹² Jeff Jarvis and Victoria Peel, 'Tourists for Hire: International Working Holidaymakers in a Work Based Destination in Regional Australia' (2013) 37 *Tourism Management* 114, 118.

¹¹³ Ibid 122.

¹¹⁴ A total of 173 491 first Working Holiday visas were granted in 2014–15, a 5.4% reduction compared to 2013–14 and that a total of 41 339 second Working Holiday visas were granted in 2014–15: see Department of Immigration and Border Protection, Australian Government, *Working Holiday Maker Visa Programme Report*, above n 95.

¹¹⁵ AusVeg Summary of the Working Holiday Maker Visa Programme Report 2015 (copy on file with authors).

the 249 000 backpackers in Australia represented about half of all WHMs in 22 OECD countries in that year.¹¹⁶

There is little doubt that the WHM program in Australia is substantially filling a demand for low-skill work in the domestic economy.¹¹⁷ This has been enabled by the regulatory reforms introduced since 2005, which create incentives for visa holders to perform paid work and the willingness of many visa holders who appear to be using the program predominantly for a work purpose.

3.4.1 Evaluation of the Working Holiday Maker Program in Terms of Meeting the Labour Needs of Growers and Protecting Workers from Exploitation

The flexible nature of WHM labour suits the workforce needs of the horticulture industry. Although some growers (especially the large and medium-sized businesses) have year-long needs for low-skilled horticulture labour, for most small and medium-sized growers, at certain times of the year such as planting and harvest, significant surge capacity is needed to undertake low-skilled tasks. Some farms only employ a small number of workers on a permanent basis but can employ hundreds of WHMs over a season.

A key attribute of WHMs as a labour source is their freedom of movement within the labour market. They are prepared to take whatever work is available at the time, and if there is no work on a particular farm, they will move onto other farms in search of work. Some crops are highly unpredictable and for that reason the SWP is unsuitable. The high level of unpredictability in the vegetable industry also makes the work less appealing to local job seekers who generally prefer a defined period of employment in the one location. Additionally, growers cannot guarantee workers on the SWP a minimum or consistent amount of work due to the unpredictable nature of seasons for certain types of vegetables.

From a grower perspective, the lack of paperwork associated with the employment of WHMs is also attractive. Growers who engage WHMs are not subject to any sponsorship obligations, do not have to provide their contract of employment to the DIBP and have no ongoing reporting obligations.

Additionally, although growers have traditionally questioned the work ethic and reliability of WHMs, this is changing with the advent of WHMs coming to Australia with the specific purpose of working in horticulture.

Nonetheless, there are a number of deficiencies with relying on WHMs as the primary source of horticultural labour in Australia.

First, WHMs are prone to exploitation in the Australian labour market, particularly when engaged in farm work. Although this has been exposed anecdotally through media reports,¹¹⁸ and through research by academics,¹¹⁹ in October 2016 a comprehensive report was released by the FWO

¹¹⁶ OECD, *International Migration Outlook 2015* (Report, Paris: OECD, 2015) 26 <<http://ifuturo.org/documentacion/InternationalMigrationOutlook.pdf>>.

¹¹⁷ Tan et al, above n 107.

¹¹⁸ Meldrum-Hanna and Russell, above n 3.

¹¹⁹ Alexander Reilly, 'Low-Cost Labour or Cultural Exchange? Reforming the Working Holiday Visa Programme' (2015) 26 *Economic and Labour Relations Review* 474; Underhill and Rimmer, 'Layered Vulnerability', above n 3.

following a two-year inquiry into the performance of work by WHMs.¹²⁰ With regard to regional work, predominantly undertaken in horticulture, the FWO found:

- more than one-third of WHMs claimed they were paid less than the minimum wage;
- of those who were paid for their regional work, around 27% were paid cash;
- 14% had to pay to secure regional work; and
- 6% had to pay an employer to 'sign off' on their regional work requirement.

The report is highly critical of the 88-day period incentive for WHMs in creating the opportunity for exploitation of WHMs. The FWO concluded that

[t]he 417 visa program created an environment where ... unreasonable and unlawful requirements are being imposed on visa holders by unscrupulous businesses ... exploitative workforce cultures / behaviours 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.¹²¹

There are a number of other risks arising from reliance on the WHM visa as a primary source for growers.

First, the increasing emergence of official and anecdotal accounts of exploitation under the WHM program will either lead to greater regulation of the visa, which may make it unworkable for growers, or it may lead to its reorientation as a visa for cultural exchange. One way or another, exploitation of WHMs will lead to reform of its regulatory design. This poses a risk for growers who are heavily reliant on WHMs for their labour.

Second, apart from the immediate harm to WHMs, worker exploitation has other negative effects. Damaging stories of worker abuse undermines the integrity of Australia's labour market regulations more broadly. It harms Australia's reputation as a destination of choice for WHMs and may lead to contracting numbers of WHMs applying to Australia for the purposes of work.¹²² It may erode public confidence in temporary immigration policy, particularly if the costs to the integrity of labour market regulation are seen to outweigh the economic and cultural benefits that WHMs deliver, which could trigger a tightening of visa regulations. These outcomes would of course have flow-on effects for growers in terms of meeting their labour needs.

Third, WHMs who choose to come to Australia for the purpose of work are an inherently unpredictable labour source. Their choice of destination will depend upon a calculation of the income that can be generated through their working holiday. If other countries have better exchange rates, higher wages, lower tax rates and more careful protection of WHMs from exploitation, it is likely to affect the choice of where a WHM will elect to go. Various circumstances outside of growers' control are at play here, including changing economic conditions, taxation and exchange rates. A powerful example of the role of contextual factors in influencing the decision of WHMs to travel to

¹²⁰ Fair Work Ombudsman, '417 Visa Inquiry', above n 5.

¹²¹ Ibid 4.

¹²² Verena Töpper, *Working Holiday Exploited in Australia* (20 November 2016) Spiegel Online [trans of: Working Holiday Ausgebeutet in Australien] <<http://www.spiegel.de/karriere/working-holiday-in-australien-so-gelingt-die-arbeitssuche-a-1121151.html>>.

Australia and work in the horticulture industry, is the recent political uncertainty around the proposed backpacker tax which began in 2015 and was only resolved in Parliament on 1 December 2016. The debate around the appropriate level of taxation for backpackers exposed both the heavy reliance of growers on WHMs as a primary source of labour at harvest time and the fickleness of this labour source, given that many WHMs revised their travel plans to Australia.

Fourth, another risk for growers arises from the use of a visa that may limit the productivity and skills gains, which can be achieved in low-skilled horticulture work. As WHMs can only stay with the same employer for six months, and indeed most only stay with horticulture employers for three months because of the 88-day inducement, this limits the ability for WHMs to become productive and efficient in horticultural work. The turnover of WHMs means that growers constantly have to retrain workers and it 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 provided by many growers and their representatives to the Joint Standing Committee on Migration’s inquiry into the SWP, which highlighted both the industry’s extreme dependence on WHMs as a labour source and many growers’ deep-seated 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 causes issues on critical days of harvest and getting the crop picked in optimum condition.¹²³

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...¹²⁴

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,’...¹²⁵

Although there may be a shortage in some locations and at peak periods (evinced by our survey finding that 25% of growers have left produce unpicked in the last five years), **a much more significant and endemic labour issue facing the industry, in our view, is not that there is a shortage of available workers,¹²⁶ but that WHMs, as the primary source of workers available,**

¹²³ Vernview Pty Ltd, Submission No 13 to Joint Standing Committee on Migration, *Seasonal Change: Inquiry into the Seasonal Workers Programme*, 10 July 2015, 2.

¹²⁴ Evidence to Joint Standing Committee on Migration, Parliament of Australia, Melbourne, 28 October 2015, 41 (Jonathon Moss, Manager of Mossmont Nurseries).

¹²⁵ 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).

¹²⁶ Indeed, one industry representative from MADEC pointed to excess WHM labour in the industry, presenting evidence to the Joint Standing Committee on Migration inquiry that, ‘[w]e believe there has been a

are on a visa that does not meet the ongoing needs of growers. This leads to many growers feeling insecure about the desirability, viability and possible sustainability of their source of labour. The regulatory framework for the WHM program means that the 417 visa only allows them to hire for six months at a time, does not allow them to forward plan for labour needs and often attracts workers of limited commitment, aptitude and experience in horticultural work.

As we examine below, other countries use dedicated sectoral visas (for example, an agricultural work visa) or a low-skilled work visa pathway for certain occupations deemed to be in shortage in the local labour market. There is evidence to suggest that such an approach produces a more aligned, motivated and productive workforce and is more effective at protecting workers from labour market exploitation.

3.5 The Use of Migrant Labour in Horticulture in Other Jurisdictions

Labour supply challenges in the Australian horticulture industry must be considered in their international context for a number of reasons. First, the production and trade in food is a global phenomenon. The Australian horticulture industry supports an export market valued at \$2.1 billion per annum.¹²⁷ The growing export focus of the local vegetable industry and increased import penetration into the domestic market means that Australian growers are in competition with growers in countries where the costs of labour are lower. Neither is this a luxury industry, as food sustains all economies and all societies. Second, to the extent that the industry relies on migrant workers, these workers are part of a global phenomenon of labour migration. Australia and other countries draw on similar source countries for migrant workers and, therefore, it is informative to understand how the employment and migration regimes in other countries shape and compare with Australia. This is also important because the success or failure of policy pathways in other countries will influence migrant worker choices and is, therefore, instructive for developing sound policy recommendations.

In what follows, we offer a brief snapshot of policies relating to migrant labour in the agricultural industry of five developed nations: the United States, Canada, the United Kingdom, New Zealand and Sweden. Some of these countries are in direct competition with Australian growers for the export of vegetables, as well as the labour used to sustain their production. **Table 3.1** presents the main sources of migrant labour for the five countries. It is clear that dedicated pathways for seasonal labour migration program into the horticulture industry are the most common means of addressing labour supply challenges faced by growers. Only Canada has a low-skill worker visa permitting the performance of work in agriculture, with a duration of more than a year, although this is a minor addition to the much larger Seasonal Worker program in that country. Despite all the countries in the sample having Working Holiday Maker visas, only New Zealand has a significant presence of Working Holiday Makers working in horticulture. As with Australia, this is achieved by focusing a visa extension on work in horticulture and viticulture.

Undocumented labour is not included in the Table 3.1 as this is not a legitimate source of labour. However, it is important to note that in the United States, in particular, much agricultural labour is done by undocumented workers, particularly from Mexico.

significant oversupply of backpacker labour wanting to do horticulture work for a number of years': Evidence to Joint Standing Committee on Migration, Parliament of Australia, Melbourne, 28 October 2015, 58 (Robert Hayes).

¹²⁷ Department of Agriculture and Water Resources, Australian Government, above n 2.

Table 3.1 Summary of use of Migrant Labour in Horticulture in Other Jurisdictions

Visa Type	Country used	Year introduced	Recruitment countries	Numbers	Sponsorship	Visa length	Who paid Visa and transport costs	Visa Renewable
Seasonal worker visa	United Kingdom	Late 1940s (ceased in 2013)	Europe	Capped, 21 250 (2013)	Industry	Up to six months	Worker	Yes
	New Zealand	2007	Pacific Island nations	Capped, 9500 (2015–16)	Employer	Seven months	Worker + employer	Yes (in the following year)
	Canada		Caribbean and Mexico	Capped, 20 000	Employer	Eight months	Worker + employer	Yes (in the following year)
	United States		63 partner countries	Uncapped, 89 274 (2013)	Employer	10 months	Employer	Yes
Low skilled worker visa	Canada	2002	Unspecified	Uncapped	Employer	Two years	Employer (Visa) Shared (Transport)	Yes (after four months)
	Sweden	2008	Unspecified	466 (2015)	Employer (first two-year visa), Industry (second two-year visa)	Two years	Worker	Yes (for a two-year extension visa)
Working Holiday visa	New Zealand	1985	40 partner countries	Uncapped, 49 000 (2012–13)		One year + three months	Worker	No

3.5.1 The United States

The US has two large main sources of migrant labour.

First, the **H-2A visa** allows agriculture employers to sponsor workers from 63 participating countries temporarily for up to 10 months work in agriculture. The worker must have a job offer from an employer who must attest that no American worker is available to fill the vacancy. Visa holders must be paid above market wage and federal and state minimum wage levels, provided with a minimum number of work hours each week, be reimbursed for subsistence and accommodation costs and receive quality housing and workers compensation insurance. The scheme is uncapped and over 89 274 visas were issued in 2014; 86 674 of these were for workers from Mexico.¹²⁸ By some accounts, the employer attestation and minimum wage requirements of the H-2A visa are weakly enforced and thus this program offers a substantial opportunity for agriculture employers to engage migrant workers.¹²⁹

Second, there is a large number of **undocumented migrant workers** in the US agricultural industry. The prevalence of undocumented workers, particularly from Mexico, has been traced to the 'bracero' program. This program, which operated from 1942 to 1964, was initially created as a 'temporary wartime emergency' measure to allow farmers to recruit migrant workers in place of the farm labourers who had been drafted. After the war ended, farmers lobbied for the continuation and subsequently the expansion of the bracero program, enabling a seven-fold rise in the scheme's intake from the wartime peak to around 450 000 in 1956. Overall, around 4.5 million workers came to the United States during the scheme's operation. This coincided with a significant growth of undocumented migrants from Mexico, which increased from around 1.4 million in 1950 to 14 million in the 1990s. According to Martin and Teitelbaum, 'scholars largely agree that the 22 years of bracero employment created the conditions for the subsequent boom of unauthorized Mexican migration'.¹³⁰ It is both astounding and portentous to recognise that undocumented workers now account for around 50% of the US horticulture workforce,¹³¹ typically working for low (and often unlawful) wages and poor conditions.

3.5.2 Canada

In Canada, the Seasonal Agricultural Workers Program allows 20 000 workers to work in horticulture for up to eight months per year through bilateral agreements with Mexico and several Caribbean nations. The scheme has been credited with effectively addressing growers' labour needs during peak seasons, sustaining rural industries and local economies, contributing to high-

¹²⁸ US Citizenship and Immigration Services, *Data Set: Form I-129 Petition for Temporary Agricultural (H-2A) Worker* (23 November 2016) <<https://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-form-i-129-petition-temporary-agricultural-h-2a-worker>>.

¹²⁹ Martin Ruhs, 'Immigration and Labour Market Protectionism: Protecting Local Workers' Preferential Access to the Local Labour Market' in Cathryn Costello and Mark Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press, 2014) 60.

¹³⁰ Philip L Martin and Michael S Teitelbaum, 'The Mirage of Mexican Guest Workers' (2001) 80(6) *Foreign Affairs* 117, 123.

¹³¹ Calvin and Martin, above n 31.

skilled employment growth in agriculture and related industries and providing a route to legal employment thus deterring undocumented labour.¹³²

In addition, in 2002, Canada introduced an Agriculture Stream visa as part of a Low Skilled Pilot Program (LSPP), which allows employers to hire temporary foreign workers in agriculture for two years.¹³³ In Canada, 'skill level' requirements are defined by the National Occupational Classification (NOC) system. Under this system, level C is defined as '[o]ccupations requiring the completion of secondary school and up to two years of occupation-specific training'¹³⁴ and level D as '[o]ccupations which can be performed after receiving a short work demonstration or on-the-job training.'¹³⁵ The LSPP is a two-year visa designed to introduce a pool of temporary labour into the food production industry. Employers are not restricted in the countries from where they can sponsor workers. This program has received considerable criticism in relation to exploitation of workers.¹³⁶

3.5.3 The United Kingdom

The Seasonal Agricultural Workers Scheme (SAWS) was established in the United Kingdom after the Second World War to allow labour providers in the agricultural sector to engage young European university students between the ages of 18 and 25 on temporary work contracts during peak seasons. Over the following decades, it continued to function primarily as a program promoting youth mobility and cultural exchange, providing a small yet steady supply of labour to agricultural employers. SAWS operated according to an annual quota, which was initially around 5000 places per year and was raised progressively to a maximum level of 25 000 in 2003. SAWS has been effectively shut down since the enlargement of the European Union and was formally closed in 2013. The free mobility of workers from Central and Eastern European economies to the UK has reduced the need for a dedicated pathway for agriculture workers.¹³⁷ However, with the United Kingdom's imminent exit from the European Union and its free movement of labour regime, it is possible that a new low-skilled migrant worker scheme modelled on SAWS will be introduced.

¹³² Richard A O'Brien, 'The Horticulture Industry and Overseas Seasonal Workers: Guest Worker Schemes — A Desktop Study' (Report, Horticulture Australia Ltd, 30 May 2014) 8–9 <http://ausveg.com.au/intranet/technical-insights/docs/3111617_164290_VG13063.pdf>.

¹³³ Ibid 9.

¹³⁴ Fay Faraday, 'Made in Canada: How the Law Constructs Migrant Workers' Insecurity' (Summary Report, Metcalf Foundation, September 2012) 9 <<http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Summary-Report.pdf>>. For the full report see Fay Faraday, 'Made in Canada: How the Law Constructs Migrant Workers' Insecurity' (Full Report, Metcalf Foundation, September 2012) <<http://metcalffoundation.com/wp-content/uploads/2012/09/Made-in-Canada-Full-Report.pdf>>.

¹³⁵ Faraday, 'Made in Canada (Summary Report)', above n 134, 9.

¹³⁶ See, eg, Kendra Strauss and Siobhán McGrath, 'Temporary Migration, Precarious Employment and Unfree Labour Relations: Exploring the "Continuum of Exploitation" in Canada's Temporary Foreign Worker Program' (2017) 78 *Geoforum* 199; Kerry Preibisch, 'Pick-Your-Own Labor: Migrant Workers and Flexibility in Canadian Agriculture' (2010) 44 *International Migration Review* 404, 416.

¹³⁷ A Loizillon, 'Principal Labour Migration Schemes in the United Kingdom' in OECD, *Migration for Employment: Bilateral Agreements at a Crossroads* (Report, OECD: Paris, 2004) 113; P Martin, 'Managing Labour Migration: Temporary Worker Programs for the 21st Century' (Working Paper, International Institute for Labour Studies, International Labour Organisation, 2003).

3.5.4 New Zealand

New Zealand has two schemes that facilitate the work of migrant workers in horticulture. The **Recognised Seasonal Employer (RSE) scheme** provides temporary entry for a maximum of 9500 workers each year to work seasonally for up to seven months in the horticulture and viticulture industries.¹³⁸ The scheme allows Approved Employers in these industries to recruit workers from Pacific Island Forum nations if they are unable to find New Zealanders to fill job vacancies. While employers can recruit workers from other countries if no workers from New Zealand or Pacific Island nations can be found, around 80% of migrant workers on RSE visas are from Pacific Island nations. Migrant workers are required to return home after their seasonal employment has ended, but are permitted to return the following year. Around 50% of workers take-up the option of returning to work in subsequent years.

The regulatory requirements of the RSE scheme are similar in some respects to Australia's SWP. Employers need to be approved by the government department responsible for administering the program and are subject to a number of sponsorship obligations. There are approximately 100 employers accredited to participate in the RSE, many of whom are 'service providers' that can supply workers employed under the scheme to different farms. The scheme has been recognised as being relatively successful in addressing labour shortages, providing a stable supply of reliable workers and reducing the incentives for unlawful recruitment and employment practices.¹³⁹ The scheme has involved strong support from its inception by the horticulture industry and, although workers are employer-sponsored, the design of the scheme allows workers to move between growers. Growers who sponsor workers on the RSE must contribute to the cost of airfares and agree to provide a minimum of 240 hours of work.

Similar to Australia, since 1985, New Zealand has had a Working Holiday Maker scheme which allows 18 to 30-year-olds from 40 countries to work and travel for up to 12 months. In 2012–13 there were 49 000 WHMs. This constituted 8% of the population in this age range, a higher proportion than in Australia.¹⁴⁰ 30% of all WHMs find employment in the agriculture industry and these workers account for 4% of the agriculture workforce overall.¹⁴¹ WHMs can apply for a three-month extension of their visa to work in agriculture and viniculture. In 2014–15, 3169 WHMs took-up the visa extension option. To put this in context, if there were the same take-up rate of such a visa option in Australia, this would be equivalent to an extra 12 000 workers dedicated to working in horticulture for three months at the end of their first year as a WHM. It is significant to note that although the WHM program in New Zealand is proportionally larger than in Australia, the contribution of WHMs in the industry is considerably smaller when compared with the SWP.

¹³⁸ New Zealand Immigration, 'Recognised Seasonal Employer Cap Rise' (Media Release, 11 December 2015) <<https://www.immigration.govt.nz/about-us/media-centre/media-releases/recognised-seasonal-employer-cap-raise>>.

¹³⁹ OECD, *Recruiting Immigrant Workers: New Zealand 2014* (Report, OECD Publishing: Paris, 9 July 2014) 73–4 <http://www.oecd-ilibrary.org/social-issues-migration-health/recruiting-immigrant-workers-new-zealand-2014_9789264215658-en>.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

As one study puts it, ‘the ratio of Pacific seasonal workers to the total number of working holiday visa holders approved ... is 1:8 in New Zealand compared with 1:83 in Australia.’¹⁴²

3.5.5 Sweden

In 2008, Sweden introduced a demand-driven work permit scheme that gave individual employers the power to recruit migrant workers without any labour market testing requirements. Migrant workers engaged on work permits are required to have the same employment rights and conditions as citizens and permanent residents. Employers must offer wages and terms of employment ‘that are at least on par with those set by Swedish collective agreements or which are customary within the occupation or industry’. The sponsoring employer must also ‘intend to provide’ employment, pension, health and life insurance once the worker commences employment. Employers are required to provide evidence that they can guarantee the salaries of prospective work permit holders.¹⁴³ Workers are tied to an employer sponsor for two years but have four months to obtain another permit before their residency is withdrawn. After this two-year period they can apply for a second two-year work permit where the worker is tied to a specific occupation but not to a single employer.¹⁴⁴ In 2015, 13 313 workers were granted a Temporary Work Permit, of which 466 were agriculture, gardening, forestry and fishery workers.¹⁴⁵

Horticulture workers employed by Swedish firms are covered by a collective contract established by the Swedish Association of Forestry and Agricultural Employees. However, foreign labour hire companies supplying workers to Swedish firms are exempt from some of the provisions of these policy arrangements, such as certain labour market testing requirements, thus potentially weakening the effect of these regulations. In addition, because Sweden’s demand-driven migration program relies on collective organisations to provide a benchmark for wages and conditions, in industries such as berry picking where the work is of a transient nature and trade union membership is less common, there have been significant challenges in enforcement and related problems of migrant worker exploitation.¹⁴⁶

3.6 Conclusions and Findings

This chapter has highlighted the strengths and deficiencies of the current suite of labour supply options available to Australian vegetable growers. None of the three main pathways provide a comprehensive labour solution for the industry, although together they have been largely

¹⁴² Curtain, above n 88.

¹⁴³ Swedish Migration Board, ‘Measures to Counteract Abuse of Labour Immigration Regulations’ (Media Release, 29 July 2014).

¹⁴⁴ Petra Herzfeld Olsson, ‘Empowering Temporary Migrant Workers in Sweden: A Call for Unequal Treatment’ in Joanna Howe and Rosemary Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart Publishing, 2016) 207.

¹⁴⁵ Swedish Migration Board, *Statistics — Work Permits Granted 2015* (3 October 2016) <<http://www.migrationsverket.se/English/About-the-Migration-Agency/Facts-and-statistics-/Statistics.html>>.

¹⁴⁶ Samuel Engblom, ‘Reconciling Openness and High Labour Standards? Sweden’s Attempts to Regulate Labour Migration and Trade in Services’, in Cathryn Costello and Mark Freedland (eds), *Migrants at Work: Immigration and Vulnerability in Labour Law* (Oxford University Press, 2014); OECD, ‘Recruiting Immigrant Workers: Sweden’ (Report, OECD Publishing: Paris, 2011); Olsson, above n 144.

sufficient in meeting labour needs to date. However, given the many risks with relying on WHMs as the primary labour source for the industry, the research indicates that there are endemic labour supply challenges facing vegetable growers that need to be addressed through reform. The preceding examination of international regulatory solutions for meeting horticultural labour needs provides an important point of comparison for Australia. This chapter has made a number of findings:

3.6.1 The Local Workforce

- 1. Although local workers traditionally formed the bulk of the harvest workforce, they are no longer the primary source of labour for growers. It is unlikely this will change in the future given the inherent nature of horticultural work in picking, packing and grading jobs which acts as a deterrent to the engagement of local workers in the industry.**
- 2. There are two groups of local workers.**
 - Local workers who are long-term Australian residents tend to have a poor reputation with growers in terms of their commitment to working in horticulture. This reputation applies particularly to Australian youth unemployed, with many employers reluctant to take these workers on despite government incentive programs. More effort needs to be made to understand the issues the industry faces in attracting and retaining this group of local workers.
 - In some regions where migrants and asylum seekers have settled in relatively larger numbers, there is a pool of local workers whom growers consider to be reliable, committed and productive. This group has the capacity to make an important contribution to the horticulture workforce. These workers constitute a potentially vulnerable group. Although they have secure residency status, many of them have ended up in horticulture as a last resort, finding it hard to gain alternative work as a result of poor English language skills and other cultural factors, or because they are not qualified to work in other industries. Migrants and asylum seekers are a group that is not well versed in their workplace rights, and are reluctant to assert their rights even when they know them.

3.6.2 The Seasonal Worker Programme

- 3. The SWP has provided a suitable workforce for some vegetable growers with predictable seasonal needs. Although it has been used by larger growers to meet their year-long needs, it has proved less suitable for growers with year-long needs or periods of short-term high demand for labour.**
 - The SWP limits the period of stay for workers. Growers with labour needs for the full 12 months of the year are required to cover the gap left by the departure of SWP workers at the expiration of their visa.
 - Growers can either access the SWP either through becoming an Approved Employer or through engaging a labour hire firm who is an Approved Employer. Larger growers who are better able to meet the administrative challenges posed by the program are able to meet their year-long needs through organising two rotating teams of SWP workers on a six-monthly basis. Some small and medium-sized growers have used a labour hire firm who is an Approved Employer to use rotating teams of SWP workers throughout the year to meet their year-long needs, although to date, for this group, reliance on the SWP has been fairly marginal.

- Growers with unpredictable labour needs are unable to rely on the SWP as it is difficult to deploy these workers straightaway given the time lag and forward planning required to become an approved sponsor under the SWP and to arrange for the arrival of SWP workers. As the harvest time for many growers is affected by the weather, the precise time of the harvest is often difficult to predict in advance. For these growers, the design of the SWP does not suit their labour needs as they may arrange for a group of SWP workers to be engaged on their farm, only to find that they have no work to provide them with for a number of weeks because of unavoidable, weather-related delays in the harvest. When this occurs, growers are still responsible under the SWP for providing and arranging pastoral care and accommodation for SWP workers, which for many growers is a significant disincentive to using the SWP.

4. The SWP results in a more productive and committed workforce.

- SWP workers stay with an employer for a period of between six and nine months depending on their country of origin and they are permitted an unlimited right to return conditional upon ongoing employer sponsorship. Consequently, growers are better able to recoup the costs of investing in workers' training and upskilling through the increased productivity and commitment of workers.

5. The SWP results in less exploitation of workers.

- The design of the SWP means that less incidences of worker exploitation have emerged when compared with other low-skilled visa pathways.
- The requirements to provide an employment contract at the outset of the employment relationship, the reporting obligations and the other regulatory infrastructure around the SWP means that employers are more aware of their legal obligations.
- Because a grower can lose 'Approved Employer' status for non-compliance with the SWP's regulatory requirements, growers are more aware of the risks involved if workers are exploited.

6. The SWP's high regulatory burden on growers has led to a strong preference by growers for the WHM program to meet their labour needs.

- The use of the SWP has been undermined by the easy access to, and low cost of horticulture workers provided under the WHM program, thereby producing a substitution effect.
- The SWP requires growers to conduct labour market testing, contribute to workers' airfares, apply for 'Approved Employer' status to the Department of Employment and guarantee a financial benefit to workers. None of these regulatory requirements are present for growers who employ WHMs for equivalent work in horticulture.

3.6.3 The Working Holiday Maker Program

7. WHMs are the primary source of labour for the horticulture industry.

- WHMs are a highly mobile and effective workforce.
- Growers in certain regions have come to rely almost exclusively on WHMs at harvest time.
- The contribution of WHMs to the horticultural workforce has accelerated since the mid-2000s when incentives were created for WHMs on the 417 visa to work in the industry and through the opening up of the WHM program 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 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. This reform of the WHM visa has significant risks attached. With the exception of the United States, all of the countries in the 462 program are less economically prosperous than Australia and with far lower minimum wages and less regulated labour markets than Australia. Therefore, the financial gain from working in horticulture through the 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.
- 8. The primary attribute of WHMs as a labour source for growers is their flexibility and the minimal administrative requirements associated with their employment.**
- WHMs suit the stop-start nature of horticultural work at harvest time for certain commodities, and can be deployed immediately when the harvest time arrives.
 - The opportunity for a second year visa extension for WHMs after the completion of an 88-day period of work in horticulture in certain postcodes has proved highly effective in deploying WHMs to regions with horticultural labour shortages who would otherwise be hard-pressed in sourcing workers during the harvest.
 - The employment of WHMs does not involve any additional reporting or paperwork responsibilities for growers, although this has changed somewhat with the passage of the *Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016* (Cth) on 1 December 2016. This requires growers to register with the Australian Tax Office if they employ WHMs.
- 9. The WHM visa pathway has been associated with a significantly higher incidence of worker exploitation, particularly in horticulture.**
- The regulatory incentive for WHMs to complete an 88-day period of work in order to obtain a second year visa extension on a farm has been found by the FWO to contribute to the exploitation of WHMs.
 - Many media, academic and other reports have identified the exploitation of WHMs engaged in the horticulture industry.
- 10. The heavy reliance on WHMs as the primary source of labour poses significant risks to the ongoing profitability of growers.**
- The risk of relying on WHMs was apparent in the debate over the so-called 'backpacker tax'. The uncertainty surrounding the level of the tax led to a significant drop in WHMs working in the horticulture industry, despite the onset of the harvest season.
 - The exploitation of WHMs working in horticulture will increase pressure for the 88-day period incentive being reformed or abolished. It may also lead to greater regulation of employers who engage WHMs on their farm.
 - The exploitation of WHMs working in horticulture is likely to damage Australia's reputation as a destination of choice for WHMs and may lead to the contraction in the number of WHMs willing to work in the vegetable industry. It may also damage public faith in the scheme and in temporary labour migration more generally, which if acted upon would create new and problematic labour supply challenges for growers. It could also hurt public perceptions of the vegetable industry, which could affect consumers' purchasing decisions.

- 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, the incentive schemes in other countries, tax rates, wage rates and exchange rates.
- The opportunity for growers to realize productivity gains for training and investing in WHMs are limited because of the once-off, time-bound nature of the WHM visa.

3.6.4 International Regulatory Approaches

The brief review of labour migration pathways for horticulture work in five countries provides an important point of comparison for Australia. There are a number of findings from this review, which provide lessons for Australia from the experience in these jurisdictions.

- 11. All five countries have, at certain points, needed to develop labour migration pathways for horticulture work or rely on undocumented workers to meet labour needs of the horticulture industry. It seems that in all five countries local workers provide an insufficient source of labour for growers.**
- 12. The Canadian experience with both a dedicated seasonal worker program and a low-skill work visa pathway suggests that a visa pathway targeted at the needs of the agriculture industry is less likely to be associated with worker exploitation.**
- 13. Australia is the only country that relies on its WHM program as the dominant source of low-skilled labour for the horticulture industry. While the WHM program in New Zealand is proportionally larger than in Australia, WHMs play a much smaller role in servicing the industry's labour needs. Most other countries prefer a dedicated labour migration program, usually in the form of a seasonal worker program.**
- 14. Although New Zealand and Australia have similar seasonal worker programs, the RSE in New Zealand is a more extensive program. There has not been the same substitution effect between WHMs and seasonal workers in New Zealand. This suggests that there is considerable scope for the expansion of the SWP in Australia.**

Chapter 4

The Role of Stakeholders in Influencing Labour Supply in the Vegetable Industry

4.1 Introduction

Growers do not make decisions about their labour needs in isolation. Those decisions are influenced by the structure of the industry and the role played by a range of stakeholders in that structure.

- First, although growers have traditionally managed their labour needs through direct employment, with increased scale of production, many now engage labour hire companies and hostels to employ and recruit workers on their behalf.
- Second, unions have traditionally played a role in representing workers and negotiating wages and conditions of employment at local and national levels, although historically their involvement in the Australian vegetable industry has been limited.
- Third, growers rely on the advice of grower associations to represent their collective interests.
- Fourth, there are organisations, such as HortEx, that support horticultural industry groups to enhance sustainability, profitability and technical development.
- Finally, there are a range of government bodies that conduct research and offer advice to growers on employment decisions such as Horticulture Innovation Australia and the *Australian Bureau of Agricultural and Resource Economics and Sciences* (ABARES) in the Commonwealth Department of Agriculture.

In addition, employment decisions in the industry are affected by the nature of food production supply chains. Most directly, the major supermarket retailers influence employment decisions through the delivery time and price pressures they place on growers. Retailers and consumers place demands on growers for produce that satisfies minimum health, safety and ethical standards. Consumer concerns about ethical practices in the production of the goods they buy has led retailers and governments to place certification requirements on wholesalers and growers in relation to their production practices. In recent times, as we discuss below, there has been a move internationally to include treatment of workers as part of the certification process.

Our research uncovered information about the role of labour hire companies and other intermediaries who assist in the direct sourcing of workers in the industry. In this chapter, we focus on the role of labour hire. Although less prominent in the research, we also briefly discuss the role of supply chains in affecting the management of horticultural labour, in particular, how certification requirements can influence labour supply in the industry. Finally, we discuss briefly the role of trade unions in the horticulture industry.

4.2 Role of Labour Hire in the Vegetable Industry

Research suggests that the horticulture industry in most countries, including Australia, depends on labour hire contractors.¹⁴⁷ Growers are generally keen to focus their expertise toward

¹⁴⁷ Stephanie Barrientos, “‘Labour Chains’ Analysing the Role of Labour Contractors in Global Production Networks” (Working Paper 153, Brooks World Poverty Institute, July 2011); Pamela K Robinson and Helen Rainbird, ‘International Supply Chains and the Labour Process’ (2013) 17 *Competition & Change* 91.

producing 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 limited scope for mechanisation and 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 with large grocery retailers particularly the major supermarkets.¹⁴⁸

Labour hire companies provide growers with a flexible approach to the engagement of labour that helps businesses cope with peaks and troughs in demand. These intermediaries come in a variety of forms, including:

- large, multinational corporations with thousands of staff which offer a range of services for a range of industries;
- mid-sized labour hire providers that service particular industries in key regions;
- small, regionally-based, industry-based or occupationally-based companies where the agency owners know each of their workers personally;
- not-for-profit groups utilising labour hire as a means to improve employment opportunities in communities;
- accommodation proprietors who procure work for backpackers; and
- operators consisting of an individual (or individuals) with a van and mobile phone, known only by their first name.¹⁴⁹

Intermediaries provide a range of services, including: employment placement, accommodation, transport, provision of credit and training.

Labour hire companies vary in their compliance with workplace laws, awards and other industrial instruments, and health and safety legislation. When a labour hire firm is non-compliant with Australia's workplace laws this poses reputational and legal risks for growers. There is academic debate over the extent to which poor employment practices are the result of 'rogue' labour hire firms or inherent in the nature of labour hire engagement in low-wage industries. The 'triangular' relationship created by the labour hire arrangement is a well-recognised source of vulnerability for workers.¹⁵⁰ For example, in Guthman's study of organic growers in California, the very presence of labour contractors was seen as an indicator of exploitative work.¹⁵¹ Although the Victorian Government Inquiry into the Labour Hire Industry and Insecure Work (2016) noted the many legitimate roles for labour hire firms in assisting employers organise their employment relations, the inquiry noted the existence of 'rogue' labour hire agencies operating almost entirely

¹⁴⁸ Curtain, above n 88.

¹⁴⁹ Industrial Relations Victoria, Victoria State Government, *Victorian Inquiry into the Labour Hire Industry and Insecure Work* (31 August 2016) 52 <http://economicdevelopment.vic.gov.au/__data/assets/pdf_file/0016/1390111/IRV-Inquiry-Final-Report-.pdf>.

¹⁵⁰ Richard Johnstone et al, *Beyond Employment: The Legal Regulation of Work Relationships* (Federation Press, 2012).

¹⁵¹ Julie Guthman, *Agrarian Dreams: The Paradox of Organic Farming in California* (University of California Press, 2004).

outside the existing regulatory framework.¹⁵² Most worryingly, the Inquiry reported that horticulture is one of the industries where non-compliance of labour hire agencies is most prevalent.

Several recent investigations into labour hire firms show that the widespread presence of non-compliant labour hire operators are undermining the good reputation and ongoing effectiveness of the vegetable industry.¹⁵³ This chapter suggests that the problem stems in large part from poor regulation of the industry and the ease of access, or absence of barriers to entry for those wishing to provide labour hire services. The discussion here draws on the research undertaken by the project team, as well as already published material, including submissions the research team contributed to two government inquiries in 2016.¹⁵⁴

Local hostels also play a role in supplying labour to the vegetable industry. Websites such as *Gumtree*, *FruitPicking Jobs*, *Harvest Bites Labour* and *Workabout Australia* advertise harvest jobs and other information including hostel and backpacker websites. While there is huge variation between different regions in Australia, there is often a network of hostels, caravan parks and camp sites that provide farm workers with accommodation, which is directly linked to working at local farms. Some growers have come to depend heavily on the hostels for a steady supply of workers and the business model of many hostels relies on 'building relationships with growers'.¹⁵⁵ As well as being monopoly providers of accommodation for temporary migrant workers, hostel operators have the opportunity to control access to horticulture jobs. This produces an opportunity to charge higher prices for accommodation, transport and access to jobs for these workers. In the context of the UK horticulture industry, Ben Rogaly has observed:

Labour contractors hoard information about jobs and access to them, or, as is often the case in contemporary agriculture, provide the only means of transport available to the workplace, [so] workers easily become dependent on them. This dependence can be magnified when contractors are also key providers of credit or accommodation, the latter being especially important for newly-arrived migrant workers, or when they are connected to international recruitment agencies.¹⁵⁶

4.2.1 *Labour Intermediaries and Exploitation of Workers*

In 2015, the Productivity Commission reported that labour hire companies 'figure prominently in cases of migrant exploitation' in the horticulture and food processing industries.¹⁵⁷ The Australian

¹⁵² Industrial Relations Victoria, Victoria State Government, above n 149, 47.

¹⁵³ See, eg, Meldrum-Hanna and Russell, above n 3. See also the Fairfax Media investigation in November 2016: McKenzie and Baker, above n 3.

¹⁵⁴ Joanna Howe et al, Submission No 14 to the Senate Economics Legislation Committee, Parliament of Australia, *Inquiry into the Working Holiday Maker Reform Package*, 2016; Joanna Howe et al, Submission to the Department Of Agriculture and Water Services, *Working Holiday Maker Visa Review*, 2 September 2016.

¹⁵⁵ Elsa Underhill et al, 'Migration Intermediaries and Codes of Conduct: Temporary Migrant Workers in Australian Horticulture' (2016) *Journal of Business Ethics* (forthcoming) 15.

¹⁵⁶ Rogaly, above n 59, 502.

¹⁵⁷ Productivity Commission, 'Workplace Relations Framework: Productivity Commission Inquiry Report — Volume 2' (Final Report No 76, Commonwealth of Australia, 30 November 2015) 935 <<http://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume2.pdf>>.

horticulture industry has recognised the exploitation of migrant workers employed by labour hire firms as a problem. In August 2015, the industry hosted an ‘Overseas Workers in Agriculture Forum’ and produced an industry code of conduct to encourage good practices in grower-labour hire arrangements. This forum determined the importance of working closely ‘with regulatory authorities on identifying opportunities to lift standards in the industry and prevent the existence of contract labour hire firms that do not do the right thing’.¹⁵⁸

The Fair Work Ombudsman (FWO) has tried to address problems relating to the practices of unscrupulous intermediaries in horticulture. For instance, the FWO launched a three-year education campaign in 2013 informing horticulture employees and employers of their rights and obligations at work, initiating a review of Working Holiday Makers (WHMs) and acknowledging the importance of effective regulation of temporary migrant workers in horticulture.¹⁵⁹ In 2015, the federal government announced Taskforce Cadena involving several government departments and agencies, including the FWO, with an objective of uncovering and prosecuting exploitative labour hire companies. A ministerial working group was also established to help protect vulnerable migrant workers.¹⁶⁰

Various government reports and academic studies indicate that growers’ use of labour hire providers is problematic. There is abundant evidence that the effect of labour hire activities on workers can be detrimental, leading to wage underpayments with workers highly dependent on intermediaries for accommodation, credit and transport services. The use of third parties to source labour and determine wages and conditions also allows growers who access workers for non-compliant wage rates and conditions of employment to claim immunity from the legal consequences of non-compliance under the *Fair Work Act 2009* (Cth). However, there are accessorial liability provisions in the Act that, if strengthened, as the federal government intends, potentially pose future risks for growers in the use of non-compliant labour hire firms.¹⁶¹ The widespread use of intermediaries means they are able to control access to horticulture jobs, often through ethnic recruitment networks and interdependent relationships with growers, which can inhibit the employment of local workers. Most importantly, growers that use unscrupulous labour hire firms gain an unfair competitive advantage thereby unfairly penalising responsible growers who find it increasingly difficult to compete with their non-compliant counterparts.¹⁶²

¹⁵⁸ PMA Australia-New Zealand, “‘Overseas Workers in Agriculture’ Forum”.

¹⁵⁹ Tess Hardy, ‘Enrolling Non-State Actors to Improve Compliance with Minimum Employment Standards’ (2011) 22 *Economic and Labour Relations Review* 117; Fair Work Ombudsman, *Harvest Trail Campaign* <<https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trail-campaign>>; Fair Work Ombudsman, *Annual Report 2014–15* (28 September 2015).

¹⁶⁰ Industrial Relations Victoria, Victoria State Government, above n 149, 44.

¹⁶¹ The accessorial liability provisions in the legislation are to be found in s 550(1) of the *Fair Work Act 2009* (Cth), which state that ‘[a] person who is involved in a contravention of a civil remedy provision is taken to have contravened that provision’.

¹⁶² Chris F Wright et al, ‘Analysing the Labour Challenges of Securing Food Production in Australian Horticulture’ (Paper presented at the Society for the Advancement of Socio-Economics Annual Conference, University of California, Berkeley, 24–26 June 2016) 18; *Fair Work Ombudsman v Kentwood Industries Pty Ltd (No 3)* [2011] FCA 579 (31 May 2011) [38]; Di van den Broek, William Harvey and Dimitria Groutsis, ‘Commercial Migration Intermediaries and the Segmentation of Skilled Migrant Employment’ (2016) 30 *Work Employment & Society* 523.

4.2.2 Snapshot of Labour Hire Activities: Evidence from the National Survey of Vegetable Growers

While the scale of the problem is difficult to quantify, the Victorian Inquiry into the Labour Hire Industry and Insecure Work identified that non-complaint operators are exploiting vulnerable workers through underpayment of award wages, non-payment of superannuation, provision of sub-standard accommodation and non-observance of statutory health and safety requirements in the picking and packing of fresh fruit and vegetables.¹⁶³ Our national survey of vegetable growers revealed that 40% of employers surveyed had used labour hire firms to access workers and 29% had recruited through youth hostels. Use of labour hire companies is far more prevalent (61%) among businesses with more than 20 employees, but very low (10%) among micro businesses with fewer than five employees. Growers who recruited through labour hire companies were significantly more likely than average to use temporary migrants (89%) and especially WHMs (82%) than Australian workers from the local region (80%). Similarly, growers who used youth hostels to recruit were highly likely to employ temporary migrants (99%) particularly WHMs (97%), compared to Australian workers (86%) including those from the local region (83%) and from elsewhere in Australia (34%) (see Table 4.1). Among growers surveyed, 15% had a business relationship with a hostel that provided accommodation to their workers.

