

Ms. Julia Agostino

Committee Secretary

Standing Committee on Education and Employment | Department of the Senate

Submission to Senate Education and Employment Committee Inquiry into the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.

Dear Ms Agostino

Emeritus Prof. Malcolm Rimmer and I have conducted substantial research on wages, employment conditions, and occupational health and safety amongst Working Holiday Maker (WHM) visa holders (section 417) and we welcome the opportunity to provide those research findings to the committee.

During the course of our research, we conducted empirical fieldwork during 2013 and 2014. We have had an extensive interview program at three regional locations in Victoria (Bendigo, Maffra, and Mildura), in Tasmania and the Northern Territory. Harvest workers were interviewed through nine dual-moderator focus groups with a total of 64 participants from the following countries: England (15), France (8), Burundi (7), Ireland (7), Germany (5), Hong Kong (5), Italy (3), Afghanistan (3), Taiwan (3), Malaysia (3), Scotland (2), Estonia (1), Japan (1), South Korea (1). With the exception of those originating from Burundi, Afghanistan and Malaysia, all were WHMs. When interviewed they were harvesting a range of crops including apples, cherries, strawberries, grapes, citrus, salad and mixed vegetables, and mangoes. In addition interviews were conducted with farmers, labour-hire contractors, employment agency staff, backpacker hostel operators, union officials, OHS authority staff, and ethnic community organisations. In late 2013 / early 2014 our interview program was supplemented with telephone interviews of backpacker hostel and caravan park operators in all six Australian states and the Northern Territory. An online survey was also administered to harvest workers. The questionnaire was presented in both English and Chinese (10% of respondents used the latter), and was available online from December 2013 to March 2014. Respondents were recruited by placing invitation cards at working hostels used by harvest workers, and through a web-site used by WHMs to locate harvest work. Useable responses were received from 303 harvest workers. Of these, four out of five were WHM first year visa holders, 72% of whom were seeking a second year visa. Our empirical data provides a sound basis for understanding the employment experience of WHMs.

Our research provides data about whether temporary work visa holders have access to the same benefits and entitlements as their Australian counterparts; and the extent of exploitation and mistreatment of temporary work visa holders.

I have attached two papers which set out our research findings and which I include in this submission. In essence, we find that WHM visa holders:

- experience significant vulnerability in accessing jobs in the harvesting sector in Australia;
- experience below award average hourly rates of pay;
- experience very low rates of pay when paid piece rates – a situation exacerbated by the Horticultural Award clause on piece rates which refers to ‘the average competent worker’. Growers and contractors pay piece rates which do NOT allow the average competent worker to earn an amount which approximates that set out in the award. Replicating the British system of providing a specified floor, equal to the minimum hourly rate of pay, would overcome the intense exploitation experienced by piece workers in horticulture;
- experience a level of work intensification which enhances their risk of workplace injury – a situation exacerbated by piece rate payments which encourage workers to take to earn a living wage;
- experience low level but constant exposure to injury; and
- do not receive adequate information and training about the health and safety risks which they are likely to encounter at work.

Many of these problems are intensified when WHMs are employed by contractors rather than growers. The absence of a licensing system for contractors and labour hire agencies increases the risks of low and non-payment of wages experienced by WHMs. They are poorly placed to locate a contractor to chase lost or underpaid wages, including referring their complaints to the Fair Work Ombudsman, when there is no registration process that could otherwise require contractors to at least have an official address and meet minimum employment and ethical standards.

A related issue is the rapid spread of undocumented workers who compete for work with WHMs. Whilst data is anecdotal, contractors supplying undocumented workers are believed to undercut the rates of pay paid by legitimate contractors and growers, and place downward pressure on the rates of pay and conditions experienced by WHMs. If this continues, there is a risk the WHM visa programme will be undermined as legitimate harvesting jobs dry up. Again, an absence of licencing for contractors has allowed ‘shonky’ contractors to flourish. Almost all countries from which Australia draws WHMs have already regulated labour hire agencies through licensing systems intended to minimise the kind of problems which we have identified in our research.

I would be pleased to add verbal evidence to my written submission if requested by the Committee.

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Deakin School of Business, Melbourne

Attached:

**(1) Layered vulnerability: Temporary migrants in Australian horticulture**

**(2) Itinerant Foreign Harvest Workers in Australia: The Impact of Precarious Employment upon Occupational Health and Safety.**

## **Layered vulnerability: Temporary migrants in Australian horticulture**

**Dr. Elsa Underhill\* and Prof. Malcolm Rimmer\*\***

### **Abstract**

Australian horticulture (fruit and vegetable production) relies upon a seasonal harvest workforce, much of which now consist of temporary migrant workers. This paper argues that the composition of this workforce and the character of the work lead towards layered vulnerability, some groups being more exposed to low pay and substandard working conditions than others. Formally at least, employment conditions are generally protected by the federal Horticulture Award (2010). But are decent employment standards observed consistently? The paper explores this question, examining three issues. First, does analysis of workforce composition reveal different tiers in the workforce, some more vulnerable than others? Second, do the casual nature of harvest work and the job search processes used by temporary migrant workers create disadvantaged groups? Third, does evidence upon pay, working hours, and work intensity reveal some workers to be more vulnerable than others? The paper concludes with an examination of some factors that appear to be associated with layered vulnerability in the harvest workforce, and considers some policy implications.

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## **1. Introduction**

On 4 August 2014 the Fair Work Ombudsman announced a review of the wages and conditions of young working holiday makers (WHMs) in recognition that ‘overseas workers can be vulnerable and/or require special assistance’ (Fair Work Ombudsman (FWO), 2014a). A substantial literature exists showing the vulnerability of migrant workers in Australia and other countries (Anderson and Rogaly 2008; Anderson 2010; Preibisch 2010; Refslund 2014; Rogaly 2008; Mares 2012). Studies also show temporary migrants to be especially vulnerable in horticultural jobs where they may be disadvantaged by undocumented status (Martin 2003; Pena 2010), being bonded to a single employer (Preibisch 2010), social exclusion (Preibisch 2004), poor English skills (Sargeant and Tucker 2009) and precarious employment (Kroon and Paauwe, 2013; Potter and Hamilton, 2014) – factors which generally combine to render unenforceable local (and international) labour rights (Fudge, 2011; Campbell and Tham, 2013).

This paper aims to add to this literature focusing upon Australian horticulture. However, it goes further by considering the diversity of the harvest workforce and the ways in which vulnerability is multi-layered rather than homogenous. The concept of layered vulnerability has been associated with a range of factors that cause disparities in migrant workers’ working conditions. Sargeant and Tucker (2009) divide these factors into three groups – migration factors (including migration status and whether bonded to an employer); migrant worker characteristics (especially language, education and skill level) and receiving country conditions (including union and regulatory protection and social exclusion). Because these factors do not necessarily apply evenly to all temporary migrant workers, vulnerability may be layered producing differential degrees of disadvantage. Previous studies of layered vulnerability have focused on macro- or meso- level analysis (Sargeant and Tucker 2009) to

assist analysis of political, economic, and institutional influences. This paper focuses instead upon micro-analysis, examining layered vulnerability in the specific context of Australian horticulture to identify the immediate causes of layered vulnerability and the implications for policy.