Growers who have difficulties recruiting workers 'always or most of the time' (50%) are significantly more likely than average to use labour hire companies than those who 'sometimes' (35%) or 'never' (40%) have such difficulties. Moreover, growers who 'never' have difficulty recruiting workers are the most likely group to use labour hire companies exclusively. By contrast, growers who have recruitment difficulties 'always or most of the time' (15%) are significantly less likely than average to recruit workers through hostels.

Our survey also found a significant variation in the way growers engaged with labour hire firms. Among those who have used labour hire contract 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. A study by Underhill and Rimmer also found that 27% of farm workers surveyed received their remuneration for horticulture work from a contractor.¹⁶⁴ This suggests that whilst some vegetable growers more closely scrutinise labour hire arrangements and oversee the wages and conditions of workers, many others do not.

¹⁶³ Industrial Relations Victoria, Victoria State Government, above n 149, 52; Meldrum-Hanna and Russell, above n 3; Justice and International Mission Unit, Synod of Victoria and Tasmania and Uniting Church in Australia, Submission No 29 to the Senate Education and Employment Committees, Parliament of Australia, *The Impact of Australia's Temporary Work Visa Programs on the Australian Labour Market and on the Temporary Work Visa Holders*, May 2015; Tobi Loftus, 'Queensland Labour Company Allegedly Left Fruit Pickers from Vanuatu Without Pay', *The Sydney Morning Herald* (online), 13 January 2016 <<http://www.smh.com.au/business/workplace-relations/queensland-labour-company-allegedly-left-fruit-pickers-from-vanuatu-without-pay-20160112-gm4or5.html>>; Mark DeBono, 'Crackdown Continues on Exploitation of Migrant Workers on Victorian Farms', *ABC News* (online), 22 May 2015 <<http://www.abc.net.au/news/2015-05-22/crackdown-on-migrant-workers-on-australian-farms-continues/6491474>>.

¹⁶⁴ Underhill and Rimmer, 'Itinerant Foreign Harvest Workers in Australia', above n 101, 27.

Labour hire companies and migration agents are significantly more likely than average to have been used by growers who need workers more than six months of the year. Conversely, the penetration of recruiting through youth hostels is significantly higher than average among those who only need workers six months or fewer.

Table 4.1 Categories of Workers Used by Recruitment Channels Used in the Last Five Years

	Total	Labour Hire company	Migration agent	National Harvest Labour Info Service	Youth Hostel	Recruiting people directly yourself	<u>ONLY</u> recruited people directly yourself
(Sample size n=)	(252)	(103)	(18)	(21)	(82)	(220)	(76)
	%	%	%	%	%	%	%
NET USED AUSTRALIANS	84	83	68	93	86	88	85
Australians from local region	82	80	68	84	83	86	84
Australians from other parts of Australia	26	28	16	48	34	26	17
NET USED TEMPORARY MIGRANTS	78	89	83	93	99	77	54
People on Working Holidays	72	82	67	81	97	72	46
International students	29	41	40	42	40	29	15
Pacific seasonal workers	20	39	48	40	21	16	2
Used temporary migrants but none of these/ can't say type	3	3	-	6	2	3	4
None/ can't say	1	1	-	-	-	-	1

4.2.3 Case Study: Bundaberg, Queensland

The case studies conducted for this report reveal a varied picture of grower reliance on labour hire firms to assist them in their recruitment of staff. For example, industry association representatives told the research team that the majority of growers in the Bundaberg region engage heavily with labour hire contractors to meet their labour needs. As noted below, this reliance varied depending on the geographic region and industry segment, with growers cultivating tree crops and sweet potatoes more likely to employ workers directly and on a longer-term basis. The types of crop shaped these variations, however, many farms engage staff throughout the year because they grew various complimentary crops.

Relatedly, accommodation for farm workers also depends on the regional location of 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 backpackers to go to bed early in preparation for the next working day. The research team 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 backpackers hoping to stay there. When the hostel owners were asked what they were looking for among prospective backpackers, one manager replied:

Not someone who thinks they're going to party. Maturity, probably, is the biggest thing. You don't have to look like you can work on a farm, but you do need to have a pretty mature attitude because it's really hard work for some of the other ones ... the older the better but having said that, we've got a heap that are under 20 now.

Within the Bundaberg region, growers tended to source workers from multiple hostels, and could on occasions cancel their 'orders' with hostels. Since WHMs gain work exclusively through their hostels and given they are generally employed casually, this situation would often result in hostels effectively withdrawing work from WHMs for one or several days unless alternative arrangements could be found.

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'. For instance, hostel owners revealed that one young man currently staying at their hostel had been working for eight months on a sweet potato farm, typically 13 days per fortnight, and sent the money he earned back to his poor family in Taiwan. In this case, the hostel owner was looking at the possibility of a farm sponsoring him on a 457 visa in a supervisory role to allow him to stay beyond the two-year limit of his WHM visa. Our data also found that 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 each day for WHMs.

Growers typically recruit workers from several different hostels in the region to give them flexibility in meeting their daily labour needs. Outside of the 'core' workforce of local non-seasonal workers, the hostels between them appear to have a 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. 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'. While one hostel reported having placed a few young Australian workers in farms in the past, these workers 'are not always very successful'; the workers staying in the hostels are therefore almost exclusively WHMs from abroad.

Intermediaries, such as labour hire firms and hostel operators, were prominent in organising labour in the vegetable industry in this region. On one hand, these intermediaries play an important role in channelling committed workers to the farms where they are most needed and difficult to source given seasonal and fluctuating requirements. Their efforts are crucial to the continuity of labour supply. On the other hand, some intermediaries were known not to comply with legal requirements and ethical practices relating to the treatment of workers. For instance, growers and hostel operators recounted many instances of labour hire companies paying below the minimum wage who 'phoenixed' themselves or left the region to avoid the sanction of the FWO. A degree of 'co-ethnic' recruitment among labour hire companies was also reported: 'there will be Koreans looking after a whole bunch of Koreans' in the words of one grower. In these scenarios, the labour hire 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.

Different stakeholders in this region, including growers and their representatives, expressed frustration with the FWO's limited local presence and lack of 'teeth' in enforcing legal minimum wages and employment laws. This was particularly the case due to the evidence the FWO requires before it can prosecute. It was also reported that the FWO had a tendency to target 'visible'

growers and intermediaries who complied with these standards, rather than the unscrupulous 'fly-by-nighters'. Several suggestions were offered for how to enforce labour standards among labour hire companies more effectively, including greater resources and a local office for the FWO in the region and a licensing/registration scheme for intermediaries.

Several growers indicated that there was an abundance of labour hire contractors, many of whom are 'blow ins' coming from outside the region, who supply labour to local farms. There were reported instances of contractors paying workers \$30 for 10 hours work. Asked why growers would engage these contractors, one hostel manager replied:

there are some big farms that only use contractors because they think they're indemnifying themselves against ripping off the workers and avoiding their obligations relating to tax and superannuation. So that \$30 in a day; they'd get a pay slip if it wasn't cash, and it would say that they've worked 1.5 hours. It wouldn't say that they only picked six buckets, it would say that they worked 1.5 hours.

Not much was known about the workers who are engaged by these labour hire contractors but there was a general view that they were often of the same ethnicity. According to an industry association official:

There's some growers that have been dealing with the same [contractors] for a very long time and they're comfortable with that relationship I guess. But then a number of growers have also said that they could 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]. Look, if they are not doing their due diligence and making sure that they are ticking all the correct boxes [regarding compliance] then they will find themselves in hot water. Many growers that don't go down that path because they see the red flags. We've had growers contact us before and say: 'I have since found out that contractor was not passing on the correct amount of \$21.63 or whatever per hour, what can I do about it?' And that's the thing. You find out that there's no payslips, things like that. So I guess it's a learning curve for them to then use the contractors that are reputable.

While there was widespread concern over the presence of non-compliant labour hire operators in the region, some growers felt no obligation to police their activities. According to one grower:

If I employed you as my contractor ... I pay you. I do my documentation with you; this is what we're going to be doing ... 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. It's like when the painter comes, can you paint my house this is how much; I don't care if he's got 50 people painting it as long as he says to me I'm going to have it done by Friday it's going to cost you that much. It's business ... I pay you one lump sum and then you distribute that. You have to keep your list and all the documentation that goes with all the people that work with you. That's not my responsibility ... You could be paying [your workers] one cent, but [the worker] would be a fool to stay working for you wouldn't he? Sometimes you've got to let things work themselves out like that.

The hostels typically also provided backpackers with transport to the farms for a fee in the morning and the afternoon, and some included this service within the accommodation price. An industry association representative claims that many of the hostels in the region are reputable and transparent in their practices, which is partly explained by their greater visibility than the labour

hire contractors who can leave the region more easily if they are at risk of having their business practices monitored by regulatory agencies. The hostels are also more reputable 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 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’, according to one source.

4.2.4 Case Study: Virginia, South Australia

By contrast, the case study in Virginia revealed much less reliance on labour hire firms and hostels. Unlike the Bundaberg case, growers in the South Australian region indicated that their workforce was constituted mainly of recently arrived permanent migrants to Australia many of who are from developing countries.

Some large and medium-size businesses used labour hire companies to organise their workforce, while others relied on their own human resources teams to source workers. Small businesses did not use labour hire companies at all. An important difference between Bundaberg and Virginia is that there was a high level of distrust of labour hire firms among growers in Virginia. The response of some growers was to bring all hiring decisions in house. While others continued to use labour hire but took more care to engage contractors with good reputations and transparent practices. However, other businesses felt they had no choice but to rely on labour hire firms 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’.

There was general consensus among growers in Virginia that using labour hire companies posed significant risks to their businesses. One grower stated labour hire arrangements are ‘too dangerous and often [attract] the wrong people’. Growers were supportive of establishing registration for labour hire companies, but some maintained that they would not use the services of contractors even if they were registered.

4.2.5 Risks for Vegetable Growers of Relying on Labour Hire Firms

For growers, the most immediate risk of engaging a non-compliant labour hire firm is the risk of accessorial liability under the *Fair Work Act 2009* (Cth). For workers the risk relates to being underpaid and exploited by unscrupulous labour hire firms. There is also a significant reputational risk for growers, with negative publicity affecting their standing in the industry and possibly risking their supply contracts with major retailers.

Various government enquiries and ABC’s *Four Corners* program have drawn attention to unscrupulous intermediaries in horticulture. In addition, the media regularly reports on the underpayment of wages, substandard housing, unlawful deductions for transport and other costs and in some instances, sexual harassment.¹⁶⁵ If growers are not seen to take sufficient individual

¹⁶⁵ Economic and Finance Committee, Parliament of South Australia, ‘Inquiry into the Labour Hire Industry’ (Final Report, 18 October 2016); Industrial Relations Victoria, Victoria State Government, above n 149; Howe et al, *Submission to Working Holiday Maker Reform Package Inquiry*, above n 154, 7–8.

and collective responsibility for the practices of intermediaries, their own reputations and the reputation of the industry as a whole may suffer by association.

AusVeg reported to the Forsyth Inquiry that a common example of exploitation arises where a labour hire firm and a grower arrange for the firm to supply a set amount of employees at a particular rate of pay, and the firm then underpays their workers and pockets the difference for themselves without the grower being aware. AusVeg submitted that it is aware of other exploitative and abusive treatment of temporary workers by labour hire firms, including firms keeping workers in squalid accommodation and forcing them to work extended periods of overtime without breaks.¹⁶⁶

In 2013–14, Underhill and Rimmer conducted a study of the comparative working conditions of 198 workers engaged directly by growers and 75 workers engaged through labour contractors. They found that:

- The mean hourly earnings for workers paid by contractors (\$12.66) was less than that of workers paid by growers (\$14.86), and substantially less than \$21.09, the minimum award hourly rate of pay for a casual employee at the time of the study.
- Non-payment of wages was a significant problem for workers engaged by contractors — 15% of survey respondents had experienced not being paid for work performed. Working for a contractor rather than a grower directly more than doubled the likelihood of non-payment of wages.
- Very short working hours were twice as likely amongst contractor employees, resulting in an inadequate income, and conversely, around a fifth of all workers reported long hours. Dissatisfaction with the number of working hours was considerably greater amongst employees of contractors.
- Seasonal workers employed by contractors endured far harsher conditions of employment than when working for a grower, being more likely to work in extreme heat and miss drink breaks. Workers, hostel owners and migrant community representatives reported a high level of violence, and threats of violence by contractors supplying labour in horticulture.¹⁶⁷

The large recruitment firm, MADEC, also submitted that the horticulture industry was more inclined to use unlawful labour contractors because ‘it is cheap labour in an industry where margins are thin and there is pressure to keep costs down’. Another labour hire agency submitted confidentially that it had made a decision several years ago not to engage in business development activity in the agriculture sector. ‘[O]ur fees were regularly being undercut to the extent it was no longer cost effective to operate in these sectors and where based on a logical analysis of wages and statutory costs, our competitors were either operating at a loss or not paying appropriate wages or taxes and insurance.’¹⁶⁸

¹⁶⁶ Industrial Relations Victoria, Victoria State Government, above n 149, 151.

¹⁶⁷ Underhill and Rimmer, ‘Layered Vulnerability’, above n 3.

¹⁶⁸ Industrial Relations Victoria, Victoria State Government, above n 149, 156.

4.2.6 *The International Context of Labour Hire Firms in Horticulture*

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 vegetable 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'. 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 must 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.¹⁶⁹

The United Kingdom's Gangmasters Licensing Authority (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 licenses 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 license applications relying upon checks with other government departments and can decide whether an application should be awarded or a license refused.¹⁷⁰ 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.

¹⁶⁹ Judy Fudge and Daniel Parrott, 'Placing Filipino Caregivers in Canadian Homes: Regulating Transnational Employment Agencies in British Columbia' in Judy Fudge and Kendra Strauss (eds), *Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work* (Routledge, 2013) 85–9.

¹⁷⁰ For an overview of the GLA regime, see Mick Wilkinson with 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.

Both international examples provide responses to the myriad regulatory challenges arising from the widespread use of labour hire firms in the horticulture industry. We now turn to a discussion of the role of another important actor influencing growers' labour supply options. In Australia, and indeed worldwide, major retailers play a critical role in shaping labour practices and the profitability of the horticulture industry.

4.3 The Role of Major Grocery Retailers in Influencing the Management of Labour Supply in the Vegetable Industry

Major retailers that purchase and distribute produce to Australian consumers play a significant role in the industry. Coles and Woolworths, the two largest supermarket chains, make up 73% of the Australian market for vegetables.¹⁷¹ They source their vegetables from hundreds of suppliers around Australia as well as importing from overseas. Along with other major grocery retail chains, such as Aldi and IGA, these supermarkets exert significant control over the vegetable industry. In this section we identify two ways in which the major retailers influence the management of labour supply in the vegetable industry. We begin by critiquing the practice of the major retailers of using intense price competition as a way of selecting between suppliers of fresh fruit and vegetables. The effect of this practice places enormous pressure on growers to reduce their labour costs. This relates to the second aspect of our examination of the role of the major retailers: their lack of action in response to exploitative work practices in the industry and, in particular, their failure to proactively work with growers to improve labour standards. In both aspects, the major retailers in Australia have had a detrimental influence on the management of labour supply in the vegetable industry. It is essential to consider this supply chain context in which growers operate in order to understand the labour supply challenges and options facing the industry.

In Australia, the major grocery retailers have placed tremendous pressure on vegetable growers through their requirements for volume, quality and low prices. The 'supermarket price wars' are well known, and whilst consumers benefit from cheaper prices, this phenomenon can result in the sale of fresh produce below the cost of production. For instance, in October 2016 it was revealed that strawberries were being sold for 90 cents a punnet, notwithstanding that they cost \$1.40 per punnet for growers to produce.¹⁷² Many of the growers we interviewed told us of the unrealistic expectation of the major retailers for lower prices for fresh produce. Many provided examples of the significant cost pressures placed by the supermarket retailers in driving and intensifying the competitive nature of the industry.

This problem of major retailers exercising influence over growers is not unique to Australia. Writing in the UK context, where there is significant but less pronounced market concentration in grocery retail compared to Australia, Rogaly observes:

¹⁷¹ Education and Employment References Committee, Parliament of Australia, *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (March 2016) 284; Curtain, above n 88, 8.

¹⁷² Chloe Booker, 'Big Supermarkets Blamed for Driving "Ridiculous" Strawberry Prices', *The Sydney Morning Herald* (online), 20 September 2016 <<http://www.smh.com.au/business/retail/big-supermarkets-blamed-for-driving-ridiculous-strawberry-prices-20160919-grjtpt.html>>.

The buyer-driven structure of the horticultural supply chain ... has meant declining margins available for growers on each unit of output. Many producers of fresh fruit and vegetables have gone out of business, as evidenced by the shrinking and increasingly concentrated structure of the fresh fruit and vegetable sectors.¹⁷³

In 2013, following many years of pressure from growers and two major inquiries by the UK Competition Commission into the relationships between major supermarkets and their suppliers, a new Groceries Code Adjudicator was created following the passage of the *Groceries Code Adjudicator Act 2013* (UK).¹⁷⁴ Although it is beyond the scope of this report to consider whether such a reform would be advisable in the Australian context, it is important, at the very least, to identify the detrimental impact of supermarket buying practices upon the competitiveness of growers and their ability to manage their workforce fairly and in compliance with Australian employment law.

The second area in which Australia's major retailers have had a detrimental impact on labour practices in the industry is in their failure to take action to stamp out non-compliant labour practices in their supply chains for horticultural produce. Each of the major retailers have policies for the ethical sourcing of produce, which require that their suppliers comply with Australian workplace laws. However, they rarely engage in any independent monitoring of their suppliers, leaving it to the FWO to investigate and enforce legal compliance. They also fail to provide resources and support to growers to assist them in ensuring compliant and non-exploitative work arrangements for picking, packing and grading jobs.

Interviews with industry participants in the two case study areas revealed that major retailers were highly influential on growers in relation to the cost of produce and delivery times, but not in relation to requiring minimum labour standards.

A grower we interviewed stated that 'a lot of people don't understand where their food comes from and the supermarkets at the moment are training society to buy the cheapest. Well you get what you pay for and all the problems that come with it'.

An industry representative indicated that the major retailers do take an interest in the state of the workforce of their growers, stating that 'we encourage people to speak to our workforce independently. Coles and Woolies do it all the time. They grab a few people from the lunchroom and interview them and we have independent auditors do it. It is healthy for us.'

There is little question that the major retailers could have a more positive influence in employment practices in the industry if they took on responsibility for this aspect of their suppliers' businesses. In doing so, it is essential that the costs of ethical sourcing policies involved with doing audits of their supply chain and other oversight activities are not passed onto growers. The FWO has argued that there is significant scope for the major retailers to investigate breaches of workplace practices in the businesses supplying their produce.¹⁷⁵ The FWO has demonstrated an increased willingness to scrutinise contracts in the supply chain and to use the accessorial

¹⁷³ Rogaly, above n 59, 499–500 (citations omitted).

¹⁷⁴ For more on this reform and for an analysis of its effectiveness, see Antony Seely, 'Supermarkets: The Groceries Code Adjudicator' (Briefing Paper No 6124, House of Commons, 12 November 2015).

¹⁷⁵ Education and Employment References Committee, Parliament of Australia, above n 171, 282.

liability provisions of the *Fair Work Act 2009* (Cth). A prominent example is the Coles trolley collectors' litigation, which also concerned temporary migrant workers amongst others, to argue that the large players in the market must use due diligence when outsourcing to low-cost providers.¹⁷⁶ In this situation the FWO was able to demonstrate that Coles was not providing its trolley subcontractors with a sufficient contract price in order to ensure the correct payment of the award wage to the subcontractors' individual trolley collectors. Rather than pursue its prosecution of Coles for the widespread abuse of its trolley collectors by subcontractors, the FWO pursued an Enforceable Undertaking (EU). As part of the EU, Coles acknowledged that 'it is responsible for compliance with all aspects of the law across its business operations'.¹⁷⁷ It also accepted that it has an

ethical and moral responsibility to require standards of conduct from all entities and individuals directly involved in the conduct of its enterprise [and] that the traditional contracting model it formerly utilised to obtain trolley collection services from trolley contractors was highly vulnerable to exploitation and the perpetuation of poor employment practices by its trolley contractors including underpayment in the industry.¹⁷⁸

Coles' arrangement to subcontract its trolley collecting at a low price point made it virtually impossible for the subcontractor to pay its workers the wage they were legally entitled to. This is analogous to the pressure supermarkets exert on vegetable growers to agree to a tender price for fresh produce that is below the cost of production. The 'fresh food price wars' between Coles and Woolworths make it difficult for growers to pay harvest workers in compliance with the award wage and make a profit. As the trolley collectors' example demonstrates, the major supermarkets have a clear ethical and moral responsibility to ensure growers are fairly paid for their commodities which, in turn, will enable more compliant labour practices by growers.

In the horticultural context, the major retailers have consistently maintained that responsibility for breaches of workplace laws is the sole responsibility of the 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.¹⁷⁹

Even following a high profile 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.¹⁸⁰ At the Senate inquiry, a representative from Woolworths stated that it would not conduct an audit as this would place extra costs on suppliers.¹⁸¹ Despite the revelation of widespread exploitation particularly of

¹⁷⁶ Natalie James, 'Risk, Reputation and Responsibility' (Paper presented at the ALERA Conference, Gold Coast, Queensland, 29 August 2014). See also *Fair Work Ombudsman v Al Hilfi* [2012] FCA 1166 (26 October 2012); *Fair Work Ombudsman v Al Hilfi* [2015] FCA 313 (2 April 2015); *FWO v South Jin Pty Ltd* [2015] FCA 1456 (18 December 2015).

¹⁷⁷ Fair Work Ombudsman, *Enforceable Undertaking between Fair Work Ombudsman and Coles Supermarkets Australia Pty Ltd* (6 October 2016) 5 [R].

¹⁷⁸ Ibid 5 [R]–[S].

¹⁷⁹ Education and Employment References Committee, Parliament of Australia, above n 171, 283 [9.71].

¹⁸⁰ Meldrum-Hanna and Russell, above n 3.

¹⁸¹ Education and Employment References Committee, Parliament of Australia, above n 171.

temporary migrant workers, the major retailers consider Australia to be 'low risk' because of its robust workplace laws and mechanisms for monitoring compliance.¹⁸²

This inactivity by Australia's major supermarket retailers can be contrasted to the proactive and positive behavior by British supermarkets in the wake of the tragic drowning of Chinese undocumented migrant workers picking cockles in Morecambe Bay. This tragedy led to an unlikely coalition forming between unions, supermarkets, non-governmental organisations, employers' organisations and government officials who worked together to create a labour hire licensing scheme under the auspices of the Ethical Trading Initiative's Temporary Labour Working Group. Pivotal to its success was the backing of the large supermarkets wishing to safeguard their reputation, and by extension their customer base and market share.¹⁸³ This led to the creation of the GLA in September 2006.

As a price-maker in the Australian vegetable industry and given their direct interface with consumers, supermarkets are in a strong position to influence grower behaviour. Therefore, an important strategy for improving labour standards is to make this objective a major priority for supermarkets. The most direct way to do this is to incorporate the enforcement of fair and reasonable labour standards into the certification requirements for produce that is sold in the domestic market. Such a strategy has been implemented successfully in Florida, USA in which a workers' coalition negotiated with national and international retail brands to establish a Fair Food Standards Council to monitor wage and employment conditions in the tomato industry in Florida.¹⁸⁴

The most widely used standard in the vegetable industry in Australia is the Freshcare National On-Farm Quality Assurance Program, which offers Food Safety and Quality Certification to businesses based on a range of quality control measures. In addition, the Hazard Analysis and Critical Control Point (HACCP) Certification allows vegetable producers 'to demonstrate their commitment to food safety through the implementation of a food safety plan based on the principles of HACCP'.¹⁸⁵

Freshcare and HACCP Certification relate specifically to food safety and quality, and have no standards relating to the pay and conditions of workers in the industry. However, the requirements for certification may be about to change. In 2016, the Australian vegetable industry has begun benchmarking the most widely used domestic certification for food, the Freshcare Food Safety and Quality Standard, against the international certification process, GLOBALG.A.P., used in Asia, the Middle East and Europe.

This presents a clear advantage for vegetable growers who participate in both domestic and international markets in that they will only have to undertake one certification for both markets. Horticulture Innovation Australia Chief Executive John Lloyd stated, in relation to the accreditation benchmarking: 'Australian produce has a strong international reputation for being

¹⁸² Ibid 283–7.

¹⁸³ Susanne Freidberg, 'The Ethical Complex of Corporate Food Power' (2004) 22 *Environment and Planning D: Society and Space* 513.

¹⁸⁴ 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.

¹⁸⁵ See <<http://www.haccp.com.au/>>.

fresh, clean and safe, and as the horticulture industry looks to increase its presence in overseas markets, it's vital that this reputation is backed up by an internationally recognised certification.' Completion of the benchmarking exercise is projected for mid-2017.¹⁸⁶

Although GLOBALG.A.P. does not have criteria for certification relating to pay and conditions of work, it does impose a number of requirements in relation to treatment of the farm workforce. GLOBALG.A.P. Control Points and Compliance Criteria includes checks for Worker Health and Safety (AF 4.1); Training (AF 4.2); Hazards and First Aid (AF 4.3); and Welfare (AF 4.5). Within Welfare there are criteria for provision of adequate food storage areas and drinking water for workers (4.5.3); a requirement that on-site living quarters have basic services (4.5.4), and that transport to and from work is 'safe' and compliant with national regulations' (4.5.5). There are also separate compliance criteria related to the oversight of the activities of any subcontractors (5.1).¹⁸⁷

In addition, GLOBALG.A.P. has developed a voluntary add-on module called 'GRASP' that allows growers to check their risk assessment in relation to social practice. Social practice includes, among other criteria, standards for worker representation, wages, working hours and non-discriminatory treatment. As at January 2016, more than 13 000 producers worldwide had pledged their commitment to social responsibility through the GRASP assessment.¹⁸⁸

¹⁸⁶ Horticulture Innovation Australia, 'Streamlining Vegetable Industry Export Access' (Media Release, 28 September 2016) <<http://horticulture.com.au/streamlining-fresh-produce-industry-export-access/>>.

¹⁸⁷ GLOBALG.A.P., *Integrated Farm Assurance: All Farm Base — Crops Base — Fruit and Vegetables: Control Points and Compliance Criteria* (July 2016) <http://www.globalgap.org/export/sites/default/.content/.galleries/documents/160630_GG_IFA_CPCC_FV_V5_0-2_en.pdf>.

¹⁸⁸ GLOBALG.A.P., *Grasp Add-On: GLOBALG.A.P. Risk Assessment on Social Practice: Committed to Workers' Health, Safety and Welfare* (March 2016) <http://www.globalgap.org/export/sites/default/.content/.galleries/documents/160404_GRASP_Booklet_en.pdf>.

4.4 The Role of Industry Associations in Horticulture

Industry associations play an important role in representing their constituency and securing the sustainability of their industry in a number of ways. They undertake a variety of activities: they represent their members in the negotiation over wages and conditions; provide specialised services such as training and legal or strategic advice; engage in lobbying and public relations to influence public debate and government policy; coordinate training activities relevant to their industry and minimise anti-competitive behaviour that can undermine their members' collective interests. In sum, they engage in activities to defend and promote their members' collective interests.¹⁸⁹ For example, one of Australia's largest peak industry associations, the Australian Industry Group, undertakes a multitude of activities ranging from policy and research on education and training policy, workplace health and safety and predictive issues related to the economic outlook and workforce planning.

With these functions in mind, industry associations representing vegetable growers are in a good position to **coordinate the activities of growers and constructively work with government and other key stakeholders to improve the reputation of the industry as a source of quality employment**. Industry associations could focus more collaboratively on issues around workforce sustainability and reputation by:

- Providing human resources and employment relations training to growers to develop quality job opportunities and career pathways for local workers within their organisation.
- Developing stronger links with important stakeholders such as training and education.
- Bringing together local and regional growers' associations with community groups to identify factors that exacerbate the mismatch between local labour supply and local demand needs within the vegetable industry.
- Work with training providers and worker representatives to ensure that their programs suit the needs of growers and enable participants to appreciate the long-term potential of a career in horticulture.
- Overseeing regional and metropolitan horticulture job fairs and engaging with young Australians through social media to promote employment and career opportunities in the industry.

Job quality and the possibility of a stable and rewarding career in the vegetable industry are essential both for the attraction and retention of local workers into the industry. As such, developing a positive image of the vegetable industry as dynamic could encourage local workers, and particularly young Australians, into the industry with good long-term job prospects for them. While public relations campaigns and membership training initiatives can be resource intensive, industry associations can potentially work together with local councils, community groups and Chambers of Commerce to utilise these strategies to communicate the career opportunities

¹⁸⁹ Michael Barry and Adrian Wilkinson, 'Reconceptualising Employer Associations under Evolving Employment Relations: Countervailing Power Revisited' (2011) 25 *Work, Employment and Society* 149; Philippe C Schmitter and Wolfgang Streeck, 'The Organization of Business Interests: Studying the Associative Action of Business in Advanced Industrial Societies' (Discussion Paper No 99/1, Max Planck Institute for the Study of Societies, 1981); Peter Sheldon and Louise Thornthwaite, *Employer Associations and Industrial Relations Change: Catalysts or Captives?* (Allen and Unwin, 1999).

available in horticulture to the wider public and promote growers' awareness of best practices that can help to attract and retain workers.

For example, a young local worker we encountered in the Virginia case study who had just finished his secondary education felt that he had learnt a lot and enjoyed his experience in the industry. That said he also noted that he intended to move into a different industry within the next 12 months. When pressed as to his reasons, he stated that he needed to find work in another manual industry that would enable him to *develop his skills and income potential over a longer term*. Although he also stated that, 'if someone offered me a supervisor's job I would probably take it.' The provision of career opportunities needs to be considered by growers if the industry wants to bolster the retention of quality local workers. The research team also spoke with another mature worker who had worked for the same farm for 13 years and seemed satisfied with his career trajectory in the industry:

I am more of a manager now. I started off as a worker. Then I went to leading hand and supervisor and now I run half the shed. Carrots are my area. I look after the shed, pallets, crates everything, office reconciliations and other stuff ... There is a lot of flexibility here. I am now my own boss. [The grower] is my boss but he leaves me alone. I have my own freedom when I want a day off. I take a day off and when I work back I can go early.

It seems clear that attracting local people will remain difficult if the industry fails to take advantage of these opportunities to attract, retain and develop them. This may not be as difficult as first thought. There are examples of initiatives overseas that attempt to build genuine career pathways and to improve the attraction of horticulture work to local workers. In Italy, a new European Commission project 'FAYP-Fostering Agriculture Amongst Young People' has seen collaboration between the agriculture industry, unions and government to attract young people to farm work.¹⁹⁰ If successful this pilot program will be implemented across European Union member States, where it is estimated that more than 2 million new jobs could be created through innovative approaches to agricultural practices.¹⁹¹ Although FAYP is in its first year, some strategies that have already been used include an agricultural fair to attract the local population, especially young people to agriculture through debates, events, conferences and meetings, all related to the rural world and use of social networks, updated websites and engaging videos on YouTube to reach young people. FAYP project partners have also met to develop a common strategy to boost young people's entrepreneurial activities in rural areas to encourage them to view agriculture as a long-term career path. This is essential given that only 17% of Italian growers are under 40 years of age. Although it is too early to ascertain the success of this program, its active and collaborative approach to attracting young local workers into the Italian agriculture industry could be instructive for the Australian context.

In addition to working with other stakeholders to improve the vegetable industry's reputation as a source of long-term career pathways, there is also potential for each state and territory's industry

¹⁹⁰ Ilaria Armaroli and Paolo Tomassetti, *FAYP: An EC-Funded Project to Attract Young People to Agriculture* (27 October 2015) ADAPT International.IT <http://adapt.it/englishbulletin/wp/wp-content/uploads/2015/10/FAYP_InternationalBulletin_26_10_2015.pdf>.

¹⁹¹ Réseau Projectives, Jean-Pierre Klapuch and Patrick Caudron, 'Green Jobs in Agriculture and Rural Areas' (Brochure, EFFAT, 27 June 2014) <<http://www.effat.org/sites/default/files/news/11273/en-green-jobs-in-agriculture-and-rural-areas-06-2014.pdf>>.

associations to **coordinate labour recruitment within each regional area of production** to assist growers of different produce and with peak labour needs at different times of the year.

The research team spoke with two growers in regional South Australia who had previously attempted to coordinate labour supply to their operations. One grower told us:

We worked with ... [another grower] for a while. This is when we had labour hire. When they had their off season we actually shifted people down to us and tried to keep them employed so they wouldn't lose them. But that worked until ... there was just an issue with basically we didn't have the pickers they needed to offset, and also the union started coming around and saying how can they work for two different companies and all this sort of stuff.

The research on industry associations in other Australian industries and internationally shows that these organisations play an important role in encouraging growers to engage in cooperative (rather than competitive) behaviour around labour supply.¹⁹² In a study of mining and horticulture in 2013, Storer and Connell concluded that labour harmonisation across these industries enabled an easing of their respective labour shortages.¹⁹³ This was consistent with a National Farmers' Federation (NFF) recommendation in 2009 that joint training programs be established for mining and agriculture so workers could move between these industries.¹⁹⁴

4.5 The Role of Trade Unions in Horticulture

There are two main unions involved in horticulture: the Australian Workers Union (AWU) and the National Union of Workers (NUW). In our research, we found that growers generally had a negative perception of the role of unions in the vegetable industry. Some comments from growers and industry representatives in the case study include:

- 'What I would like is the government to give us flexibility to control our workforce without the union butting in.'
- 'Anyone can pay more if we get more for our produce. It's a perishable market. It's supply and demand. Unions don't understand that kind of thing.'
- 'We have probably the best on farm facilities in Australia so it upsets me the interactions with the union because we really spend a lot of money on our people ... But then the union come along and they try incite dissatisfaction which is very upsetting.'

In Bundaberg, the AWU claimed to have low membership coverage in the region's horticulture workforce. By contrast, organising and recruiting activity by the NUW has increased in Virginia, according to many of the growers we spoke to. They communicated a strong concern over what

¹⁹² Georg Menz, *The Political Economy of Managed Migration* (Oxford University Press, 2009); Sheldon and Thornthwaite, above n 189; Kathleen Thelen, *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States, and Japan* (Cambridge University Press, 2004).

¹⁹³ Christine Storer and Julia Connell, 'Akubras to Hard Hats: Easing Skill Shortages through Labour Harmonisation Strategies' (2013) 39 *Australian Bulletin of Labour* 64.

¹⁹⁴ Sam Nelson, 'Finding Tomorrow's Agricultural Workforce' (2011) 8(2) *Australian Farm Business Management Journal* 47, 51.

they saw to be an unrealistic expectation for higher wages and overtime payments by the NUW and disappointment in the union's strategy in seeking to unionise the largest growing operations in Virginia, which were largely compliant with Australian workplace law, whilst avoiding the smaller producers who were often at the forefront of cash-in-hand, under-award payments. Since the airing of the ABC *Four Corners* program in May 2015 exposing poor working conditions in the industry in which some Virginia growers were prominently featured,¹⁹⁵ the NUW has launched a national Fair Food Campaign. One of the goals of this campaign is to educate consumers about the origins of the fresh produce they purchase and to improve wages and conditions in the industry.

Although the nature of horticultural work makes it a challenging environment for unions to recruit members, midway through 2016 it was revealed that the NUW had successfully forced the Costa group to the bargaining table at its Guyra site after 200 of its workers had signed a petition indicating their support for enterprise bargaining.¹⁹⁶ In an interview for the project, NUW's Sam Roberts argued that the acceptance of unions being in the industry would ameliorate over time and lead to a gradual lifting of labour standards:

Three-quarters of the industry have been getting away with non-compliance and brazen award breaches for 30 years, and so there is of course a hostility towards the union. In other industries there has been some historical experience with unions being present, so there is more tolerance for unions.

Indeed, until the 1990s, unions had broad rights to enter workplaces, which were often extended under the provisions contained in many awards. Unions were able to use these rights and provisions, as well as their legal capacity to take industrial action and secondary boycotts and utilise powers of the industrial tribunals to settle disputes, as mechanisms for pressuring businesses to comply with award standards. Although unions were not officially sanctioned with monitoring employer compliance, their utilisation of these broad industrial rights was based on the high levels of membership coverage across much of the workforce. The federal government's minimal devotion of resources to labour standards enforcement meant that unions played an important de facto role in enforcing award standards across horticulture, and other industries. This allowed unions to be key actors in the regulation of labour standards across the Australian workforce.¹⁹⁷

The ability of unions to harness the conciliation and arbitration system to regulate labour standards has been curtailed significantly by a series of legislative changes introduced over the past two decades. These have constrained the ability of unions to enter workplaces, to recruit members, and to enforce award standards. Therefore, unions have much less capacity to enter workplaces to regulate labour standards than was the case prior to 1996, particularly in workplaces that are not covered by union-negotiated enterprise bargaining agreements. The effect of these legal provisions is that unions find it difficult to regulate labour standards in the growing proportion of the workforce that is not unionised.

¹⁹⁵ Meldrum-Hanna and Russell, above n 3.

¹⁹⁶ Ben Schneiders, 'Historic Win for Low-Paid Farmers at Supermarket Supplier', *The Sydney Morning Herald* (online), 30 July 2016 <<http://www.smh.com.au/national/investigations/historic-win-for-lowpaid-farm-workers-at-supermarket-supplier-20160729-gggenh.html>>.

¹⁹⁷ Tess Hardy and John Howe, 'Partners in Enforcement? The New Balance between Government and Trade Union Enforcement of Employment Standards in Australia' (2009) 22 *Australian Journal of Labour Law* 306.

Nevertheless, unions continue to have an important role in enforcing award standards. Despite the creation of the FWO to perform this function, ‘non-compliance with minimum standards in Australia is significant’, according to Tess Hardy and John Howe.¹⁹⁸ Unions are likely ‘to detect non-compliance more quickly than a state agency can in relation to non-unionised workplaces’.¹⁹⁹ They are more likely to create a visible and accessible workplace presence to workers and as with other industry stakeholders they are often embedded within the local community.

This is relevant for understanding labour regulation challenges in the vegetable industry. Across the agriculture industry generally, only 2.1% of workers are members of a trade union.²⁰⁰ This low union membership coverage of workers is likely to contribute to the high rate of award non-compliance in the industry. A report arising from the FWO’s (2010) compliance program in horticulture found 36% of employers audited contravened aspects of the Horticulture Award 2010.²⁰¹ In a survey of 278 horticulture workers, Underhill and Rimmer found that their average hourly earnings was more than \$2 below the minimum award rate.²⁰² Therefore, while trade unions have relatively low formal representation, they do play an important role in protecting the rights of workers employed within the industry and in developing initiatives that may help sustain the industry’s workforce over the short and long term.

The potentially useful role of unions in helping to enforce labour standards in the horticultural industry was recognised by the Fair Work Commission after it exercised a rarely used power in November 2016 to allow the NUW access to the employment records of every worker employed on a vegetable farm in Victoria because of clear evidence of widespread wage underpayments.²⁰³ Although the legitimacy of union involvement in the industry and their role as co-regulators of labour standards are often highly contested by growers and their representatives, there have been occasions of fruitful collaboration between the two stakeholders. One example is the union movement’s constructive involvement in the original design of the Seasonal Worker Programme (SWP) and its ongoing role in providing on-arrival briefings for SWP workers, although the effectiveness of the application of the latter requirement could be improved, as we will recommend in Chapter 5. Another example is the positive role unions have played in convincing some UK supermarkets to take greater responsibility for price pressure imposed on their food supply chains, in ways that have benefited suppliers and workers.²⁰⁴ It is, therefore, possible to see the mutual gains that can be made when union and grower associations work cooperatively to improve labour standards in order to safeguard the reputation of the industry and to guarantee the stability of labour supply.

¹⁹⁸ Ibid 334–5.

¹⁹⁹ Ibid.

²⁰⁰ Australian Bureau of Statistics, *6310.0 — Employee Earnings, Benefits and Trade Union Membership, Australia, August 2013* (16 March 2016) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6310.0>>.

²⁰¹ Fair Work Ombudsman, ‘Horticulture Industry Shared Compliance Program 2010’, above n 66.

²⁰² Underhill and Rimmer, ‘Layered Vulnerability’, above n 3.

²⁰³ Richard Baker, Nick McKenzie and Ben Schneiders, ‘Another Supermarket Fruit Supplier Caught Allegedly Underpaying Migrants’, *The Sydney Morning Herald* (online), 15 November 2016 <<http://www.smh.com.au/business/workplace-relations/another-supermarket-fruit-supplier-caught-allegedly-underpaying-migrants-20161115-gspu0v.html>>.

²⁰⁴ Chris F Wright, ‘Leveraging Reputational Risk: Sustainable Sourcing Campaigns for Improving Labour Standards in Production Networks’ (2009) 137 *Journal of Business Ethics* 201.

Trust is essential for building a genuine collaboration between unions, growers and industry associations to address the labour supply challenges confronting the vegetable industry. In our view, unions can play a constructive role in ensuring employment laws are complied with and that wages and award rates are properly enforced across the industry. This will have the triple benefit of ensuring that ethical, compliant growers are not undercut by unscrupulous competitors, workers are not exploited and Australian wages and conditions are not undermined across the economy. As the experience in a number of other industries demonstrates, where unions, employers and governments work together in a constructive, collaborative manner, it is possible to arrive at mutually beneficial outcomes. For example, a tradition of consensus-based industrial relations in several Northern European and Scandinavian countries has allowed these stakeholders to negotiate high-wage, high-productivity outcomes, which have provided the foundation for sustained internationally competitiveness for their export-oriented industries.²⁰⁵ Similar arrangements have been adopted in Australia. In the 1980s and 1990s cooperation between industry associations, unions and government helped several key industries exposed to increased international competition to adjust their business models and employment practices in ways that minimised the adverse impacts for employers and workers.²⁰⁶ At the workplace level, studies across the Australian manufacturing and services sectors have found that cooperative workplace relationships can engender greater trust between workers and managers and lead to improved organisational performance.²⁰⁷

4.6 Conclusions and Findings

This chapter has identified the significance of key stakeholders in influencing the availability and management of labour supply in the Australian vegetable industry. It has made the following findings regarding the role placed by labour hire firms, hostel operators, the major retailers and unions.

4.6.1 Intermediaries (Labour Hire Firms and Hostels)

- 1. There is evidence from government, media and academic reports of non-compliance among the labour hire operators in the vegetable industry, pointing to the need for greater regulation of these operators.**
- 2. Research findings suggest that growers who use labour hire are inadequately aware of the wage and employment conditions being offered to workers by labour hire operators.**
- 3. The adoption of a national labour hire licensing scheme for the industry represents one potential solution for regulating labour hire practices in the vegetable industry.**

²⁰⁵ Andrew Scott, *Northern Lights: The Positive Policy Example of Sweden, Finland, Denmark and Norway* (Monash University Publishing, 2014).

²⁰⁶ Chris F Wright, 'The Prices and Incomes Accord: Its Significance, Impact and Legacy' (2014) 56 *Journal of Industrial Relations* 264.

²⁰⁷ Russell Lansbury, 'An Elusive Quest: Effective Communications and Employee Engagement in Australia' (Invited Paper 1/2014, Fair Work Commission, March 2014) <<https://www.fwc.gov.au/documents/documents/education/wres/wres-paper-1-2014.pdf>>; Andrew Stewart et al, "'Promoting Cooperative and Productive Workplace Relations": Exploring the Fair Work Commission's New Role' (2014) 27 *Australian Journal of Labour Law* 258.

International models operating in Canada and the UK provide a useful template for developing an Australian scheme.

4. The role of hostels and labour hire firms in controlling access to vegetable industry jobs, accommodation and transport requires more effective regulation in order to eliminate exploitative practices.
5. Labour hire firms that organise undocumented workers and profit from exploitation need to be eliminated as they undermine the ability of the industry to be a level playing field.