Horticulture in Australia until the 1990s was distinctive because few temporary migrants were used for harvest work. Since then reliance has grown on two different types. First are WHMs. These are young travellers, without dependents, who can apply for a second 12 month working visa in Australia once they have completed 88 days work in horticulture (or a limited range of other specified industries). Doyle and Howes (2015:15) found that nearly half of the growers they surveyed reported that backpackers (WHMs) were the main type of worker they employed. The second important group of temporary migrant workers are undocumented workers. While little is certain about their number, the evidence available suggests they have grown recently to form a significant part of the harvest workforce. Drawn largely from Asian countries outside of the WHM program, their exposure to exploitation appears to be very high (Howells 2010; Hall & Partners 2012) in part because they have no right to work in Australia and cannot claim legal protection for their employment conditions (Clibborn 2015).

In contrast all other horticultural workers, whether Australians or WHMs, nominally enjoy legally enforceable employment conditions under the modern federal award (the Horticulture Award 2010) which fixes minimum hourly wages, an additional 25% casual loading, and a 15% loading that must allow the 'average competent worker' on piecework to earn more than the hourly rate. While the award prescribes a 38 hour week for full-time workers, most harvest workers are hired on a casual basis and are only paid for the hours they work. Piece-

rates must be voluntarily agreed between the employer and the harvest worker. Clause 15.9 of the award suggests there is no floor to actual piecework earnings, stating 'nothing in this award guarantees an employee on a piecework rate will earn at least the minimum ordinary time wage....as the employee's earnings are contingent on their productivity' (Fair Work Commission, 2010). Piece-workers are paid only for what they pick. Thus the award clearly provides scope for some variance in piecework earnings and casual hours. Notwithstanding the casual and piecework conditions in the award, it provides a 'floor of rights' which are legally enforceable. Whether this floor of rights is observed in practice, and which layers of the workforce are most vulnerable to substandard conditions, are issues explored below.

The remainder of the paper is divided into five parts. The first describes the research methods used to collect data. The second section looks at the layered composition of the harvest workforce. The third describes the short-term, casual nature of harvest work, and the processes of job search, exploring how uncertain employment exacerbates vulnerability. The fourth section considers evidence upon pay, working hours and work intensity to show which harvest workers experience the most exploitative employment conditions. The final section reviews the paper's findings upon layered vulnerability and then considers policy issues.

## **2. Methodology**

The paper is based upon data collected from empirical fieldwork conducted in three stages during 2013 and 2014. First, an extensive interview program was undertaken at three regional locations in Victoria (Bendigo, Maffra, and Mildura), in Tasmania and the Northern Territory. Harvest workers were interviewed through nine dual-moderator focus groups with a total of 64 participants from the following countries: England (15), France (8), Burundi (7), Ireland (7), Germany (5), Hong Kong (5), Italy (3), Afghanistan (3), Taiwan (3), Malaysia

(3), Scotland (2), Estonia (1), Japan (1), South Korea (1). With the exception of those originating from Burundi, Afghanistan and Malaysia, all were WHMs. When interviewed they were harvesting a range of crops including apples, cherries, strawberries, grapes, citrus, salad and mixed vegetables, and mangoes. In addition interviews were conducted with farmers, labour-hire contractors, employment agency staff, backpacker hostel operators, union officials, OHS authority staff, and ethnic community organisations. Second, in late 2013 / early 2014 the interview program was supplemented with telephone interviews of backpacker hostel and caravan park operators in all six Australian states and the Northern Territory.

Third, a survey was administered on-line to harvest workers. The questionnaire was presented in both English and Chinese (10% of respondents used the latter), and was available online from mid-December 2013 to mid-March 2014. Respondents were recruited by placing invitation cards at working hostels used by harvest workers, and through a web-site used by WHMs to locate harvest work. Data cleaning reduced the initial 417 responses to 303 useable responses. Of these, 58.1% were male and 41.9% female, while the mean age was 24 years. Current crops or tasks included grapes (20.8%), vegetables (18.2%), berries (12.9%), stone fruit (12.5%), and citrus (8.5%). Four out of five were WHM first year visa holders, 72% of whom were seeking a second year visa. Other respondents included Australians, New Zealanders and international students. Table 1 shows the distribution of respondents into demographic categories. No respondents were known to be undocumented workers – a group beyond the reach of a survey distributed through hostels and websites. Also, some degree of response bias should be acknowledged, skewing findings towards dissatisfied workers.

**Table 1: Survey respondents by nationality, state location, and visa type**

<b>Nationality/Region (n=303)</b>	<b>%</b>
European Union (excluding UK/Ireland)	33.3
Asia	23.1
UK/Ireland	21.8
Australia/NZ	15.5
Other	6.3
<i>Total</i>	<i>100</i>
<b>Current Job Location (n=303)</b>	<b>%</b>
Victoria	39.3
Queensland	19.8
NSW	19.1
Tasmania	6.3
South Australia	5.9
West Australia	5.9
Northern Territory	3.6
<i>Total</i>	<i>100</i>
<b>Visa (n=259, excluding Australian/NZ)</b>	<b>%</b>
Subclass 417 year 1	81.5
Subclass 417 year 2	10.8
Student visa	3.9
Other visa	3.9
<i>Total</i>	<i>100</i>

### **3. Layered vulnerability: the structure of the harvest workforce**

Analysis of the size and composition of the horticultural workforce is complicated by seasonality, the involvement of family members, and the unquantifiable use of undocumented workers. Seasonal workers are not identified separately in official employment statistics, and their movement between harvesting locations impedes an accurate count (Hanson and Bell 2007). Nevertheless, estimates have claimed there are about 30,000 growers and 130,000 employees in Australian horticulture (FWO, 2011). The harvest workforce is made up of several groups. In this section, we focus on three – Australian residents, WHMs and undocumented workers. While some international students (Knight 2011), subclass 457 visa holders (Birrell and Healey, 2013; Deegan, 2008; Toh and Quinlan, 2009), Pacific seasonal



workers (Doyle and Howes 2015) and workers on organic farms work in horticulture, they are numerically insignificant and shall be excluded. Harvest workers of all kinds are nominally covered by the Australian Workers' Union but almost never organised: union presence in horticulture rarely extends beyond packing sheds and processing plants where the National Union of Workers is sometimes active (Union official interview, 8 February 2013; ABC 2015).

The composition of the harvesting workforce has changed considerably over the past twenty years. Until the late 1990s, Australian residents were numerically dominant. These included permanent itinerants, local farm labourers, working class families that spent their annual holidays picking, and semi-skilled rural workers that abandoned their regular employment each year for the higher paid picking work (Mares 2005; Hanson and Bell 2007). Hanson and Bell (2007) categorised the harvest workforce in 2003 into four somewhat different groups. Most important were 'permanent itinerants' (40-50% of the workforce); second were WHMs (20-30% of the workforce); next were Australian retirees (15-25%), and the balance consisted of Australian working holidays makers and students (5-10% of the workforce). Since the 1990s, permanent itinerants have declined in number (Hanson and Bell 2007). A grower in Mundubbera reported that whilst 90% of his workforce used to be permanent itinerants; by 2003 they made up only half (Hansen and Bell 2007). Hugo (2001) suggests that low wages, poor working conditions, and changing attitudes towards travel to remote locations for uncertain employment all contributed to this decline. The labour force gap left by the exodus of permanent itinerants was initially filled in part by WHMs (Doyle and Howes 2015).