4.6.2 The Major Supermarket Retailers

6. There is evidence from government and media reports that price wars between major supermarket retailers have detrimental effects on labour standards in the vegetable industry and can make it difficult for growers to comply with minimum standards on wages and conditions.
7. More research is needed on how to ensure the supermarkets are held responsible for exploitative labour practices in their supply chains and whether accessorial liability provisions in the *Fair Work Act 2009* (Cth) can be used to safeguard the interests of growers and workers.
8. Major supermarket retailers have largely avoided taking responsibility for labour practices in the vegetable industry, in part because they are not required to by law and because the major certification regimes in Australia do not require compliance with minimum workplace practices. Nevertheless, there is a movement towards voluntary forms of regulation globally, with the Australian industry benchmarking against the widely used GLOBALG.A.P.. GLOBALG.A.P. has developed a voluntary 'add-on' certification model for socially responsible workplace practices. This would tend to suggest that labour standards in the industry are becoming more closely monitored globally. This points to the importance of the Australian vegetable industry having compliant workplace practices.

4.6.3 Industry Associations and Trade Unions

9. There is a high degree of fragmentation amongst vegetable industry associations.
10. Vegetable industry associations should create structures and forums to ensure they can fruitfully collaborate on labour supply solutions and to ensure a united, coherent voice in labour matters.
11. There is a low level of unionisation in the vegetable industry and in agriculture more generally. Growers and industry representatives have a low opinion of the role of unions in the industry. Nonetheless, experience in other industries and countries suggests that unions can play a constructive and important role in detecting non-compliance with award standards.

12. The union movement's involvement in the design and implementation of the SWP suggests that there may be mutual benefits for growers and unions working together in finding sustainable and non-exploitative labour supply solutions.

Chapter 5

A Reform Agenda to Address Labour Supply Challenges in the Vegetable Industry

5.1 Introduction

This report has comprehensively evaluated labour challenges facing the vegetable industry in Australia. However, it is not easy to propose labour supply solutions that will be applicable to all growers given the vegetable industry's diversity and complexity. There are an estimated 4527 vegetable growers in Australia of varying sizes and location.²⁰⁸ Between these locations local labour market conditions can be very different, thus affecting the nature and the scale of the labour supply and regulatory challenges. Each grower produces different vegetable commodities and in different volumes for different consumer markets. Some growers specialise in one product, others diversify to allow for year-long output. Some growers control for the vagaries of weather using glasshouse or greenhouse operations, whereas the very nature of other vegetable commodities means they have to be grown outdoors. Some growers, particularly large farm businesses, are highly mechanised or are moving in this direction, whereas many small and medium-size growers rely on traditional and labour-intensive hand-picking, packing and grading methods.

This diversity was particularly captured in our two case studies in Bundaberg, Queensland and Virginia, South Australia. Operating in vastly different contexts, growers in these locations addressed their labour supply challenges in contrasting ways. This suggests that rather than one solution or regulatory response, multiple solutions are required to meet labour supply challenges for growers across the vegetable industry.

In this chapter, we develop two separate, mutually exclusive reform packages for how labour supply and regulation challenges could be better addressed in the Australian vegetable industry. The recommendations pertaining to the introduction of a labour hire registration and licensing scheme and to stimulating local workers' engagement in horticulture are common across both reform packages. Another common aspect of the two proposed reform packages is the reliance on a mix of various types of temporary migrant workers to meet the industry's future labour supply needs, although the specific visa categories in each package are distinct and differently designed. *Package One* requires less changes to existing labour migration pathways and is likely to be more limited in its impact, whereas *Package Two* delivers a comprehensive long-term labour supply solution for the industry. It is up to government, industry and other stakeholders to now determine which reform package will be pursued but we do urge caution in maintaining the integrity of each package as a whole. Both packages have been carefully calibrated to minimise unintended consequences, and we strongly caution against simply cherry-picking recommendations from each package.

We recognise our proposed solutions will alter current labour practices in the industry and encourage growers to change how they recruit and manage labour. We also acknowledge that our proposals will have a particular impact on growers who have become solely or predominantly reliant on Working Holiday Makers (WHMs) to meet their labour needs. However, the knowledge base we have developed over the course of this research project has indicated the need to change current practices if there is to be a sustainable and reliable labour force within the vegetable industry.

²⁰⁸ Australian Bureau of Statistics, *Agricultural Commodities, Australia, 2014–15* <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/7121.0>>.

It is also the view of the research team that these proposals must be embedded securely within the vegetable industry recognising the role of multiple stakeholders who work within and around this industry. This means that the recommendations that follow require substantial buy-in from industry, government, unions and other stakeholders to ensure that there is bipartisan support for any new initiatives introduced. A smooth transition for any changes taking place within the industry is imperative.

It is also important to point out that our intention in undertaking this research is not to propose labour supply solutions that may undermine the vegetable industry's profitability, but rather to seek greater economic viability over the short, medium and long term. Our proposals have been framed with serious consideration of the regulatory and cost impositions to growers. Our intention is also to ensure that those employed in the industry are equally protected from any exposure to exploitation, thereby guaranteeing a level playing field for growers who comply with their legal obligations, eliminating unfair competition from unscrupulous operators and maintaining the reputation of the industry both domestically and internationally. As such, our proposals should be seen as opening an important conversation both within and beyond the vegetable industry that will lead to broad-based, bipartisan political support for a comprehensive labour supply reform package.

The research team plans to continue conducting research into labour supply in horticulture in 2017 and 2018 building on this report for Horticulture Innovation Australia. The team is in discussions with a range of stakeholders to determine the parameters of this further research. The willingness of stakeholders to be involved in this future research project shows that there is a genuine desire to develop mature and evidence-based approaches to labour supply that will improve the industry as a whole.

In the remainder of this chapter we develop a set of recommendations for each reform package with the objective of producing a more sustainable, productive and better-protected vegetable industry and workforce.

5.2 Common Reform Elements of *Package One* and *Package Two*

The following set of recommendations pertaining to the regulation of the labour hire industry and the engagement of local workers are common to both *Package One* and *Package Two*.

5.2.1 The Introduction of a Labour Hire Registration and Licensing Scheme

Recommendation 1

All labour hire firms and contractors who supply labour to growers should be required to register with the Fair Work Ombudsman (FWO).

It is common for growers to access workers through engaging a labour hire firm or a contractor. There is now a considerable evidence base that this practice creates vulnerabilities for workers as it can lead to exploitation and for growers in the form of unfair competition and reputational risk. We support the recommendation of the Victorian Government's Inquiry into Labour Hire and Insecure Work that the horticulture industry be subject to a mandatory registration and licensing regime for labour hire operators. This is a vital initiative that will assist in protecting both growers and workers from unscrupulous and exploitative behaviour by labour hire firms and contractors. As Chapter 4 outlines, there are various models for a licensing scheme that could be adopted in

Australia, including the initiatives introduced in Manitoba Canada and the Gangmasters Licensing Authority in the United Kingdom.

The evidence shows that growers have a high reliance on labour hire firms to access and organise workers, and that there is a high incidence of exploitation of workers by those firms in the vegetable industry. There is a strong case for increased regulation of labour hire, which is reflected in government, media and academic reports. We advocate the adoption of a national sector-specific labour hire licensing scheme that is relevant to the vegetable industry, that it be registered with WorkSafe and that it complies with federal immigration laws including systems for ensuring that all employees have a right to work in Australia. If labour hire intermediaries provide accommodation to workers, they should be required to demonstrate that the accommodation meets the standards of applicable law.

Given its role in enforcing workplace rights, the FWO is the government agency best placed to administer the licensing and registration system for contractors and labour hire firms in horticulture. The FWO will need more resources and powers in order to effectively build this role into its regulatory activity.

As part of developing the licensing and registration scheme, the FWO should publicise its online anonymous tip off service to encourage *legally-compliant* growers and *illegally-exploited* workers to notify authorities about the operations of unregistered labour-hire firms and non-compliant growers.

Ideally, the implementation of this recommendation would involve minimal cost to the federal budget. We propose that the FWO-administered licensing and registration scheme be funded partly through labour hire firms and contractors paying for a license to operate within the horticulture industry. Some of this cost will necessarily be passed on to growers who engage labour hire firms and contractors through an increased fee for their services. We believe the reform will nonetheless be well received by growers, in particular large and medium businesses who face real risks to their reputation and to their contracts of supply to the supermarket retailers from using labour hire firms who engage in illegal practices. It is also envisaged that state and federal governments would partly fund the horticulture industry licensing and registration scheme given that it is anticipated there will be increased tax revenue from the reduction of cash payments in the horticulture industry.

As this is a recommendation that has the strong capacity of attracting bipartisan political support given its clear benefits for growers and workers, the development of an FWO-administered horticultural licensing and registration scheme should be a **first-order priority** for the federal government, industry, unions and other key stakeholders.

Recommendation 2

Vegetable growers who rely upon contractors or labour hire firms to access workers should be required to verify that these intermediaries are registered. This should occur via a simple online checking service administered by the FWO as part of the licensing and registration scheme. Failure to do this verification will leave growers open to liability as an accessory for any exploitative conduct by the contractor or labour hire firm under the *Fair Work Act 2009* (Cth).

This recommendation will ensure unscrupulous labour hire firms whose business models are built on underpaying undocumented workers and who use phoenixing to avoid registration requirements will not survive, as it will be too risky for growers to use them. It is important that

there is an appropriate oversight and enforcement mechanism ensuring that the labour hire registration and licensing scheme is working effectively. Reputational and accessorial liability risks only exist for growers who use an unregistered labour hire firm if there is a perception that there is a reasonable chance of being detected and of a penalty being imposed.

This approach has been successful in New Zealand, where in the lead up to the introduction of the Recognised Seasonal Employer (RSE) scheme, the government agreed progressively to enforce labour standards and eliminate illegal behaviour, especially where it concerned exploitation and fraudulent activity. The New Zealand government established a national contractor registration for new and existing contractor groups for seasonal harvest labour and set up requirements for contractors to meet attainable standards.²⁰⁹

It is important that the FWO's verification process is quick and easy for growers to use to encourage compliance with this new system and to minimise the regulatory burden and costs for growers associated with complying with this recommendation. As the FWO is constantly developing and upgrading its suite of online tools and apps and resources for workers and employers, the FWO is well placed to build a simple online checking system for growers to ensure that their labour hire firm or contractor is registered under its licensing scheme.

5.2.2 Initiatives Promoting Engagement of Local Workers in the Vegetable Industry

A foundational principle for this report is that local workers should have preferential access to opportunities for employment and fair conditions of work in the Australian vegetable industry. This reflects an important component of the social contract that governments have with their citizens. This also reflects an essential component of the vegetable industry's **social licence** to operate. In order for the vegetable industry to rely on dedicated pathways for temporary migrant workers to meet its labour supply needs, such as the second year visa extension for WHMs and the Seasonal Worker Programme (SWP), the industry *first* needs to establish that Australian local workers are given an opportunity to work in the vegetable industry. Any structural impediments to local workers' participation in the vegetable industry should be thoughtfully considered at both a local and national level. While this position attracts broad agreement from growers and unions, there are different views on how best to encourage the participation of the local workforce in low-skilled work in the vegetable industry. One important finding in this report is that growers generally discounted local workers as a reliable source of labour.

Unions argue that wages in the industry need to improve in order to attract local workers. Conversely, growers attest to substantial cost constraints, pressure from retailers and other barriers to raising wages and conditions. Despite the substantial evidence we have collected, it is not possible to conclude which perspective is correct. Indeed, the findings from the national survey are contradictory in this regard: growers who pay award wages or higher are significantly more likely than average to suffer from recruitment problems, while those growers who pay below award rates reported that they are less likely than average to experience such problems. In the context of research literature indicating that employers offering higher wages generally find it easier to attract and retain workers, these findings conflict with conventional expectations.

²⁰⁹

For more, see Curtain, above n 88.

Finally, given that the setting of appropriate wage rates occurs through the award determination and enterprise bargaining process and is, therefore, a matter for the Fair Work Commission, growers and workers, it is beyond the scope of this report to formally consider this matter. In this section we propose solutions other than raising wages to attract and retain local workers in the vegetable industry.

Recommendation 3

The federal government should work with industry and other stakeholders to ensure there are no structural impediments to the participation of local workers in the vegetable industry.

Programs for the long term and youth unemployed and for older Australians need to provide not only appropriate training, but also a wage structure that does not create a disincentive to work. There needs to be a proper and comprehensive examination of the link between the performance of horticultural work and the receipt of welfare for the unemployed, and between the performance of horticultural work and the receipt of the pension for retirees.

In late 2016, in the context of the political debate about the 'backpacker tax', Senator Nick Xenophon made a specific proposal to reform the welfare to work transition arrangement for unemployed people who work in horticulture. For example, present rules only allow Newstart recipients to earn \$104 a fortnight before there is a reduction of 50 cents in the dollar for each extra dollar earned. Benefits then withdraw completely at \$1024.84 a fortnight for a single person. Senator Xenophon's proposal is to allow a person on unemployment benefits to work for up to eight weeks and earn up to \$5000 in seasonal agricultural work, without any loss of benefits. This proposal encompasses support for job service providers to place job seekers in this work and financial support for job seekers who had to travel more than a certain distance to the workplace. This proposal has since been accepted by the Coalition Government and introduced in the *Social Services Legislation Amendment (Omnibus Savings and Child Care Reform) Bill 2017*, as part of a two-year trial of incentives aimed at increasing the number of eligible job-seekers who undertake seasonal horticultural work such as vegetable picking and packing.

Whilst we recognise the merits of this approach, we also acknowledge that after the maximum earnings of \$5000 is reached, there will be a drop off in the recipient's welfare entitlement if they remain in the workplace. This trade-off between work and welfare will always present challenges to enticing job seekers into the labour market. However, it is important not to overstate the inevitable challenge of the welfare to work financial transition. The Newstart allowance for jobseekers who are single with no dependents is \$528.70 per fortnight, whereas the minimum wage on the Horticultural Award 2010 at Level 1 for a standard 38 hour week is \$1345.20. This indicates there are clear financial advantages of full-time low-skilled work in the vegetable industry compared to welfare, although it must be acknowledged that there are additional benefits (eg rent assistance, transport concessions, etc) that Newstart recipients are entitled to which necessarily complicate any comparison between work and welfare.

Senator Xenophon's proposal and that advanced in the Coalition Government's proposed two year trial has the advantage of delaying the point at which welfare is withdrawn, and thus provides job seekers with additional time to develop skills and experience, to access a workplace community, and to increase their personal confidence as they work towards full time employment. For some long-term unemployed who face multiple barriers to full employment, policy changes such as these may enable them to more easily transition into worthwhile, rewarding work and a recognisable career trajectory.

There is no easy solution to the issues outlined above and localised arrangements, alongside national-level policies, may be necessary for encouraging higher levels of local employment in certain regions. It is clear, though, that creative ideas are needed for enticing young Australians into the vegetable industry.

Recommendation 4

The federal government should work with industry and other stakeholders to improve investment and tailoring local training programs for encouraging and integrating local workers into the Australian vegetable industry. These programs should focus on developing life skills and pre-employment training. Investment should be targeted towards key groups of local workers that have the potential and availability to be involved in low-skilled horticultural work — long-term and youth unemployed, recent permanent migrants to Australia and retirees.

Long-term and youth unemployed

This report has found many growers have had firsthand experience with long-term and youth unemployed which makes them less willing to employ these groups for low-skilled work in the industry. Other growers have negative perceptions regarding the attitude, work ethic and capability of these groups. Government programs need to be developed in consultation with industry that seek to foster the labour market participation of the long term and youth unemployed in the horticulture industry. In particular, there needs to be mandatory pre-employment and life skills training prior to a placement on a vegetable farm to ensure these workers are ‘farm ready’. Growers need to be encouraged and incentivised to participate in these programs and to employ local workers from these groups.

Permanent migrants

Newly arrived permanent migrants from non-English speaking backgrounds often have little or no understanding of Australian employment laws and services. Different cultural norms can act as barriers to them entering the workforce, or resolving problems they have at work once they have found employment. Newly arrived permanent migrants from non-English speaking backgrounds are likely to not be as vulnerable as visa holders in the labour market because their right to remain in Australia is not conditional upon employer sponsorship. However, there is still a need to address the vulnerabilities that poor English language ability, limited community and social integration and limited assets and income can produce for this group.²¹⁰

Targeted education programs can be used to raise awareness of workplace culture and rights as well as introduce industry specific job skills. Research shows there is a necessary role for language assistance as the basis for successful migrant settlement and/or labour market integration.²¹¹ These programs can also be used as a pathway to employment in the industry. Ideally, community members would be involved in this training.²¹²

²¹⁰ This report on newly arrived migrant and refugee workers highlights their vulnerability in the workforce and makes 10 recommendations for assisting them: Catherine Hemingway, ‘Not Just Work: Ending the Exploitation of Refugee and Migrant Workers’ (Final Report, WEstjustice Western Community Legal Centre, 15 November 2016) <<http://apo.org.au/resource/not-just-work-ending-exploitation-refugee-and-migrant-workers>>.

²¹¹ James Jupp, *From White Australia to Woomera: The Story of Australian Immigration* (Cambridge University Press, 2002).

²¹² Hemingway, above n 210.

Additionally, state and federal governments should provide funding for the development of specific farm skill sets amongst this cohort in order to encourage their retention within the industry. For example, this training could involve the development of targeted and specialised skills such as a chemicals skill set or qualification for a forklift license.

Retirees

Older Australians, colloquially known for their involvement as horticultural pickers as 'grey nomads', have historically played a supplementary but important role in meeting the vegetable industry's labour supply at harvest time. Industry and government need to work together to ensure that retirees have every opportunity to form part of the vegetable harvest workforce and to develop tailored and specific pre-employment training for this group. There should also be a consideration of how the employment of older Australians in horticultural work affects their ability to collect the government pension. Structural impediments and tax and welfare disincentives to their workforce participation in horticulture should be identified and removed.

Recommendation 5

Vegetable industry associations should use the opportunity presented by mechanisation to encourage growers to develop a more coherent skills strategy differentiating highly skilled and core jobs in the vegetable industry. Every effort should be made to encourage and retain local workers into other jobs that enable career progression into these highly skilled jobs.

Although the focus of this report has been on addressing labour supply challenges for low-skilled horticultural work, a key way to achieve this is to foster strategies that develop long-term and sustainable career pathways for local workers in the vegetable industry. Mechanisation presents an important opportunity for the vegetable industry to attract and train local workers over the long term. Although many inherent aspects of horticulture work cannot be mechanised, the case studies revealed that some vegetable operations were highly mechanised (for example, large-scale glasshouse tomato growing operations in South Australia). A number of growers were also considering investing in mechanisation to avoid rising labour costs and to improve long-term efficiency. For example, technology is advancing quickly, with one grower confirming his intention to buy a robot to de-leaf tomato plants and another grower investing \$3 million for a new automated process to pack and stack carrots and trialling optical grading equipment to ensure product quality of potatoes.

It is important that local workers are given first access to employment and training opportunities for highly skilled jobs in the vegetable industry as a result of mechanisation and automation. It is also important that motivated, capable and experienced local workers involved in low-skilled horticultural work be given opportunities by growers to move into more highly skilled job opportunities created through the growing mechanisation of the industry. Industry associations need to support individual growers in developing career pathways within their business for this type of worker. According to a recent submission to a government inquiry by a vocational education provider, more needs to be done to ensure the workforce development of local workers in this respect:

Addressing capability remains a challenge which means the sector still has a workforce deficit. Changing practices of horticulture production to increased use

of robotics and machines means the workforce skills deficiency is likely to increase. This has implications for the long-term sustainability of the sector.²¹³

Over time the effect of mechanisation within the vegetable industry will result in the reduction of the need for low-skilled workers in basic jobs of picking, packing and grading. However, it will also necessitate a smaller but more skilled, core workforce to oversee and maintain the equipment and automated processes for these tasks. Not all farms will be of a large enough scale to automate their processes. For certain horticulture produce, mechanisation may never be a possibility. But where there is scope for reform, we believe that opportunities arising from technological change could be a vital attraction and retention strategy for local workers. Industry investment in programs to facilitate the performance of high-skilled horticultural work by local Australians through the creation of sustainable and long-term career pathways is a key aspect of the industry's social license to operate and its ability to access temporary migrant workers for low-skilled jobs.

Recommendation 6

Vegetable industry associations should do more to foster coordination between growers, particularly during peak labour periods throughout the year.

There is a role for each state and territory's vegetable industry association to coordinate labour recruitment within each regional area of production. Vegetable industry associations would benefit from working more closely to leverage their collective interests by developing a mapping tool that is capable of identifying the annual labour needs of growers. Although the current Harvest Trail website shows peak labour demand times in each region, it does not specify how many workers are required and what skills they need, which are critical pieces of information required for workforce planning. This knowledge base could then be used to coordinate activities between growers of different produce and with peak labour needs at different times of the year.

The research team spoke with two growers in Virginia, South Australia who had previously attempted to coordinate labour supply to their operations. One grower told us:

We worked with ... [another grower] for a while. This is when we had labour hire. When they had their off season we actually shifted people down to us and tried to keep them employed so they wouldn't lose them. But that worked until ... we didn't have the pickers they needed to offset, and also the union started coming around and saying how can they work for two different companies.

Industry associations can play a critical role in encouraging grower cooperation around labour supply. They can also seek to negotiate agreements from the relevant unions to support and encourage local workers to take-up employment in the industry. A joint stakeholder approach to coordinating labour supply within geographic regions is likely to elicit better results for the industry.

Local industry and business associations could also help to coordinate the labour needs of various industries within a single location. Such a strategy requires targeted funding in each state, territory, or region to coordinate labour supply. Coordinating such tasks could improve the integration of job seekers across a number of roles for different growers, and perhaps within different industries. For example, in a study of mining and horticulture in 2013, Storer and Connell concluded that labour harmonisation across these industries enabled an easing of their respective

²¹³

TAFE Queensland, Submission No 27 to Joint Standing Committee on Migration, Parliament of Australia, *Seasonal Change: Inquiry into the Seasonal Worker Programme*, 5.

labour shortages.²¹⁴ This was also consistent with a National Farmers' Federation (NFF) recommendation in 2009 that joint training programs be established for mining and agriculture so workers could move between these industries.²¹⁵ To this end we recommend vegetable industry bodies examine the possibility of coordinating labour supply between the horticulture and food processing industries. The similar level of skill required for key jobs in these two industries, their close relationship within the supply chain for processed produce, the proximity of farms and processing plants in some regions which enables collaboration between businesses, and the potential for career pathways encompassing both horticulture and food processing provide foundations for greater coordination.

Recommendation 7

The federal Department of Employment should work with Harvest Labour Services to improve the Harvest Trail jobs board for vacancies in the vegetable industry and promote its use by growers and workers.

An industry-led, government-sponsored, central jobs board for all vegetable industry vacancies has the capacity to benefit both growers and workers. It will assist local growers to coordinate recruitment activities and it will help workers access jobs in the industry. At present the Australian government contracts an industry service provider 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 vegetable industry. According to a recent description of Harvest Labour Services 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.²¹⁶

This report suggests that the potential of the Harvest Trail website is not presently being realised. The survey findings presented in Chapter 2 show that only a small minority of vegetable growers with difficulties finding workers use the Harvest Trail jobs board. In its current form, not all growers register vacancies on the board. Most growers use a variety of other methods to notify the labour market of prospective vacancies including through traditional job advertisement websites

²¹⁴ Christine Storer and Julia Connell, 'Akubras to Hard Hats: Easing Skill Shortages through Labour Harmonisation Strategies' (2013) 39 *Australian Bulletin of Labour* 64.

²¹⁵ Sam Nelson, 'Finding Tomorrow's Agricultural Workforce' (2011) 8(2) *Australian Farm Business Management Journal* 47, 51.

²¹⁶ 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 Programme*, 20.

such as seek.com.au, social media and other websites such as gumtree.com.au, and engaging intermediaries such as labour hire firms, backpacker hostels and recruitment agencies.

We recommend that although these other methods should remain available to growers as ways of accessing labour, growers should be encouraged to register vacancies with the Harvest Trail job board before being able to recruit temporary migrant workers. The process for registering vacancies must be industry-designed and road-tested to ensure it is efficient, and simple to use, especially as many growers have demanding work schedules, have limited experience and training with technology of this sort and are often in remote locations with unreliable internet connectivity.

The development of the Harvest Trail jobs board into a comprehensive, industry-led, government-sponsored horticultural jobs board will create a consolidated evidence base for industry around where and when labour needs arise in the industry. This initiative will also improve information among local workers — and indeed all prospective vegetable industry workers, including visa holders — to know where and when job opportunities exist. This initiative is important for ensuring local workers have equal access to job vacancies in the industry, especially given that to date, the majority of placements by Harvest Labour Services are filled by WHMs rather than Australian citizens and permanent residents.²¹⁷ This reform will also break the monopoly of labour hire firms and backpackers hostels in some regions over information about where job vacancies exist and prevent these intermediaries from exerting control over workers through capture of this knowledge.²¹⁸

Recommendation 8

The federal government should work with industry to encourage the resettlement of asylum seekers into regions with a strong vegetable industry.

Although it is unlikely that this recommendation will provide a feasible labour supply solution for the majority of vegetable growing regions, the literature suggests that the resettlement of asylum seekers in particular regions has assisted in meeting the labour supply challenges of growers in those regions.²¹⁹

A principle that has emerged from this report has been the need to favour permanent migration over temporary migration. Permanent migrants have made a commitment to Australia, contribute to community building, and are more likely than temporary migrants to inject money into the

²¹⁷ Joint Standing Committee on Migration, Parliament of Australia, above n 64, 25.

²¹⁸ For example, US migration scholar Philip Martin suggests that the challenge of ‘information asymmetry’ whereby some actors know where job vacancies exist needs to be addressed through giving workers more information, thereby reducing the need for reliance on intermediaries: Philip Martin, ‘Reducing Worker-Paid Migration Costs’ in Joanna Howe and Rosemary Owens (eds), *Temporary Labour Migration in the Global Era: The Regulatory Challenges* (Hart Publishing, 2016) ch 17.

²¹⁹ Jock Collins, Branka Krivokapic-Skoko and Devaki Monani, ‘New Immigrants Improving Productivity in Australian Agriculture’ (Report, Rural Industries Research and Development Corporation, 2016); David Radford, “‘Everyday Otherness’ — Intercultural Refugee Encounters and Everyday Multiculturalism in a South Australian Rural Town’ (2016) 42 *Journal of Ethnic and Migration Studies* 2128. ‘Karen Refugees Make \$40m Contribution to Nhill Economy in Victoria’s Wimmera Study Finds’, *ABC News* (online), 24 April 2015 <<http://www.abc.net.au/news/2015-04-24/study-reveals-refugees-boosting-nhill-economy/6417620>>.

Australian economy rather than transfer it overseas.²²⁰ They are also more likely to assist the sector in the medium and long term due to their permanent residency status.

Their permanent status also means they enjoy the same rights and access to the labour market as local workers. In addition they do not suffer the same level of precariousness in the workforce as temporary migrant workers that arises, in part, from temporary workers' ability to be deported.²²¹

Growers in Virginia reported a high level of satisfaction with the recent permanent migrant workforce. However, at present there are only small pockets of vegetable growing areas where access to these workers is viable. There are limited permanent migration pathways into low-skilled work in the vegetable industry. The Regional Sponsored Migration Scheme does not include low-skilled horticultural work. However, it does include related occupations with similar skill sets such as 'Gardener' (general) and 'Nurseryperson'.

One possible modification to the current law could be to expand the list of occupations in the Regional Sponsored Migration Program to include semi-skilled work in horticulture. However, we recognise that it is unlikely the federal government will choose to do this. Skilled migration is an important economic lever for the government, given its contribution to increased productivity and growth.²²² If the level of permanent migration were to remain the same, increases in the permanent regional sponsorship intakes would likely come at the expense of the existing skilled permanent visa intakes. This would involve a clear economic trade off.²²³ Further, like any group of workers there is no guarantee that new permanent migrants will remain in horticulture throughout their career. Unless there is some legislative requirement to remain in the industry, many permanent migrants using a regional sponsorship targeted at horticulture to enter Australia may move to other employment, most likely in urban centres unless there are incentives to stay. This is particularly likely as a result of the comparatively low level of wages and the physically demanding work in the industry. However, regional lifestyles, and the prospect of secure work, may serve to both attract and retain these workers.

Thus, our recommendation here focuses on the federal government working closely with industry, local government and other stakeholders to ensure asylum seekers who are granted permanent residency visas are encouraged to settle in strong vegetable growing regions. Many of these asylum seekers find it difficult to access work because of limited English language ability or skills

²²⁰ Graeme Hugo, 'Economic, Social and Civic Contributions of First and Second Generation Humanitarian Entrants' (Report, Department of Immigration and Citizenship, June 2011) <<https://www.border.gov.au/ReportsandPublications/Documents/research/economic-social-civic-contributions-about-the-research2011.pdf>>.

²²¹ Harald Bauder, 'Citizenship as Capital: The Distinction of Migrant Labor' (2008) 33 *Alternatives: Global, Local, Political* 315; Catherine Dauvergne, *The New Politics of Immigration and the End of Settler Societies* (Cambridge University Press, 2016); Luin Goldring and Patricia Landolt, 'The Conditionality of Legal Status and Rights: Conceptualizing Precarious Non-Citizenship in Canada' in Luin Goldring and Patricia Landolt (eds), *Producing and Negotiating Non-Citizenship: Precarious Legal Status in Canada* (University of Toronto Press, 2013) 3.

²²² Chris F Wright et al, 'Economic Migration and Australia in the 21st Century' (Report, Lowy Institute for International Policy, October 2016) <https://www.lowyinstitute.org/sites/default/files/wright_et_al_economic_migration_and_australia_in_the_21st_century_0_0.pdf>.

²²³ Martin Ruhs, *The Price of Rights: Regulating International Labor Migration* (Princeton University Press, 2013), 92.

and training. The vegetable industry's substantial labour needs in low-skilled work present an opportunity to provide growers with a permanent migrant workforce and asylum seekers with access to the labour market. There are numerous examples of recent migrant communities successfully resettling in regional Australia and making a significant economic contribution.²²⁴ The federal government should work with local ethnic community organisations and agencies involved in the resettlement of asylum seekers and vegetable industry bodies to build on these successes and encourage asylum seekers to settle in vegetable growing areas. To be feasible, this proposal would need to be well resourced and supported by a strong government training and pre-employment program to address language and cultural issues.

5.3 Reform Components Distinct to *Package One*

In the previous Section 5.2, Recommendations 1–8 are common to both *Package One* and *Package Two*. In this Section 5.3, Recommendations 9–12 which follow are only applicable to *Package One*. In the following Section 5.4, a specific set of proposals with regard to the SWP and WHM visa are contained in Recommendations 13–15 and pertain to *Package Two* only.

5.3.1 *Reforms to Facilitate the Employment of Working Holiday Makers in the Vegetable Industry*

WHMs represent a critical source of labour for the vegetable industry. Their key attribute is their flexibility and the minimal additional costs on growers and labour hire firms who employ them. The opportunity to gain a second year visa extension following the completion of 88 days paid work in the industry has proven to be an effective regulatory incentive in channelling WHMs into regions that have acute labour needs at harvest time. That this extension can only be achieved following work in certain postcodes has meant that WHMs provide an important contribution to both the tourism and horticulture industries in Australia. Nonetheless, there are a number of threats for industry in relying on WHMs as a primary source of labour which the following recommendations seek to address. The first threat relates to the exploitation of WHMs employed in the industry which has already led to, and may lead to more calls for the abolition of the second year visa extension or increased regulation on growers engaging WHMs as part of their business model. The second threat relates to the insecurity of WHMs as source of labour supply for the industry if this continues to be seen as a de facto pathway rather than a dedicated labour migration pathway which serves a critical purpose in meeting the industry's labour needs. Both of these pose risks for industry that need to be ameliorated through reform.

Recommendation 9

The opportunity for WHMs to receive a second year visa extension following a period of 88 days of work in horticulture should be reformed to eliminate the opportunity for worker exploitation. We propose this reform should include a number of key elements:

Reducing the role of employers in signing off on the 88 days of work

²²⁴ Jock Collins, Branka Krivokapic-Skoko and Devaki Monani, 'New Immigrants Improving Productivity in Australian Agriculture' (Report, Rural Industries Research and Development Corporation, 2016); David Radford, "Everyday Otherness" — Intercultural Refugee Encounters and Everyday Multiculturalism in a South Australian Rural Town' (2016) 42 *Journal of Ethnic and Migration Studies* 2128. 'Karen Refugees make \$40m Contribution to Nhill Economy in Victoria's Wimmera Study Finds', *ABC News* (online), 24 April 2015 <<http://www.abc.net.au/news/2015-04-24/study-reveals-refugees-boosting-nhill-economy/6417620>>.

A key source of vulnerability for WHMs is their dependency upon employers to sign off on their 88 days of employment and the opportunity this creates for unscrupulous labour hire firms and growers to exploit this power. The FWO's report into the 417 visa found that 6% of survey respondents had paid their employer to sign off on their 88 days paid work. The FWO report also observes that the regulatory settings place the burden of proof on WHMs to prove their 88 days paid work through the provision of payslips which creates a further imbalance of power between an employer and a WHM as the former may withhold payslips in order to increase their control over the employment relationship. If the second year on the WHM visa is maintained as an incentive for WHMs to work in horticulture, there is an urgent need for regulatory reform to reduce the power of employers to sign off. Some examples of how this could be achieved is through independent verification that the worker has completed 88 days of paid work from other stakeholders. The FWO's report into the 417 visa indicates that it is currently developing technology that would support the simple recording of working hours,²²⁵ which may enable WHMs to validate that they have met the 88 days paid work requirement without employer sign-off. Another option is to require employers to use an app to provide copies of payslips to the Australian Taxation Office (ATO) for WHMs seeking to complete 88 days paid work in order to be eligible for the second year extension of their visa.

ATO registration and one-way information-sharing arrangements between the FWO and ATO

Schedule 2 of the *Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016* (Cth) introduced a once-off requirement that all employers of WHMs register with the ATO. This register will not be available to the public but information gleaned through the register will be passed onto the FWO to assist with its investigation. It is imperative that the information sharing between the FWO and ATO is one-way only. This will ensure that visa holders are not deterred from reporting workplace exploitation to the FWO out of fear that detail of their accepting cash-in-hand payments will be passed onto the ATO.

Greater mechanisms for oversight and enforcement by the FWO, funded through the ATO registration requirement

The research for this report confirms the existing evidence of exploitation of WHMs employed in the horticulture industry. It is essential, therefore, that the FWO be given greater powers and resources to oversee compliance within the industry and to apply enforcement tools to reduce worker exploitation. We propose that growers pay a one-off, annual levy of \$500 for registering with the ATO as a user of WHMs, which would apply both to growers who employ WHMs directly and to those who employ them indirectly through labour hire companies. Even if only half of vegetable growers use WHMs, this will still produce an annual FWO oversight and enforcement fund of \$1 million for the vegetable industry. This levy would be passed onto the FWO as a means of funding a dedicated team of inspectors within each state and territory, and in key growing regions, to oversee and enforce compliance with Australian workplace law. This fee recognises that the WHM visa extension is a key source of the industry's labour supply and establishes a cost premium for the existence and use of this labour migration pathway by growers. The need for a price signal to encourage employers to access local workers first and to reflect that labour migration pathways are a privilege not a right is a key foundational principle of the reform agenda.

²²⁵ Fair Work Ombudsman, '417 Visa Inquiry', above n 5, 53.

Strict penalties for non-compliant employers of WHMs

Labour hire firms and growers who employ WHMs to assist with the vegetable harvest should incur strict penalties for non-compliance with Australian workplace law and Australian immigration law. At present there are very few penalties on employers who exploit temporary migrant workers under the WHM visa. Although on occasion labour hire firms and growers are required to rectify underpayments, there have been only isolated incidences of fines being levied for exploitative conduct. As one industry stakeholder informed us, the effect of the present system is that: ‘The only money paid is for wages that were supposed to be paid in the first place — so you rob the bank and if you’re caught you pay the money back, and if you’re not ... you keep the money!’

There is clearly a need for broader strategies to enhance compliance with Australian workplace law. The federal government needs to consider strengthening accessorial liability in the *Fair Work Act 2009* (Cth) to ensure that all supply chain operators (including the supermarkets) are held legally accountable for exploitation of WHMs. Employers that engage undocumented workers should face stricter penalties, as should employers who fail to comply with the award. The FWO’s inquiry report into the 417 visa strongly recommended strengthening the sanctions framework for employers who contravene relevant legislation.²²⁶

Informing workers of their workplace and representational rights under Australian law

By virtue of their youth, limited experience of the labour market, temporary and non-citizen status, WHMs are recognised as having a precarious status in the Australian labour market. This is particularly the case for WHMs from non-English speaking backgrounds. It is essential, therefore, that WHMs are informed of their workplace and representation rights under Australian law. Although SWP workers employed in the vegetable industry are given pre-departure and on-arrival briefings to which both the FWO and the relevant union are invited, no such induction program exists for WHMs employed in the industry. We propose that the FWO work with vegetable industry associations and relevant unions to develop an in-person induction for WHMs seeking to be employed in the vegetable sector. WHMs would pay a small fee of \$20–\$50 to attend this induction. Growers and labour hire firms who employ WHMs would be required to verify that any WHMs employed in their business had completed the induction. The purpose of the induction would be to inform WHMs of their workplace rights under Australia law, to make them aware of various enforcement mechanisms, to alert them to processes for making official complaints about workplace exploitation, and to provide information regarding the availability of support services.

Regulating the role of labour hire firms and contractors

A key source of vulnerability for WHMs seeking a second year visa extension is their reliance on labour hire contractors to access horticultural work. It is anticipated that the implementation of Recommendation 1 will assist in eliminating unscrupulous labour hire practices within the industry and ensure that only compliant labour hire firms are used by growers because of the registration requirement. It is also anticipated that the improvement of the Harvest Trail jobs board in Recommendation 7 will improve WHMs’ awareness of where job vacancies exist and lead to less reliance on labour hire firms for information and access to work in the industry.

²²⁶

Ibid 52.

Regulating the role of accommodation providers, especially hostels

The research for this report confirms existing evidence that accommodation providers who are independent of growers contribute to the exploitation of WHMs.²²⁷ It is essential that there is a proper system for regulating the role of accommodation providers, in particular hostels. Although this issue did not form a strong focus of the report, in 2017 and 2018 the research team plans to examine the role of accommodation providers in producing worker vulnerability in the horticulture industry and to identify possible models for reform.

Recommendation 10

The opportunity for WHMs to receive a second year visa extension following a period of 88 days of work in horticulture should be officially recognised as a legitimate labour migration pathway by the federal government as a key source of the industry's labour supply for harvest-related jobs.

This recommendation has two key components:

- **The federal government should work with the Department of Immigration and Border Protection to ensure that the official and stated purpose of the WHM 417 visa extension explicitly recognises the importance of this visa category as a temporary labour migration pathway for the horticulture industry.** This should be reflected in official documents and reports pertaining to the WHM 417 visa such as the annual WHM Programme Report and on the Department's website.
- **Growers should be able to employ WHMs in harvest jobs for the full two years of the WHM visa without the need to complete any additional paperwork.** At present, growers who wish to employ a WHM visa holder beyond the six-month maximum period of employment permitted under the regulatory framework are required to complete an additional form. This requirement should be abolished given the recognised and significant role WHMs play in meeting the labour needs of the industry.

The purpose of this recommendation is to acknowledge WHMs as a critical source of labour supply for the vegetable industry. This will ensure that the second year visa extension will be recognised as a labour migration pathway upon which the industry relies to meet its labour needs. By dispensing with the centrality of the 'cultural exchange' purpose of the WHM visa this will minimise the risk that future governments will seek to change arbitrarily the regulatory (including taxation) arrangements around the WHM visa which have the potential to substantially erode the viability of this visa category as a labour source for growers. The inherently insecure nature of the labour supply that WHMs provided was exposed in the ongoing debate over the so-called 'backpacker tax' in 2015 and 2016 which created great uncertainty for growers. This political debate exposed a lack of awareness of the critical reliance of the horticultural industry on the work of WHMs. This is in strong contrast to the ongoing acceptance of the 457 visa as a legitimate labour migration pathway for employers with skilled job vacancies.

Recommendation 11

The role of the WHM visa program as a labour supply option for the horticulture industry should be subject to a government review after two years to determine whether exploitation of WHMs in the industry continues to be a problem.

The extensive evidence of exploitation of WHMs on a second year extension of the WHM visa signifies that the scheme is widely used as a de facto low-skilled work visa pathway for the

²²⁷

Ibid.

horticulture industry, and is not officially recognised as a critical labour migration pathway to meet the industry's labour needs. The legitimacy of this visa should therefore be subject to ongoing critical evaluation and reform.

5.3.2 Reforms to Improve the Seasonal Worker Programme as Part of Package One

Recommendation 12

The SWP should be improved so that it works more effectively to meet the needs of growers and workers. We propose that this reform include the following elements:

Greater industry involvement in the administration and fine-tuning of the SWP

Even in its present form, it seems there is scope for greater reliance on the SWP by medium and large vegetable growers. The SWP was capped until 1 July 2015. Under the capped SWP there was nearly complete take-up of the program's capacity of between 91 to 98 per cent. Since removal of the caps there has been steady take-up in numbers of employers and seasonal workers participating in the SWP. In order to foster continued increase in the uptake of the SWP under the uncapped model, the vegetable industry and other stakeholders have a key role in promoting the program and working with government to fine-tune program requirements so that they are improved. Where possible, the regulatory burden on growers should be minimised so long as the existence of regulation necessary to safeguard against worker-exploitation is maintained.

Greater facilitation of labour hire engagement with the SWP through registered labour hire firms who operate as 'Approved Employers'

One of the key benefits for growers of the SWP is that when they use a labour hire firm to access SWP workers they can share the costs associated with the program to do with airfares and visa fees. In addition labour hire firms bear the responsibility of providing accommodation, transport and pastoral care. The possibility of worker exploitation via the labour hire arrangement is also minimised under the SWP by the requirement that labour hire firms be registered as Approved Employers under the scheme.

Encourage the practice among growers using labour hire firms to access SWP workers on six-monthly rotations

Some growers who currently use labour hire firms to access the SWP rotate two groups of SWP workers on a six-monthly basis. This provides a way of circumventing visa restrictions on how long SWP workers can remain in the country. As the return rates for SWP workers tend to be high, these growers recuperate the training costs invested during the SWP workers' first year of employment in subsequent seasons. We recommend that there be greater promotion within the vegetable industry of the SWP as a secure and sustainable labour supply solution through the use of labour hire firms.

Improved worker induction (both pre-departure and on-arrival)

A key protective element of the SWP is worker induction. This facilitates pre-employment and cultural awareness training for visa holders and also informs them of their workplace rights under Australian law and the support services available to them. At present, it appears that worker induction is occurring in a sporadic and ad hoc manner. Although the relevant union and the FWO are notified via an automatic email from the Department of Employment whenever an Approved Employer has had their request to sponsor a group of SWP visa holders approved, 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. The Department needs to ensure that pre-departure and on-arrival induction processes are operating in an efficient and

consistent manner across the program and to review the effectiveness of these processes on an ongoing basis.

Current SWP requirements be preserved

We recommend that current requirements around SWP workers receiving a ‘net financial benefit’ and the \$500 airfare contribution be preserved in order to ensure SWP workers benefit from participation in the program. We also recommend that the ability of SWP workers to work long hours be preserved as an element of the program. Although there is some lobbying for the Horticulture Award to include penalty rates for weekend and overtime work, it is important to acknowledge that this has the potential to decimate the SWP. One of the strengths of the SWP is that the workers have a high desire to work as much as possible as this is the purpose of their willingness to migrate temporarily to Australia. At present, when the opportunity for increased hours is presented to SWP workers, the vast majority are keen to avail themselves of this opportunity so as to earn more remittance income. If growers are compelled to pay SWP workers overtime for additional hours, it is likely that these hours will be covered by a second shift of workers as this will reduce costs for growers. But it will also undermine the potential for SWP workers to earn as much under the SWP.

5.4 Reform Components Distinct to *Package Two*

Package Two is underpinned by two core elements: first, substantial reform to the SWP so that it works in an efficient and fair manner to meet the bulk of the vegetable industry’s labour needs; and second, the phasing out of the second year visa extension for WHMs over a 48-month period via a four-stage process.

Package Two provides a more sustainable, strategic and far-reaching reform agenda to meet the current and future labour needs of the Australian vegetable industry. We recognise that *Package Two* encompasses a more ambitious reform agenda for the industry to consider. In brief, the rationale for *Package Two* is as follows — in its present form, the SWP does not have the capacity to address the labour supply challenges facing the Australian vegetable industry. Although the SWP has seen steady growth since its inception and in the past year the program intake has increased by 49%, its role in meeting the labour needs of the Australian vegetable industry is still marginal compared with the contribution of the WHM visa. Given our recommendation to phase out and ultimately abolish the WHM second year visa extension, substantial reforms need to be made to the SWP to ensure it is more accessible to a broader range of growers and meets their labour needs. *Package Two* develops a new model for the SWP and establishes the case for the program’s reform. In what follows, we recommend that the SWP have two distinct streams. We note that the same regulatory reform can be achieved by introducing a separate Horticulture Industry visa with the same conditions as the SWP Stream 2 visa described below. We have no view on whether it is preferable to implement the reform as a second stream within the SWP or as a completely new visa category.

Recommendation 13

The SWP should be divided into two Streams, the SWP Stream 1 Visa and the SWP Stream 2 Visa.

Each visa stream will have distinctive requirements which are broadly described below. The finer details of the regulatory framework for each visa stream will need to be worked out through a consultative process involving government, industry, unions and other key stakeholders.

5.4.1 *The Seasonal Worker Programme Stream 1 Visa*

- The Stream 1 Visa is limited to workers from Pacific Island countries that are currently partners under the SWP.
- The duration of a Stream 1 Visa should be nine months for all Stream 1 partner countries.
- Stream 1 visa holders can return to Australia to work in horticulture for an unlimited number of seasons. A particular regulatory advantage for growers who choose to use Stream 1 is that these workers are able to return year after year, while maintaining a connection to their country of origin. This provides growers with continuity in their workforce and thereby reduces recruitment and training costs, as workers will be familiar with the particular needs of the business from previous years. It will also create a reliable workforce with proven capacity as a result of their previous employment in the business. Return workers are more productive than short-term workers like WHMs as they have passed the learning phase. There is likely to be ongoing gains in the quality of the produce picked as workers become increasingly experienced. Better social adjustment outcomes for the whole program are also likely as returning workers have previous knowledge of working in Australia and can play a role in provide support and training to new workers.
- In their first season, Stream 1 visa holders can only enter Australia via sponsorship from an Approved Employer. In subsequent seasons, a Stream 1 visa holder can freely move between Approved Employers within the SWP. Although it is expected that workers will return to the same employer with whom they have developed a relationship, tying workers to an employer is known to increase their vulnerability in the workplace.
- For every season after their first season, Stream 1 visa holders do not require employer sponsorship to enter Australia. If Stream 1 visa holders do not have sponsorship for subsequent seasons, they will be required to self-fund their return airfare. However, if they are employer-sponsored in subsequent seasons, then the employer will be required to contribute \$500 to the worker's return airfare. For employers this provides the benefit of a return workforce whom they have already trained and developed a relationship with in a previous season.
- The Stream 1 Visa provides a capped pathway to permanent residency in Australia, based on a lottery system. Eligibility to apply for permanent residency is contingent upon completion of six months' work per season, for five seasons within an eight-year period. If there are more than 250 applicants for these positions in any one year, the places should be allocated through a lottery system.²²⁸ We have chosen to rely on a lottery system rather than an employer-sponsorship model for the permanent residency pathway to reduce the vulnerabilities and dependence on employers produced by an employer-sponsorship system.²²⁹ This is consistent with the recommendation of the Deegan Review into the 457 visa which suggested that periods of employment, rather than sponsorship by an individual employer, should form part of the eligibility requirement for permanent

²²⁸ Richard Curtain et al, 'Pacific Possible: Labour Mobility: The Ten Billion Dollar Prize' (Report, ANU and The World Bank, 2016) <<http://pubdocs.worldbank.org/en/555421468204932199/labour-mobility-pacific-possible.pdf>>, which provides information on the New Zealand system that allocates PR places based on a lottery.

²²⁹ 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?' (2016) *Journal of Ethnic & Migration Studies* (OnlineFirst).

residency.²³⁰ The Deegan Review identified how the promise of permanent residency can provide an incentive for temporary migrant workers to accept poorer wages and conditions.

- There are a number of advantages to making a limited number of places available for permanent residency. First, the opportunity to apply for permanent residency will encourage some workers to complete five seasons in the industry. Second, for those who successfully apply for a permanent visa, their experience and connections in Australia will be in horticulture, and there is a good chance that many of them will remain in the industry permanently, thus boosting its permanent workforce over time. Thirdly, this pathway to permanent residency will have a positive development impact on the Pacific through remittance flows and reducing the population pressures on Pacific nations greatly affected by climate change.²³¹

5.4.2 *The Seasonal Worker Programme Stream 2 Visa*

Eligible countries

- The Stream 2 Visa is limited to workers from partner countries in the 417 WHM program, 462 WHM program and workers from Pacific Island countries that are currently partners in the SWP and eligible under Stream 1. It is important that the federal government and the Department of Immigration give proper consideration as to whether Stream 2 incorporate 462 WHM program countries given that at present, except for in Northern Australia, only 417 WHMs are eligible for the second year visa extension. We note that the 462 visa includes a large number of developing countries with far less regulated labour markets and a much lower minimum wage than Australia. The inclusion of 462 visa partner countries in the SWP will increase the possibility of exploitation of visa holders. We advocate that the Department of Immigration complete a comprehensive risk assessment in conjunction with the FWO as to eligibility and caps surrounding Stream 2 countries.
- Each partner country (except for Pacific Island countries) will be subject to an annual cap as to the number of Stream 2 Visas issued to each country.
- The duration of a Stream 2 Visa is for a maximum of 24 months for all Stream 2 partner countries and Pacific Island countries.
- A Stream 2 Visa is non-renewable upon expiration of the visa's 24-month term for all Stream 2 partner countries and Pacific Island countries.
- Stream 2 visa holders (including those from Pacific Island countries) will self-fund their return airfare to and from Australia.

Oversight by a SWP Management Committee

We propose the formation of a SWP Management Committee built on a joint stakeholder, co-regulatory model.

²³⁰ Barbara Deegan, 'Visa Subclass 457 Integrity Review' (Final Report, October 2008) 51 <<https://www.border.gov.au/WorkinginAustralia/Documents/457-integrity-review.pdf>> ('Deegan Review').

²³¹ Berkelmans and Pryke, above n 8.

A core aspect of our proposal for reforming the SWP is to encourage a collaborative, tripartite approach within the industry with all stakeholders committed to ensuring the program's ongoing viability and success. It is essential that the SWP is not administered bureaucratically in ways that burden growers but that growers and their representatives are actively involved in the co-regulation of the program. New Zealand's RSE has involved far greater coordination and collaboration between industry, government and other key stakeholders. During the scheme's design phase, industry actively participated in the development of the RSE, beginning with the 'Pure Business Policy' which started in 2004. This involved a three-year joint collaborative project between government and the apple industry to address systemic problems facing apple growers, including barriers to securing seasonal labour. A 'Horticulture and Viticulture Seasonal Working Group' was also established to address seasonal labour shortages over the short, medium and longer-terms through cooperation between government, industry and unions. Ongoing collaboration between these stakeholders, which has been critical to the scheme's success to date, has been identified as a best practice element of the policy.²³² The partnership between government and industry occurs through a variety of channels. These stakeholders have jointly developed a Master Contractors registration system to improve the workplace practices of labour contractors,²³³ and a seasonal labour and supply demand model to generate consistency in allocation of RSE workers across regions.²³⁴ Regional allocations are planned well in advance of the start of the season.

As in New Zealand, it is essential that the Australian government's administration of the SWP incorporate industry, unions and other key stakeholders with an interest in the program's ongoing viability and success. Equally, it is important that the horticulture industry develop a more cohesive, united and coordinated response for meeting labour supply challenges. In researching this report we observed considerable fragmentation within the industry and we noted different union strategies, some of which were more constructive than others. In our view industry fragmentation leads to a lack of cohesion in the advocacy and lobbying efforts to the collective detriment of the industry. Unions too, need to recognise their role in contributing to the long-term viability and sustainability of the industry.

Australian growers and their industry representatives must accept that award wages are an embedded cost of business and not an optional instrument. Similarly unions should ensure that wage claims and award variations are not ambit claims and take into account the circumstances of the industry and the capacity of growers to pay a particular rate. The Fair Work Commission's role as an independent umpire of the award system is paramount, as is federal government's role in steering the reforms for a better system that are proposed in this report.

Unions should play a constructive role in ensuring employment laws are complied with and that wages and award rates are properly enforced across the sector. This will have the mutual benefit of ensuring that unscrupulous competitors do not undercut ethical, compliant growers, workers are not exploited, and Australian wages and conditions are not undermined across the economy.

²³² Graeme Hugo, 'Best Practice in Temporary Labour Migration for Development: A Perspective from Asia and the Pacific' (2009) 47(5) *International Migration* 23.

²³³ Bedford, above n 26, 156.

²³⁴ Ibid 164.

Where unions, growers and governments work together in a constructive manner, it is possible to arrive at such 'win-win' outcomes.

For the SWP to work effectively and to ensure widespread uptake, horticulture industry bodies, unions, government and other stakeholders need to coordinate their involvement in the program, in a united and constructive way. We recommend this occur via the 'SWP Management Committee'.

The SWP Management Committee has a number of core functions, including but not limited to:

- Regularly reviewing the horticulture industry's labour needs and setting annual caps for Stream 2 Visa Countries.
- Arranging for the collection of program fees from Approved Employers of Stream 2 visa holders.
- Working with regional industry bodies, growers and local communities to organise accommodation and transport, and to facilitate social integration into the local community for visa holders. This proposal reduces some of the costs associated with the SWP's current design as employers will no longer be solely responsible for accommodation and transport. This will be a cost and responsibility borne by industry as a whole or through the more widespread use of legitimate labour hire firms registered as Approved Employers under the SWP. It makes more sense that this type of need is collectively shared between growers in a region either via industry coordination or a labour hire firm. This proposal ensures that small and medium-sized growers have greater access to the program and places the responsibility on national, state, territory and regional horticultural industry bodies to come together in assisting growers to use the SWP. It draws on successful aspects of New Zealand's RSE program which allows 'growers cooperatives' to be formed so that seasonal workers can move in a coordinated way between growers who have different labour needs at different times of the year and to share the administrative burden of being involved in the program.
- Developing and delivering content for a one-day induction program for all Stream 1 and Stream 2 visa holders that will include input from the FWO, the relevant union and local community organisations and service-providers.
- Conducting annual assessments of the SWP to ensure its continual refinement over time so that it meets the needs of growers, local workers, SWP partner countries and SWP workers.
- The program fees for Stream 2 will also contribute to the appointment of a **FWO Horticulture Community and Industry Liaison Officer** for each state and territory, based in a key growing region, responsible for coordinating the FWO's investigative and enforcement efforts in each jurisdiction.
- Liaising with Approved Employers, the Department of Immigration, the Department of Employment, the Department of Foreign Affairs and Trade and other relevant stakeholders to ensure that the integrity of the SWP is maintained over time and that visa holders whose visas have expired return to their home country.

Requirements of visa holders

- Stream 2 visa holders do not require employer sponsorship to enter or remain in Australia. Stream 2 visa holders can freely move between Approved Employers within the SWP.
- Stream 2 visa holders will have their visa cancelled if they are out of paid employment within the horticulture industry for more than six months. This does create an additional

dependence on employers as Stream 2 visa holders will be reliant on employer registration to demonstrate that they are not unemployed for more than six months. There are lessons to be learnt from the second year visa extension for the WHM visa which is currently contingent upon employer sign-off and has produced significant vulnerabilities for this cohort of visa holders. Care will need to be taken to ensure that Stream 2 visa holders are fully aware of job vacancies throughout the horticulture industry so that they have all the information they need to move between different employers in search of work. We hope that the implementation of a comprehensive Harvest Trail jobs board proposed in Recommendation 7 will assist in this regard.

- The Stream 2 Visa should be a multiple entry visa, so that workers can return home when required, or during down turns in labour demand in off-peak periods.
- The Stream 2 Visa should be available for workers from 18 to 45 years of age. This will be a point of distinction from the WHM program. Given that the focus of this visa pathway is on employment rather than cultural exchange, workers in their 30s and early 40s are more likely to have relevant work experience in horticulture and related industries which will enable them to be productive and require less training.
- Given that our proposal largely dispenses with the requirement of employer sponsorship and the SWP Stream 2 Visa offers an accessible pathway to Australia for the purpose of work, it will be important to monitor the level of overstay rates. This is one rationale for the imposition of caps for each country in the SWP Stream 2 Visa which will limit numbers for workers from each country in the program. Although there is a risk of overstaying the visa and remaining in Australia illegally, the risk is comparable to WHM visa holders.

Arrangements pertaining to fees for use of Stream 2

- Approved Employers of Stream 2 visa holders are required to register the employment of a Stream 2 visa holder at the beginning of their employment with the SWP Management Committee.
- Approved Employers of Stream 2 visa holders pay a program fee for employing Stream 2 visa holders. This registration process should be simple and efficient for growers given that for large and medium-sized growers it is likely to involve the registration of large cohorts of SWP workers.
- Approved Employers of Stream 2 visa holders are required to register the employment of a Stream 2 visa holder at the beginning of their employment with the SWP Management Committee.
- The program fee for Stream 2 is levied at the end of the Stream 2 visa holder's employment with a grower by the SWP Management Committee.
- This program fee needs to be set at a rate to reduce the substitution effect between Stream 1 and Stream 2. However, it should also take into account that most farms are marginal businesses. As growers are price-takers they have a limited ability to pass on costs.
- A failure to pay the program fee results in revocation of Approved Employer status.
- If feasible, the program fee for Stream 1 should be lower overall for return workers which should minimise the substitution effect between the two Streams.
- These are broad guidelines for how the program fee could be levied and administered. We defer to those with greater expertise in this field to determine the specificities associated with this proposal.

Measures to minimise worker exploitation under Stream 1 and 2

- Given that both Stream 1 and Stream 2 visa holders are employed in a low-wage, low-skilled industry, which appears to experience fairly endemic regulatory challenges associated with worker exploitation, it is important that the design of the visa streams seek to eliminate opportunities for non-compliance by employers with Australian workplace law.
- The requirement for Stream 1 and Stream 2 employers to seek Approved Employer status and to identify themselves positively through the registration of SWP workers are the primary safeguards against exploitation built into the scheme. These measures facilitate far greater transparency than current employment practices of WHMs and allow for easier compliance checks by the Department of Immigration and FWO (by analogy with the 457 visa which has enjoyed better compliance outcomes in recent years).
- The removal of the mandatory employer sponsorship requirement for Stream 1 visa holders following their first season and the opportunity for free movement within the horticultural labour market for returning Stream 1 visa holders and all Stream 2 visa holders will address the power imbalance created through an employer sponsorship model. Additionally, the lottery pathway to permanent residency has also been designed with this in mind.
- There are additional, dedicated resources provided to the FWO via the SWP Management Committee to assist with its critical oversight and enforcement role.

Regulatory requirements that are *common* across both Streams are as follows:

- Only Approved Employers under the SWP can employ Stream 1 and Stream 2 visa holders.
- There needs to be **faster approval times and streamlined processes for becoming an 'Approved Employer'** under Stream 1 and Stream 2. For a revised SWP to be useful to industry it needs to be sufficiently flexible, adaptable and low on administration. The result needs to be a cost-effective and efficient option for growers. A key aspect of this is to improve processes for growers and labour hire firms to become Approved Employers. At present there are 69 sponsors in the SWP with approximately another 40 pending sponsorship. With over 4500 vegetable growers in the industry, it is clear that more Department of Employment resources need to be deployed to ensuring approval times (which are already quite long at three to four months) for becoming an Approved Employer under the program do not blow out if registration is a mandatory process under Stream 1 and Stream 2.
- There is **no employer-conducted labour-market testing requirement** for Approved Employers under the SWP as the increased costs associated with the SWP sends an appropriate price signal to growers relying on the benefits of recruiting locally in the first instance. In addition the use of annual caps for Stream 2 means there is less likely to be an oversupply of labour and ensures that locals will have sufficient access to jobs. The removal of an employer-conducted labour market testing requirement is also necessary on practical grounds as it will be increasingly difficult to enforce as the SWP expands as envisaged under this reform package. It places an unnecessary burden on growers without guaranteeing that local jobs are protected. **The utility of employer-conducted labour**

market testing in protecting local job opportunities has been rigorously critiqued as being not fit for purpose.²³⁵

- As is presently the case under the SWP, both Stream 1 and Stream 2 visa holders will be subject to a **15% tax rate from the first dollar earned**.
- Upon arrival in Australia, Stream 1 visa holders after their first year, and Stream 2 **visa holders have the right to free movement within the horticultural labour market** by being able to move between Approved Employers within the horticulture industry.
- There are **no secondary visa rights** attached to the Stream 1 and Stream 2 visas. That is, a worker should not be able to bring a partner or dependents with them, unlike 457 temporary skilled migration visas. One of the reasons for creating this distinction from the 457 visa is that there should be a clear message that these are temporary streams. A worker commits to a season or up to two years' work away from their family, but then must return.
- Stream 1 and Stream 2 Visas are subject to **oversight by the SWP Management Committee**, which is a collaboration between the horticulture industry, unions, government and other relevant stakeholders.
- The work of **the SWP Management Committee shall be funded through the fee levied on growers** engaging Stream 2 visa holders.

Recommendation 14

The federal government should phase out the WHM second year visa extension.

Australia's vegetable industry is unique around the world in its strong reliance on WHMs as the core source of low-skilled labour. Experience abroad suggests that dedicated labour migration pathways for low-skilled horticultural workers are preferable to relying on generic, dedicated low-skilled, multi-industry work visa pathways or de facto low-skilled work visa pathways like that provided under the Australian WHM program. This is because the labour needs of the vegetable industry are quite distinct from other industries. These needs are typically seasonal and, although they can be year-long, they include peaks and troughs. Many of the inherent requirements of low-skilled horticultural work cannot be changed which makes it challenging for growers to attract local workers into the industry. The nature of horticultural work, both here and abroad, tends to leave workers vulnerable to exploitation. These features mean that it is preferable to design labour migration pathways for horticultural work in a targeted fashion in order to properly address these myriad challenges. The following set of recommendations to the WHM program proposes to wean Australian vegetable growers from their heavy reliance on WHMs as their core labour source in favour of a more sustainable, productive and better protected workforce.

²³⁵

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 Programme' (Independent Review, September 2014) <<https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/streamlined-responsive-457-programme.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.

This report has made clear that the vegetable industry's dependence on WHM labour is unsatisfactory for a number of reasons. We will briefly revisit these here in order to establish the case for why the WHM second year visa extension should be phased out. It is our strong view that the reliance by vegetable growers on WHMs as their dominant labour source poses undue risk for the industry.

First, WHMs are a workforce segment whose working conditions are weakly regulated, in part due to their concentration in industries where the presence of unions and the FWO is marginal. This has led to a high level of exploitation of WHMs.²³⁶ The FWO's inquiry report into the 417 visa observed the impact of this visa 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.**²³⁷

The production of worker exploitation under the WHM program is of course deeply concerning in itself. Furthermore, from an industry perspective, it undermines the ability of growers in the vegetable industry to operate on a level playing field. Although many growers engage WHMs legally, the ability for other growers to engage in illegal exploitative practices in their employment of WHMs and to avoid compliance with Australian workplace laws provides them with a significant competitive advantage.

Second, the number of WHMs entering Australia in a given year is highly variable and subject to unpredictable changes in economic conditions, taxation rates and other factors beyond the control of growers. Although there was an upsurge in numbers in the program leading to a peak in 2013, the number of WHMs who choose to come to Australia is highly dependent on economic conditions in their country of origin, and the incentives they may be offered to travel to other working holiday destinations.²³⁸ Nowhere has this risk been more apparent than in the debate over the so-called 'backpacker tax' that was finally resolved when a new law was passed on 1 December 2016.²³⁹ The political uncertainty surrounding the tax led to a significant drop in WHMs working in the horticulture industry, despite the onset of the harvest season. Growers' associations acknowledge the unpredictability of WHMs as a labour source. At the Senate inquiry, the NFF estimated a fall in applications for farm work of between 40% and 90% since the tax

²³⁶ Fair Work Ombudsman, '417 Visa Inquiry', above n 5.

²³⁷ Ibid 33 (emphasis added).

²³⁸ Reilly, 'Low-Cost Labour or Cultural Exchange?', above n 119.

²³⁹ Income Tax Rates Amendment (Working Holiday Maker Reform) (No 2) Bill 2016 (Cth).

increase to 32.5% was proposed,²⁴⁰ and in Tasmania growers have reported a 40% drop in the number of WHMs seeking work.²⁴¹

Third, the opportunity for a second Working Holiday visa increases the vulnerability of WHMs as it ties them to growers through the requirement that growers verify their 88 days of paid employment. This was observed in the 2016 report of the FWO into the WHM program discussed in Chapter 3. This situation poses several risks for growers. One risk relates to the potential abolition or regulation of the second Working Holiday visa in order to address a growing concern that it produces the systemic exploitation of visa holders in horticulture. There are already signs that the regulatory burden on growers engaging WHMs in horticulture is going to increase with the passage of the *Treasury Laws Amendment (Working Holiday Maker Reform) Act 2016* (Cth), which requires growers to register with the ATO if they employ WHMs. Additionally, growers face the risk that WHMs themselves will elect to travel to another destination for their working holiday because of growing awareness that WHMs employed in horticulture in Australia are subject to exploitation. This reputational risk caused by the illegal behavior of some growers has flow-on effects for the whole industry's ability to attract WHMs.²⁴²

Fourth, there is a deleterious substitution effect from local workers and workers on other more highly regulated visa schemes, such as the SWP.²⁴³ Growers' negative perceptions of Australian workers compared to WHMs, as outlined in the survey findings presented in Chapter 2, may be influencing their recruitment practices. This situation needs to be addressed. One way to do this is to remove the non-economic incentive to work in horticulture for WHMs which creates a bias in perceptions of these workers' productivity and reliability compared to Australia workers. With a ready supply of unregulated labour, there are few incentives for growers to invest in their workforce through training. Rather, existing policy arrangements encourage growers to trial workers for a short time until they find workers with the highest work capacity and productivity. This encourages unsustainable labour practices in the industry. This substitution effect has also led to recent calls by the parliament's migration committee,²⁴⁴ unions,²⁴⁵ and independent scholars²⁴⁶ to review the WHM and scale back its operation.

Fifth, reliance on the WHM visa prevents the industry from developing a more secure and sustainable labour supply solution that encourages growers to expand their business operations. Our research has found that Australian growers are highly insecure about their ability to meet their labour needs, which in turn affects strategic decision-making regarding business expansion. Our proposals will provide growers with a more committed, productive and efficient labour source.

²⁴⁰ Gabrielle Chan, 'Down on the Farm: Australia at War with its Backpacker Workforce', *The Guardian* (online), 6 November 2016 <<https://www.theguardian.com/australia-news/2016/nov/05/australia-cherry-picking-backpacker-tax-agriculture>>.

²⁴¹ Anna Vidot, 'Backpacker Tax: Neither Party can Claim the Moral High Ground', 18 November 2016, *ABC News* (online), <<http://www.abc.net.au/news/2016-11-18/what-you-need-to-know-about-the-backpacker-tax-analysis/8034584>>.

²⁴² Töpper, above n 122.

²⁴³ Doyle and Howes, above n 68, 13.

²⁴⁴ Joint Standing Committee on Migration, Parliament of Australia, above n 64.

²⁴⁵ ACTU, Submission No 19 to Joint Standing Committee on Migration, Parliament of Australia, *Seasonal Change: Inquiry into the Seasonal Worker Programme*, 10 July 2015.

²⁴⁶ Curtain et al, above n 228.

The investment in training SWP Stream 2 visa holders will potentially allow for a 24-month productivity pay-off and the opportunity for return workers under SWP Stream 1 will mean that investments in training in a visa holder's first season is likely to produce productivity dividends in future seasons. An Australian study of SWP workers found a significant productivity dividend associated with these workers as opposed to WHMs.²⁴⁷ A recent New Zealand study of the Hawke Bay region found that RSE workers received 22% higher earnings than local workers and WHMs on the same site.²⁴⁸ As the workers were being paid piece rates, this reflects the higher productivity of the RSE workers. Additionally in New Zealand, where there has been a much greater take-up of seasonal workers, Approved Employers consistently rate RSE workers in the top category for dependability, enthusiasm and productivity.²⁴⁹ Notably, three-quarters of RSE employers have expanded their areas of cultivation since involvement in the scheme and 77% said involvement in the RSE was a factor in this decision.²⁵⁰ While we recognise that New Zealand has a different industry profile, this demonstrates the positive effect of a more sustainable labour supply solution for growers on their ability to plan for the future expansion of their business.

Recommendation 15

The federal government and industry should work together to develop transitional arrangements to phase out the second year visa extension over a 48-month period. The transition package should support growers from transferring their strong reliance on WHMs to other sources of low-skilled horticultural labour, in particular, local workers and workers in the SWP.

Young people who want a visa that focuses on work should apply for the SWP, which, as we recommend below, should be expanded in order to better meet the needs of growers. In contrast, the WHM visa should only be used for short periods of employment to supplement a visa holder's tourist experience. In short, we propose reverting the WHM back to its original intention of being for 'cultural exchange', with the performance of work being 'incidental' to the central holiday purpose of the visa.

We recognise that removing the second working holiday visa will have a dramatic short-term effect on labour supply in the vegetable industry and for this reason, we recommend it be phased out over a period of 48 months as the newly expanded SWP is established as an alternative. The transition from reliance on WHMs to reliance on SWP workers will require the support of growers in the industry. It is essential that horticulture industry associations work with government to develop the transitional package and to encourage and facilitate growers to shift their heavy reliance on WHMs toward other sources of labour.

It is important to emphasise that this recommendation does not preclude WHMs from working in the vegetable industry during the 12 months of their visa. There would still be a place for WHMs in the vegetable industry to work during peak harvest periods for up to six months for the one grower. The participation of WHMs in the industry remains appropriate during these periods of short-term intensive labour demand. It is likely that many WHMs will still wish to work in the vegetable industry but the anticipated effect of abolishing the second-year visa is to reduce WHMs'

²⁴⁷ Nettle, above n 62.

²⁴⁸ Bedford, above n 26, 167.

²⁴⁹ Ibid 168.

²⁵⁰ Ibid 170.

role as the vegetable industry's core labour source and the unintended consequence of systemic exploitation of WHMs employed in the industry that this regulatory incentive produces.

Table 5.1 Transitional Arrangements to Phase Out the Second Year Visa Extension

Stage	Timeframe	Explanation of Phase
Stage One: Design Phase	0–12 months	<p>In this first phase, industry, unions, government and other stakeholders will be involved in a comprehensive consultative process aimed at designing a pilot for Streams 1 and 2 of the SWP.</p> <p>This design phase is critical for ensuring the SWP operates in the interests of the Australian horticulture industry as a whole. Although the costs of the SWP should ensure an impost for the use of overseas workers, the SWP's regulatory burden on growers must not be set too high or it will diminish its usefulness as a labour supply solution. Failing to strike the right balance in the regulatory framework for the SWP poses a real risk of labour shortages for the industry, given our proposal for the SWP to replace the second year visa extension for WHMs. Whilst not all growers will elect to use the SWP, it is essential the SWP benefits the industry as a whole by guaranteeing a level playing field for fair competition.</p> <p>Throughout the design phase, the 417 WHM visa extension will not be changed.</p>
Stage Two: Individual Growers Pilot Phase	12–24 months	<p>In this second phase, a number of growers will be invited to pilot the program. A comprehensive review will be undertaken following the pilot to ascertain the effectiveness of the pilot.</p> <p>Throughout the second phase, the 417 WHM visa extension will not be changed.</p>
Stage Three: Industry Pilot Phase	24–36 months	<p>In this third phase, all vegetable industry employers are able to apply for Approved Employer status and to access workers under SWP Streams 1 and 2. A comprehensive review will be undertaken to ascertain the effectiveness of the industry pilot.</p> <p>Throughout the third phase, the 417 WHM visa extension will be changed so that the number of visa extensions available will be cut by half.</p>
Stage Four: Industry-Wide Implementation	36–48 months	<p>In the fourth phase, and presuming the successful completion of the previous phases, the WHM second year visa extension will be completely phased out and replaced by the SWP Streams 1 and 2.</p>

5.5 Conclusion

This report has analysed both the *depth* of labour supply challenges facing vegetable growers and the *fragility* of current labour supply options currently provided within the Australian regulatory framework. Our argument is not to *increase* or *decrease* the amount of temporary migrant workers available to growers at harvest time but to *redesign* labour migration pathways to ensure that temporary migrant workers are channelled via visa categories that will enable growers to meet their ongoing labour needs more efficiently and sustainably. In essence, our reform agenda articulates a new vision for labour supply for the Australian vegetable industry — one that seeks to stimulate the involvement of local workers but underpins this core approach through reliance on dedicated horticultural workers entering Australia via the SWP and WHM visa in *Package One* or the SWP, Streams 1 and 2 in *Package Two*. Under both packages, the SWP and WHM visas are redesigned.

This research project has aimed to look at the vegetable industry *as a whole*, and to address all of the dimensions of the labour supply question. We have attempted to maintain a broad approach to the question and to rely on the evidence from our quantitative and qualitative research and from existing studies to maintain an evidence-based perspective on the issues raised. We have employed a range of strategies to achieve this:

- we have identified and consulted major stakeholders in the industry;
- we have used a conventional theoretical framework, drawn from labour economics, to understand the nature of labour supply challenges in the industry;
- we have considered the relationship between local and migrant workforces in the industry;
- we have considered local supply challenges in the context of the international environment in which the industry operates; and
- we have drawn on a range of international comparisons to contextualise our analysis.

The result is a comprehensive reform agenda.

Although we have presented our findings in two comprehensive reform packages, we understand that legal reform is commonly piecemeal. Although each element of the agenda might be debated separately, we argue that the reforms contained within each package should be considered as a whole. In particular, the suite of reforms in relation to local workers and labour hire registration are applicable to both packages, to avoid substitution effects it is of utmost importance that the reforms in relation to the SWP not be considered in isolation from the reforms to the WHM visa in either *Package One* or *Package Two*.

Of course all reforms involve potential risks and both reform package options articulated in Chapter 5 are no different. To varying degrees, these packages require industry to forgo its current dependence on what we view as a largely unregulated, poorly targeted and often exploited labour force in favour of a more targeted, long-term and strategic approach. If each reform package is to be successful it will require strong industry buy-in and support. It will also require industry to collaborate with other important stakeholders, including government, unions and education and training providers, particularly at the local level.

We see this report as initiating a conversation about how best to meet growers' labour supply needs. We hope that it will spark a deeper and more evidence-based approach on the types of national and local reforms that are needed in order to protect effectively the interests of growers and workers.

5.5.1 Next Steps

Stakeholder Engagement and Consultation

We understand that there is much work to be done in explaining the merits of our proposals, and we expect that the reform package will change over time in light of feedback. Our role as independent researchers is to highlight the evidence underpinning the proposals, rather than championing the proposals themselves.

Although this project has specifically examined labour supply challenges and solutions for the Australian vegetable industry, our next project beginning 2017 and continuing into 2018 will consider the labour needs of the entire horticulture industry.

Legal and Policy Reform

Since the end of the Second World War, Australia has used migration law and policy as a lever for economic, cultural and social change. Both sides of politics have introduced ambitious, and sometimes experimental, new programs to benefit the Australian community. Many of these earlier reforms were controversial, and today is no different.

The field of migration law and policy continues to be a dynamic area of reform. Governments, in response to stakeholder demands, are regularly introducing new programs and amending existing ones in response to changing attitudes and political developments internationally and to maximise the economic and other benefits of Australia's migration program. The last 20 years has seen a move from a migration program that focused almost exclusively on permanent migration, to a program that brings in close to 1 million people annually on a range of temporary work and study visas. This increase in temporary migrant workers has brought many challenges which often can lead to heated debates both in parliament and in the media.

The reform agenda contained in this report represents the views that we have formed about the most equitable and sustainable labour supply options for the vegetable industry on the available evidence. We acknowledge, however, that there is more work to be done to understand the labour supply challenges in the vegetable and related industries. As new evidence emerges, different responses to these challenges will no doubt present themselves. We look forward to continuing to research in this space in collaboration with industry and other stakeholders.

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Vegetable grower practices, experiences and views concerning employment of seasonal farm labour

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1. Executive summary

This report presents findings of a survey of vegetable growers across all Australian states apart from Tasmania. Fieldwork was conducted by telephone among a sample of n=332 growers. The sample frame was based on contact lists provided by peak grower bodies in each state. Consequently the survey results are based on a sample of growers who are members of, or associated with these peak bodies, rather than a sample drawn from the entire vegetable grower population.

Basic market structure

- A little over 70% of the growers surveyed had used **paid** workers to do picking, packing or grading in the last five years, with the balance only using family. However a majority of those using paid labour *had also used family* – so using a mix of both appears to be the norm. The remainder of the survey results relate only to those who had used paid labour.
- Most growers (70%) who hire pickers, packers or graders are *small* businesses, employing a total of less than 20 people in peak season; 28% are *medium* businesses with 20-199 employees, and 2% are large with 200+ people. About two-thirds use pickers, packers or graders for more than half the year, including around 40% who need workers *all year round*. Larger businesses are more likely to need workers for 7-12 months.
- A majority (73%) mostly use **casual** workers, with the balance mostly using **permanent full time/ part time** staff. Casual labour is predominant regardless of business size or seasonal requirements, however it is greatest among those who need workers for only 1-6 six months a year.

Recruiting pickers, packers and graders

- Nearly all growers (88%) have recruited workers directly themselves in the last five years, through advertising, job boards, talking to people they know, and the like. However 40% have used a Labour Hire Company, and about 30% have recruited through Youth Hostels. Usage of The National Harvest Labour Information Service (9%) or migration agents (7%) is relatively low. The penetration of Labour Hire Companies increases with business size - around 60% of businesses employing 20+ people have used one in the last five years.
- Three channel *combinations* account for 70% of all grower practices (i) *only* recruiting directly by self, 30% (ii) recruiting directly *and* using a Labour Hire company, 22% (iii) recruiting directly *and* using Youth Hostels, 18%.
- In terms of the characteristics that growers seek when looking for workers, the top priorities are:
 - basic physical ability to do the job
 - being able to:
 - start work immediately
 - commit to a full season
 - speak and understand basic English.
- Two-thirds also regard availability to work *long hours* as important, and while *previous experience* is important for about half, few rate it as *very* important.
- Although only 10% say they place importance on *ethnic background*, growers certainly have impressions about different groups. Workers of Asian background are regarded as by far the most productive and reliable (covered in further detail below).

1. Executive summary

Usage of Australians vs. temporary migrants

- In the last five years, about 80% of growers have used **Australian** workers (mostly from their local region), and about 80% have used **temporary migrants**. Obviously enough, many have used both. People on working holidays are the most commonly used temporary migrants. Only 20% have used Pacific Seasonal workers.
- The number of different categories of workers used increases with business size and therefore labour requirements – growers employing 20+ people are the largest users of *all* worker categories. *Exclusive* use of Australian workers is greatest among the smallest businesses employing fewer than five people.
- Analysis by recruiting channels shows usage of temporary migrants is simply greater among growers who extend to any recruiting channels apart from recruiting directly themselves. This in turn is correlated with employment size – bigger businesses with greater labour needs extend to multiple recruiting channels.
- One-in-five growers believe that use of Undocumented workers is common in the industry, but only 2% admit to having used them.

Perceptions about worker productivity/ reliability

- Growers were asked to give their impressions about the productivity/ reliability of seven categories of worker, including a mix of ethnic groups and classes of temporary migrants. Although many did not have an impression about international students, Pacific Seasonal workers and particularly Undocumented workers, the views of those who *do* have an impression can be used to draw conclusions.

- Australians are *not* regarded favourably compared with all categories of temporary migrants. Australians are also seen as far less productive and reliable than people from European backgrounds, and particularly (as noted earlier) those from Asian backgrounds.
- Among those who have an impression about them, people on working holidays and international students are well regarded (slightly more so the former), as are Pacific Seasonal workers. Impressions about Undocumented workers are also largely positive, though about 20% do not believe they are very productive or reliable.

Wages and conditions

a) Sources of information about wages and conditions

- There are a number of sources of information growers use to help them set wages and conditions, the key ones being:
 - the relevant award, 92%
 - industry bodies, 61%
 - the Fair Work Ombudsman, 36%, and
 - talking to other farmers, 43%.
- Use of professional external sources such as industry bodies, the Fair Work Ombudsman and HR consultants is greater among businesses employing 20+ people, whereas talking to other farmers is more prevalent among smaller businesses.

b) Work hours

- Long hours are not uncommon. Typically growers report work weeks of 30 to 50 hours in peak season, and 40% report 40+ hour weeks. Roughly speaking, the bigger the business the longer the hours. Among those employing 20+ people, 60% work 40+ hour weeks.

1. Executive summary

- There is evidence that business scale and expectations about hours, lead businesses of different size to meet their seasonal requirements with different models. For example, based on a very small sample, the bulk of businesses employing fewer than five people who need workers 7-12 months a year, work no more than 40 hours. Consequently a mix of permanent full time/ part time workers is open to them as a solution. However larger businesses with the same seasonal requirements, but needing more people and expecting them to work 40+ hours, may mean that casual workers are the best/ only solution for most.

c) Pay rates

- Paying an *hourly* rate is almost universal, and 25% also use piece rates. Piece rates are more common among larger businesses. About half those using them, say the rates are *documented* for workers in a written agreement.
- One-in-four growers believe that paying *below* the award is common in the industry, but when asked directly, only 5% admit to doing so in the last five years. However pay rate information provided by growers, if accurate, suggests about 15% are currently paying below the award, and it is more common among businesses employing less than 20 people.
- Most growers have people working on weekends, but only about 25% of them pay weekend pay penalty rates - larger businesses being more likely to do so. A third say their people work 'overtime' hours, but only half of these businesses pay penalty rates. (Note: 27% of growers who don't have people working 'overtime' also report they work 40+ hour weeks).

- Among those who have used labour hire contract workers, about half say the *last time* they used them they were **aware of the wage rate paid to the workers** themselves. Of these, about 70% say the Labour Hire Company provided written documentation about the rate paid to workers, and about 40% say they had input to setting the wage rate paid to workers.

d) Other conditions

- The provision of training for workers in how to do their job is universal, and OH&S training is also very common, 84%.
- Virtually all growers also report their workers can have a say about the way things are done by raising things with a manager – and the facility to do so through team meetings is also quite prevalent, 62%. Suggestion boxes (15%) or having a voice through union representatives (3%) are not common.
- Although most say that, at least sometimes, seasonal workers organise their own accommodation, 46% also report workers using accommodation organised with some type of assistance from the grower or a labour hire company.

Difficulty recruiting pickers, packers and graders

- At some point in the last five years, 40% of growers have experienced occasions where they simply could not get enough workers. Most commonly they have met this challenge by getting other employees to do the work, getting help from friends or family, or simply working harder themselves. Some have tried improving wages or conditions. However, 63% have left vegetables unpicked (and this amounts to 25% of *all* growers).

1. Executive summary

- More generally, about two-thirds of growers report having difficulty getting pickers, packers or graders (22% *'always or most of the time'* and 41% *'sometimes'*). Those employing 5-19 people are the most likely to do so.
- Growers overwhelmingly put the problem down to the **nature of the work** itself – either people don't like the type of work and/ or the need to work outside under any weather conditions. Nonetheless significant minorities also believe the **location of their farm** (38%) or **competition for workers** from other farms in their area (30%) are factors. Only 22% feel it is because the **job doesn't pay enough**. Some say that people are 'lazy'/ 'don't want to work'/ 'get paid for doing nothing' on benefits, and a few (5%) refer to the 'backpacker tax' being an issue.
- As a complement to obtaining growers' views about the issue, a systematic analysis of results was undertaken to identify factors correlated with recruiting difficulty:
 1. This revealed that **growers with higher expectations when recruiting are also a little more likely to have difficulty**, that is, growers placing greater importance on factors such as availability to work long hours, availability to commit to a full season, previous experience, and the like.
 2. However there appears to be **no compelling evidence of a correlation between recruiting difficulty and wages or other conditions**, including paying award rates, penalty rates, providing accommodation assistance, training, or avenues for workers to 'have a say'. *[However this doesn't preclude the possibility that a grower who handles these issues well and markets it effectively can have greater success].*
 3. Use of **Pacific Seasonal workers is more common among those with recruiting difficulties**.

4. Those with recruiting difficulties **appear to know more about Undocumented workers**, i.e. they are more likely to (i) have an *impression* about the productivity/ reliability of Undocumented workers and (ii) believe that use of them is 'common' in the industry. However there is no direct evidence of any significance usage of them by these growers.
5. Growers who have difficulties *'always or most of the time'* **are the most likely to use Labour Hire Companies and Migration agents**. It's probable that using these channels has been an *outcome* of having difficulty recruiting. However it's also true that almost as many growers who *'never'* have difficulty use Labour Hire Companies.

This raises two questions:

Firstly, if contract labour is more costly, why did growers who *currently* never have difficulty start using a Labor Hire Company in the first place? A likely answer is that they *were* previously having difficulty recruiting. If so, it confounds analysis of the relationship between recruiting difficulty and usage of contract labour.

But this still leaves a second question: why do some growers using Labour Hire Companies have ongoing recruiting problems, while others do not? There are a few possibilities:

- The research only measured channels used in the last five years – it did not cover recency or consistency of usage. Those with chronic recruiting problems may only use Labour Hire Companies (or other channels) *periodically* because of cost.
- Some Labour Hire Companies may be better than others, or tap into labour sources others cannot.
- There are other characteristics about the growers themselves or their environment that explain the difference.

2. Methodology

Methodology

The sample

A total of n= 332 interviews with vegetable growers were conducted by telephone in NSW, Victoria, Queensland, South Australia and Western Australia.

Of these, n= 252 were growers who had hired or paid pickers, packers or graders in the last five years. The balance of n= 80 had not, relying solely on family members to undertake this type of work.

Fieldwork

A pilot survey was conducted on August 10-12, with fieldwork for the main survey undertaken over the period August 17–September 6, 2016.

The population being surveyed and the sample frame

The Australian Bureau of Statistics (ABS) estimates there are 4,024 vegetable growing businesses in NSW, Victoria, Queensland, South Australia and Western Australia¹.

A sample frame with complete coverage of this grower population was not available. However contact lists were provided by the peak grower bodies NSW Farmers, AUSVEG VIC, Growcom, AUSVEG SA and VegetablesWA. After accounting for duplicate phone numbers, the combined list contained telephone numbers for 1,552 contacts. During fieldwork, a minimum of three attempts was made to reach each contact, with final call outcomes shown overleaf in Table 1.

- A. 401 (26%) were confirmed as vegetable growers
- B. 540 (35%) were identified as not being vegetable growers (including 201 numbers that were disconnected or fax numbers)
- C. 611 (39%) could not be classified as vegetables growers or not – including 98 refusals; 46 cases of a language barrier, and 467 where no contact could be made at all after a minimum of three attempts.

Consequently, at most, the sample frame provided coverage of 1,012 vegetable growers (i.e. the total of 1,552 contacts less the 540 identified as not being vegetable growers).

Although some of these growers may have registered their vegetable growing business under multiple ABN's, it seems clear that the sample frame covered only a particular subset of the entire vegetable grower population of around 4,000. It's unknown how this subset may differ from the entire population.

Consequently the survey should be considered as a survey of this population subset, rather than a survey of the entire population.

Weighting

The state in which growers operate is the only known characteristic of all records on the sample frame. This can be used to weight the survey sample, so that interviews from each state are re-combined in proportions reflecting the number of growers from each state on the contact list.

To do so, an assumption must be made about the 611 contacts that could not be classified. There are two options:

Option 1: The 611 contacts are, in fact, all vegetable growers. So the population being surveyed includes 1,012 growers (401+611).