Introduced in 1975, subclass 417 (WHM) visas offered young travellers from the UK, Ireland and Canada the right to work during their 12 month stay in Australia. Supported by inter-

country reciprocal agreements, WHM visas were intended to provide for employment incidental to travel, and to facilitate cultural exchange and understanding. The visa was available to young people without dependents, and no English language proficiency standard was necessary at that time (Hugo 2001). By 1995, reciprocal agreements had been reached with three more countries and the number of WHMs had expanded so rapidly that a cap of 33,000 visas per annum (adjusted annually) was introduced (Hugo 2001). In 1997 a Senate enquiry was held following up concerns that WHMs were limiting labour market opportunities for Australian youth (Parliament of the Commonwealth of Australia 1997). Evidence presented to that enquiry pointed to the critical role WHMs had come to fulfil in seasonal harvesting, noting a preference by growers for WHMs over local youth. The Federal government accepted the committee's recommendations that the cap on visa numbers remain. Reflecting community antagonism to guest workers at that time, the committee stated 'Above all, the Committee wishes to avoid...the working holiday program being used as a form of guest labour' (Parliament of the Commonwealth of Australia 1997: xxvi).

By 2005, concerns about WHMs being pseudo guest workers were outweighed by labour market needs. Following a period of extreme labour shortage in horticulture, and lobbying by the National Farmers Federation, the Federal government amended WHM visas to grant a second year visa for those who completed 88 days rural work during their first 12 months in Australia. That work had to be performed in three industries: agriculture, mining or construction. The purpose of the changes were expressed clearly by the Minister for Immigration and Multicultural Affairs: 'the changes to the visa do provide, I think, a significant incentive to people to get out there and help us bring in the crops. That in turn will provide farmers with a wealth of fit, mobile and enthusiastic workers when they are most needed for farm labour' (Parliament of the Commonwealth of Australia, 2005:29). By this

time Australia held reciprocal agreements with 19 countries, including most of the EU, Korea, Taiwan and Japan (Brennan 2014). Whilst English is not the mother tongue in many of these countries, English language proficiency continued to be omitted from the visa requirements. Since the second year visa was introduced, the number of WHM visas issued increased from 96,479 in 2003/4 to 249,231 in 2012/13. In 2013/14, 45,950 second year visas were granted, with the largest groups of recipients coming from Taiwan (24%) and Britain (18%) (DIBP 2014a: 20).

The incentive of a second year visa mostly attracted WHMs into harvest work, DIBP statistics showing that 90% of those who received a second visa completed the qualifying 88 days work in horticulture (DIBP 2014a, 2014b). Grower reliance upon WHMs for harvest work remains high. However, the 2015 Doyle and Howes Report (2015) for the World Bank shows a decline from 73% of growers four years earlier to less than half at the time of their study.

One reason for falling reliance on WHMs may be increased use of a third group - undocumented workers. They are defined by the Department of Immigration and Border Protection (DIBP) as 'non-Australian citizens who are working in Australia without a visa (mostly "over-stayers") or who are in Australia lawfully but working in breach of their visa conditions' (mostly holders of a visitor or "tourist" visa) (DIAC, 2009). Over-stayers (predominantly Chinese, American, Malaysian and British) tend to be international students, as well as skilled, high paid, urban workers (DIBP 2012). Those breaking their visa conditions by doing harvesting or other unskilled work mostly come from low wage, developing countries in Asia. Because undocumented workers are deported for working illegally they are elusive and difficult to count. In 2011 the Department estimated that

between 40,000 and 90,000 illegal workers were working in all industries (DIAC, 2011). Checks to identify and deport illegal workers in 2010/11 located 1,788 people of whom about a third worked in agriculture. This is likely to be the tip of a large iceberg.

While quantification is not possible, these workers may now account for between a quarter and a third of the harvest workforce. This development appears to be recent. While the presence of undocumented workers was observed in the past, it was of marginal concern to the Senate enquiry into WHMs of 1997 (Parliament of the Commonwealth of Australia 1997). Yet in 1999 the Department of Immigration and Multicultural Affairs found significant numbers of undocumented workers and was examining tougher sanctions on employers – a step opposed by horticulturalists on the grounds that ‘it was not always possible to attract sufficient legal workers during the harvest’ (DIMIA, 1999: 27). By 2005, Mares (2005: 5) reported that ‘unless labour-supply problems in the horticultural industry are addressed, there is the potential for a growing number of jobs to be filled by undocumented workers...creating an increasingly antagonistic relationship between primary producers and immigration officials’. His survey of 176 growers in the Murray Valley found that 28% admitted to using undocumented workers at least some of the time (Mares 2006). Three years later a study in a NSW regional centre also reported widespread but unquantifiable exploitation of undocumented workers (Segrave 2009). In some Victorian regions, undocumented workers are now believed to make up the majority of horticultural workers (Hostel manager interviews, January 23: 2013; January 15: 2014).

Accompanying the growing number of undocumented workers are allegations of other illegal practices and the erosion of employment standards. The most authoritative evidence comes from the Howells Report arising from an enquiry commissioned by the Federal Government

in 2010 to explore the effectiveness of those provisions in the Migration Amendment (Employer Sanctions) Act 2007 intended to deter the employment of non-citizens and those without permission to work. The Howells Report criticised growing reliance on this source of labour, saying the presence of these workers 'is very often organised by intermediaries (contractors) who abuse and exploit these workers...these intermediaries are often involved in tax and welfare fraud and breaches of industrial, health and safety and other laws' (Howells, 2010: 22). Howells criticised the effectiveness of existing measures to clamp down on undocumented workers by deporting them and prosecuting employers. Until 2011 prosecuting employers was difficult because hiring undocumented workers was a criminal offence. Since the main witnesses (the workers) were deported, the proof necessary for criminal conviction could not be presented and successful prosecutions were rare. Since 2011 more accessible penalties such as infringement notices and civil action have been introduced (DIAC 2011).

The Howells Report went on to claim undocumented workers are frequently 'underpaid, misled about what they are doing, undernourished, beaten and threatened' (Howells, 2010: 56). The nature of these threats is illustrated by a Goulburn Valley hostel operator who described being raided by the Department of Immigration after 'a contractor "dobbed in" an undocumented worker who complained about being paid AUD\$7.00 (nearly AUD\$10 below the award rate) - not AUD\$12.00 an hour. He told her: "if you can't work for me you can't work for anyone"' (Hostel Manager interview, 15 January 2014). Another case involved a Chinese worker in Tasmania who asked his supervisor for back-pay and 'three from the company physically attacked him causing the police to be brought in' (Hostel Manager interview, January 14: 2014). Another case from Mildura revealed both poor living conditions as well as the violence that can be bred in these situations. In 2012 a fruit picking

contractor – Pardeep Kumar – was bundled into a car outside the town library and found two weeks later in NSW with his throat cut. The coroner's enquiry exposed some of his business practices. He was:

paid by farmers to supply Indian nationals and kept a percentage of what he received....He had up to 45 people living in a four bedroom house who he charged \$50 a week in rent and \$5 a day to be transported to and from farms.....In the days before his death he was carrying \$18,000 which he had withheld from his workers' wages because he needed to show the money up front to obtain a new contract (Murphy, 2012).

Undocumented workers employed by such contractors appear to be the most vulnerable segment in the harvest workforce. The available evidence (mainly anecdotal) suggests this vulnerability rests upon a set of interlocking characteristics – their lack of any legal right to work (and to claim employment rights); total dependence on contractors to supply work; social isolation from other workers and the wider community; disorientation created by moving from job to job; and the lack of English language skills that might help them understand and break from their conditions of bondage. Australian horticulture workers share none of these characteristics. Nor do many WHMs, although the growing numbers of non-Anglophone WHMs can suffer the social isolation and total reliance on contractors that typify undocumented workers. It is reasonable to conclude that the compositional changes outlined above have created layered vulnerability, with undocumented workers most disadvantaged.