Option 2: Based on the records that *were* classified, we assume that a similar proportion of the 611 records are vegetables growers, and the remainder are not. This means assuming that only about half of the 611 records are vegetable growers (i.e. from Table 1, the proportion of growers = $(A) / (A + B1 + B2) = 54\%$. So the population would be $(A) + 54\% (C) = 401 + .54 * 611 = 731$ growers.

1. ABS: Agricultural Commodities, Australia- 2014-15

Methodology

Obviously the true number of growers is somewhere in between these options. On the basis that Option 2 is probably overly pessimistic, Option 1 has been adopted.

This means the assumed population of 1,012 growers being surveyed is distributed by state as shown in Table 2. The table also shows the raw and weighted sample profile by state.

Table 2

	Assumed population		Raw sample profile		Weighted sample profile	
	(A)+(C)	%	n	%		%
NSW	517	51	123	37	170	51
Qld	124	12	69	21	41	12
SA	43	4	19	6	14	4
Victoria	63	6	16	5	20	6
WA	265	26	105	32	87	26
Total	1,012	100	332	100	332	100

Table 1 - call outcomes

	NSW	Qld	SA	Vic	WA	Total
Total contact list (after removal of duplicate numbers)	863	139	54	69	427	1552
(A) Contacts confirmed as vegetable grower						
Interview with vegetable grower who has hired/ paid pickers, packers or graders in the last five years	75	65	17	16	79	252
Interview commenced with vegetable grower, but not hired/ paid pickers/ packers/ graders in last five years	48	4	2		26	80
<i>Subtotal vegetable growers interviewed</i>	<i>123</i>	<i>69</i>	<i>19</i>	<i>16</i>	<i>105</i>	<i>332</i>
Interview commenced but terminated part way by respondent	3				2	5
Appointment (appointment made to call-back either by target respondent or someone else who answered, but unable to contact the person again after a minimum of three attempts)	11	3	1	7	8	30
Away duration (target respondent was away until after the survey period)	12	5	3	4	10	34
Total (A)	149	77	23	27	125	401
(B) Contacts identified as not being vegetable grower						
B1. Interview commenced farmer/ farm manager, but respondent does not grow vegetables	59	7	2		30	98
B2. Interview not commenced but contact advised either that they were no longer growing vegetables, or that the contact number was not a vegetable farm	154	7	7	4	69	241
<i>Subtotal B1+B2</i>	<i>213</i>	<i>14</i>	<i>9</i>	<i>4</i>	<i>99</i>	<i>339</i>
B3. Disconnected number/ fax	133	1	2	2	63	201
Total (B)	346	15	11	6	162	540
(C) Others not classifiable as vegetable grower or not						
Refusal	46	15	2	11	24	98
Language (difficulty communicating in English with person who answers phone)	39				7	46
No contact made after a minimum of three calls (no answer, voicemail)	283	32	18	25	109	467
Total (C)	368	47	20	36	140	611

Methodology

Statistical significance testing

Statistically significant differences between segments at the 95% level of confidence are identified throughout the report. Statistical significance testing was undertaken by comparing a particular segment or group *with its complement*. For example, results among growers who employ less than 5 people during the peak season would be compared with results among growers who are *not* in this category, i.e. growers who employ more than 5 people in peak season.

- In charts:
 - segments that are significantly *higher* than others are indicated using blue 'up' arrows ▲
 - segments that are significantly *lower* than others are indicated using red 'down' arrows ▼.
- In tables, segments that are significantly *higher* than others are indicated using **blue** text, and segments that are significantly *lower* than others are indicated using **red** text.

For this particular survey, the total number of vegetable growers interviewed, n= 332, constitutes a relatively high fraction (33%) of the total assumed population of 1,012 vegetable growers who are members of, or associated with the peak bodies of NSW Farmers, AUSVEG VIC, Growcom, AUSVEG SA and VegetablesWA.

Consequently statistical significance testing has included a Finite Population Correction (FPC), where the entire population, N, is 1,012, and the sample size, n, is 332.

$$\sqrt{\frac{N - n}{N - 1}}$$

Through necessity, the same sampling fraction (33%) and FPC has been assumed for all segments.

Characteristics of sample – vegetables grown

Collectively, the sample of growers interviewed grew over 30 different types of vegetables. A comparison with ABS population data shows the sample includes a reasonable representation of a number of categories, but has a substantial over-representation of businesses growing lettuces, potatoes and “other” vegetables. Overall it suggests that the growers interviewed are more likely to be growing *multiple* crops.

	ABS ¹	Survey sample (weighted)
	%	%
Total vegetable growers	100	100
Beans	6	5
Capsicums - Outdoor	6	} 10
Capsicums - Undercover	4	
Carrots	4	9
Lettuces - Outdoor	5	} 19
Lettuces - Undercover	2	
Melons	9	12
Mushrooms	2	0
Onions	4	8
Potatoes	14	21
Tomatoes - Processing	2	} 19
Tomatoes - Fresh market - Outdoor	9	
Tomatoes - Fresh market - Undercover	6	
All other vegetables	63	74

1. ABS: Agricultural Commodities, Australia- 2014-15 for NSW, Vic, Qld, SA and WA

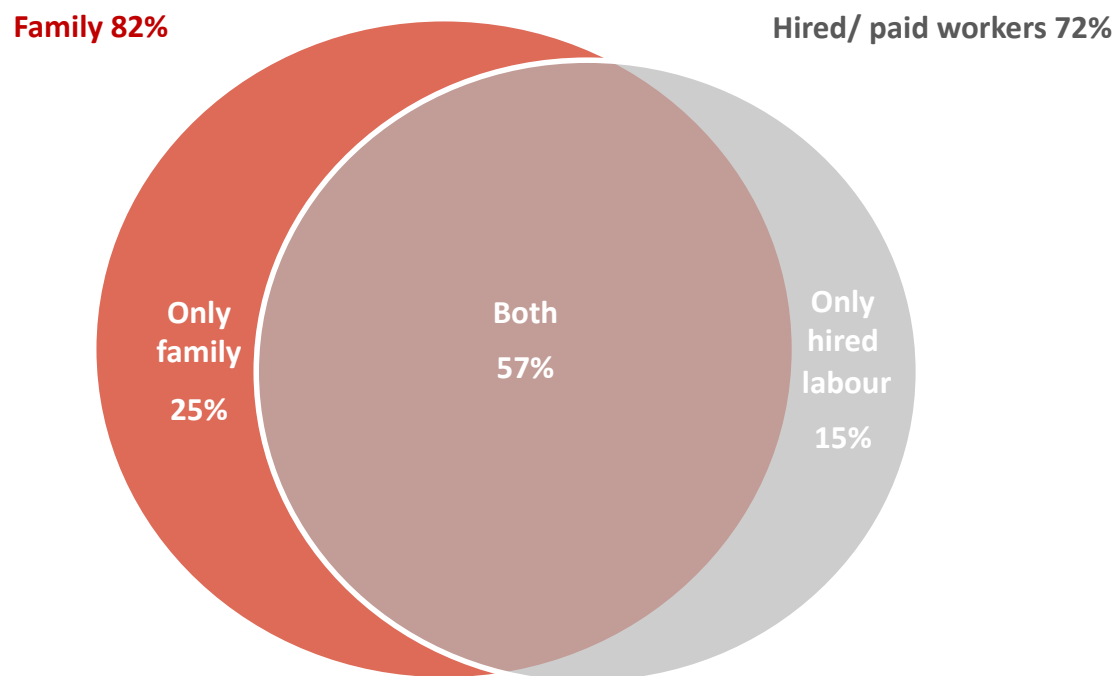
3. Findings

3.1 Basic market structure

- Use of paid labour vs. family
- Employment size and seasonal requirements
- Use of permanent vs. casual labour

Use of paid labour vs. family

In the last five years, have you ..(i) used any members of the family to do picking, packing or grading (ii) **hired** other people, or **paid** other people to do picking, packing or grading?



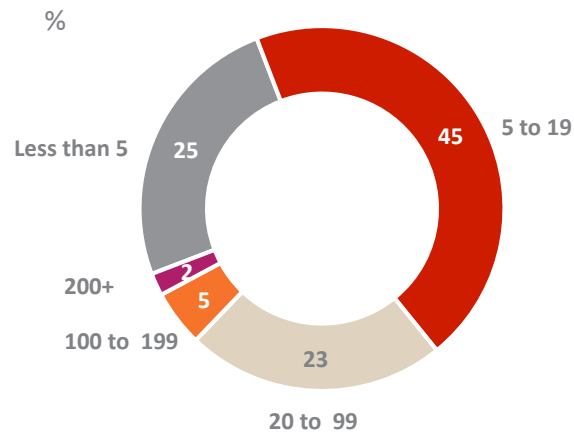
- Of the vegetable growers surveyed, about 70% reported using hired or paid labour for picking, packing or grading in the last five years – and it is these growers who are the focus of the project.
- The balance had either used family members *exclusively*, 25%, or not used either family or paid labour, 3%.
- Overall the most common practice is for growers to use a mix of family and paid workers to get the job done.

Base: Total sample of vegetable growers (n= 332)

Employment size and seasonal requirements

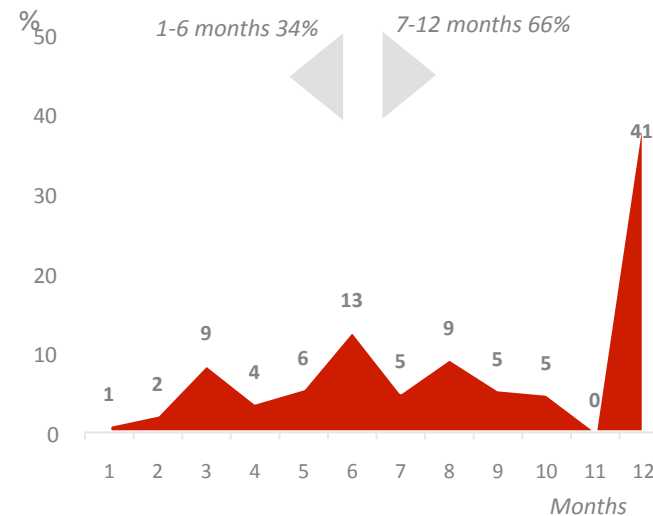
No. people employ in peak season

In total, including full time, part time or casual staff, **or** any contract workers, about how many people does your farming business employ during its **peak** season?



No. months use pickers, packers or graders

And in typical year, about how many months of the year does your business use pickers, packers or graders?



- Most growers (70%) who hire pickers, packers or graders can be classified as *small* businesses, employing a total of less than 20 people in peak season; 28% are *medium* businesses with 20-199 employees, and 2% are large with 200+ people.
- About two-thirds use pickers, packers or graders for more than half the year, including around 40% who report needing this type of labour *all year round*.
- There is a relationship between employment size and seasonal requirements, with growers who need labour more than six months of the year also tending to be larger businesses.

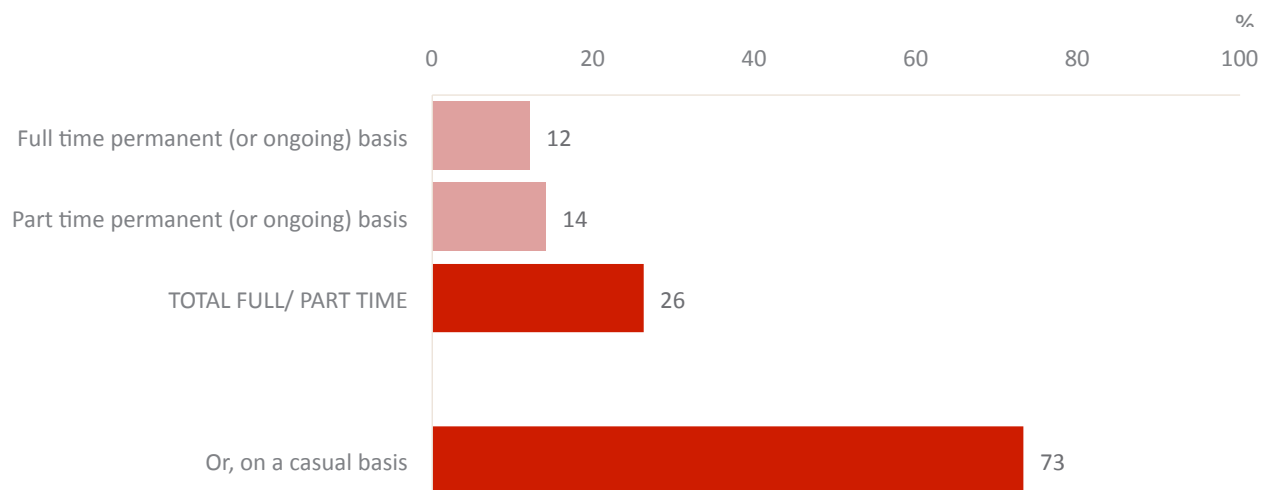
	Months use pickers, packers or graders	
	1-6 months	7-12 months
(Sample size n=)	(84)	(168)
Number employ	%	%
Less than 5	45	15
5 to 19	40	47
20+	15	38

Significantly **higher**/**lower** than others

	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

Usage of permanent full/ part time vs. casual labour

Are most of your pickers, packers or graders employed on a...?



By employment size and seasonal requirements

	Months use pickers, packers or graders	
	1-6 months	7-12 months
(Sample size n=)	(84)	(168)
	%	%
Full time	3	17
Part time	11	15
Total full/ part time	14	32
Casual	86	67
None/ can't say	-	1
Total	100	100

	No. people employ in peak season		
	Less than 5	5-19	20+
(Sample size n=)	(59)	(111)	(82)
	%	%	%
Full time	6	11	18
Part time	23	17	3
Total full/ part time	29	28	21
Casual	71	72	77
None/ can't say	-	-	2
Total	100	100	100

- A majority of growers (73%) mostly use **casual** workers for picking, packing or grading, with the balance relying mainly on **permanent full time or part time** staff.
- Casual labour is predominant regardless of a grower's business size or seasonal requirements. However the prevalence of full time/ part time staff is greater among businesses that need workers for more than six months a year.

Significantly **higher/lower** than others

Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

Usage of permanent full/ part time vs. casual labour

Are most of your pickers, packers or graders employed on a...?

Worker mix By employment size and seasonal requirements

Caution: some sample sizes very small!

	EMPLOY < 5 PEOPLE		EMPLOY 5-19		EMPLOY 20+	
	1-6 mnths	7-12 mnths	1-6 mnths	7-12 mnths	1-6 mnths	7-12 mnths
(Sample size n=)	(37)	(22)	(35)	(76)	(12)	(70)
	%	%	%	%	%	%
Full time	-	15	4	14	7	21
Part time	14	39	13	18	-	3
Total full/ part time	14	54	17	33	7	24
Casual	86	46	83	67	93	73
None/ cant say	-	-	-	-	-	3
Total	100	100	100	100	100	100



- Dissecting businesses by both employment size and seasonal requirements yields six segments, which in some cases have very small sample sizes.
- Nonetheless they suggest that businesses of different size may meet the same seasonal requirements in different ways. For example, there's an indication that many very small businesses employing less than 5 people that need workers more than six months of the year, may be more likely than others to employ full time/ part time staff (presumably Australian workers). However larger businesses employing 20+ people who also need workers more than six months, are more likely to fulfill their needs with casuals.
- However it does seem clear that, regardless of business size, the vast majority of growers who only need workers for less than six months of the year, opt mostly for casual workers.

Significantly higher/lower than others

3.2 Recruiting pickers, packers and graders

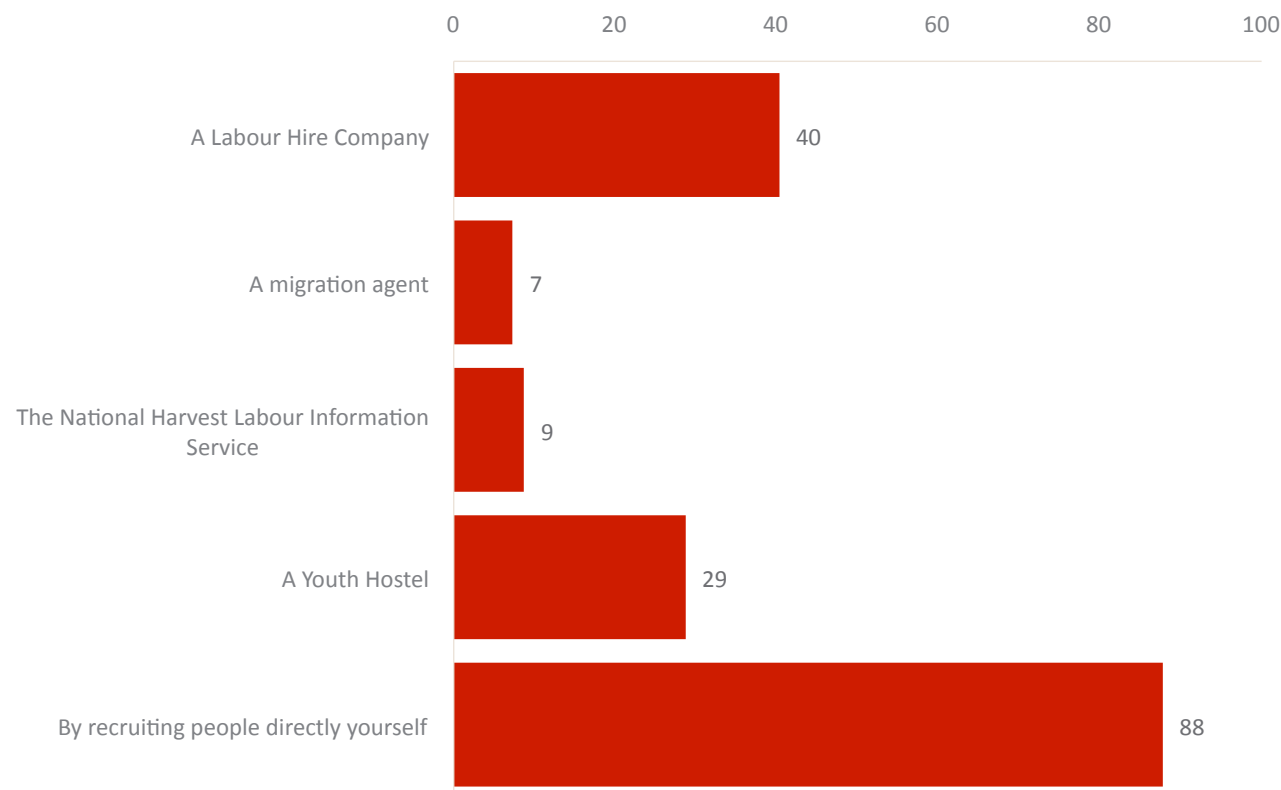
- Recruiting channels
- Characteristics growers seek when recruiting workers

Recruiting channels used for pickers, packers or graders

Firstly, you can get **contract** workers from **labour hire** companies (**PAUSE**). The rate you pay for each worker includes their pay, **plus**, a profit margin for the hire company (**PAUSE**). In the last five years, have you used pickers, packers or graders that were **contract** workers from a labour hire company?

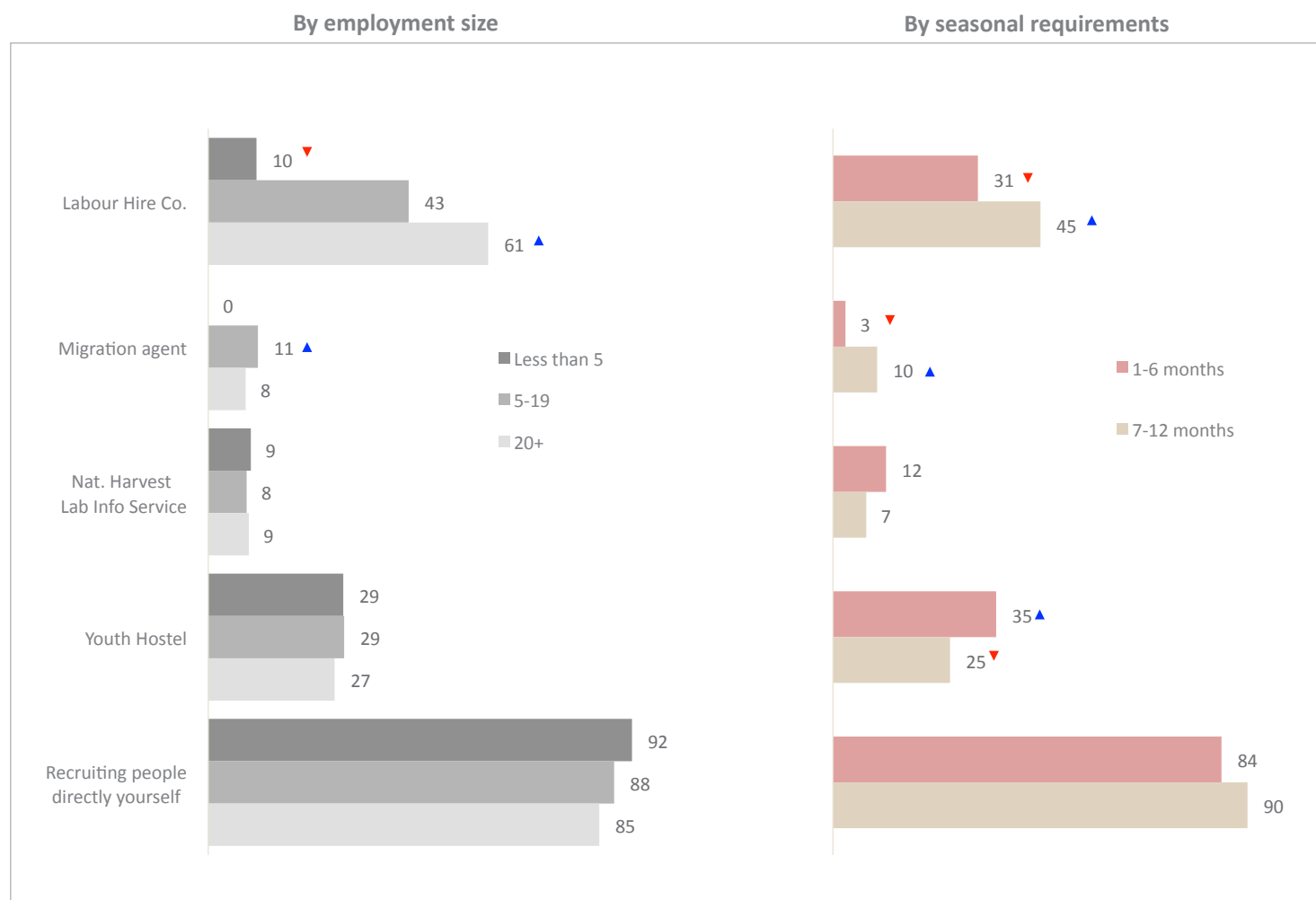
And which of these other ways have you employed pickers, packers or graders in the **last five years**?

%



- Nearly all growers (88%) say that in the last five years they have **recruited labour directly themselves** through advertising, job boards, talking to people they know and the like.
- However:
 - a significant minority of 40% have used **labour hire companies**;
 - about 30% have recruited through **Youth Hostels**
- Usage of **The National Harvest Labour Information Service** (9%) or **migration agents** (7%) is relatively low.

Recruiting channels used for pickers, packers or graders

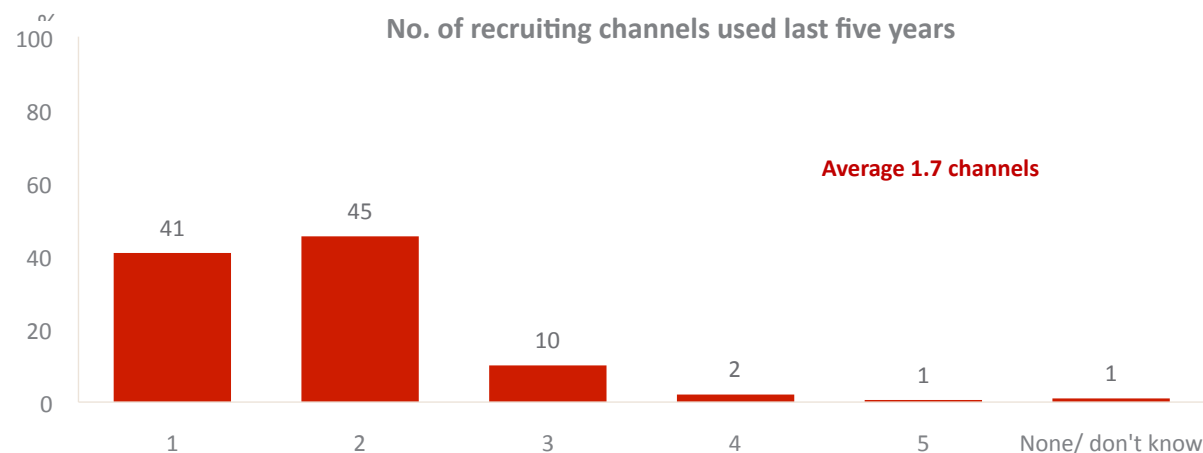


- Usage of labour hire companies, is far more prevalent (61%) among businesses employing 20+ people, but very low (10%) among the smallest businesses employing fewer than 5 people.
- Labour hire companies and migration agents are more likely to have been used by growers who need workers more than six months of the year.
- Conversely the penetration of recruiting through Youth Hostels is higher among those who only need workers 1-6 months a year.

▲ ▼ Significantly higher/lower than others

Base: Total growers who pay/ hire pickers, packers or graders (n= 252); Employ less than 5 people (n= 59); 5-19 (n= 111); 20+ (n= 82);
Need workers 1-6 months (n= 84), 7-12 months (n= 168)

Recruiting channels used for pickers, packers or graders



- Most growers have used either one or two recruiting channels in the last five years – and on average, 1.7.
- The number of channels used rises with employment size – presumably reflecting the need for larger businesses to recruit more workers.
- The number of channels does not, however, differ by seasonal requirements.

		NUMBER EMPLOYED IN PEAK SEASON			MONTHS NEED PICKERS, PACKERS, GRADERS	
	TOTAL	Less than 5	5-19	20+	1-6 months	7-12 months
(Sample size n=)	(252)	(59)	(111)	(82)	(84)	(168)
	%	%	%	%	%	%
1	41	54	39	32	45	39
2	45	41	43	52	45	45
3	10	1	15	10	8	11
4	2	-	1	6	2	2
5	1	-	1	-	-	1
Total 3+	13	1	17	16	9	14
None/ don't know	1	3	1	-	1	1
Average	1.7	1.4	1.8	1.9	1.6	1.8

Significantly higher/lower than others

Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

Recruiting channels used for pickers, packers or graders

Combinations of recruiting channels used last five years

	TOTAL	NUMBER EMPLOYED IN PEAK SEASON			MONTHS NEED PICKERS, PACKERS, GRADERS	
		Less than 5	5-19	20+	1-6 mnths	7-12 mnths
(Sample size n=)	(252)	(59)	(111)	(82)	(84)	(168)
	%	%	%	%	%	%
One channel						
Labour Hire	6	-	7	9	7	5
Youth Hostel	2	3	3	1	5	1
Recruit self	30	47	28	21	31	30
Two channels						
Labour Hire/ Migration agent	-	-	1	-	-	1
Labour Hire/ Youth Hostel	2	2	1	4	4	1
Labour Hire/ Recruit self	22	8	19	35	14	26
Migration agent/ Recruit self	1	-	2	1	1	1
NHLIS/ Recruit self	3	7	2	2	6	2
Youth Hostel/ Recruit self	18	27	21	9	21	17
Three channels						
Labour Hire/ Migration agent/ NHLIS	-	-	1	-	-	1
Labour Hire/ Migration agent/ Youth Hostel	-	-	-	1	-	1
Labour Hire/ Migration agent/ Recruit self	2	-	4	1	1	2
Labour Hire/ NHLIS/ Recruit self	1	-	2	-	-	1
Labour Hire/ Youth Hostel/ Recruit self	4	2	5	5	5	4
Migration agent/ Youth Hostel/ Recruit self	-	-	1	-	-	1
NHLIS/ Youth Hostel/ Recruit self	2	-	2	4	2	2
Four channels						
Labour Hire/ Migration agent/ NHLIS/ Recruit self	-	-	-	1	-	1
Labour Hire/ Migration agent/ Youth Hostel/ Recruit self	1	-	1	2	-	2
Labour Hire/ NHLIS/ Youth Hostel/ Recruit self	1	-	-	2	1	1
Migration agent/ NHLIS/ Youth Hostel/ Recruit self	-	-	-	1	-	1
All five channels						
Labour Hire/ Migration agent/ NHLIS/ Youth Hostel/ Recruit self	-	-	1	-	-	1

- Three channel combinations account for 70% of all grower practices:

- only recruiting directly by self, 30%
- recruiting directly and using a Labour Hire company, 22%
- recruiting directly and using Youth Hostels, 18%.

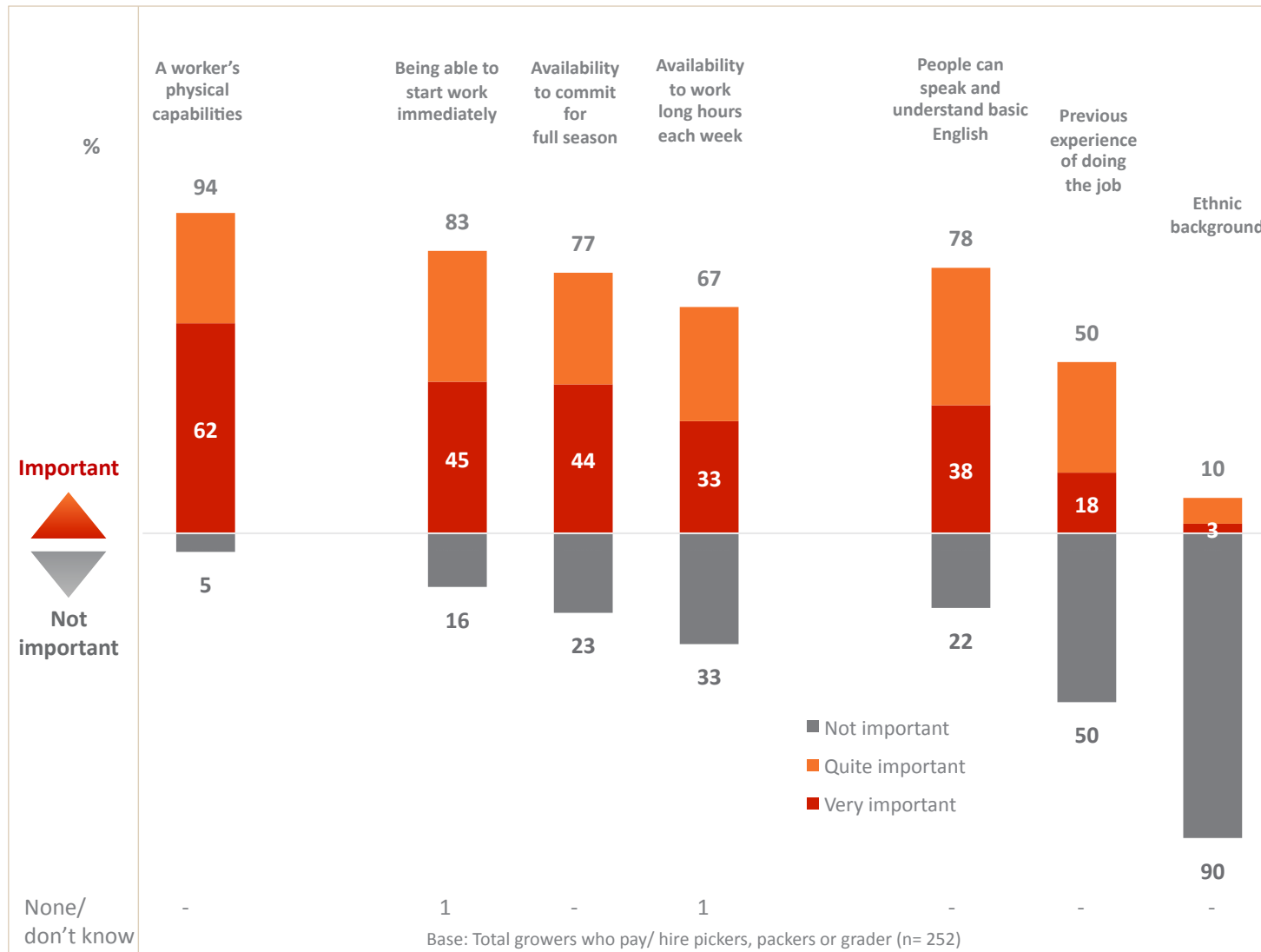
- Most of the smallest businesses that employ fewer than 5 people use only two of those combinations – either direct recruiting alone, or mixing direct recruiting with Youth Hostels.

Significantly higher/lower than others

Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

Characteristics growers seek when recruiting workers

When you're looking for pickers, packers or graders, please say how **important** each of the following skills or characteristics are for you – are they **very** important, **quite** important, or **not** important?



- In terms of the characteristics that growers seek when looking for workers, the top priorities are:
 - basic physical ability to do the job
 - being able to:
 - start work immediately
 - commit to a full season
 - speak and understand basic English¹.
- Two-thirds also regard availability to work long hours as important (and a third say it is very important).
- Only half regard previous experience is important, few rate it as very important.
- And, only 10% say ethnic background is important, though as will be seen in a later section, growers certainly have impressions about the productivity/ reliability of different groups of workers.

1. It may seem unexpected that about 20% did not rate basic English communication skills as being important. However it appears growers have strategies to deal with this. For example in a question about training, about 20% of these growers provide literacy/ language training where appropriate. There is also anecdotal evidence from interviewers that farmers mention factors such as (i) their own ability to speak other languages, or having someone else who can (ii) training people using 'visual' techniques.

Characteristics growers seek when recruiting workers

When you're looking for pickers, packers or graders, please say how **important** each of the following skills or characteristics are for you – are they **very** important, **quite** important, or **not** important?

		NUMBER EMPLOYED IN PEAK SEASON			MONTHS USE PICKERS/ PACKERS/ GRADERS	
	TOTAL	Less than 5	5-19	20+	1-6 months	7-12 months
(Sample size n=)	(252)	(59)	(111)	(82)	(84)	(168)
	%	%	%	%	%	%
Previous experience of doing the job						
Very important	18	27	18	11	19	17
TOTAL IMPORTANT	50	58	44	52	56	47
People can speak and understand basic English						
Very important	38	38	34	43	41	36
TOTAL IMPORTANT	78	82	78	75	83	75
A workers physical capabilities						
Very important	62	50	64	69	52	67
TOTAL IMPORTANT	94	90	93	99	91	96
People being able to start work immediately						
Very important	45	38	51	41	45	44
TOTAL IMPORTANT	83	80	85	83	84	83
Availability to work long hours each week						
Very important	33	21	38	36	24	37
TOTAL IMPORTANT	67	60	66	73	61	69
Availability to commit for a full season						
Very important	44	28	50	48	30	51
TOTAL IMPORTANT	77	63	81	81	69	80
Ethnic background						
Very important	3	0	4	4	2	3
TOTAL IMPORTANT	10	6	12	12	8	12

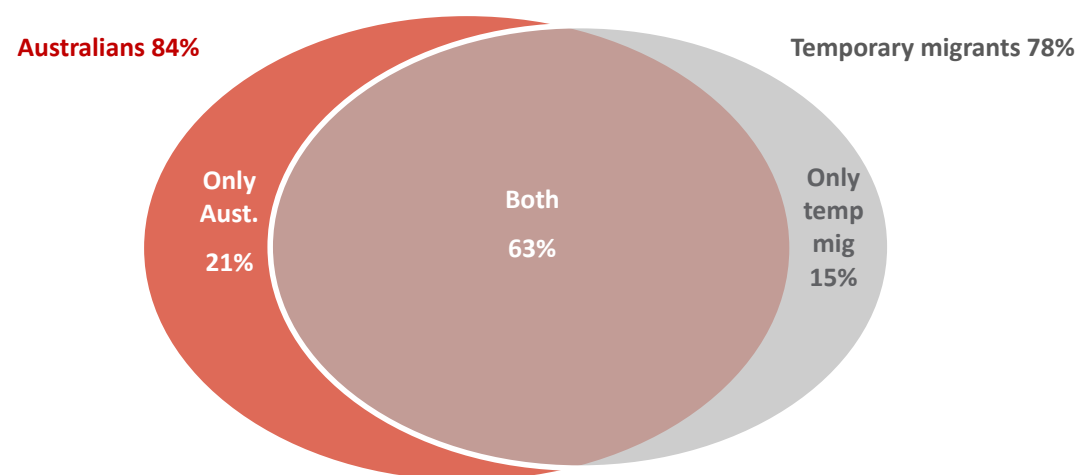
- There are few striking difference in the expectations of businesses of different size, though the most pronounced is that growers employing 5+ people place a greater emphasis on workers being **able to commit for a full season**.
- The smallest businesses place less importance on a few things, but they are the most likely to rate **previous experience** as very important.
- Those who need people for 7-12 months of the year place greater importance, or strength of importance, on **committing to a full season, working long hours and physical capability**.

Significantly **higher**/**lower** than others

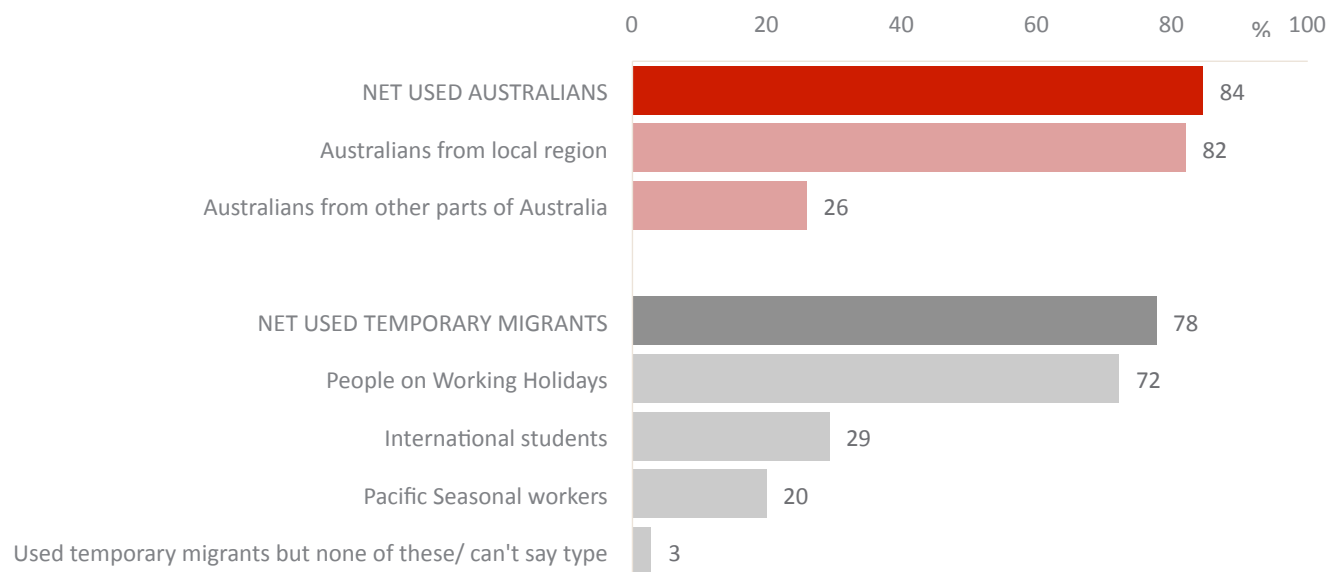
3.3 Use of Australians vs. temporary migrants

- Categories of workers used in the last five years
- Undocumented workers
- Literacy testing for temporary migrants
- Perceptions about worker productivity/ reliability

Categories of workers used last five years



- In the last five years, about 80% of growers have used **Australian** workers, and about 80% have used **temporary migrants**.
- Most commonly, growers have used both (63%), though 21% have used Australians exclusively, and 15% have used temporary migrants exclusively.
- Australian workers are most likely to come from the grower's local region, and people on working holidays are by far the most commonly used temporary migrants. One-in-five growers say they have used Pacific Seasonal workers in the last five years.



Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

Categories of workers used last five years

Categories of workers used by employment size and seasonal requirements						
		NUMBER EMPLOYED IN PEAK SEASON			MONTHS NEED PICKERS, PACKERS, GRADERS	
	TOTAL	Less than 5	5-19	20+	1-6 months	7-12 months
(Sample size n=)	(252)	(59)	(111)	(82)	(84)	(168)
	%	%	%	%	%	%
NET USED AUSTRALIANS	84	78	84	90	75	89
Australians from local region	82	75	81	90	69	89
Australians from other parts of Australia	26	21	27	28	35	21
NET USED TEMPORARY MIGRANTS	78	63	78	89	85	74
People on Working Holidays	72	60	72	83	79	68
International students	29	16	28	41	29	29
Pacific Seasonal workers	20	12	20	27	24	18
Used temporary migrants but none of these/ can't say type	3	1	2	5	3	2
Only used Australians	21	37	21	10	13	26
Only used temporary migrants	15	22	15	9	23	10
Used both Australians and temporary migrants	63	42	63	80	62	63

- The number of different categories of workers used increases with employment size and labour needs – growers employing 20+ people are the largest users of both Australians and every category of temporary migrants.
- Among the smallest businesses employing fewer than five people, employing Australians is more common than employing temporary migrants (78% vs. 63%). Indeed almost 40% of the smallest businesses say they have used Australian workers *exclusively* in the last five years.
- As previously noted, *casual* labour is the predominant choice for growers who need workers for less than six months – and this no doubt explains why use of temporary migrants is higher among this group.

Significantly higher/lower than others

Categories of workers used last five years

Categories of workers used by recruitment channels used in last five years

		RECRUITING CHANNELS USED LAST FIVE YEARS					ONLY recruited people directly yourself
		Labour Hire company	Migration agent	National Harvest Labour Info Service	Youth Hostel	Recruiting people directly yourself	
			Caution: very small sample sizes!				
(Sample size n=)	(252)	(103)	(18)	(21)	(82)	(220)	(76)
	%	%	%	%	%	%	%
NET USED AUSTRALIANS	84	83	68	93	86	88	85
Australians from local region	82	80	68	84	83	86	84
Australians from other parts of Australia	26	28	16	48	34	26	17
NET USED TEMPORARY MIGRANTS	78	89	83	93	99	77	54
People on Working Holidays	72	82	67	81	97	72	46
International students	29	41	40	42	40	29	15
Pacific Seasonal workers	20	39	48	40	21	16	2
Used temporary migrants but none of these/ can't say type	3	3	-	6	2	3	4
None/ cant say	1	1	-	-	-	-	1

- Usage of temporary migrants is higher among those who have used Labour Hire Companies and Youth Hostels as recruiting channels. However based on *tiny* samples sizes, this also appears to be the case for users of the National Harvest Labour Information service and Migration Agents (for some categories of temporary migrants).
- Consequently usage of temporary migrants is simply greater among growers who extend to any recruiting channels apart from only recruiting directly themselves. This, in turn, is correlated with employment size – bigger businesses with greater labour needs use more channels.

Recruiting channels used last five years by employment size

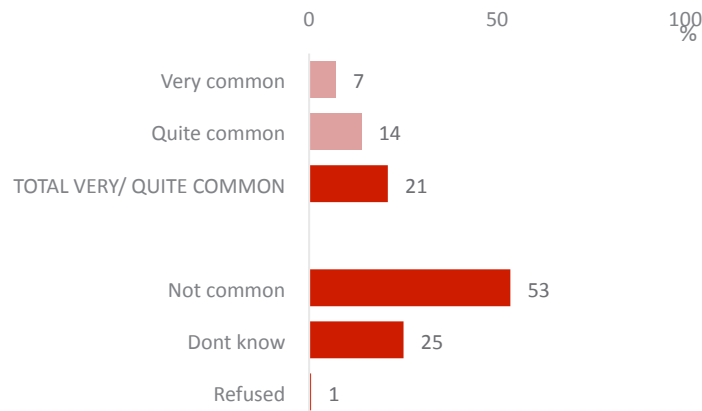
	TOTAL	NUMBER EMPLOYED IN PEAK SEASON		
		Less than 5	5-19	20+
(Sample size n=)	(252)	(59)	(111)	(82)
	%	%	%	%
Only recruit directly by self	33	52	31	21
Only used other channels	11	5	11	15
Used both	55	40	57	63
Used neither	1	3	1	-
TOTAL RECRUIT DIRECTLY BY SELF	88	92	88	85
TOTAL USED ANY OTHER CHANNEL	66	45	68	79

Significantly higher/lower than others

Undocumented workers

Perceptions about the prevalence of using undocumented workers

Farmers may also use "Undocumented" workers. These are people from other countries **without** the official right to work in Australia, **or** who are overstaying their visa, or working outside the terms of their visa (**PAUSE**). Do you think it is very common, quite common or **not** common for farmers in your industry to use "Undocumented" workers?

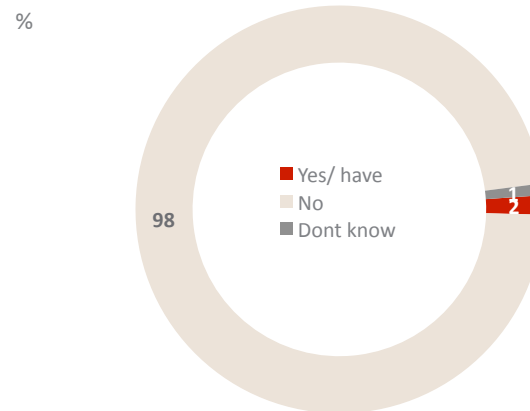


	TOTAL	NUMBER EMPLOYED IN PEAK SEASON		
		Less than 5	5-19	20+
(Sample size n=)	(252)	(59)	(111)	(82)
	%	%	%	%
Very common	7	5	9	6
Quite common	14	16	14	12
TOTAL VERY/ QUITE COMMON	21	21	22	19
Not common	53	63	51	50
Dont know	25	16	27	30
Refused	1	-	-	2
Total	100	100	100	100

Significantly **higher**/**lower** than others

Have you used undocumented workers yourself?

And in the last 5 years, have you used "Undocumented" workers yourself?

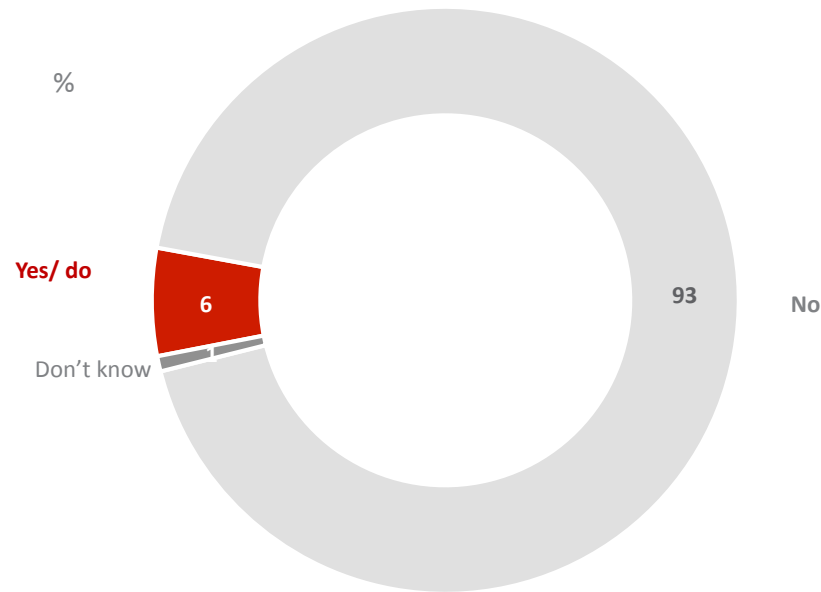


- One-in-five growers believe that use of Undocumented workers is common in the industry, but only 2% admit to having used them in the last five years.

Literacy testing for temporary migrants

When you employ temporary **migrant** workers, do you ever make passing a literacy test a condition of their employment?

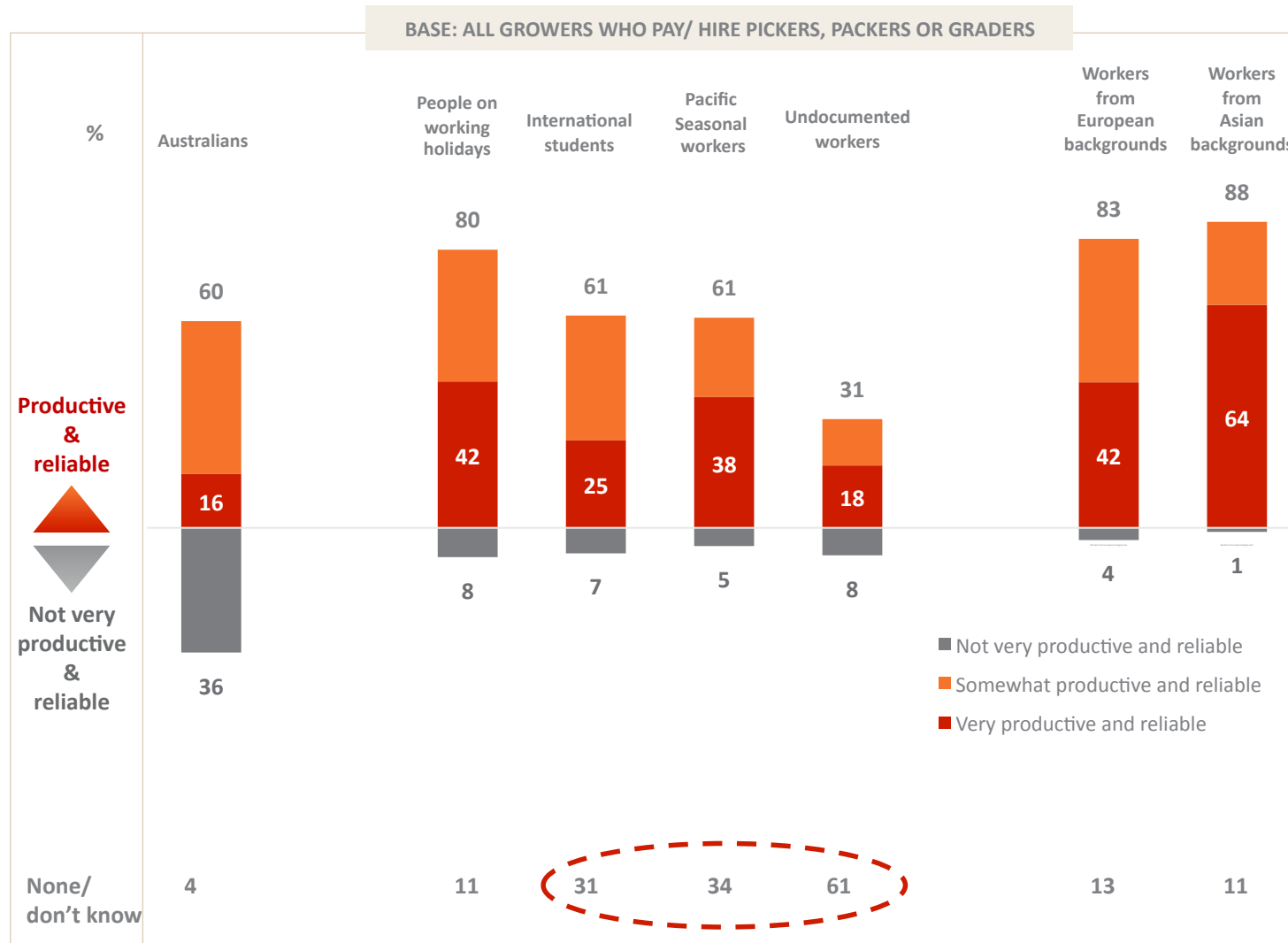
BASE: GROWERS USED TEMPORARY MIGRANTS



- Very few growers, 6%, say they make passing a literacy test a condition of employment for temporary migrants.
- There are no differences by business size or seasonal requirements.

Perceptions about worker productivity/ reliability

Finally, we'd like your impression about how **productive and reliable** certain workers are as pickers, packers or graders. As I say each category of worker, please say if you generally consider them to be **very** productive and reliable, **somewhat** productive and reliable, or **not** very productive and reliable (**PAUSE**). It doesn't matter if you've used them or not, it's your impressions we're after. So firstly, what's your impression about...?

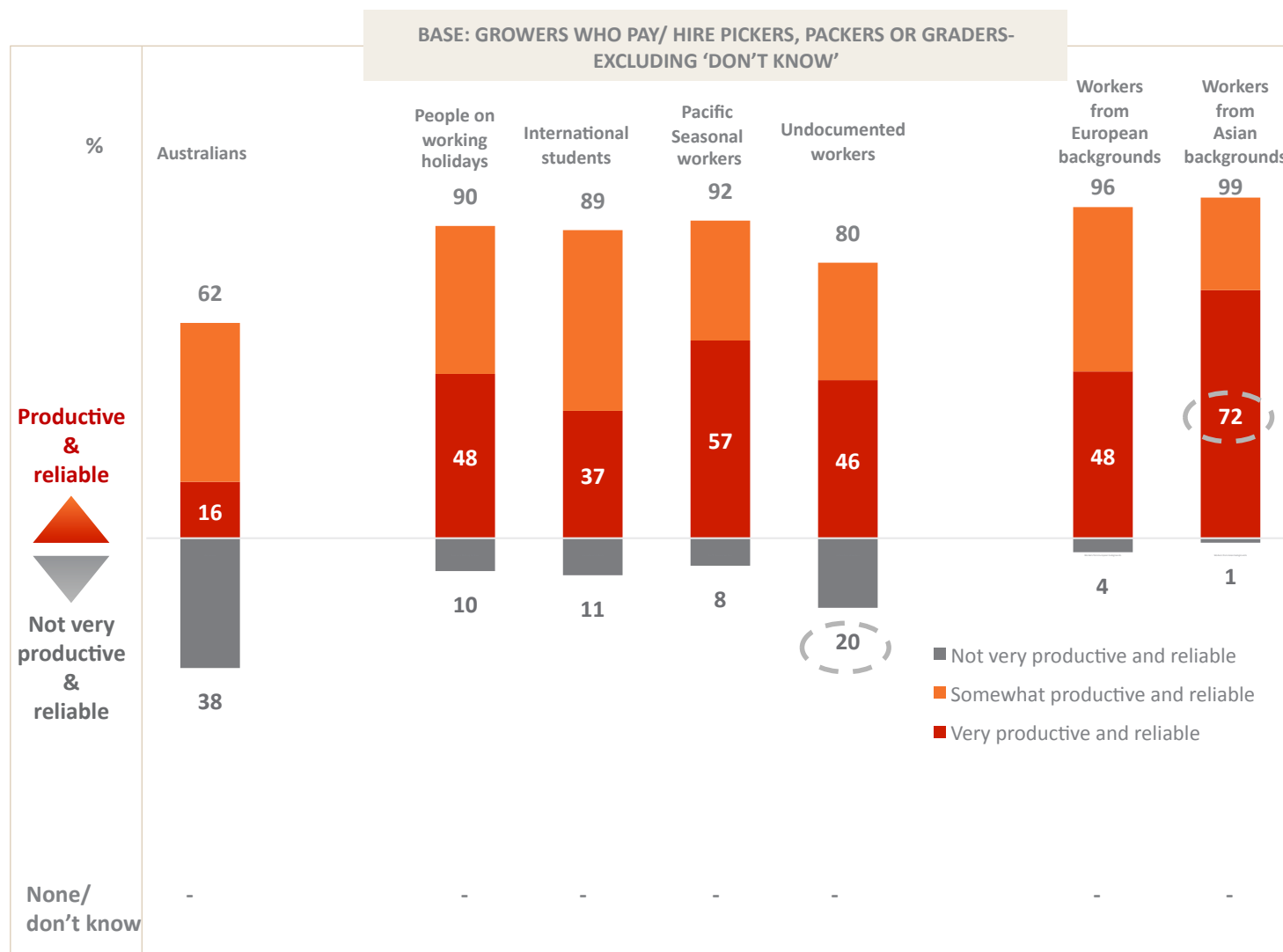


- Respondents were asked to rate seven categories of worker in terms of productivity/ reliability – and if they had *not used* a given category they were encouraged to provide their *impressions* about them. The categories included a mix of ethnic groups and classes of temporary migrants.
- It's clear that Australian workers are not regarded favourably compared with people on working holidays; people from European backgrounds and particularly workers from Asian backgrounds.
- Results for the other categories are difficult to compare because many growers simply do not have an impression about them

Base: Total growers who pay/ hire pickers, packers or grader (n= 252)

Perceptions about worker productivity/ reliability

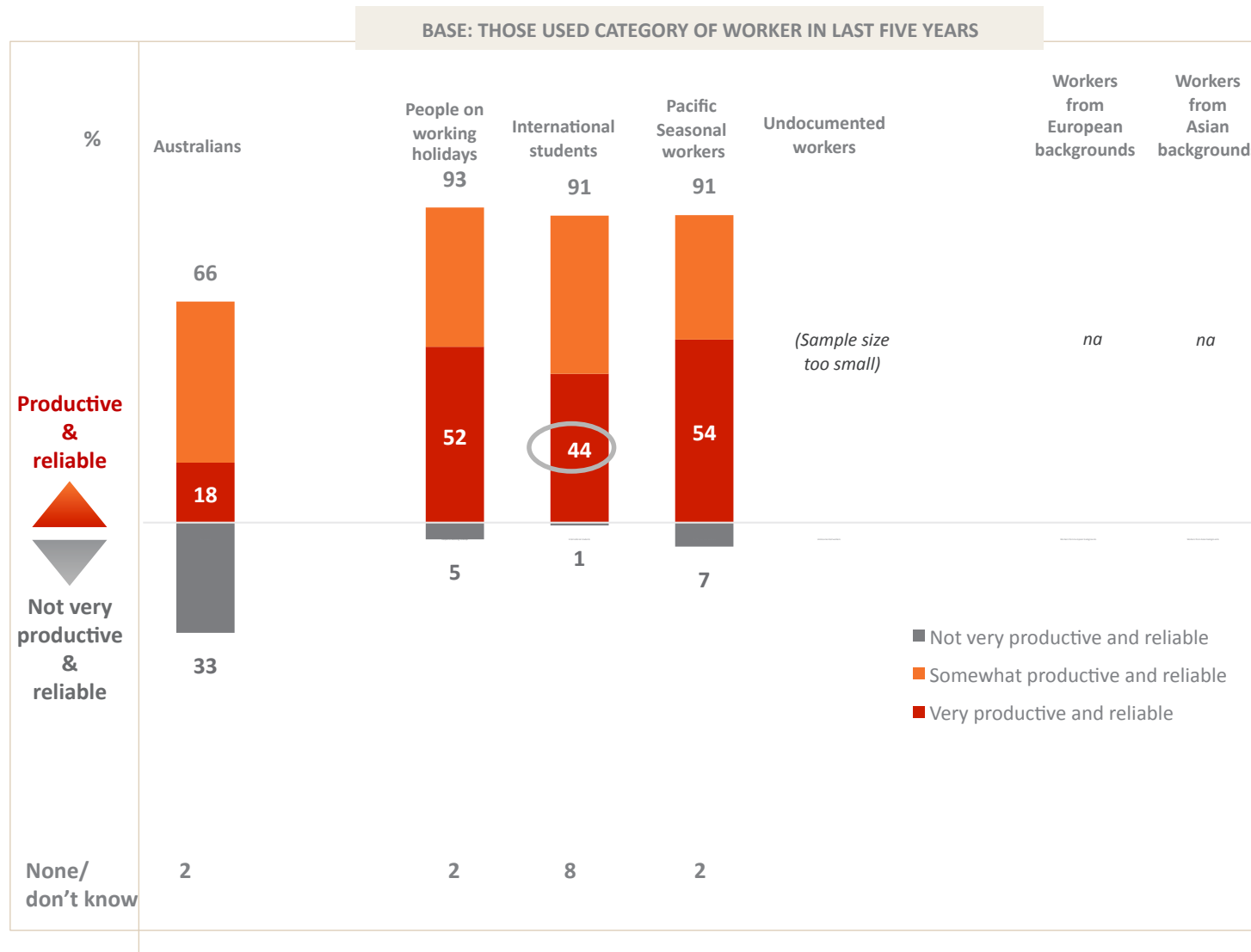
Finally, we'd like your impression about how **productive and reliable** certain workers are as pickers, packers or graders. As I say each category of worker, please say if you generally consider them to be **very** productive and reliable, **somewhat** productive and reliable, or **not** very productive and reliable (**PAUSE**). It doesn't matter if you've used them or not, it's your impressions we're after. So firstly, what's your impression about...?



- However by excluding the 'don't response' from each category, those who *do* have an impression about the respective worker categories can be compared.
- On this basis Australians compare poorly with all others, and it is people from Asian backgrounds that are rated by far the most productive and reliable group of workers.
- Among those who have a view about them, Pacific Seasonal Workers are regarded well. The strength of positive feelings isn't quite as high for International students compared with some others, and although Undocumented workers are largely seen in a positive light, 20% believe they are not very productive or reliable.

Perceptions about worker productivity/ reliability

Finally, we'd like your impression about how **productive and reliable** certain workers are as pickers, packers or graders. As I say each category of worker, please say if you generally consider them to be **very** productive and reliable, **somewhat** productive and reliable, or **not** very productive and reliable (**PAUSE**). It doesn't matter if you've used them or not, it's your impressions we're after. So firstly, what's your impression about...?



■ Impressions among those who have actually *used* four respective categories of workers in the last five years can also be compared – and the results are much the same, with:

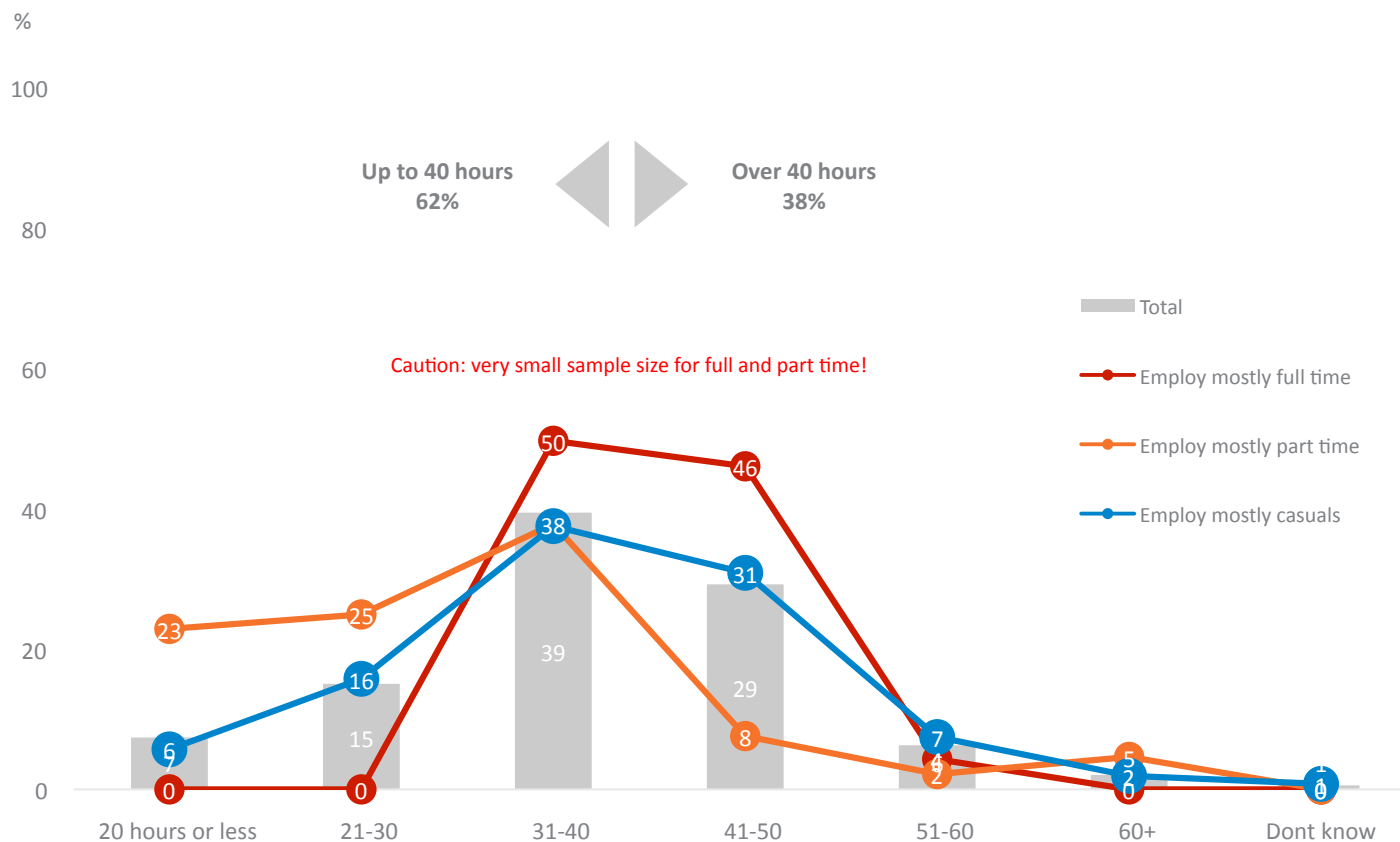
- Australians regarded unfavourably
- the strength of positive feeling about International students is not quite as great as for people on working holidays or Pacific Seasonal workers.

3.4 Wages and conditions

- Hours of work in peak season
- Use of hourly and piece rates
- Paying above/ below award rates
- Penalty rates
- Pay rates for contract workers
- Sources of information used to set wages and conditions
- Seasonal worker accommodation
- Provision of training
- Channels for workers to 'have a say'

Hours of work in peak season

During **peak** season, roughly how many hours a **week** do your pickers, packers or graders typically work? Would it be...?



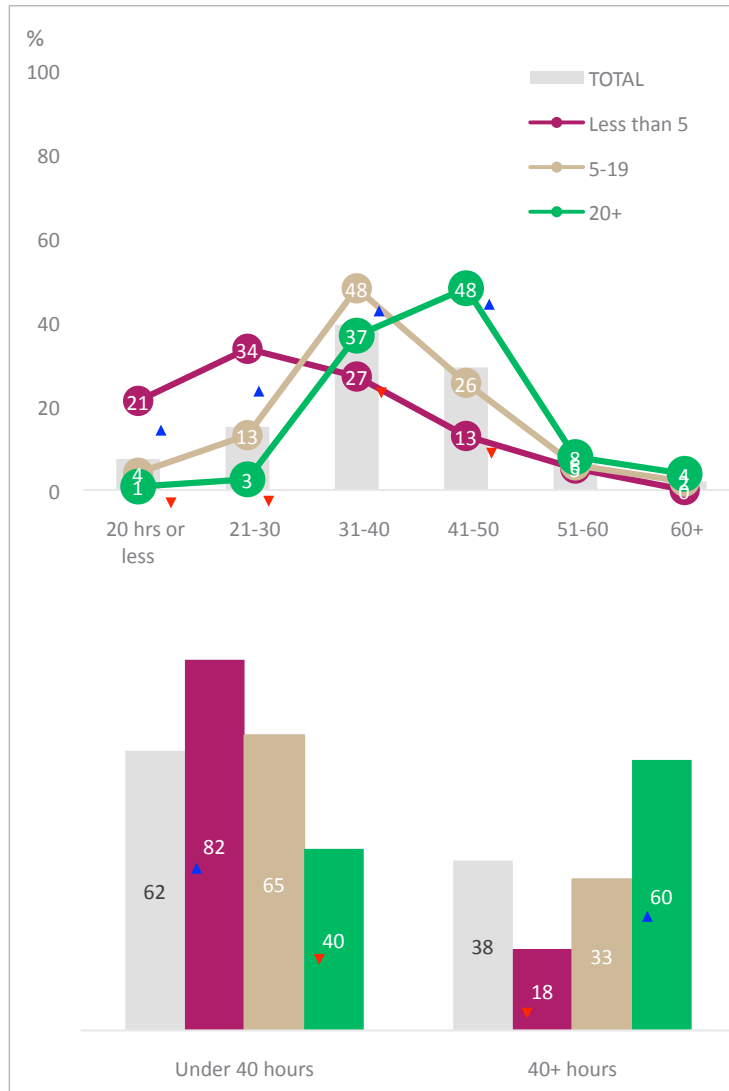
Base: Growers who pay/ hire pickers, packers or graders: Total (n= 252); Employ mostly full time (n= 25); part time (n= 31); casual (n= 194)

- Typically growers report their pickers, packers or graders work between 30 and 50 hours a week in peak season, with 38% saying they work over 40 hours.
- This overall pattern mostly reflects the work hours of **casual** workers who constitute the bulk of the labour force.
- Based on very small samples:
 - about half those who employ mostly **full time** workers say their people work 40+ hours;
 - but only 14% of those mostly employing **part time** workers report 40+ hour weeks.
- Nonetheless, for part time workers, even a weekly workload of 20-30 hours could potentially translate into long hours depending on the number of days they work each week.

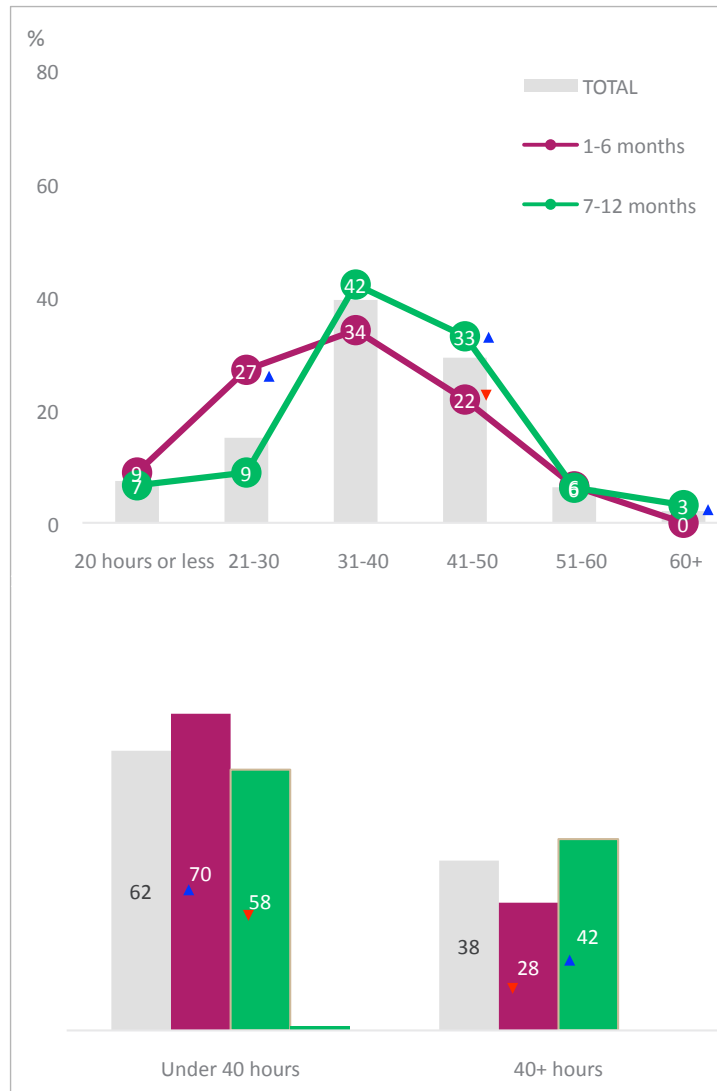
Hours of work in peak season

During **peak** season, roughly how many hours a **week** do your pickers, packers or graders typically work? Would it be...?

By employment size



By seasonal requirements



- The weekly hours that growers expect their people to work increase with business size and seasonal requirements.
 - Only 18% of businesses employing fewer than five people say their people work more than 40 hours a week in peak season. However this rises to 33% among those employing 5-19 people, and to 60% among those employing 20+ people.
 - Only 28% of growers needing people for 1-6 months have 40+ hour weeks, but it is 42% among those using workers 7-12 months a year.

▲ ▼ Significantly higher/lower than others

Base: Total growers who pay/ hire pickers, packers or graders (n= 252); Employ less than 5 people (n= 59); 5-19 (n= 111); 20+ (n= 82); Need workers 1-6 months (n= 84), 7-12 months (n= 168)

Hours of work in peak season

During **peak** season, roughly how many hours a **week** do your pickers, packers or graders typically work? Would it be...?

Hours worked in peak season By employment size and seasonal requirements

Caution: some sample sizes very small!

	EMPLOY < 5 PEOPLE		EMPLOY 5-19		EMPLOY 20+	
	1-6 mnths	7-12 mnths	1-6 mnths	7-12 mnths	1-6 mnths	7-12 mnths
(Sample size n=)	(37)	(22)	(35)	(76)	(12)	(70)
	%	%	%	%	%	%
TOTAL UNDER 40 HOURS	79	87	72	63	40	40
20 hours or less	18	27	3	5	-	1
21-30	43	19	19	11	-	3
31-40	18	41	50	47	40	36
TOTAL OVER 40 HOURS	21	13	24	37	60	60
41-50	13	13	20	28	55	47
51-60	8	-	5	6	5	8
60+	-	-	-	3	-	5
Dont know	-	-	4	-	-	-

- However, it appears that business size actually accounts for quite a lot of the apparent influence of seasonal requirements. This can be seen by looking at the six small sample size segments based on employment size / seasonal requirements.
- The bulk of the smallest businesses, regardless of their seasonal needs, say their people work less than 40 hours.
- At the other end, businesses employing 20+ people, again regardless of seasonal needs, are more likely to have workers putting in 40+ hours a week.
- Consequently the longer hours worked by businesses who need people more than six months of the year, is mainly because growers with longer seasonal requirements are also more likely to be bigger businesses.

Significantly higher/lower than others

Hours of work in peak season

During **peak** season, roughly how many hours a **week** do your pickers, packers or graders typically work? Would it be...?

Hours worked in peak season

Caution: some sample sizes very small!

	EMPLOY < 5 PEOPLE		EMPLOY 5-19		EMPLOY 20+	
	1-6 mnths	7-12 mnths	1-6 mnths	7-12 mnths	1-6 mnths	7-12 mnths
(Sample size n=)	(37)	(22)	(35)	(76)	(12)	(70)
	%	%	%	%	%	%
TOTAL UNDER 40 HOURS	79	87	72	63	40	40
20 hours or less	18	27	3	5	-	1
21-30	43	19	19	11	-	3
31-40	18	41	50	47	40	36
TOTAL OVER 40 HOURS	21	13	24	37	60	60
41-50	13	13	20	28	55	47
51-60	8	-	5	6	5	8
60+	-	-	-	3	-	5

Worker mix

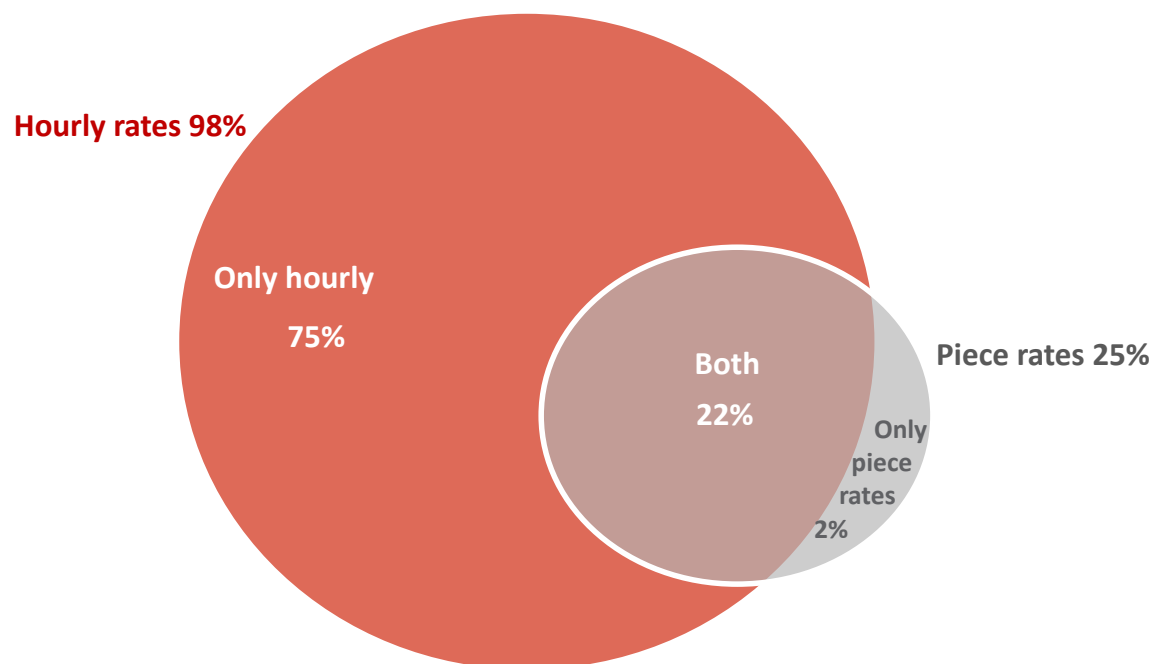
	EMPLOY < 5 PEOPLE		EMPLOY 5-19		EMPLOY 20+	
	1-6 mnths	7-12 mnths	1-6 mnths	7-12 mnths	1-6 mnths	7-12 mnths
(Sample size n=)	(37)	(22)	(35)	(76)	(12)	(70)
	%	%	%	%	%	%
Full time	-	15	4	14	7	21
Part time	14	39	13	18	-	3
Total full/ part time	14	54	17	33	7	24
Casual	86	46	83	67	93	73

- A grower's needs/ expectation about the hours people work, together with the scale of their business, may (at least partly) explain why growers meet their seasonal requirements differently.
- For example, based on a very small sample, the bulk of growers who need fewer than five people for 7-12 months of the year, have people working for less than forty hours. Consequently a mix of permanent full time/ part time workers is open to them as a solution. However a larger business with the same seasonal requirements, but needing more people and having the expectation they will work 40+ hours consistently, may mean that casual workers are the best/ only solution for most growers.

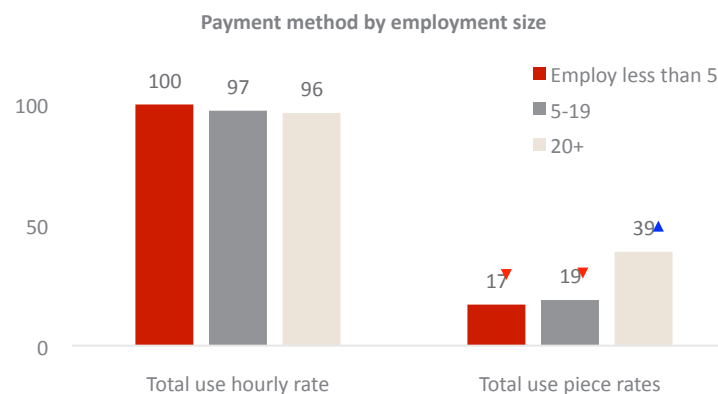
Significantly higher/lower than others

Use of hourly and piece rates

Do you pay pickers, packers or graders based on an hourly rate, on piece rates, or do you use a mix of **both** hourly rates and piece rates?



- Nearly all growers pay at least some of their workers on an *hourly* rate. A quarter use *piece* rates, but nearly all of those who do use a *mix* of hourly and piece rates.
- Use of piece rates is more prevalent among growers employing 20+ people.

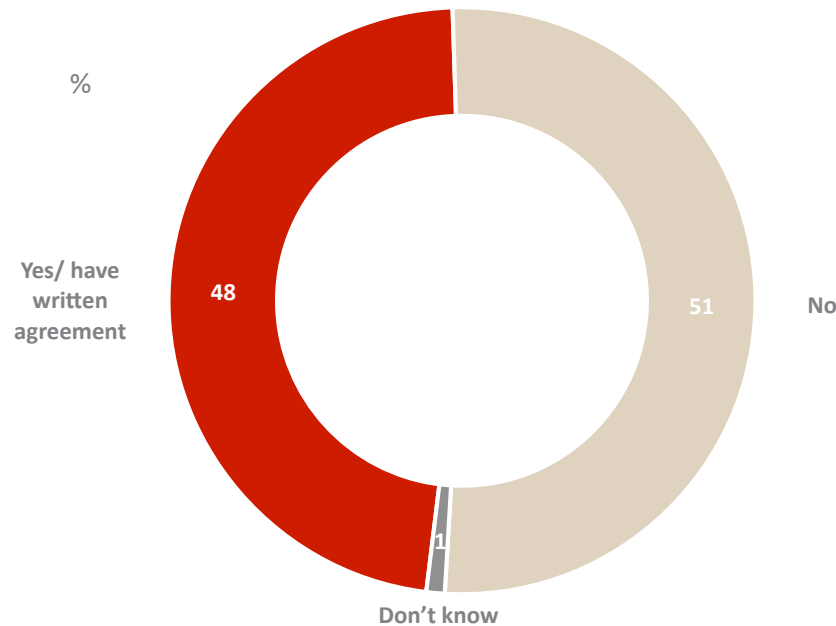


▲ ▼ Significantly higher/lower than others

Base: Total growers who pay/ hire pickers, packers or graders (n= 252); Employ less than 5 people (n= 59); 5-19 (n= 111); 20+ (n= 82)

Documenting piece rates for workers

When you pay **piece** rates, do you have a **written** agreement with workers that specifies the rate of payment for them **in writing**?



- About half the growers using pay piece rates claim to have a **written agreement** with workers that specifies the rate of payment for them in writing.
- Based on very small samples, it appears written documentation is more likely to be provided by larger businesses employing 20+ people.

Caution: very small sample sizes!

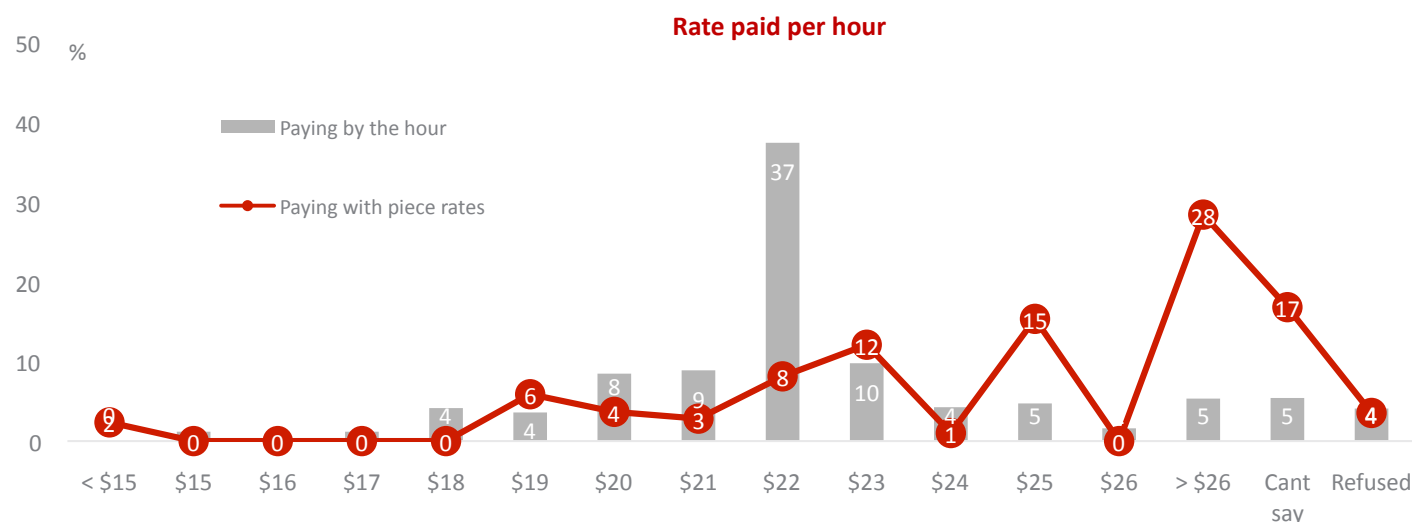
	Total use piece rates	No. people employ in peak season	
		<20	20+
(Sample size n=)	(63)	(30)	(33)
Provide written documentation	%	%	%
Yes/ do	48	29	68
No	51	71	30
Don't know	1	-	2
Total	100	100	100

Significantly higher/lower than others

Base: Total growers who pay/ hire pickers, packers or graders using piece rates (n= 63)

Paying above/ below award rates

(IF PAY BY THE HOUR): For a typical adult worker, what's the approximate hourly rate you pay for ordinary time, **excluding** any overtime or weekend loading?
(IF USE PIECE RATES): For an average competent adult worker, what's the approximate hourly rate you pay for ordinary time, **excluding** any overtime or weekend loading?



	Full time/ part time	Casual
Award rate	\$17.70	\$22.13
Analysis criteria		
- Below award	<\$17	<\$22
- Award or higher	\$17+	\$22+

Paying by the hour			
		NO. EMPLOY IN PEAK SEASON	
	TOTAL	<20	20+
(Sample size n=)	(247)	(168)	(79)
	%	%	%
Pay below award	17	21	6
Pay award or higher	74	69	85
Not determined	9	10	9
Total	100	100	100

Paying with piece rates			
Caution: small sample sizes!			
		NO. EMPLOY IN PEAK SEASON	
	TOTAL	<20	20+
(Sample size n=)	(63)	(30)	(33)
	%	%	%
Pay below award	15	24	5
Pay award or higher	65	56	74
Not determined	20	20	21
Total	100	100	100

Significantly **higher**/lower than others

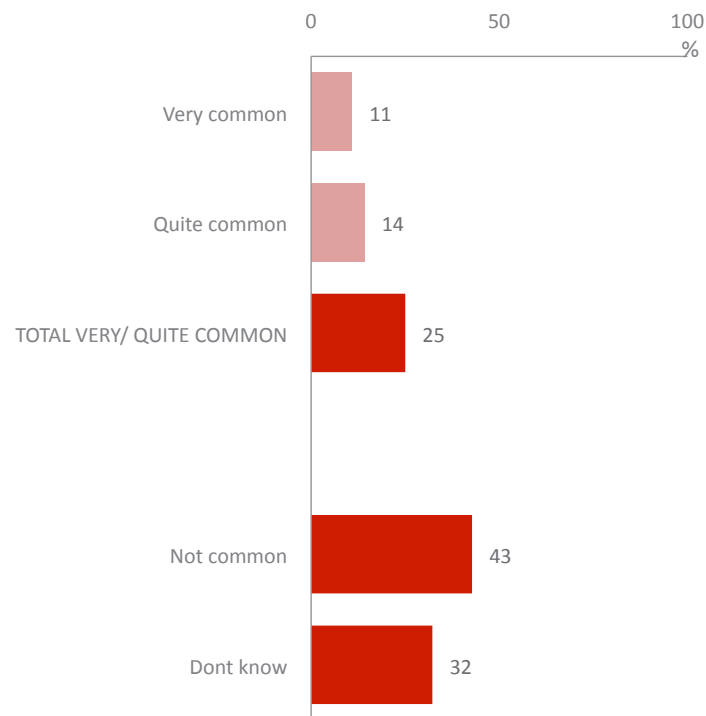
- Respondents were asked the hourly rate they pay adult workers for ordinary time – and for those who use piece rates, the hourly rate they pay an average competent adult worker.
- Assuming that (i) respondents provided accurate rates, and (ii) the rates related to the full time, part time or casual workers they reported as 'mostly' employing, it can be determined if a given grower pays below the award. The criteria used for paying below the award were (i) under \$17 for full/ part time workers; (ii) under \$22 for casuals.
- On this basis, 17% were classified as paying below the award for hourly rates, and 15% for piece rates¹. In each case, paying below the award appears more common among those employing less than 20 people.

1. 9% of respondents could not be allocated on hourly rates because they were unable or unwilling/ reluctant to provide the hourly rate they pay. The proportion of unallocated respondents was higher for piece rates, at 20%

Paying above/ below award rates

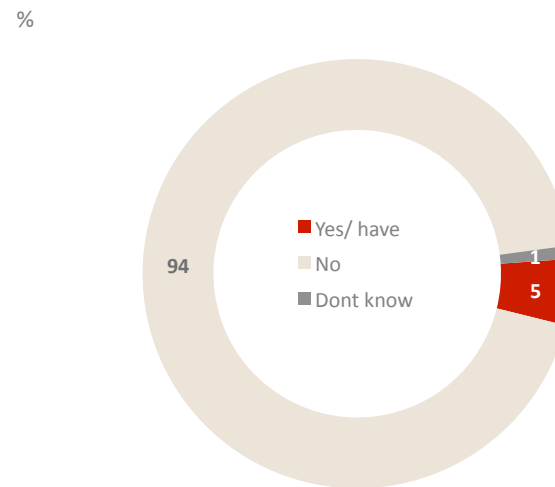
Perceptions about the prevalence of growers paying below award

Some farmers have said that, for a variety of different reasons, they pay pickers, packers or graders below the award rate. Would you say it is **very** common, **quite** common or **not** common for farmers in your industry to pay below the award?