#### **4. Harvest work: vulnerability in a casual labour market**

Harvest jobs are generally short-term and unpredictable linked to the vagaries of harvest conditions. This creates a challenge for horticulturalists who must recruit casual workers in the correct number and at the right time. The scale of this army of harvest workers is evident in Bowen, where a population of 12,000 swells to 17,000 over the harvesting season (Hanson and Bell 2007). Job search under these conditions poses challenges for harvest workers who must locate work, pay for travel and accommodation, and minimise idle time between jobs. Hiring is done by growers (performing the normal legal duties of an employer) and by contractors (who relieve growers of these duties, charging an all-in rate to cover labour costs and their profit), both of whom depend upon the efficient circulation of job vacancy information. This can occur in several ways.

First, formal assistance for job search is provided by the National Harvest Labour Information Service (NHLIS), created in 2003 when the government contracted the Mildura and District Educational Cooperative to coordinate and distribute information about harvest jobs. This task is accomplished through a booklet (National Harvest Guide, 2014) which provides general information about the harvesting cycle for crops around Australia, the 'harvest trail' website, and a free-call telephone service. In larger regional centres job search is also assisted by agencies funded by the government for each placement.

Second job search is aided by communication through the internet and social media. Several websites carry advertisements for harvest jobs. Amongst these are *Gumtree*, *FruitPickingJobs*, *Harvest Trail*, *Harvest Bites Labour*, and *Workabout Australia* as well as some websites in Asian languages. Also popular with WHMs are backpacker hostel websites which advertise both jobs and accommodation (WHM interviews, 2013). Backpacker

websites also exist, some carrying hostile reviews of poor hostels. One reviewer attacked the Lazy Lizard Lodge in Ayr, Queensland, stating 'I found out that that Lazy Lizard hardly ever gets any work because all the farmers in town hate the owner because he is that much of a horrible, rude, arrogant guy' (The Backpacker, 2013). Reviews of this kind are commonplace in travellers' blogs and websites. WHMs also establish groups to exchange job information using social media. One group of 30 female Taiwanese harvest workers operated an exclusive face-book site to pool news about available work (WHM interview, April 29: 2013). Most often WHMs alert friends informally as their travels take them to places where work is available. Mobile phones and wi-fi access are essential on the harvest trail.

A third source of job information is the network of working hostels and caravan parks (Jarvis and Peel 2013). Many hostels act as information brokers between horticulturalists and WHMs, sourcing jobs from growers so they can fill their beds. One hostel operator in Victoria described his business model as 'being about building relationships with growers' (Hostel Manager interview, Feb, 7: 2013). He had acquired his hostel with a telephone sim card and spreadsheet allegedly plotting farm contacts. Most had lapsed so the network had to be rebuilt. Most hostel income is earned by charging from \$120.00 to \$180.00 a week for accommodation, and sometimes a daily fee of \$5.00 to \$8.00 for transport to farms. Driven by the imperative to fill beds, hostels sometimes advertise work when it is not available. One WHM described a Victorian hostel as 'a..holes because they have a big website, but only want to fill rooms not jobs' (WHM interview, February, 6: 2013). More conscientious was a Victorian hostel which guaranteed work and was inundated with about 20 phone calls a day from WHMs. High demand allowed it to screen WHMs to ensure that growers received good workers and would provide repeat business. Another hostel in Queensland guaranteed worker



reliability by restricting on-site alcohol consumption to ensure WHMs were fit for early morning work starts (Hostel Manager interview, November 25: 2013).

Some contractors and labour-hire agencies recruit temporary migrants directly from overseas agents (ABC, 2015). Since Australia, unlike some other countries, does not regulate contractors or require them to be registered (Underhill 2013), little systematic information exists about them. However recent studies reveal several levels of labour-hire contractors in horticulture. One study observed 'at the highest level there are legitimate labour hire agents who provide a full labour hire service to their clients, many using backpacker labour...at the other end of the spectrum illegal contractors work with agents/facilitators overseas to recruit workers...and farmers are very willing to abrogate responsibilities to these labour hire contractors including with regard to the extent to which they employ illegal workers' (Hall and Partners / Open Mind 2012). Contractors and agencies are attractive to farmers because they remove the problems of workforce recruitment and management. Importantly, growers can delegate to contractors the duty of checking the visa status of their workers, thus abrogating responsibility for the use of undocumented workers (DIBP 2015).

The three workforce layers outlined in the previous section experience job search differently. Australian workers, including permanent itinerants, generally have regular work habits, returning to the same growers every year to perform seasonal work. Local knowledge provides them with the most reliable information about recurrent job vacancies.

Unlike Australian residents, WHMs rarely obtain repeat work and depend upon the job search processes outlined above. These processes create risk for WHMs because they are racing against time to record 88 days work in one year to gain a visa renewal. One danger of lost

time between jobs was highlighted in 2011 when tropical cyclone Yasi stranded two WHMs in Atherton (Queensland) just short of the 88 working days target required for a visa extension, rendering them unable to remain in Australia. As their hostel manager observed 'the Department (of Immigration) can be very strict' (Hostel Manager interview, November 25: 2013). Most WHMs need multiple jobs to achieve the 88 day target. The study reported here found average job tenure was just 20 days, forcing WHMs into constant job search. While interstate travel remained rare (73% worked in only one State) moving between districts was almost universal creating dislocation and lost work time. Exacerbating job search problems is the lack of useful and reliable job vacancy information. Only 4.7% of survey respondents used the NHLIS website (a poor source of detailed information), relying instead upon working hostels (32.8%), the internet (29.7%) and friends and other travellers (24.6%) for job information. These sources can be unreliable. Indeed false job vacancy information is endemic, reported by half of survey respondents and in focus groups. Those focus group participants who travelled to the Northern Territory for the 2013/14 mango harvest, for example, made an expensive journey only to discover the harvest had failed (WHM interview, October 17: 2013). Most vulnerable to untrustworthy job information are Asian WHMs who are further disadvantaged by language barriers. Of the Asian WHMs surveyed, almost 40% relied upon friends and other travellers for job information, and 63% complained about false job information.

Third are undocumented workers. Available reports suggest they are almost entirely reliant upon contractors who bring them into Australia, place them with growers, and organise their return journeys. The conditions under which they are recruited overseas and hired in Australia resemble bonded servitude rather than informed participation in a free labour market, placing them in the bottom layer of the harvest workforce.

## **5. Pay, working time and work intensity: three dimensions of vulnerability**

The Fair Work Ombudsman (FWO), who is responsible for award enforcement repeatedly reports compliance problems in horticulture. In 2009/10 a shared industry compliance program was pioneered by the FWO alongside unions and employers to both audit compliance and educate horticulturalists about their obligations (Hardy, 2011). The audit found 36% of farmers in contravention of the award, a quarter of these for underpayment but most often for not keeping pay records or giving payslips (FWO, 2011: 7). In August 2014, inspectors found that strawberry farms around Caboolture (Queensland) had underpaid pickers and packers by \$134,000, and were failing to make written agreements with piece-workers (FWO, 2014b). Award non-compliance and poor employment record keeping appear widespread in Australian horticulture (Tan and Lester 2012; Mares 2005; Doyle and Howes 2015). This section examines survey and focus group evidence upon earnings, working hours and work intensity to throw light upon whether employment conditions comply with the award and which subgroups are most vulnerable to sub-standard conditions.

Earnings information was provided by 278 survey respondents. Of these 158 were currently paid by the hour and 120 by piece-wages while 198 were paid by farmers/growers and 75 by contractors. Asian WHMs made up almost half of the number of contractor employees. In contrast to the award hourly wage of AUD\$16.87 for a level 1 employee (as of August 2014), mean hourly earnings for workers paid by farmers was AUD\$14.86 (SD 5.13) while contractor employees were paid a mean of AUD\$12.66 (SD 5.74). Table 2 shows hourly earnings for hourly paid workers and piece-workers.