Have you paid below award yourself?

In the last 5 years, have there been any occasions when you've paid below the award rate yourself?



- A quarter of growers believe it is very or quite common for farmers in their industry to pay below the award, though only 5% admit to doing so themselves in the last five years. There are no significance differences for either metric by business size or seasonal requirements.

Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

Paying above/ below award rates

Perceptions about the prevalence of growers paying below award X classification on hourly rates

Caution: some very small sample sizes!

	Classified as paying hourly rate:			
	Total pay by the hour	Below award	Award or higher	Not classified
(Sample size n=)	(247)	(39)	(188)	(20)
	%	%	%	%
Common in industry to pay below award				
Very common	11	17	11	-
Quite common	14	20	14	10
TOTAL VERY/ QUITE COMMON	25	37	25	10
Not common	43	39	44	38
Dont know	32	24	31	52
Total	100	100	100	100

Have you paid below award yourself X classification on hourly rates

Caution: some very small sample sizes!

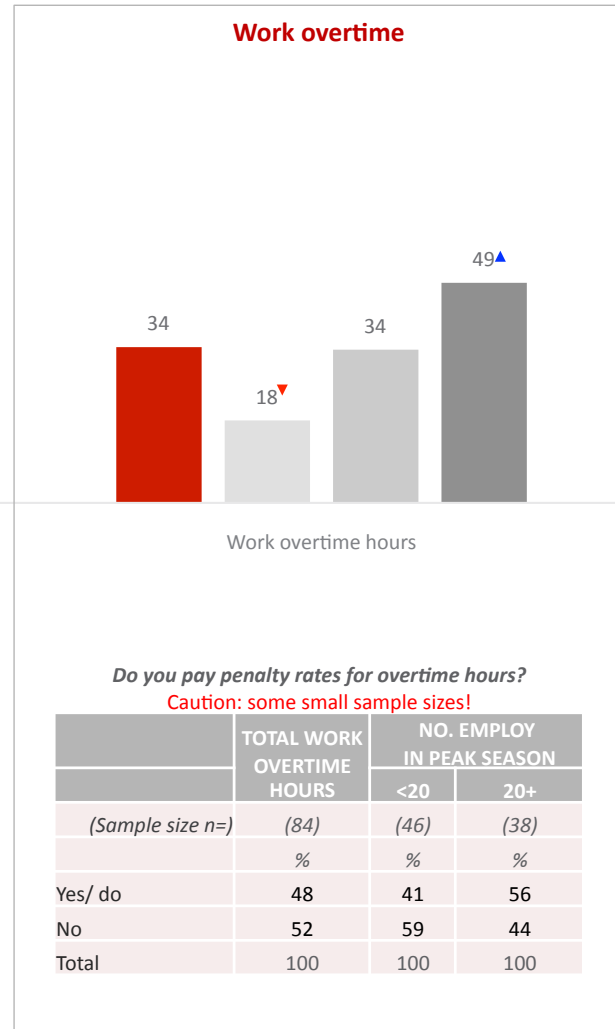
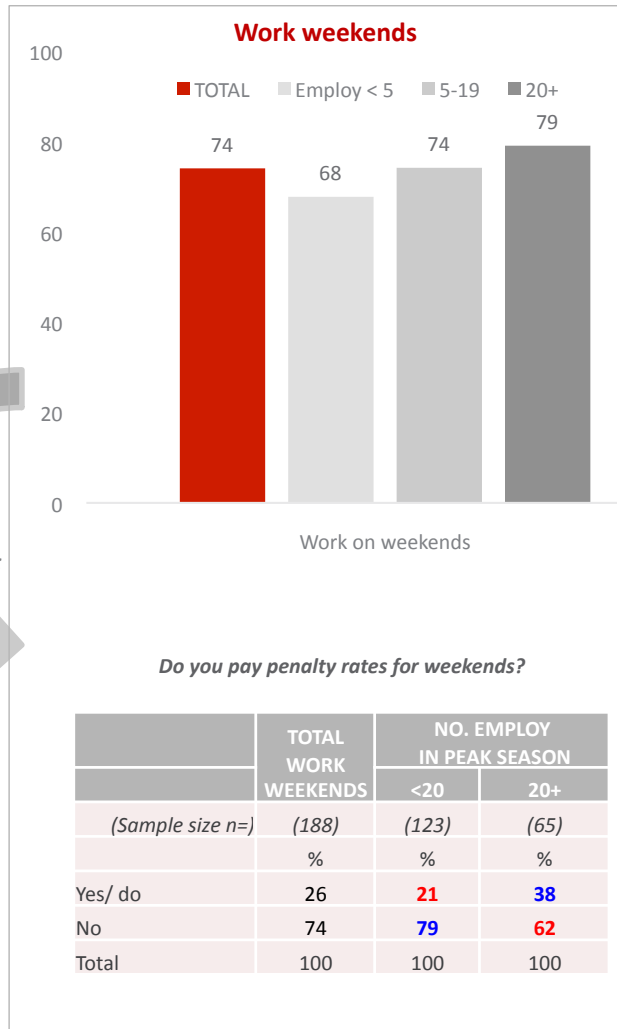
	Classified as paying hourly rate:			
	Total pay by the hour	Below award	Award or higher	Not classified
(Sample size n=)	(247)	(39)	(188)	(20)
	%	%	%	%
Paid below award past five years				
Yes/ have	5	6	5	6
No	94	94	94	94
Don't know	1	0	1	0
Total	100	100	100	100

- Growers categorised as paying below the award based on their reported pay rates, are also more likely to believe that paying below the award is common in the industry.
- However there is no correlation between categorisation on paying above/ below award vs. direct admission of paying below the award in the past five years.
- For those admitting to it, but not being categorised as such, the difference can be that admission was based on the last five years, but categorisation was based on *current* rates.
- Conversely, those not admitting to it, but currently classified as paying below award could be due to:
 - growers providing inaccurate rate information;
 - lack of awareness about award rates; or,
 - simply being 'caught out' through a mix of direct and less direct questioning about the issue.

Significantly higher/lower than others

Penalty rates

Do your pickers, packers and graders ever...(i) Work on weekends (ii) Work overtime hours?



- A substantial majority of growers, 74%, say their pickers, packers or graders work on **weekends** (at least sometimes), but only a third report their people ever work '**overtime hours**'. Growers reporting 'overtime' hours increases with business size.
- For those with people working on weekends, only a quarter pay penalty rates. However about half pay penalty rates for overtime hours.
- Larger businesses employing 20+ people are more likely to pay weekend penalty rates.

Significantly higher/lower than others

Base: Growers who pay/ hire pickers, packers or graders: Total (n= 252)

Penalty rates

	Total	
	Workers ever work overtime hours	
	Yes/ do	No
(Sample size n=)	(84)	(168)
	%	%
Hours worked in peak season		
Up to 40 hours	43	72
40+ hours	57	27

Caution: some small sample sizes!

	Employ <5	
(Sample size n=)	(10)	(49)
	%	%
Hours worked in peak season		
Up to 40 hours	60	87
40+ hours	40	13

	Employ 5-19	
(Sample size n=)	(36)	(75)
	%	%
Hours worked in peak season		
Up to 40 hours	49	74
40+ hours	51	24

	Employ 20+	
(Sample size n=)	(38)	(44)
	%	%
Hours worked in peak season		
Up to 40 hours	31	49
40+ hours	69	51

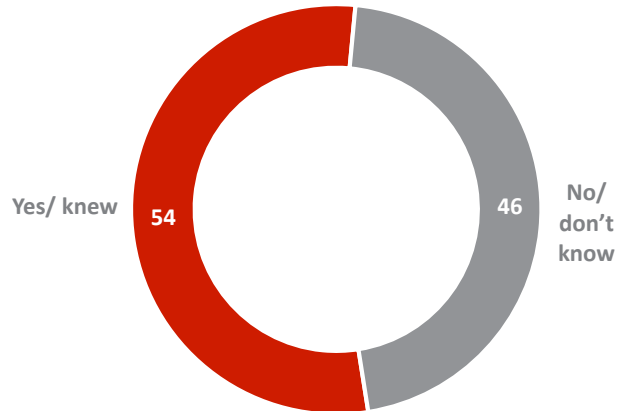
- However it is worth noting that 27% of growers who say their people never work 'overtime hours', also report their people usually work over 40 hours a week in peak season.
- This apparent contradiction appears to be more prevalent among larger businesses employing 20+ people.

Significantly higher/lower than others

Pay rates for contract workers

Awareness wage rate paid to workers by labour hire company

Thinking again about getting pickers, packers or graders through labour hire companies (PAUSE). As I mentioned earlier, the rate you pay for each contract worker, includes what the **worker** actually gets paid, **plus** a profit margin for the labour hire company (PAUSE). The **last** time you used a labour hire company, did you know how much the workers **themselves** were **actually** being paid by the labour hire company?

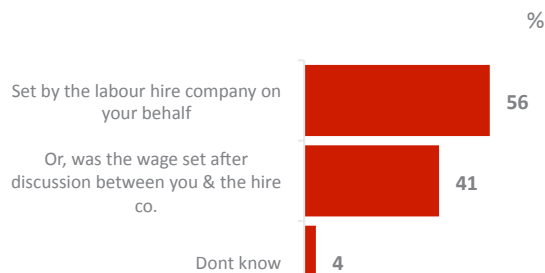


	TOTAL USED LABOUR HIRE	NO. EMPLOY	
		<20	20+
(Sample size n=)	(103)	(53)	(50)
	%	%	%
Yes/ knew	54	48	61
No	45	51	39
Don't know	1	1	-

IF YES:

Who determined wage rate

Who determined the wage **rate** paid to the **actual** workers themselves? Was it...?

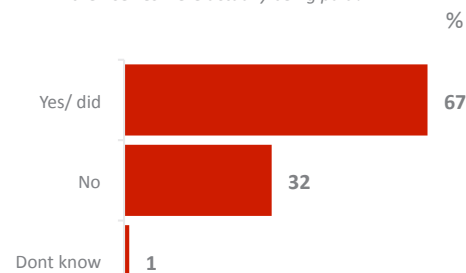


Caution: very small sample sizes!

	TOTAL AWARE WAGE RATE	NO. EMPLOY	
		<20	20+
(Sample size n=)	(54)	(23)	(31)
	%	%	%
Set by hire company	56	73	40
Set after discussion	41	27	53
Don't know	4	0	7

Written documentation provided

And did the labour hire company provide you with any **written** documentation, or pay slips, showing the wage rate the workers themselves were actually being paid?



Caution: very small sample sizes!

	TOTAL AWARE WAGE RATE	NO. EMPLOY	
		<20	20+
(Sample size n=)	(54)	(23)	(31)
	%	%	%
Yes/ did	67	55	78
No	32	45	20
Don't know	1	0	2

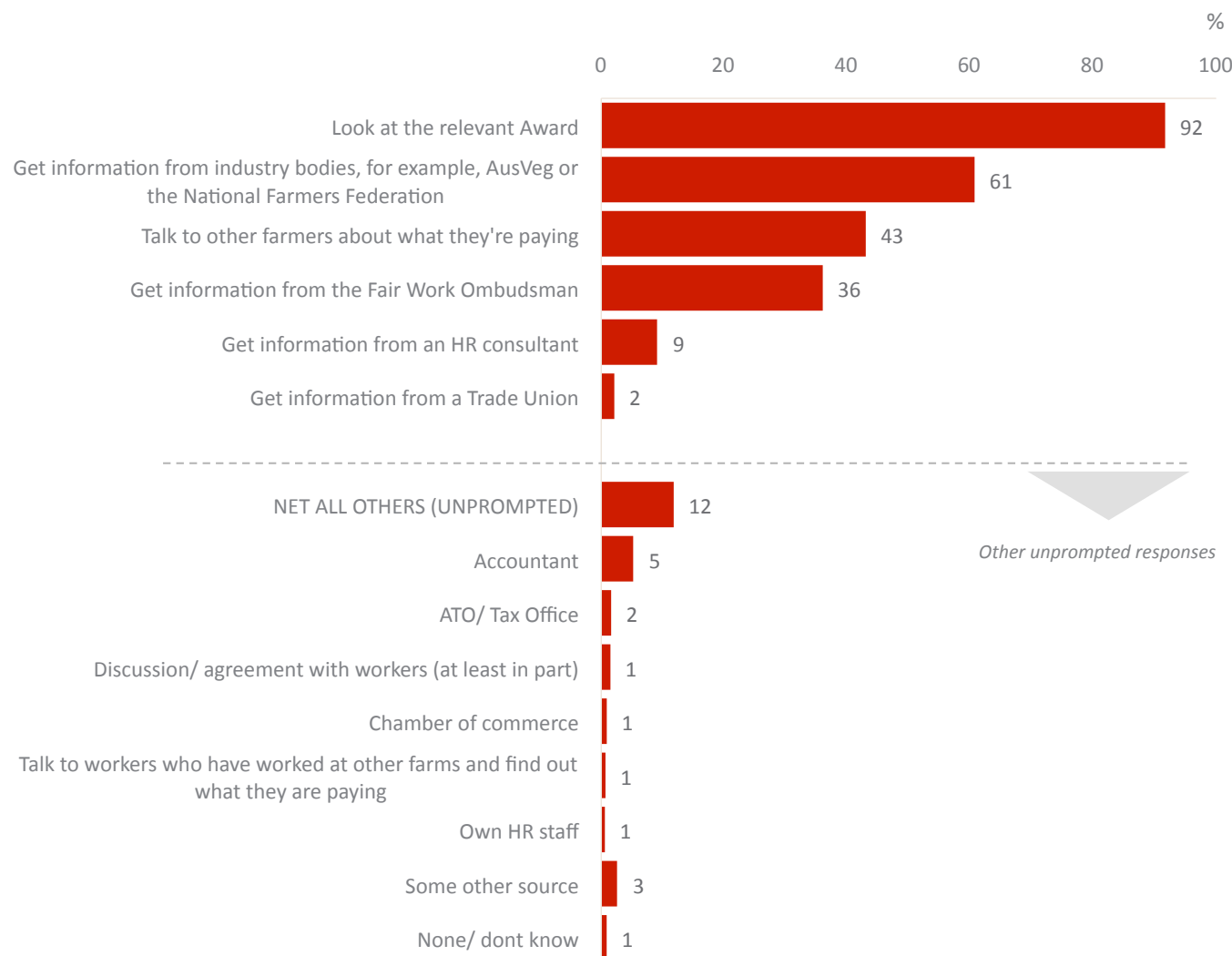
- Among those who have used labour hire contract workers, about half say the *last time* they did so they were **aware of the wage rate paid to the workers** themselves.
- Of those aware of the wage rate:
 - about 70% say the labour hire company provided some type of **written documentation** about the rate paid to workers;
 - about 40% say they had some **input to setting the wage rate** paid to workers
- There are no significant differences by employment size, but based on very small samples, there's an indication that businesses employing 20+ people are more likely to have obtained written documentation and had input to setting the wage rate.

Significantly **higher/lower** than others

Base: Used labour hire company last five years (n= 103)

Sources of information used to help set wages and conditions

Which of these sources of information do you use to help you set workers' wages and conditions? Do you..?



- There are a number of sources of information growers use to help them set wages and conditions, the key ones being:
 - the relevant award, 92%
 - industry bodies, 61%
 - the Fair Work Ombudsman, 36%, and
 - talking to other farmers, 43%.
- About 10% claim to get help from an HR consultant, but usage of information from a Union is very limited.
- About 10% provided other sources they use, the most common of which were Accountants.

Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

Sources of information used to help set wages and conditions

Which of these sources of information do you use to help you set workers' wages and conditions? Do you..?

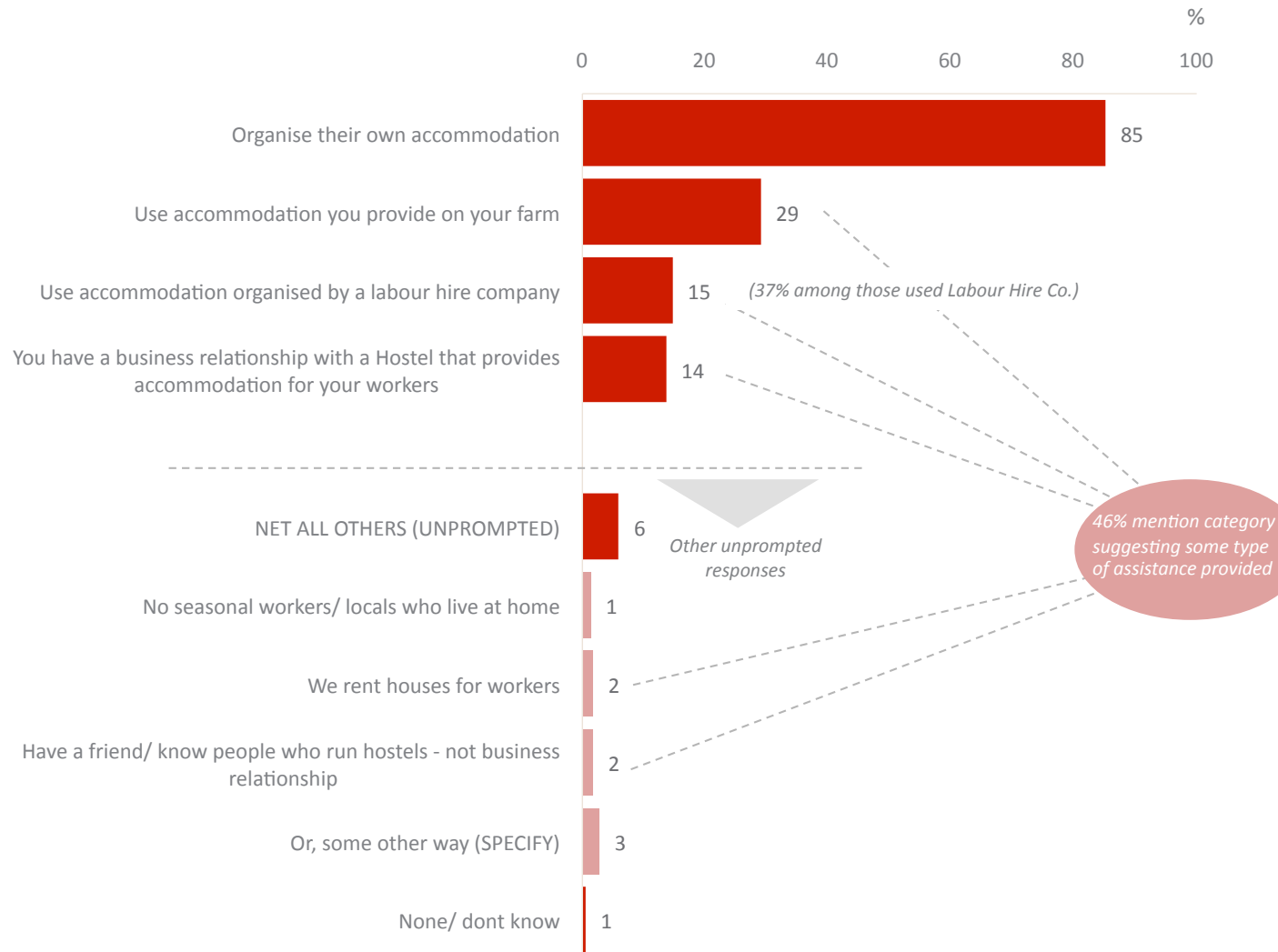
	TOTAL	NUMBER EMPLOYED IN PEAK SEASON		
		Less than 5	5-19	20+
(Sample size n=)	(252)	(59)	(111)	(82)
	%	%	%	%
Look at the relevant Award	92	88	91	96
Industry bodies	61	56	58	68
Other farmers	43	56	48	25
Fair Work Ombudsman	36	29	33	46
HR consultant	9	8	6	14
Trade Union	2	-	2	5
NET ALL OTHERS (UNPROMPTED)	12	19	12	5
Accountant	5	7	6	2
ATO/ Tax Office	2	4	-	2
Discussion/ agreement with workers (at least in part)	1	4	1	-
Chamber of commerce	1	-	1	1
Talk to workers who have worked at other farms and find out what they are paying	1	-	2	-
Own HR staff	1	-	-	2
Some other source	3	4	4	-
None/ dont know	1	2	1	-

- Use of professional external sources such as industry bodies, the Fair Work Ombudsman and HR consultants is greater among businesses employing 20+ people, whereas talking to other farmers about what they are paying is more prevalent among those employing fewer than 20 people.

Significantly higher/lower than others

How seasonal workers typically find accommodation

In which of the following ways do your seasonal workers typically find **accommodation**? Do they...?



- The vast majority of growers (85%) say that, at least sometimes, pickers, packers or graders organise their own accommodation.
- Nonetheless 46% report workers using accommodation which appears to have been organised with some type of assistance from the grower or a labour hire company. Grower assistance may come in the form of on-farm accommodation, renting properties for workers to use, or the grower having a relationship with a Youth Hostel that provides accommodation.

Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

How seasonal workers typically find accommodation

In which of the following ways do your seasonal workers typically find **accommodation**? Do they...?

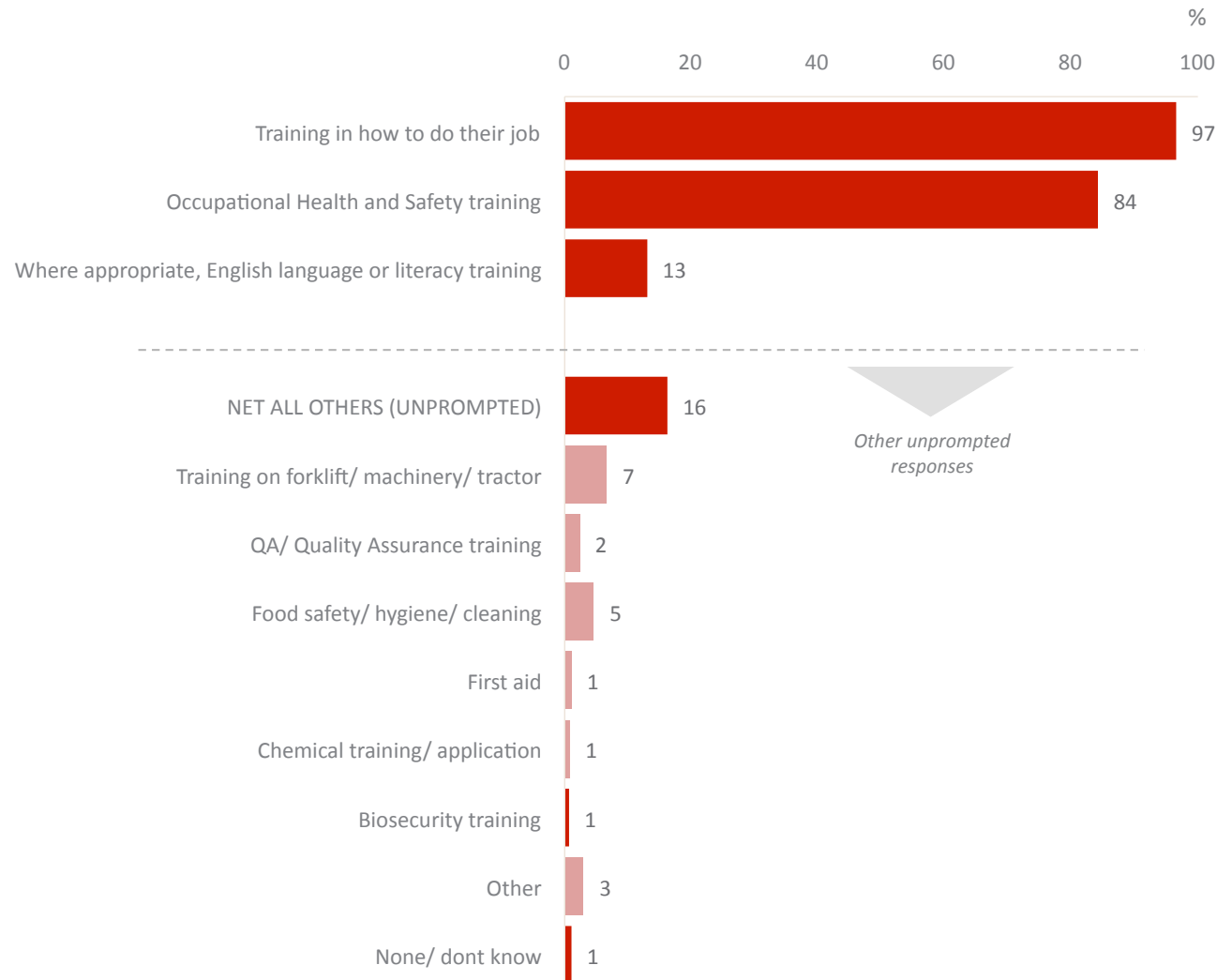
		NUMBER EMPLOYED IN PEAK SEASON		
	TOTAL	Less than 5	5-19	20+
(Sample size n=)	(252)	(59)	(111)	(82)
	%	%	%	%
Organise their own accommodation	85	89	83	86
Use accommodation you provide on your farm#	29	23	34	27
Use accommodation organised by a labour hire company#	15	1	16	24
You have a business relationship with a Hostel that provides accommodation for your workers#	14	9	14	18
NET ALL OTHERS (UNPROMPTED)	6	6	3	10
No seasonal works/ locals who live at home	1	1	-	4
We rent houses for workers#	2	-	1	5
Have a friend/ know people who run hostels - not business relationship#	2	-	1	5
Other	3	5	2	2
None/ dont know	1	-	-	2
# NET CATEGORIES WHERE ASSISTANCE PROVIDED	46	30	52	49

- Accommodation organised by a labour hire company is more prevalent among larger businesses – because they are more likely to use contract workers.
- Overall, accommodation that has been organised with some type of assistance is more common among businesses employing 5+ people (about 50%) than among business with fewer than 5 people (30%).

Significantly higher/lower than others

Provision of training

Which of these types of **training** do you provide or organize for pickers, packers or graders?



- The provision of training for workers in how to do their job is universal (97%), and OH&S training is also provided by nearly all growers, 84%.
- As might be expected, English language/ literacy training is not common (13%).
- Other unprompted responses about training provided included training in operating forklifts/ machinery/ tractors; food safety/ hygiene/ cleaning, and Quality Assurance, among others.

Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

Provision of training

Which of these types of **training** do you provide or organize for pickers, packers or graders?

		NUMBER EMPLOYED IN PEAK SEASON		
	TOTAL	Less than 5	5-19	20+
(Sample size n=)	(252)	(59)	(111)	(82)
	%	%	%	%
Training in how to do their job	97	94	98	96
Occupational Health and Safety training	84	71	87	91
Where appropriate, English language or literacy training	13	18	11	13
NET ALL OTHERS (UNPROMPTED)	16	11	12	26
Training on forklift/ machinery/ tractor	7	6	5	9
QA/ Quality Assurance training	2	-	3	4
Food safety/ hygiene/ cleaning	5	1	3	10
First aid	1	-	1	2
Chemical training/ application	1	2	1	-
Biosecurity training	1	-	2	-
Other	3	1	-	9
None/ dont know	1	3	-	1

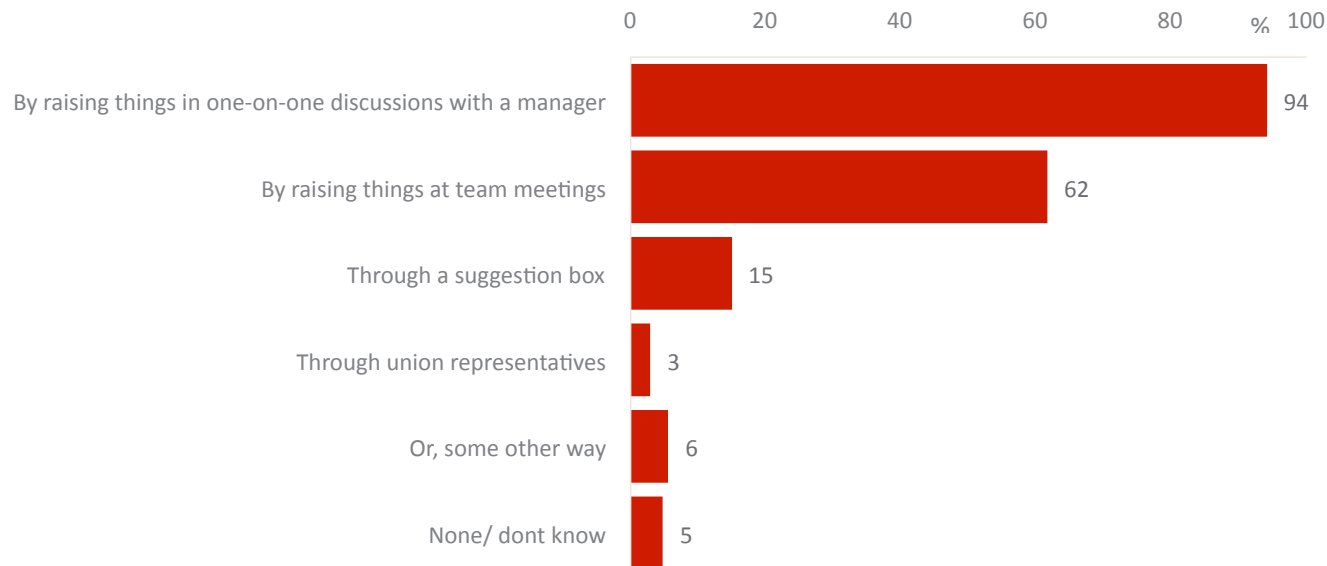
- OH&S and 'other' types of training are more prevalent among larger businesses.

Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

Significantly higher/lower than others

Channels for workers to 'have a say'

In which of these ways, if any, can workers have a **say** about the way things are done?



		NUMBER EMPLOYED IN PEAK SEASON		
		Less than 5	5-19	20+
	TOTAL			
(Sample size n=)	(252)	(59)	(111)	(82)
	%	%	%	%
By raising things in one-on-one discussions with a manager	94	89	97	94
By raising things at team meetings	62	46	55	84
Through a suggestion box	15	14	11	21
Through union representatives	3	-	3	6
Or, some other way	6	5	3	10
None/ dont know	5	11	2	4

- Virtually all growers report their workers can have a say about the way things are done by **raising things with a manager** – but the facility to do so through **team meetings** is also prevalent, 62%.
- **Suggestion boxes** (15%) or having a voice through **union representatives** (3%) are not common.
- Again, larger businesses employing 20+ people are the most likely to provide channels such as team meetings or suggestions boxes.

Significantly **higher/lower** than others

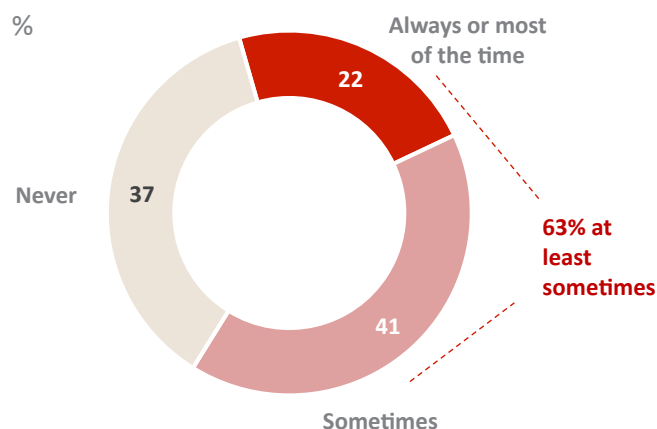
Base: Total growers who pay/ hire pickers, packers or graders (n= 252)

3.5 Difficulty recruiting workers and factors associated with it

Difficulty recruiting pickers, packers and graders

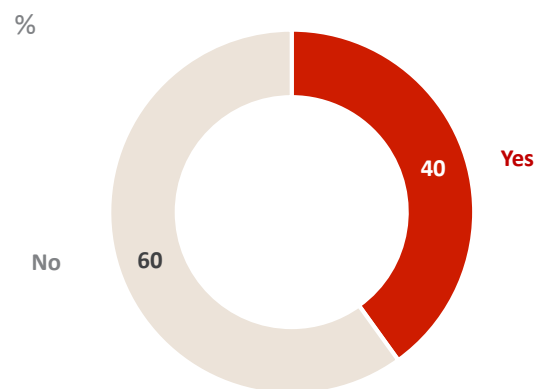
Frequency have difficulty

In general, how often do you find it **difficult** to get pickers, packers or graders?



Occasions been unable to get enough workers

In the last 5 years, have there been in any occasions where you were **not** able to get as many pickers, packers or graders as you needed?



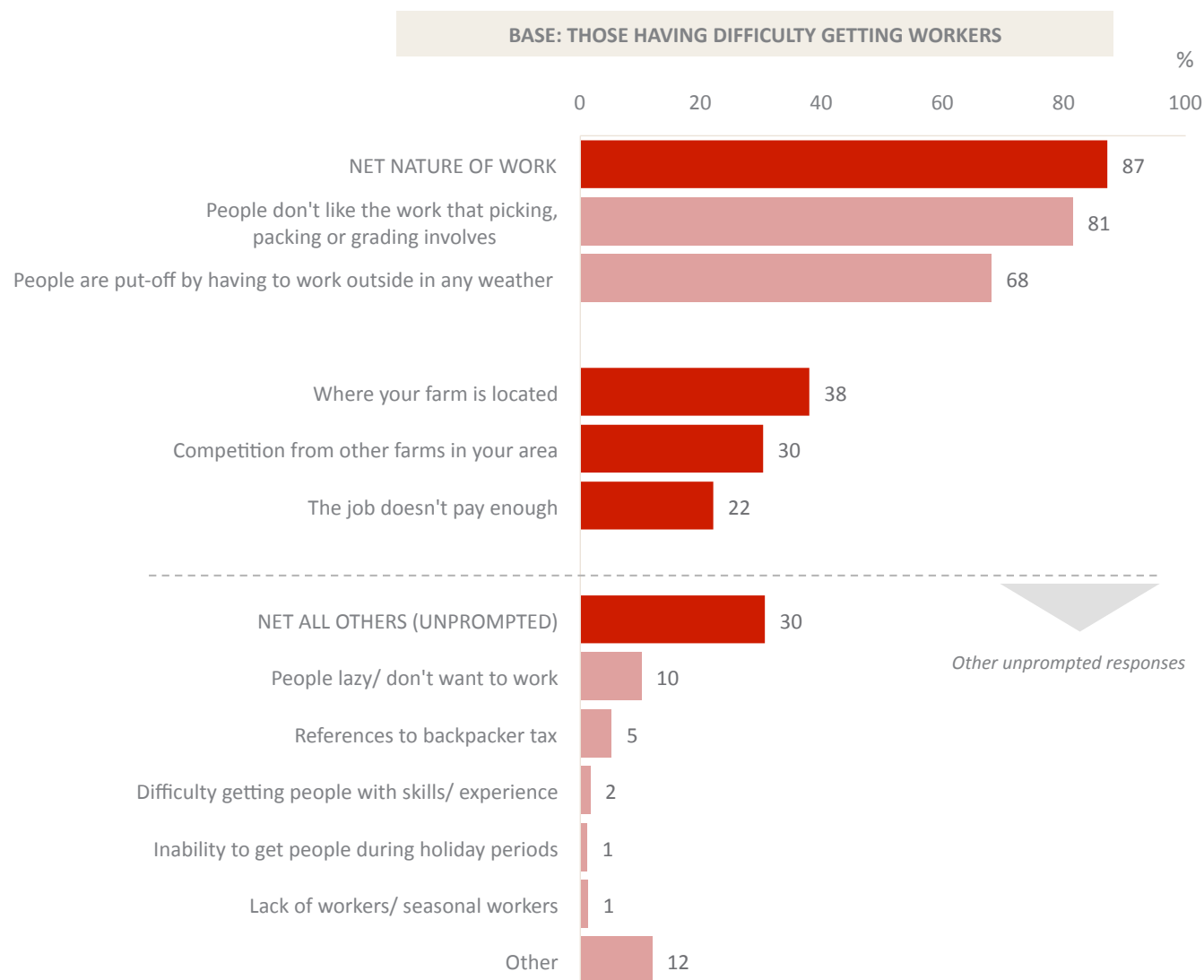
- About two-thirds of growers report having difficulty getting pickers, packers or graders at least sometimes – and 40% have had occasions in the last five years where they simply could not get as many workers as they needed.
- Growers employing 5-19 people are more likely than others to have difficulty. There is no difference based on seasonal requirements.

		NUMBER EMPLOYED IN PEAK SEASON			MONTHS USE WORKERS	
	TOTAL	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/ SOMETIMES HAVE DIFFICULTY	63	58	72	54	61	64
Or, never	37	42	28	46	39	36

Base: Total growers who pay/ hire pickers, packers or grader (n= 252)

Why growers believe they have difficulty recruiting workers

Which of this **list** of things, do **you** think explain **why** it is difficult for you to get people? Is it because...?



■ Asked to select from a list of reasons *why* they believe it is difficult to get workers, growers overwhelmingly put the problem down to the **nature of the work** itself (87%) – either people don't like the type of work and/ or the need to work outside under any weather conditions.

■ Nonetheless significant minorities also believe the **location of their farm** (38%) or **competition for workers** from other farms in their area (30%) are factors. Only 22% feel it is because the **job doesn't pay enough**.

■ One-in-three offered other unprompted reasons, including:

- 10% that people are 'lazy' / 'don't want to work' / 'get paid for doing nothing' on benefits
- 5% referring to the 'backpacker tax'.

Why growers believe they have difficulty recruiting workers

Which of this **list** of things, do **you** think explain **why** it is difficult for you to get people? Is it because...?

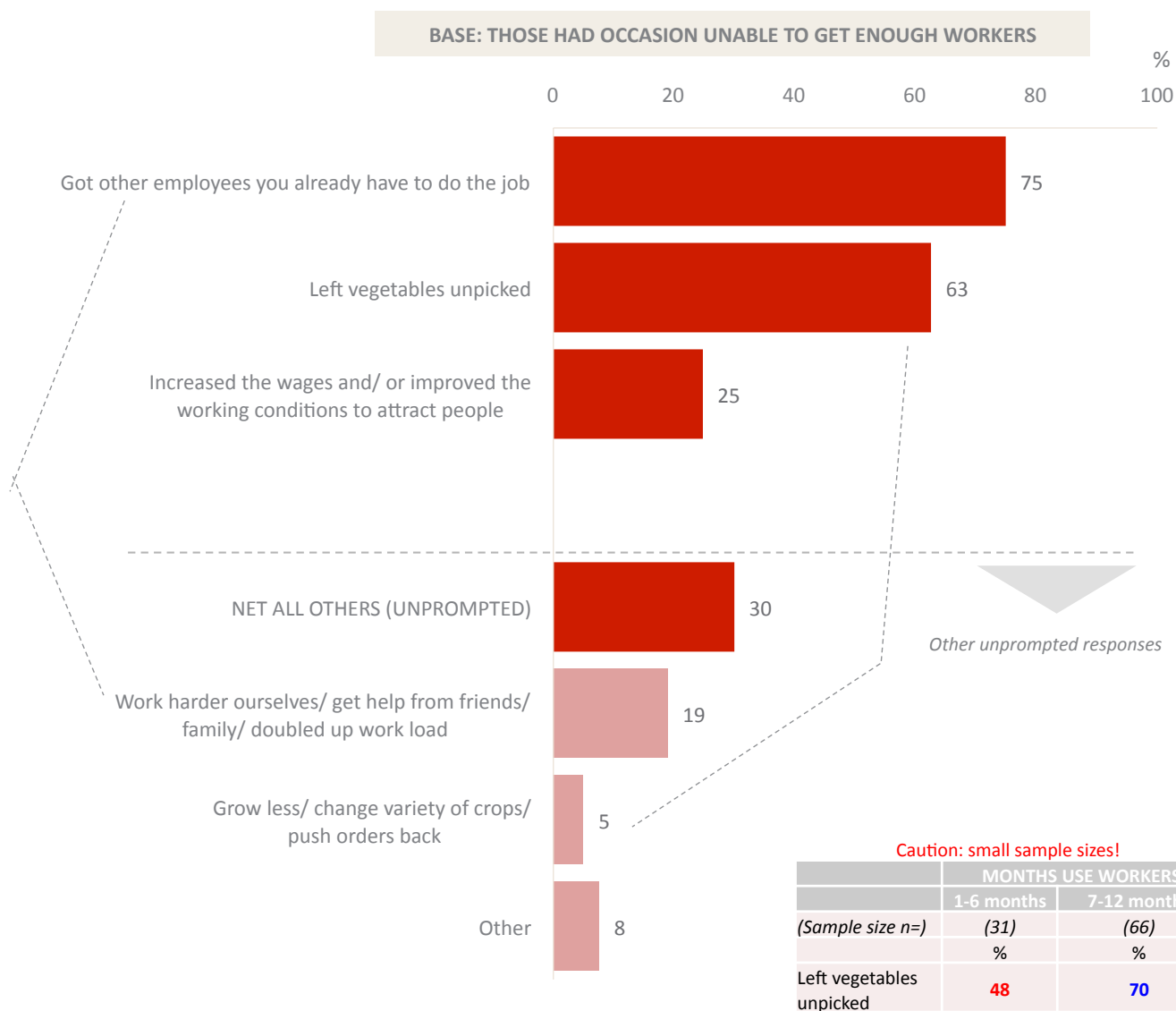
		NUMBER EMPLOYED IN PEAK SEASON			MONTHS USE PICKERS/ PACKERS/ GRADERS	
	TOTAL	Less than 5	5-19	20+	1-6 months	7-12 months
(Sample size n=)	(157)	(33)	(77)	(47)	(49)	(108)
	%	%	%	%	%	%
NET NATURE OF WORK	87	83	93	80	75	93
People just don't like the type of work	81	66	91	76	65	89
People put-off by working outside in any weather	68	71	68	65	51	76
Because of where your farm is located	38	24	46	34	34	40
Competition for workers from other farms in your area	30	31	24	42	30	30
The job doesn't pay enough	22	26	24	15	22	22
NET ALL OTHERS (UNPROMPTED)	30	20	37	26	33	29
People lazy/ don't want to work	10	2	14	9	10	10
References to backpacker tax/ people put off by tax	5	4	5	6	14	1
Difficulty getting people with skills/ experience	2	2	2	2	3	1
Lack of workers/ seasonal workers	1	2	1	2	1	1
Inability to get people during holiday periods	1	0	2	2	0	2
Other	12	12	15	6	7	14

- The vast majority of businesses of all size and seasonal requirements cite the nature of the work as the main problem.
- However those employing 5-19 people are more likely than others to also cite the location of their farm as an issue, while the largest businesses place greater emphasis on competition from other growers – which again may be connected with the location of these types of businesses.
- Unprompted mentions concerning the 'backpacker tax' come almost exclusively from those with shorter term seasonal requirements.

Significantly **higher**/lower than others

What growers have done when they couldn't get enough workers

And in the last 5 years, when you **haven't** been able to get enough farm workers, which of these have you done? Have you...?



- For those who have faced situations where they could not get enough workers, the most common strategy to deal with it is to get other employees to do the job; get help from friends/ family or simply worker harder. A quarter have tried increasing wages or improving working conditions to attract people.
- However 63% of growers facing an insurmountable labour shortage say they have left vegetables unpicked. This amounts to 25% of *all* growers. Based on small samples, leaving vegetables unpicked is more common among growers who need workers 7-12 months a year. A small number of other unprompted responses included crop management strategies such as growing less, changing the variety of crops, or pushing orders back.