**Table 2: Hourly earnings (AUD\$) for harvest workers (n=278)**

Payment method	Mean	Median	Minimum	Maximum	Standard Deviation
Paid by the hour (time wages) (n=158)	\$16.20	\$18.00	\$3.00	\$28.25	4.833
Paid piece rates (n=120)	\$11.69	\$12.00	\$2.00	\$30.00	5.01

t(276)= 7.589, p = 0.000

This data reveals several points. First, farmers pay better than contractors, who average about AUD\$4.00 below the award hourly minimum. Second, Table 2 shows that piece rate hourly earnings also average well below the award hourly minimum wage by about AUD\$5. Third, piece-rate earnings average AUD\$4.51 less an hour than time-wage earnings despite the award provision that the ‘average competent worker’ on piece rates should be able to earn 15% more. This evidence points strongly towards widespread non-compliance with the award – a finding that resonates with focus group complaints such as ‘long hours for terrible pay’ and ‘awful pay for hard work’.

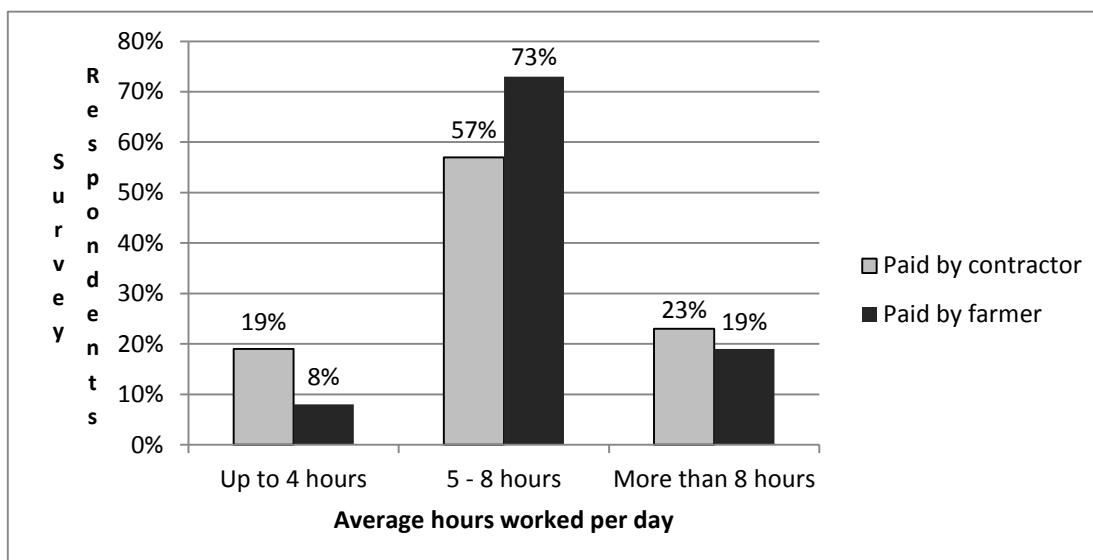
This earnings data also reveals a fourth point - high variance in hourly earnings. While this is found amongst all sub-groups, we shall focus on variance in individual piecework earnings. One common explanation is the level of worker experience – an argument illustrated by new fruit pickers who complained that experienced counterparts take the ‘low hanging fruit’ in orchards, leaving them to climb higher and earn less. Second, ethnic stereotypes about worker capability deserve note. The view persists amongst growers and contractors that Asian workers are quicker and more careful than European or Australian counterparts. One Mildura farmer described Vietnamese orange pickers ‘running up ladders filling 20kg bags and running down without using their hands - Circe de Soleil stuff... backpackers cannot compete and earn a third as much’ (Farmer interview, 8 February 2013). Despite their alleged

capabilities, we found Asian WHMs averaged the lowest earnings when paid by piece rates (AUD\$9.64 compared to the average of AUD\$11.69). Tan and Lester's (2012) analysis of WHM earnings, based on 2008 data, similarly found a lower average hourly rate for WHMs from Japan and Korea. Third is crop type. Some crops (strawberries and peas) are notorious for yielding low earnings. A Scottish WHM in Mildura reported earning 'only \$110.00 for a full week picking peas ...not enough for the hostel rent of \$180' (WHM interview, 6 February 2013). At the other extreme an Irish WHM in Tasmania 'made over \$1,000 one week picking apples' (WHM interview, 30 April 2013). Clearly a wide range of factors can and do cause variations in the productivity and earnings of individual pieceworkers. But equally, the low average pay of pieceworkers suggests that horticulturalists fix piece-rates too low on the basis of exaggerated performance expectations of the 'average competent worker'.

A separate payment problem concerns non-payment of wages – a problem reported by 40 survey respondents (14.8%). Of these 35 tried to recover their pay but only three were successful. One respondent tried to find the contractor but he had 'skipped with everyone's pay'. Another respondent reported a contractor to the FWO but was then asked to fill in forms which were 'too long and complicated'. After finding that the contractor had since left the district this picker gave up. Recovering lost wages is clearly difficult, but collective action can help. A German WHM recounted how he had 'joined 40 backpackers besieging a house in Mildura for five hours until the contractor inside surrendered, came out, and paid everyone their overdue wages' (WHM interview, 6 February 2013). While growers are sometimes guilty of not paying wages, the survey indicates that working for a contractor doubles the likelihood of this occurring.

Variations in working hours are another important aspect of vulnerability. Since almost all survey respondents were casual, their earnings (whether time wages or piece-rates) depended upon how much work-time they could get. Evidence on working hours was provided by 282 survey respondents. Of these 205 were employed by farmers and 77 by contractors. Figure 1 reveals the average daily hours worked by these two groups. Very short working hours (less than 4) were twice as likely amongst contractor employees while approximately a fifth of both groups reported long hours (more than 8).

**Figure 1: Working hours and paid by farmer or contractor**



Working hours in horticulture can be unpredictable for reasons such as rain interruptions and excessive heat. Not surprisingly then the provision of information about expected working hours is important, but can also be a 'hit and miss' affair. Just over half the survey respondents were informed about expected hours before starting at the farm (51.4%), a third (33.6%) on their first day, but 15.1% were not told at all. Variable working hours create uncertainty about weekly earnings and can cause dissatisfaction. Table 3 contrasts satisfaction with working hours amongst those paid by farmers and those paid by contractors. Two thirds of those paid by farmers (62%) found the number of hours about right, in contrast

to less than half of those paid by contractors (44.2%), while a further 27.3% of contractor employees complained of too few hours. Similar proportions amongst both groups said they would like more hours but the work is too tiring. This raises the question whether workers find the intensity of harvest work is too great.

**Table 3: Satisfaction with working hours and paid by farmer or contractor**

Satisfaction with working hours	Paid by farmer		Paid by contractor	
	No.	%	No.	%
Too few hours	26	12.7%	21	27.3%
Too many hours	29	14.1%	11	14.3%
Number is about right	127	62%	34	44.2%
Would like more hours but the work is too tiring	23	11.2%	11	14.3%
Totals	205	100%	77	100%

$\chi^2 = 10.691$  DF 3,  $p < .05$

Focus group evidence clearly showed that WHMs find harvest work is exhausting. Nevertheless work intensity does differ between groups. Survey evidence on work intensity was constructed from several indicators – carrying excessive loads, working in extreme heat, and not stopping for drink breaks – all indicators that the employment system may be pushing workers too hard. These indicators are shown in Table 4. Piece workers and hourly paid workers were contrasted on two work intensity measures – carrying heavy loads and working in excessive heat – piece workers encounter more adverse conditions. Similarly, contractor employees were much more likely than farmer employees to work in extreme heat and miss drink breaks. For many WHMs, the reality of harvest work is somewhat different from the ‘fit and healthy lifestyle’ publicised in harvest trail promotional materials (NHLIS, 2014).

**Table 4: Indicators of work intensity**

<b>Work practice</b>	<b>Piece workers (%)</b>	<b>Hourly paid workers (%)</b>
Often/always carry excessive loads <sup>a</sup>	31.9	11.2
Often/always work in extreme heat (eg. More than 35 degrees Celsius) <sup>b</sup>	48.3	25.0
	<b>Contractor employees (%)</b>	<b>Farmer employees (%)</b>
Often/always work in extreme heat (eg. More than 35 degrees Celsius) <sup>c</sup>	46.7	30.1
Often/always missing drink breaks <sup>d</sup>	24.0	16.1

a.  $\chi^2 = 24.176$  DF 2,  $p < .000$

b.  $\chi^2 = 17.332$  DF 2,  $p < .000$

c.  $\chi^2 = 6.614$  DF 23,  $p < .05$

d.  $\chi^2 = 8.127$ , DF 2,  $p < .05$ .

The evidence presented in this section makes it clear that pay and working conditions vary greatly. Which groups are most vulnerable? While we are unable to make comparisons with undocumented workers, the WHMs who make up four-fifths of our respondents, appear themselves to be layered into different groups, relative vulnerability depending upon several factors, in particular whether they are paid on piece rates (which leads to low pay and intensive work pressures) or engaged by contractors (which leads to low pay, shorter and unsatisfactory hours and more intensive work pressures). WHMs of Asian origin were the most vulnerable, and were more likely than Australians and other nationals, to work for a contractor and receive lower hourly earnings. Limited English language skills often leave this group vulnerable to predatory contractors.

## **6. Conclusion: Layered vulnerability and policy prospects**

The aim of the paper was to explore the vulnerability of temporary migrant harvest workers in Australian horticulture. Our findings reveal layered vulnerability in which different sub-



groups in the workforce differ in their experience of disadvantage. First of the three major constituent groups in the workforce, undocumented workers, appear especially vulnerable for several reasons that Sargeant and Tucker (2009) would classify as migration factors (undocumented status, dependence upon a single contractor); migrant worker characteristics (especially poor language skills); and receiving country conditions (exclusion from regulatory and union protection, and social exclusion). Second, WHMs appear more vulnerable than Australian residents because lack of labour market knowledge forces them to race the clock to record 88 working days for a visa extension. Third, Asian WHMs experience greater risks than those from other countries. They have fewer sources of reliable job information, and receive lower rates of pay once employed. Fourth, harvest workers hired by contractors (frequently Asian) are more vulnerable than farm-employed workers to below-award pay, short and unsatisfactory working hours and more intense work. Finally, piece workers are more vulnerable than hourly paid employees to low pay and intense work pressures.

Two caveats must be made about the research findings in this paper. First is the need for more research to establish with greater certainty the size and composition of the harvest workforce and to further test findings upon job search, pay, working hours, and work intensity. There is a special need for more research into the numbers and working and living conditions of undocumented workers who are known about only through anecdotal evidence and the records of enforcement agencies.

Second, it can be helpful to place labour market analysis in the context of the growing product market pressures in horticulture (Rogaly 2008). In 2009 the southern states of Australia emerged from an eight year drought that forced up water prices (at great cost to irrigators in the Murray-Darling Basin and elsewhere), restricted water supply, and drove

many horticulturalists off the land. Even after the drought, more than half of Australia's 6,000 grape growers lost money between 2009 and 2013 and 500 left the industry (Evans, 2014). While this was occurring foreign competition made fresh inroads into Australian markets and the high value of the Australian dollar discouraged exports. At the same time, Australia's two major supermarket chains forced stricter contracts on produce suppliers and processors. Recent movements to curb the abuse of retailer market power have been met with proposals from Woolworths, Coles and the Australian Food and Grocery Council for a voluntary code of conduct which may not solve the problem (Mitchell, 2014). It is likely that growers transmit product market pressures to their workforce.

The multi-layered nature of workforce vulnerability makes it unlikely that any single policy will be sufficient to eliminate disadvantage and support compliance with award standards. Several policy areas need consideration. First, immigration policies need attention to better manage the supply of documented harvest workers and remove the need for an undocumented workforce – a phenomenon that is growing (in spite of legal reforms) and breeds a host of illegal and unethical practices. Second, there is (as one political leader recently recognised) a strong need to license labour-hire companies (contractors) to drive out those engaged in illegal or unethical practices (Victorian Government 2015). Almost all countries from which Australia draws WHMs license labour hire agencies to minimise problems of the kind reported in this study (Underhill 2013). Third, the award requires attention where it prescribes piece-rates be fixed by agreement between the farmer and worker so the 'average competent worker' can earn a certain amount; this process is unrealistic and allows productivity expectations to be fixed too high. In the UK, the national minimum wage fixes a floor to piece rate earnings so that exploitative individual bargaining

cannot occur (Rogaly 2008). Such a floor would eliminate many abuses in Australian horticulture.

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## **Itinerant Foreign Harvest Workers in Australia: The Impact of Precarious Employment upon Occupational Health and Safety**

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### **Abstract**

Horticulture work in many developed economies is increasingly performed by temporary migrant workers from low-wage economies. In Australia, such work is now performed predominantly by international backpackers – young well-educated workers with mostly sound English language skills. These workers are drawn to harvesting work by a government scheme which offers a second year working visa in return for completing a specified number of days work in horticulture. This paper examines the health and safety experience of these workers, through focus groups, interviews and a survey of international backpackers. The health and safety risks encountered by backpackers are explored, and the accentuating role of work organisation, contracting, and payment systems examined. Compliance with OHS legal requirements, notwithstanding a heavily regulated environment, is found to be unsystematic, leaving these young workers vulnerable to injury. The presence of undocumented workers also places downward pressure on conditions for all workers in horticulture, especially backpackers with whom they compete for work.



## **Introduction**

Standish recently characterised the ‘precariat’ as a global phenomenon produced since the 1970s by the neo-liberal search for labour market flexibility.<sup>1</sup> As a new layer in the labour market positioned beneath the level of the traditional working class, the precariat is defined by lack of security. Amongst the several dimensions of insecurity listed by Standish is ‘employment insecurity’ involving unregulated hiring and inadequate protection against arbitrary dismissal. Most often associated with casual employment which has grown rapidly since the 1970s, this dimension of insecurity also extends to temporary migrant workers. According to one recent estimate, as many as 90 million workers or 3% of the global workforce cross national boundaries to obtain jobs.<sup>2</sup> Such estimates include primarily documented workers admitted legally for the purpose of temporary employment rather than undocumented (illegal) workers who are hard to count. Demand changes affect this flow. Following the Global Financial Crisis, between 2008 and 2009 temporary migration in OECD countries fell by 16.5%.<sup>3</sup>

Horticulture (growing fruit and vegetables) is an industry where large numbers of temporary, unskilled workers are employed for harvesting. High-wage economies with an insufficient supply of domestic harvest workers fill these jobs with temporary migrants from low-wage countries. They do so in two ways. First farmers hire undocumented workers – a resource often employed covertly in countries with restrictive migration laws. Thus before the AgJobs legislation of 2003, it was estimated that undocumented workers (mainly Mexican) filled about 40% of US farm jobs.<sup>4</sup> Second farmers recruit through formal temporary migrant worker programs that offer short-term working visas to harvest workers. Germany and Canada took this approach recruiting harvest workers from Eastern European and Latin American nations respectively with which they had agreements.<sup>5, 6</sup> The Australian approach

is similar in the sense that temporary harvest workers are given formal work visas. However, Australia differs from Germany and Canada where these visas are issued specifically for horticulture. Rather Australia offers incentives so that part of the much larger pool of international working holiday makers (WHM, also known as backpackers) will choose farm work.<sup>7</sup> The incentive is a second year extension of the initial 12 month working visa.