Factors associated with difficulty recruiting workers

Recruiting channels used last five years

	TOTAL	FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
		Always or most of the time	Sometimes	Total have difficulty	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
Average no. of channels used	1.7	1.8	1.7	1.8	1.7
	%	%	%	%	%
Labour Hire Company	40	50	35	40	40
Migration agent	7	15	4	8	6
National Harvest Labour Information Service	9	9	12	11	5
Youth Hostel	29	19	32	27	31
Recruiting directly yourself	88	89	91	90	83

A systematic analysis of survey results was undertaken to identify factors correlated with difficulty recruiting workers. These correlations could potentially identify *causes* of recruiting difficulty, *outcomes* of it, or they may simply be correlations with no cause and effect relationship at all.

Overall the list of correlates was quite 'patchy', however a few worthwhile themes emerge.

A. Consistent recruiting difficulty is associated with using Labour Hire Companies and Migration Agents

- Growers who have difficulties 'always or most of the time' are the most likely to use Labour Hire Companies and Migration agents. It's probable that using these channels has been an *outcome* of having difficulty recruiting. However it's also true that almost as many growers who 'never' have difficulty use Labour Hire Companies (40%).

Significantly higher/lower than others

Factors associated with difficulty recruiting workers

Combinations of recruiting channels used last five years

	TOTAL	FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
		Always or most of the time	Sometimes	Total have difficulty	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
	%	%	%	%	%
One channel					
Labour Hire	6	2	4	3	11
Youth Hostel	2	0	2	1	4
Recruit self	30	35	30	31	28
Two channels					
Labour Hire/ Migration agent	0	2	0	1	0
Labour Hire/ Youth Hostel	2	4	2	3	1
Labour Hire/ Recruit self	22	27	20	22	21
Migration agent/ Recruit self	1	0	1	1	2
NHLIS/ Recruit self	3	0	7	4	1
Youth Hostel/ Recruit self	18	10	19	16	22
Three channels					
Labour Hire/ Migration agent/ NHLIS	0	2	0	1	0
Labour Hire/ Migration agent/ Youth Hostel	0	0	1	1	0
Labour Hire/ Migration agent/ Recruit self	2	6	1	3	1
Labour Hire/ NHLIS/ Recruit self	1	2	1	1	0
Labour Hire/ Youth Hostel/ Recruit self	4	2	6	4	4
Migration agent/ Youth Hostel/ Recruit self	0	0	1	1	0
NHLIS/ Youth Hostel/ Recruit self	2	4	2	3	1
Four channels					
Labour Hire/ Migration agent/ NHLIS/ Recruit self	0	2	0	1	0
Labour Hire/ Migration agent/ Youth Hostel/ Recruit self	1	4	1	2	0
Labour Hire/ NHLIS/ Youth Hostel/ Recruit self	1	0	1	1	1
Migration agent/ NHLIS/ Youth Hostel/ Recruit self	0	0	1	1	0
All five channels					
31:Labour Hire/ Migration agent/ NHLIS/ Youth Hostel/ Recruit self	0	0	0	0	1

Significantly higher/lower than others

■ Indeed those who 'never' have difficulty recruiting have the largest proportion of growers who use Labour Hire Companies *exclusively*. This begs the question: why did growers who 'never' have difficulty start using a Labor Hire Company in the first place- particularly given that contract labour is more costly? A likely answer is that they were having difficulty recruiting.

■ So why do some growers using Labour Hire Companies have ongoing recruiting problems, while others do not? There are a few possibilities:

1. The research only measured channels used in the last five years – it did not cover recency or consistency of usage. Those with chronic recruiting problems may use Labour Hire Companies (or other channels) only *periodically*.
2. Some Labour Hire Companies may be better than others.
3. There are other characteristics about the growers themselves or their environment that cause the difference.

Factors associated with difficulty recruiting workers

		FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
	TOTAL	Always or most of the time	Sometimes	Total have difficulty	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
	%	%	%	%	%
NET USED AUSTRALIANS	84	79	88	85	84
Australians from local region	82	77	85	82	81
Australians from other parts of Australia	26	24	32	29	21
NET USED TEMPORARY MIGRANTS	78	77	82	80	73
People on Working Holidays	72	63	81	75	67
International students	29	28	32	30	27
Pacific Seasonal workers	20	28	22	24	13

B. Use of Pacific Seasonal workers is more common among those with recruiting difficulty

- Only 20% of growers say they have used Pacific Seasonal Workers in the last five years, but usage is almost double among those who have recruiting difficulties compared with those who don't (24% vs 13%).
- Those who 'sometimes' have difficulty are a little more likely to have drawn on Australians from outside the local region and People on Working Holidays.

Significantly higher/lower than others

Factors associated with difficulty recruiting workers

	TOTAL	FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
		Always or most of the time	Sometimes	Total have difficulty	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
	%	%	%	%	%
Perceptions about the productivity and reliability of Undocumented workers					
Very productive and reliable	18	22	19	20	14
Somewhat productive and reliable	13	11	17	15	10
TOTAL VERY/ SOMEWHAT	31	33	37	35	25
Not very productive and reliable	8	9	9	9	6
Dont know	61	58	55	56	69
Perceptions about use of Undocumented workers					
Very common	7	8	10	9	3
Quite common	14	12	17	15	11
TOTAL VERY/ QUITE COMMON	21	20	27	25	15
Not common	53	51	52	51	57
Dont know	25	29	21	24	27
Refused	1	-	-	-	1
Used Undocumented workers in last five years?					
Yes/ have	2	0	2	1	2
Sources of information used to help set wages and conditions					
Talk to other farmers about what they're paying	43	49	47	48	35

C. Those with recruiting difficulties appear to know more about Undocumented workers

- Growers who have difficulty recruiting are more likely to (i) have an *impression* about the productivity/ reliability of Undocumented workers and (ii) believe that use of them is 'common' in the industry. However there is no direct evidence of any significance usage of them by these growers – only 2% of all growers admitted to using Undocumented workers in the last five years.
- Nonetheless, greater awareness of Undocumented workers *may* suggest they are actually more likely to use them. Alternatively, it could simply be because they talk with more farmers. For example, growers who have difficulty recruiting are more likely to use other farmers as a source of information about wages and conditions.

Significantly higher/lower than others

Factors associated with difficulty recruiting workers

Importance of characteristics when recruiting workers

	TOTAL	FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
		Always or most of the time	Sometimes	Total have difficulty	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
	%	%	%	%	%
Previous experience of doing the job					
Very important	18	14	18	17	20
TOTAL IMPORTANT	50	59	52	55	43
Not important	50	41	48	45	57
People being able to start work immediately					
Very important	45	46	46	46	42
TOTAL IMPORTANT	83	87	87	87	76
Not important	16	13	11	12	23
Availability to work long hours each week					
Very important	33	41	33	36	29
TOTAL IMPORTANT	67	74	70	72	58
Not important	33	24	30	28	41
Availability to commit for a full season					
Very important	44	60	41	48	37
TOTAL IMPORTANT	77	92	73	80	71
Not important	23	8	27	20	29
A workers physical capabilities					
Very important	62	68	63	65	57
TOTAL IMPORTANT	94	99	95	96	90
Not important	5	1	4	3	10

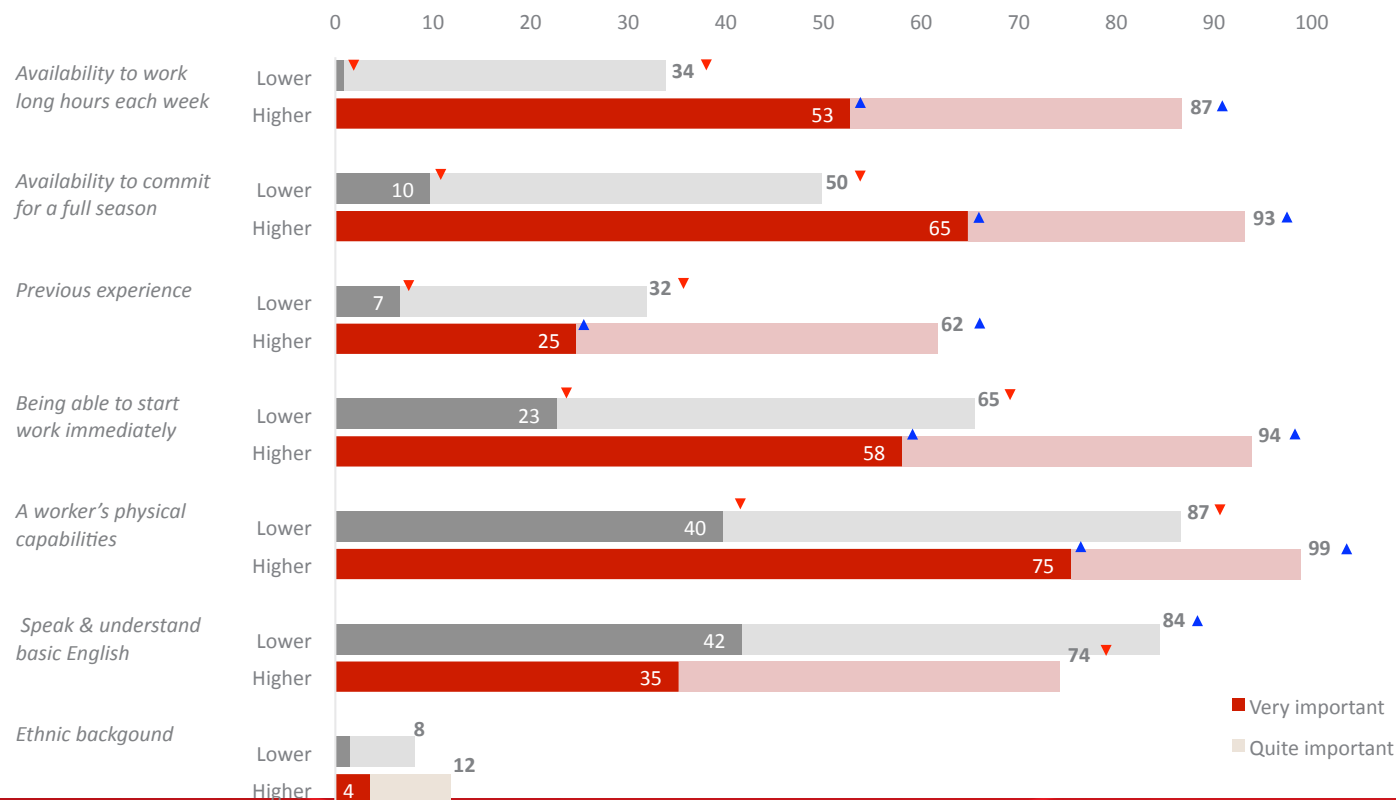
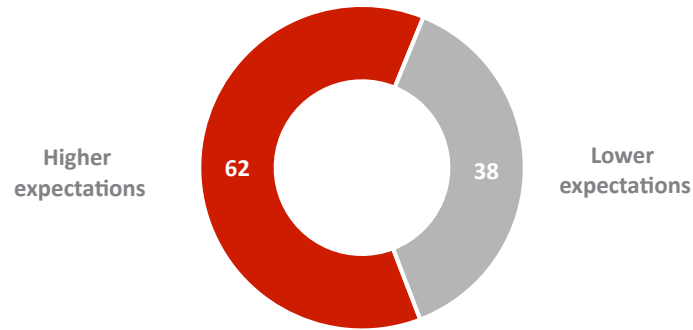
D. Growers with higher expectations when recruiting are a little more likely to have difficulty.

- Growers who have difficulty recruiting are more likely to rate a number of factors as being important:
 - previous experience
 - being able to start immediately
 - availability for long hours
 - availability to commit for a full season, and to a lesser extent,
 - physical capabilities.
- A latent class segmentation was undertaken using the full set of seven attributes growers were asked to rate on importance. This found the data fell into two segments, one with *higher* expectations, and the other with *lower* expectations follows. . . .

Significantly higher/lower than others

Factors associated with difficulty recruiting workers

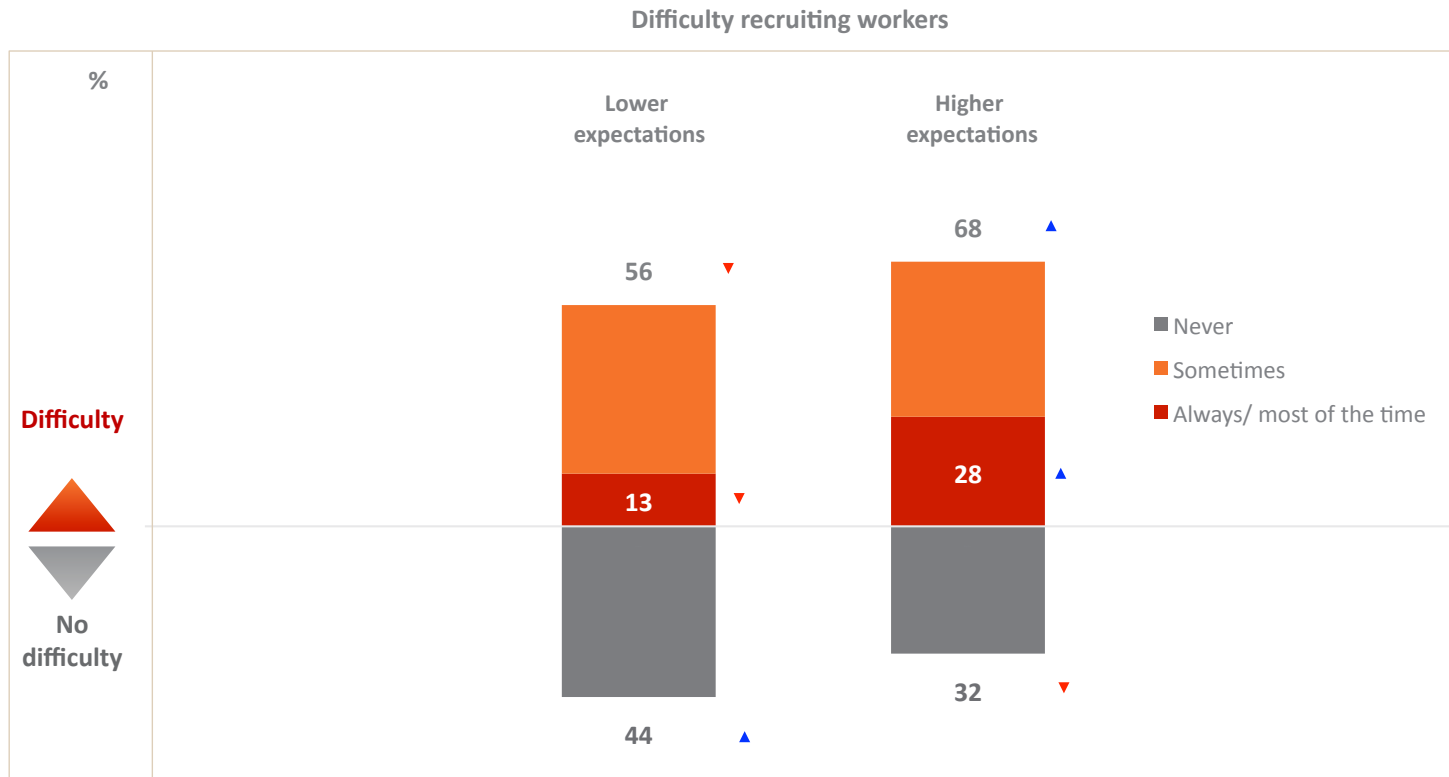
Segments derived from importance of characteristics when recruiting workers



■ The Higher Expectations segment gives nearly all attributes a *substantially* higher rating on importance, with the exception of English language capability and Ethnic background. . . .

Base: Total growers who pay/ hire pickers, packers or graders (n= 252); Higher expectation (n= 154); Lower expectation (n= 98)

Factors associated with difficulty recruiting workers



- Those in the Higher Expectations segment are also more likely to have difficulty recruiting – though the difference is not as large as might be anticipated given the substantial stated difference in importance ratings.
- The Higher Expectations segment is more prevalent among businesses employing more than 5 people, and those needing workers for 7-12 months of the year. Consequently the expectations model does not, by itself, explain why businesses employing 5-19 people specifically have the greatest difficulty recruiting workers.

		NUMBER EMPLOYED IN PEAK SEASON			MONTHS USE PICKERS/ PACKERS/ GRADERS	
		Less than 5	5-19	20+	1-6 months	7-12 months
	TOTAL					
(Sample size n=)	(252)	(59)	(111)	(82)	(84)	(168)
	%	%	%	%	%	%
Lower Expectations	38	52	34	32	50	32
Higher Expectations	62	48	66	68	50	68
Total	100	100	100	100	100	100

Significantly higher/lower than others

Base: Growers who pay/ hire pickers, packers or graders: Higher expectation (n= 154); Lower expectation (n= 98)

Factors associated with difficulty recruiting workers

		IMPORTANCE OF AVAILABILITY TO WORK LONG HOURS			
	TOTAL	Very important	Quite important	TOTAL IMPORTANT	Not important
(Sample size n=)	(252)	(83)	(83)	(166)	(84)
	%	%	%	%	%
How often have difficulty recruiting					
Always or most of the time	22	28	22	25	16
Sometimes	41	41	46	43	37
TOTAL ALWAYS/ SOMETIMES	63	68	68	68	53
Or, never	37	32	32	32	47
Total	100	100	100	100	100
Hours work per week					
TOTAL UNDER 40 HOURS	62	43	62	52	82
TOTAL OVER 40 HOURS	38	57	38	48	16
Average hours worked	37.1	41.9	36.5	39.2	32.7

		FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
	TOTAL	Always or most of the time	Sometimes	Total always/ mostly/ sometimes	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
Hours work per week					
TOTAL UNDER 40 HOURS	62	60	62	61	63
TOTAL OVER 40 HOURS	38	40	38	39	35
Average hours worked	37.1	37.9	38.1	38.0	35.5

	AVAILABILITY TO WORK LONG HOURS RATED IMPORTANT	
	Actually work <40 hours	Actually work 40+ hours
(Sample size n=)	(84)	(82)
	%	%
Workers mostly employed:		
Full time	12	12
Part time	22	5
TOTAL FULL/ PART TIME	33	18
Casual	66	82

- In relation to work hours specifically:

a) As previously noted, growers who say availability to work long hours is important, are more likely to have difficulty recruiting.

b) Moreover these growers do, in fact, generally have longer work weeks.

c) Yet at an aggregate level across all growers, there is little difference in the hours worked by businesses who do, or do not, have difficulty recruiting.

- So why the contradiction? The answer appears to be *partly* because a grower's definition of 'long hours' varies to some degree by the type of people they employ. For example growers who rate long hours as important, but actually have work weeks less than 40 hours, have a higher proportion of full time/ part time workers.

Significantly higher/lower than others

Factors associated with difficulty recruiting workers

	FREQUENCY HAVE DIFFICULTY GETTING WORKERS				
	TOTAL	Always or most of the time	Sometimes	Total always/ mostly/ sometimes	Never
	(Base: Those pay hourly rates)				
(Sample size n=)	(247)	(52)	(103)	(155)	(92)
Allocation of below/ above award for hourly rate based on reported rates of pay					
Pay below award	17	13	17	16	19
Pay award or higher	74	80	76	77	67
Not determined	9	7	7	7	14
Total	100	100	100	100	100
	(Base: Those pay piece rates - very small samples)				
(Sample size n=)	(63)	(15)	(24)	(39)	(24)
Allocation of below/ above award for piece rate based on reported rates of pay					
Piece rate below award	15	14	14	14	16
Piece rate award or higher	65	67	71	69	58
Piece rate - not determined	20	19	15	16	26
Total	100	100	100	100	100
	(Base: Total sample)				
	(252)	(52)	(105)	(157)	(95)
Self-reported admission of paying below award rate in last five years					
Yes/ have	5	8	6	7	2
No	94	92	91	92	98
Dont know	1	-	2	2	0
Total	100	100	100	100	100
	(Base: Those work weekends)				
	(188)	(34)	(87)	(121)	(67)
Pay penalty rates for weekends					
Yes/ do	26	31	26	28	24
No	74	69	74	72	76
Total	100	100	100	100	100
	(Base: Those work 'overtime' hours - very small samples)				
	(84)	(19)	(35)	(54)	(30)
Pay penalty rates for 'overtime' hours					
Yes/ do	48	58	51	54	36
No	52	42	49	46	64
Total	100	100	100	100	100

E. There does not appear to be any compelling evidence that difficulty recruiting is related to paying award rates, penalty rates, providing accommodation assistance, training, or vehicles for workers to 'have a say'. (see tables opposite and overleaf)

- In fact, if anything, there are more examples of businesses who do the right thing being more likely to have difficulty.
- The one exception relates to the small number of cases of growers who directly admitted to paying below the award in the last five years – but the numbers are *very* small.

Significantly higher/lower than others

Factors associated with difficulty recruiting workers

		FREQUENCY HAVE DIFFICULTY GETTING WORKERS			
	TOTAL	Always or most of the time	Sometimes	Total always/ mostly/ sometimes	Never
(Sample size n=)	(252)	(52)	(105)	(157)	(95)
	%	%	%	%	%
Training					
Training in how to do their job	97	97	96	96	97
Occupational Health and Safety training	84	85	83	83	85
Where appropriate, English language or literacy training	13	8	20	15	9
NET ALL OTHERS (UNPROMPTED)	16	12	18	16	17
Accommodation					
Organise their own accommodation	85	84	89	87	82
Use accommodation you provide on your farm	29	37	29	32	25
Use accommodation organised by a labour hire company	15	18	16	17	11
You have a business relationship with a Hostel that provides accommodation for your workers	14	16	13	14	13
NET ALL OTHERS (UNPROMPTED)	6	3	7	5	7
No seasonal works/ locals who live at home	1	-	1	1	2
We rent houses for workers	2	-	3	2	2
Have a friend/ know people who run hostels - not business relationship	2	-	3	2	2
Other	3	3	3	3	3
None/ dont know	1	-	-	-	1
Vehicles for workers to 'have a say'					
By raising things in one-on-one discussions with manager	94	95	92	93	96
By raising things at team meetings	62	61	70	67	52
Through a suggestion box	15	15	19	18	11
Through union representatives	3	3	3	3	2
Or, some other way	6	7	6	7	3
None/ dont know	5	3	6	5	4

Significantly higher/lower than others

Appendix

Questionnaire

Survey of Vegetable Growers

INTRO

Hello, my name is (NAME) calling from OmniPoll. We're conducting research among vegetable growers on behalf of Horticulture Innovation Australia, the University of Adelaide and the University of Sydney.

[IF NAME AVAILABLE IN SAMPLE] I was hoping to speak with... (NAME) - would that be you?

[IF NO NAME AVAILABLE] I was hoping to speak to the farm owner or the person most responsible for managing the farm - would that be you?

IF RESPONDENT CHANGES, REPEAT INTRO

The research is looking into **labour supply challenges** in the Australian vegetable industry – and getting feedback from growers about their experiences and opinions is an important part of that.

The survey takes about 15 minutes and we'd really appreciate your help. Is it convenient now? (IF NOT MAKE APPOINTMENT)

Just to let you know, this call maybe monitored for quality assurance purposes. However please be assured your responses to the survey will remain **anonymous**.

INTERVIEWER INFORMATION RE USE OF RESEARCH:

Ultimately, the results will be used in discussions with **government**. The idea is to help improve government policy, so that it's easier for vegetable growers to meet their labour needs.

INTERVIEWER INFORMATION RE SAMPLE:

As I mentioned, the survey is being conducted for Horticulture Innovation Australia, the University of Adelaide and the University of Sydney. The research is also being supported by the leading state industry associations including NSW Farmers, AUSVEG VIC, Growcom, AUSVEG SA and VegetablesWA. Each state association has provided a list of their member's phone numbers, and your number has been randomly selected from the list to participate.

IF RESPONDENT NOT SATISFIED WITH EXPLANATION If you'd like to know more about how your number was obtained, I can give you the name and contact details for the people at Horticulture Innovation Australia and the University of Adelaide who are responsible for the project – would you like those?

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Q1 Firstly, just a few background questions about you and your farming business. Are you...? **READ OUT**

PROG NOTE:

- SINGLE RESPONSE

1	A farm owner
2	Or, a farm manager
5	DO NOT READ Other (SPECIFY)

Q2(a) Can I just confirm that you grow **vegetables** as part of your farming business? **DO NOT READ**

PROG NOTE:

- SINGLE RESPONSE

1	Yes/ do
2	No

PROG NOTE: ASK IF DO NOT GROW VEGETABLES IE CODE 2 IN Q2(a). CODE 1 GO TO Q3

Q2(b) Thank you for your time, but for this survey we need to speak with people from farming businesses that grow vegetables, so I'll have to leave it there. But again, thanks for your time. **TERMINATE NE1**

PROG NOTE: ASK IF GROW VEGETABLES IE CODE 1 IN Q2(a)

Q3 Which vegetables do you grow? **READ SCALE AS NECESSARY**

PROG NOTE:

- MULTI RESPONSE

- IF SELECT 1-98 CANNOT SELECT 99

1	Beans
10	Cabbages (any type)
2	Capsicums
3	Carrots
4	Lettuces
5	Melons
6	Mushrooms
7	Onions
8	Potatoes
11	Pumpkin
9	Tomatoes (any type)
98	Other (SPECIFY)
99	Don't know

Q4 And does your farming business comprise...? **READ OUT**

PROG NOTE:

- SINGLE RESPONSE

1	Only one farm growing vegetables
2	Or more than one farm growing vegetables
99	DO NOT READ Don't know

PROG NOTE: ASK IF HAVE MORE THAN ONE FARM AND NOMINATED VEGETABLES GROW IN Q3 IE CODE 2 IN Q4 AND CODE 1-98 IN Q3. IF HAVE MORE THAN ONE FARM AND DON'T KNOW VEGETABLES GROW IN Q3, AUTOFILL 99 IN Q5(a) AND GO TO Q5(b). OTHERS GO TO Q6(a)

Q5(a) Just thinking about your **main** vegetable farm - by that I mean your **largest** vegetable growing farm. Which vegetables do you grow on that **particular** farm? **READ SCALE AS NECESSARY**

PROG NOTE:

- ONLY DISPLAY 1-11 SELECTED IN Q3 THEN 98-99 LAST. SHOW CODE 98 AS "Other (SPECIFY)"

- MULTI RESPONSE

- IF SELECT 1-98 CANNOT SELECT 99

PROG NOTE: ASK IF HAVE MORE THAN ONE FARM IE CODE 2 IN Q4. OTHERS GO TO Q6(a)

Q5(b) In this survey we'll be asking you various questions about your vegetable farming business. Are you able to answer questions about your farming business as a **whole**, or is it easier if we focus just on your **main** farm? **DO NOT READ**

PROG NOTE:
- SINGLE RESPONSE

1	Business as a whole
2	Focus on main farm
99	DO NOT READ No preference/ don't know

Q5(c) OK, for the rest of the survey can you please answer the questions as they relate to your (PROG NOTE: IF CODE 2 IN Q5(b) INSERT: "main vegetable farm." ELSE INSERT: "farming business as a **whole**."). HIT "ENTER" TO CONTINUE

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

Q6(a) Now a question about the people you use as pickers, packers or graders. **READ OUT**

PROG NOTE:
- MULTI RESPONSE

		Yes	No
A	In the last five years, have you used any members of the family to do picking, packing or grading	1	2
B	In the last five years, have you hired other people, or paid other people to do picking, packing or grading	1	2

PROG NOTE: ASK IF **NOT** PAID OTHER PEOPLE IE CODE 2 IN Q6(a)B. CODE 1 IN Q6(a)B GO TO Q7

Q6(b) Thank you for your time, but for this survey we need to speak with people from farming businesses that **hire** pickers, packers or graders, so I'll have to leave it there. But again, thanks for your time. **TERMINATE NE2 BUT KEEP RECORD AS PART OF DATASET**

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

Q7 In total, including full time, part time or casual staff, or any contract workers, about how many people does your farming business employ during its **peak** season? Would it be...? **READ OUT**

PROG NOTE:
- SINGLE RESPONSE

1	Less than 5
2	5 to 19
3	20 to 99
4	100 to 199
5	200 to 999
6	Or 1,000 or more
99	DO NOT READ Don't know

Q8 And in typical year, about how many months of the year does your business use pickers, packers or graders? **DO NOT READ**

PROG NOTE:
- SINGLE RESPONSE

1	1 month
2	2 months
3	3 months
4	4 months
5	5 months
6	6 months
7	7 months
8	8 months
9	9 months
10	10 months
11	11 months
12	12 months
99	Can't say

SECTION A-

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

AA Now some questions about the ways your business may find pickers, packers or graders. **HIT ENTER FOR NEXT SCREEN**

A1 Firstly, you can get **contract** workers from **labour hire** companies (**PAUSE**). The rate you pay for each worker includes their pay, **plus**, a profit margin for the hire company (**PAUSE**).

In the last five years, have you used pickers, packers or graders that were **contract** workers from a labour hire company? **DO NOT READ**

PROG NOTE:
- SINGLE RESPONSE

1	Yes/ have
2	No

PROG NOTE: THERE IS NO A2

A3 And which of these other ways have you employed pickers, packers or graders in the **last five years**? **READ OUT**

PROG NOTE:
- MULTI RESPONSE
- IF 1-4 SELECTED CANNOT SELECT 99

1	Through a migration agent
2	The National Harvest Labour Information Service
3	Through a Youth Hostel
4	By recruiting people directly yourself, for example through advertising, job boards, talking to people you know, hiring people who approach you, and so on
99	DO NOT READ None/ don't know

A4 PROG NOTE: HIDDEN QUESTION – COLLECT ALL METHODS USED AND STORE IN A4

1	A Labour Hire Company (CODE 1 IN A1)
2	A migration agent (CODE 1 IN A3)
3	The National Harvest Labour Information Service (CODE 2 IN A3)
4	A Youth Hostel (CODE 3 IN A3)
5	By recruiting people directly yourself (CODE 4 IN A3)
99	None (CODE 2 IN A1 AND CODE 99 IN A3)

A5 In general, how often do you find it **difficult** to get pickers, packers or graders? **READ OUT**

PROG NOTE:
- SINGLE RESPONSE

1	Always or most of the time
2	Sometimes
3	Or, never
99	DO NOT READ Don't Know

ASK IF ALWAYS/ SOMETIMES HAVE DIFFICULTY IE CODE 1-2 IN A5. CODE 3-99 GO TO A7

A6 Which of this list of things, do you think explain **why** it is difficult for you to get people? Firstly, is it...? **READ OUT**

PROG NOTE:

- MULTI RESPONSE
- RANDOMISE 1-6 MAINTAINING ORDER OF 6-4 THEN 98-99 LAST
- IF SELECT 1-98 CANNOT SELECT 99

1	Because of competition for workers from other farms in your area
2	Because the job doesn't pay enough
3	Because of where your farm is located
6	Because people are put-off by having to work outside in any weather – hot, cold or rain
4	Because people just don't like the type of work that picking, packing or grading involves
98	Or some other reason (SPECIFY)
99	DO NOT READ None/ don't know

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

A7 In the last 5 years, have there been in any occasions where you were **not** able to get as many pickers, packers or graders as you needed? **DO NOT READ**

PROG NOTE:

- SINGLE RESPONSE

1	Yes/ have been occasions
2	No

PROG NOTE: ASK IF OCCASIONS NOT ABLE TO GET WORKERS NEEDED IE CODE 1 IN A7. CODE 2 GO TO A9

A8 And in the last 5 years, when you **haven't** been able to get enough farm workers, which of these have you done? Have you...? **READ OUT**

PROG NOTE:

- MULTI RESPONSE
- RANDOMISE 1-3 THEN 98-99 LAST
- IF SELECT 1-98 CANNOT SELECT 99

1	Increased the wages and/ or improved the working conditions to attract people
2	Got other employees you already have to do the job
3	Left vegetables unpicked
98	Or, something else (SPECIFY)
99	DO NOT READ None/ don't know

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

A9 When you're looking for pickers, packers or graders, please say how **important** each of the following skills or characteristics are for you - are they **very** important, **quite** important, or **not** important? Firstly...? **REPEAT SCALE AS NECESSARY**

PROG NOTE:

- SINGLE RESPONSE PER ROW
- RANDOMISE A-F MAINTAINING ORDER D-F THEN G LAST

		Very important	Quite important	Not important	DO NOT READ Don't know
A	Previous experience of doing the job	1	2	3	99
B	That people can speak and understand basic English	1	2	3	99
C	A worker's physical capabilities	1	2	3	99
D	People being able to start work immediately	1	2	3	99
E	Availability to work long hours each week	1	2	3	99
F	Availability to commit for a full season	1	2	3	99
G	Ethnic background	1	2	3	99

SECTION B -

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

B1 In which of the following ways do your seasonal workers typically find **accommodation**? Do they...? **READ OUT**

PROG NOTE:

- MULTI RESPONSE
- IF SELECT 1-98 CANNOT SELECT 99

1	Organise their own accommodation
2	Use accommodation you provide on your farm
3	PROG NOTE: IF CODE 1 IN A1 DISPLAY: Use accommodation organised by a labour hire company
4	You have a business relationship with a Hostel that provides accommodation for your workers
98	Or, some other way (SPECIFY)
99	DO NOT READ None/ don't know

B2 Which of these types of **training** do you provide or organize for pickers, packers or graders? **READ OUT**

PROG NOTE:

- MULTI RESPONSE
- IF SELECT 1-98 CANNOT SELECT 99

1	Training in how to do their job
2	Occupational Health and Safety training
3	Where appropriate, English language or literacy training
98	Some other type of training (SPECIFY)
99	DO NOT READ None/ don't know

B3 In which of these ways, if any, can workers have a **say** about the way things are done? **READ OUT**

PROG NOTE:

- MULTI RESPONSE
- IF SELECT 1-98 CANNOT SELECT 99

1	Through a suggestion box
2	Through union representatives
3	By raising things at team meetings
4	By raising things in one-on-one discussions with a manager
98	Or, some other way
99	DO NOT READ None/ don't know

B4 During **peak** season, roughly how many hours a **week** do your pickers, packers or graders typically work? Would it be...? **READ OUT**

PROG NOTE:

- SINGLE RESPONSE

1	20 hours or less a week
2	21-30
3	31-40
4	41-50
5	51-60
8	Or, more than 60 hours a week
99	DO NOT READ Don't know

SECTION C-

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

PROG NOTE: ASK IF USED LABOUR HIRE COMPANY IN LAST 5 YEARS IE CODE 1 IN A1. OTHERS GO TO C4

- C1 Thinking again about getting pickers, packers or graders through labour hire companies (**PAUSE**). As I mentioned earlier, the rate you pay for each contract worker, includes what the **worker** actually gets paid, **plus** a profit margin for the labour hire company (**PAUSE**).

The **last** time you used a labour hire company, did you know how much the workers **themselves** were **actually** being paid by the labour hire company? **DO NOT READ**

PROG NOTE:
- SINGLE RESPONSE

1	Yes/ was aware
2	No/ not aware
99	DO NOT READ Don't know

PROG NOTE: ASK IF AWARE OF WORKERS WAGE RATE IE CODE 1 IN C1. CODE 2-99 GO TO C4

- C2 Who determined the wage **rate** paid to the **actual** workers themselves? Was it...? **READ OUT**

PROG NOTE:
- SINGLE RESPONSE

1	Set by the labour hire company on your behalf
2	Or, was the wage set after discussion between you and the hire company
99	DO NOT READ Don't know

- C3 And did the labour hire company provide you with any **written** documentation, or pay slips, showing the wage rate the workers themselves were actually being paid? **DO NOT READ**

PROG NOTE:
- SINGLE RESPONSE

1	Yes/ did
2	No
99	Don't know

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

- C4 (**PROG NOTE: IF USED LABOUR HIRE COMPANY IE CODE 1 IN A1 INSERT:** "The next few questions are about the rates you pay the pickers, packers or graders you employ yourself - **not** contract workers you get through a labour hire company." **ELSE INSERT:** "The next few questions are about the rates you pay pickers, packers or graders.")

- C5 Which of these sources of information do you use to help you set workers' wages and conditions? Do you...? **READ OUT**

PROG NOTE:
- MULTI RESPONSE
- IF SELECT 1-98 CANNOT SELECT 99

1	Look at the relevant Award
2	Get information from industry bodies, for example, AusVeg or the National Farmers' Federation
3	Talk to other farmers about what they're paying
4	Get information from the Fair Work Ombudsman
5	Get information from a Trade Union
6	Get information from an HR consultant
98	Some other source (SPECIFY)
99	DO NOT READ None/ don't know

- C6 Do you pay pickers, packers or graders based on...? **READ OUT**

PROG NOTE:
- SINGLE RESPONSE

1	An hourly rate
2	On piece rates
3	Or, do you use a mix of both hourly rates and piece rates
99	DO NOT READ None/ don't know

PROG NOTE: ASK IF USE HOURLY RATE IE CODE 1,3 IN C6. OTHERS GO TO C8

- C7 (**PROG NOTE: IF CODE 3 IN C6 INSERT:** "Thinking about when you pay by the **hour**. ") For a typical adult worker, what's the approximate hourly rate you pay for ordinary time, **excluding** any overtime or weekend loading? **DO NOT READ**

IF **DON'T KNOW** Just an **approximate** figure for a typical adult worker is fine

PROG NOTE:
- SINGLE RESPONSE

1	Less than \$15 per hour
2	\$15 per hour
3	\$16 per hour
4	\$17 per hour
5	\$18 per hour
6	\$19 per hour
7	\$20 per hour
8	\$21 per hour
9	\$22 per hour
10	\$23 per hour
11	\$24 per hour
12	\$25 per hour
13	\$26 per hour
14	More than \$26 per hour
97	Can't say
99	Refused

PROG NOTE: ASK IF USE PIECE RATE IE CODE 2-3 IN C6. OTHERS GO TO C10

- C8 (**PROG NOTE: IF CODE 3 IN C6 INSERT:** "Thinking about when you use **piece** rates. ") For an average competent adult worker, what's the approximate hourly rate you pay for ordinary time, **excluding** any overtime or weekend loading? **DO NOT READ**

IF **DON'T KNOW** Just an **approximate** figure for an average, competent adult worker is fine

PROG NOTE:
- SINGLE RESPONSE

1	Less than \$15 per hour
2	\$15 per hour
3	\$16 per hour
4	\$17 per hour
5	\$18 per hour
6	\$19 per hour
7	\$20 per hour
8	\$21 per hour
9	\$22 per hour
10	\$23 per hour
11	\$24 per hour
12	\$25 per hour
13	\$26 per hour
14	More than \$26 per hour
97	Can't say
99	Refused

C9 When you pay **piece** rates, do you have a **written** agreement with workers that specifies the rate of payment for them **in writing**? **DO NOT READ**

PROG NOTE:
- **SINGLE RESPONSE**

1	Yes/ do
2	No
99	DO NOT READ Don't know

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

C10 Are most of your pickers, packers or graders employed on a...? **READ OUT**

PROG NOTE:
- **SINGLE RESPONSE**

1	Full time permanent (or ongoing) basis
2	Part time permanent (or ongoing) basis
3	Or, on a casual basis
99	DO NOT READ None/ can't say

C11 Do your pickers, packers and graders ever...? **READ OUT**

PROG NOTE:
- **MULTI RESPONSE**
- **IF SELECT 1-2 CANNOT SELECT 99**

1	Work on weekends
2	Work overtime hours
99	DO NOT READ None/ can't say

PROG NOTE: ASK IF WORK WEEKENDS OR OVERTIME IE CODE 1-2 IN C11. CODE 99 GO TO C13

C12 Do you pay penalty rates...? **READ OUT**

PROG NOTE:
- **MULTI RESPONSE**
- **IF SELECT 1-2 CANNOT SELECT 99**

1	PROG NOTE: DISPLAY IF CODE 1 IN C11 For weekends
2	PROG NOTE: DISPLAY IF CODE 1 IN C11 For overtime
99	DO NOT READ None/ can't say/ refused

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

C13 Some farmers have said that, for a variety of different reasons, they paypickers, packers or graders below the award rate. Would you say it is **very** common, **quite** common or **not** common for farmers in your industry to pay below the award? **DO NOT READ**

PROG NOTE:
- **SINGLE RESPONSE**

1	Very common
2	Quite common
3	Not common
97	Don't know
99	Refused

C14 In the last 5 years, have there been any occasions when you've paid below the award rate yourself?
DO NOT READ

PROG NOTE:
- **SINGLE RESPONSE**

1	Yes/ have
2	No
97	Don't know
99	Refused

SECTION D -

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

D1 In the last five years, (**PROG NOTE: IF USE FAMILY MEMBERS IE CODE 1 IN Q6(a) INSERT: "apart from family members,"**) which of these types of people have you used as pickers, packers or graders. **READ OUT**

PROG NOTE:
- **MULTI RESPONSE**
- **IF SELECT 1-2 CANNOT SELECT 99**

1	Any Australian workers, that is, Australian citizens or permanent residents
2	Any temporary migrants , for example, working holiday makers, international students, Pacific seasonal workers or anyone else temporarily visiting Australia
99	DO NOT READ None/ can't say

PROG NOTE: ASK IF USED AUSTRALIANS IE CODE 1 IN D1. OTHERS GO TO D3

D2 And were the Australians you used...? **READ OUT**

PROG NOTE:
- **SINGLE RESPONSE**
- **IF SELECT 1-3 CANNOT SELECT 99**

1	All from your local region
2	All from other parts of Australia
3	Or did you have a mix of both locals and people from other parts of Australia
99	DO NOT READ None/ can't say

PROG NOTE: ASK IF USED TEMPORARY MIGRANTS IE CODE 2 IN D1. OTHERS GO TO D5

D3 When you employ temporary **migrant** workers, do you ever make passing a literary test a condition of their employment? **DO NOT READ**

PROG NOTE:
- **SINGLE RESPONSE**

1	Yes/ do
2	No
99	Don't know

D4 Which of these types of temporary migrants have you used as pickers, packers or graders in the last 5 years?
READ OUT

PROG NOTE:
- **MULTI RESPONSE**
- **IF SELECT 1-3 CANNOT SELECT 99**

1	People on Working Holidays
2	International students
3	Pacific Seasonal workers
99	DO NOT READ None/ don't know

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

D5 Farmers may also use "Undocumented" workers. These are people from other countries **without** the official right to work in Australia, or who are overstaying their visa, or working outside the terms of their visa (**PAUSE**). Do you think it is very common, quite common or **not** common for farmers in your industry to use "Undocumented" workers?
DO NOT READ

PROG NOTE:
- **SINGLE RESPONSE**

1	Very common
2	Quite common
3	Not common
97	Don't know
99	Refused

D6 And in the last 5 years, have you used "Undocumented" workers yourself? **DO NOT READ**

PROG NOTE:
- SINGLE RESPONSE

1	Yes/ have
2	No
97	Don't know
99	Refused

PROG NOTE: ASK ALL RESPONDENTS NOT TERMINATED

D7 Finally, we'd like your impression about how **productive and reliable** certain workers are as pickers, packers or graders. As I say each category of worker, please say if you generally consider them to be **very** productive and reliable, **somewhat** productive and reliable, or **not** very productive and reliable (**PAUSE**).

It doesn't matter if you've used them or not, it's your impressions we're after (**PAUSE**). So firstly, what's your impression about...? **REPEAT SCALE AS NECESSARY**

PROG NOTE:
- SINGLE RESPONSE PER ROW
- RANDOMISE A-E THEN F-G

		Very productive and reliable	Somewhat productive and reliable	Not very productive and reliable	DO NOT READ Don't know
A	Australians	1	2	3	99
B	People on Working Holidays	1	2	3	99
C	International students	1	2	3	99
D	Pacific Seasonal workers	1	2	3	99
E	Undocumented workers	1	2	3	99
F	Workers from European backgrounds	1	2	3	99
G	Workers from Asian backgrounds	1	2	3	99

CLOSE

Z1 That is the end of the survey. Thank you very much for your cooperation. In case my supervisor needs to contact you to check the validity of this interview, (**PROG NOTE: IF NAME IN SAMPLE DISPLAY BELOW AND INSERT:** "can I just confirm your name is..." **ELSE** "could I please ask for your name?")

And the number I called you on was: **PROG NOTE: DISPLAY NUMBER DIALLED**

I really appreciate you sparing the time to take part in this survey today.

[IF NECESSARY PRIVACY STATEMENT]

This survey has been conducted in accordance with the Privacy Act, once information processing is completed, please be assured that your name and contact details will be removed from your responses to this survey. After that time we will no longer be able to identify the responses provided by you.

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