Australia is also distinctive in having a highly regulated labour market in which minimum wage, unfair dismissal, and occupational health and safety (OHS) protection applies equally to native and temporary migrant workers. However a growing body of research suggests that temporary migrant workers, whether documented or undocumented, are often denied full equality. They encounter systematic employment disadvantages,<sup>8, 9, 10</sup> are unable to claim normal legal rights,<sup>6, 11, 12, 13</sup> and have higher exposure to certain job hazards.<sup>14, 15</sup> This paper seeks to explore how the precarious nature of temporary migrant work in Australian horticulture affects OHS conditions.

The paper is organised into six sections. First we provide a brief account of the methodology used to collect the empirical data upon which our analysis is based. Second, we examine the temporary migrant workforce in horticulture looking at the numbers of workers and their different migration status. Third the paper examines the nature of horticultural work and job search and hiring practices in the industry. The fourth section looks at OHS in horticulture focusing upon legal regulation, the nature of risks, and the role of training in incident prevention. The fifth section draws upon focus group and survey data to report horticultural workers' perceptions of risks, training and factors adversely impacting their health and safety. Finally, we conclude by questioning whether temporary migrant employment practices in horticulture are consistent with the maintenance of appropriate OHS standards and practices.

## **Methodology**

The paper is based upon empirical fieldwork collected in two stages during 2013 and 2014. First an extensive interview program was conducted at three regional locations in Victoria (Bendigo - apple and cherry orchards, Maffra - salad vegetables, and Mildura - grapes, citrus, and mixed vegetables); Tasmania (apples, cherries and strawberries); and the Northern Territory (mangoes). Most interviewees were harvest workers, although data was also collected from farmers and contractors, employment agency staff, migrant hostel operators, union officials, OHS authority staff, and ethnic community organisers. Harvest workers were interviewed initially through nine focus groups with a total of 64 participants from the following countries: England (15), France (8), Burundi (7), Ireland (7), Germany (5), Hong Kong (5), Italy (3), Afghanistan (3), Taiwan (3), Malaysia (3), Scotland (2), Estonia (1), South Korea (1), and Japan (1). Drawing on the focus group findings, a questionnaire was designed for administration on-line. The survey was presented in both English and Chinese. Respondents were recruited initially in all Australian states by placing invitation cards at hostels used by harvest workers. Following this a further round of invitations was issued through a web-site used by WHMs seeking harvest work. A total of 417 initial responses were received. These were checked for duplication, factual errors and inconsistencies after which 303 valid responses remained. Data was analysed using SPSS 21. The national origin of respondents is shown in Table 1.

**Table 1: National origin of survey respondents (n=303)**

Region	% of responses
Australia & New Zealand (14.5% Australian)	15.5%
Europe (21.8% UK & Ireland; 16.8% Germany; 6.9% France)	55.1%
Asia (12.9% Taiwan)	23.1%
Americas (5% Canada)	5.6%
Total	100%

Of these respondents, 69% were paid by farmers, 27% by contractors, and most of the remaining 4% were unpaid volunteers. Undocumented workers were unlikely to respond and could not be identified.

### **The global reserve army: Temporary migrants in Australian horticulture**

The observation that a reserve army of labour is used to meet demand fluctuations is not new.<sup>16</sup> Only recently, however, has the use by developed economies of a global pool of surplus workers been observed.<sup>17</sup> Australian horticulture had little need to tap into this global pool until recently since Australian working class families traditionally provided the peak harvest workforce, often leaving the cities to harvest fruit and vegetables during their holidays. As recently as 1999, Victorian fruit growers reported that 80% of harvest workers in the rich Goulburn valley stone-fruit (apricots and peaches) district were local Australians.<sup>18</sup> Until 1993 (when the railway closed) the Dried Fruits Association used to hire 4 or 5 trains a year to take Melbourne working class families to Mildura (a remote regional centre 600 kilometres away) to pick grapes during their holidays. To some extent Australians, including 'grey nomads' (itinerant retirees) still work in horticulture often performing skilled jobs such as pruning, or driving tractors and fork lifts which horticulturalists are reluctant to assign to unskilled migrants. However horticulturalists prefer WHMs for harvest work, finding them more motivated, hardworking, honest and flexible than comparable Australians.<sup>19</sup> A large

share of unskilled horticultural work is now done by temporary migrant workers. There are estimated to be 30,000 horticulturists and 130,000 employees in the industry.<sup>20, 21</sup> While the number of temporary migrant workers cannot be accurately measured, it is likely they account for the majority of seasonal peak employment.

Temporary migrant harvest workers are a sub-group within the larger population of temporary entrants to Australia. Birrell and Healey<sup>22</sup> reported a stock of 1,045,838 temporary entrants in December 2011, of which 12% held Working Holiday Maker visas. Three other groups participate in harvesting work but are not numerically significant. These include student visa holders,<sup>23</sup> those employed under the Seasonal Worker Program (drawn from Pacific Islands)<sup>24</sup> and Willing Workers on Organic Farms (WWOOFERS) (WWOOF Australia, 2014).<sup>25</sup> The two main sources of temporary migrant harvest workers are Working Holiday Makers and undocumented workers.

The first group - Working Holiday Makers – make up perhaps a third of the harvest workforce. They can be sub-divided into two sub-groups - Subclass 462 and Subclass 417 visa holders. There are fewer than 6,000 of the former recruited from the USA and 9 other countries. Since their 12 month visas cannot be extended they have no incentive to take harvest jobs. More important are Subclass 417 visa holders. This scheme commenced in 1975 catering initially for British, Irish and Canadian backpackers, and now extends to 19 countries with which Australia has reciprocal arrangements (centred predominantly upon work entitlements). Eligibility for the scheme is confined to single people without dependants aged between 18 and 30 years old. In 2012/13 a total of 258,248 WHM visas were granted (DIBP, 2013).<sup>26</sup> Two thirds of these visa holders came from 5 countries - the UK, Germany, Taiwan, France, and South Korea. To attract these WHMs into horticulture the Subclass 417

visa program was amended in 2005 allowing an extension for a further 12 months to applicants who have completed 88 days of work in three specified industries (mining, construction and agriculture) in regional Australia. In 2012/13, second year visa extensions were granted to 38,862 applicants (DIBP, 2013).<sup>27</sup> Over 90% of second year visas are gained by taking horticultural jobs.<sup>19</sup> Subclass 417 visa holders now form an important part of the horticultural workforce with perhaps as many as 40,000 a year seeking harvest jobs.

Second are undocumented (illegal) workers – a growing and numerically significant part of the workforce. These are defined by the Department of Immigration and Border Protection (DIBP)\* as non-Australian citizens working in Australia without a visa (mostly ‘over-stayers’) or who are in Australia lawfully but working in breach of their visa conditions (mostly holders of visitor or tourist visas). Over-stayers (often American or British) tend to be skilled, high-paid, city workers; those breaking their visitor’s visa conditions to work in horticulture mostly come from low-wage developing countries. In 1999 the Department recommended tougher sanctions be imposed on employers to curb the problem of illegal workers. This approach was opposed then by horticulturalists who argued ‘it was not always possible to attract sufficient legal workers during the harvest’.<sup>27</sup> Because undocumented workers are deported for working illegally they are elusive and difficult to count. In 2011 the Department estimated that between 40,000 and 93,000 illegal workers were working in all industries.<sup>28</sup> DIBP conducts periodic checks to identify and deport illegal workers, locating 1,788 in 2010/11 of which about a third worked in agriculture. This is likely to be the tip of a very large iceberg. Qualitative evidence suggests that undocumented workers are increasing rapidly in number.<sup>29</sup> While quantification is not possible, they may account for between a quarter and a third of the peak horticultural workforce.

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\* In 1997 DIMIA (the Department of Immigration and Multicultural Affairs) changed its name to DIAC (the Department of Immigration and Citizenship) and in 2013 to the DIBP (Department of Immigration and Border Protection).

To summarise, the horticultural workforce now is principally made up of three groups – a core of stable, generally skilled Australian workers; a large mobile population of WHMs mostly taking harvest work to meet requirements for a visa extension; and a large and growing number of undocumented workers mainly from low-wage, developing countries. For WHMs, their precarious status derives from their reliance on casual, short-term employment upon which their access to a second year visa is dependent. They are vulnerable because of the need to work a minimum 88 days in a volatile job market. Undocumented workers, on the other hand, are precarious because of the absence of a legal right to work. Their vulnerability extends beyond work rights to general citizenship rights.

### **Casual harvesting: A two-tier labour market**

Harvesting jobs are short-term and unpredictable governed by the vagaries of crop size and ripeness. Recruitment under these conditions is challenging since the right number of workers must be available, at the right time, and often in remote regions. These conditions dictate a dominant hiring model of casual work paid at piece-rates – a model that is reflected in the employment conditions specified in the Horticulture Award.<sup>30</sup> This hiring model is primarily geared to the needs of horticulturalists - not harvest workers who have no guarantees of work, job duration, or earnings. Few can afford to travel to remote regional locations only to find there is little or no work. In this labour market the effective circulation of accurate and timely job information is important to both horticulturalists (so they can recruit sufficient labour) and temporary migrants (so they will find enough work as they travel).

Two different hiring methods are common in horticulture. First is direct hire by farmers who are responsible for the normal duties of an employer to observe legal employment, workplace

safety and health conditions and collect income tax, superannuation and workers' compensation contributions. Second is employment through contractors who are paid an 'all-in rate' to relieve the horticulturalist not only of the challenge of finding labour but also responsibility for remuneration, and meeting legal employment obligations (other than OHS duties which are shared). Where direct employment prevails, both horticulturalists and workers (mainly Australians and WHMs) depend upon a number of mechanisms to circulate information about job availability. First, consistent with its promotion of harvesting work to international backpackers, the federal government funds a National Harvest Labour Information Service (NHLIS). The NHLIS provides a booklet (National Harvest Guide, 2014) which sets out the harvest periods for different crops in various locations; a free-call telephone job information service; and in larger regional centres, local job agencies are paid by the government for each job placement. The 'Harvest Trail' encourages temporary harvest workers to chase the harvest around the continent since Australia's climatic range and variety of crops mean that some harvest work is almost always available somewhere. Publicity material also promotes the idea that job seekers from overseas can 'find a great way to maintain a fit and healthy lifestyle.... to meet people from around the world....and to travel and see Australia at their own pace while working and making money'.<sup>31</sup> Focus group and survey evidence indicate the NHLIS is well known, but is rarely relied on by job seekers because of the lack of timely and accurate vacancy information.

Second, informal networks relying on social media, word of mouth and working hostels are important sources of job information. Four out of five survey respondents found their current job using these three methods. The widespread use of social media has resulted in multiple websites catering to WHMs by advertising social events, accommodation and jobs. These are popular since they are effective in bridging the geographical gulf between harvest workers



and horticulturalists in real time. Informal electronic communication is also important. One group of about 30 female Taiwanese harvest workers scattered around Australia established an exclusive face-book site to pool job information gathered from their dispersed work experiences. But most often, friends simply phone each other about job openings. Mobile phones and internet access are essential tools for WHMs on the harvest trail.

Most important for informal job information, however, are working hostels which operate as information brokers between harvest workers and horticulturalists. Their websites promote accommodation and their ability to provide jobs for those who stay with them. The information they offer WHMs typically includes job vacancies, likely duration, and wage rates. For farmers they undertake to recruit sufficient labour and also sometimes to vet for skill and aptitude. Hostels make a profit by filling beds (dormitory accommodation costs between \$120.00 and \$180.00 a week) and sometimes by charging a daily fee of \$5.00 to \$8.00 to transport WHMs to work. The imperative of filling beds causes some hostels to claim harvest work is available when it is not. Such hostels get a bad reputation. An English backpacker described how 'we were promised 6-8 hours a day and 6-7 days a week. We only do 2 hours a day 4 days a week', others described how they could be kept 'waiting weeks for work'. With a limited budget, and the need to complete 88 full days of work to achieve a 2<sup>nd</sup> year visa, such misleading information is resented amongst backpackers. They can wait for work to become available, or they can travel to another regional location with no greater certainty of fair treatment. Other hostels, however, take their job intermediary role more seriously including vetting WHMs for suitability (Interview, January 24: 2013), and restricting alcohol to ensure WHMs are fit for early morning work (Interview, November 11: 2013). However good a hostel may be, its success depends upon farmers seeking labour. Many hostels are finding demand for labour (and beds) is falling because farmers are

recruiting undocumented workers who use alternative accommodation. One example - a caravan park in the Goulburn Valley – contracted its operations from two sites to one and was considering closing after being squeezed out by ‘dodgy contractors who cram 25 illegal workers in a house, if they are nice give them a mattress, and charge each one \$85.00 to \$125.00 a week rent’ (Interview, 15 January: 2014).

Where contractor employment prevails, workers may be employed through contractors or labour-hire agencies, both of which offer administrative advantages to farmers but were viewed unfavourably by focus group participants and survey respondents. Contractors paid harvest workers lower wages than farmers, and had a reputation for unreliable payment of wages, including non-payment. At the extreme are illegal contractors who ‘work with agents/facilitators overseas to recruit workers...and farmers are very willing to abrogate responsibility to these labour hire contractors including with regard to the extent to which they employ illegal workers’.<sup>32</sup>

Information upon illegal contractors is difficult to obtain. However, reports from government inquiries and other sources agree upon how illegal contracting works. The most authoritative account comes from the Howells Report which had access to closed files on illegal workers held by the Department of Immigration.<sup>29</sup> Howells’ account of offshore recruitment observed:

There are many people who come to Australia on a tourist visa ....but who work to support their stay. This method .....has proved reasonably successful and so it becomes attractive for organisers to arrange for tourist visas and passage and then to arrange work and some accommodation. A person then meets them on arrival and takes them to a workplace....They may not actually meet the employer.

Rather they are 'paid' by the intermediary...and may move from one workplace to another.<sup>29</sup>

This system is attractive to horticulturalists because it relieves them of the burden of employment paperwork and the need to discipline or communicate with workers many of whom are Asian and cannot speak English. It can also yield lower labour costs and higher productivity because, as one hostel operator claimed, 'Asians are disciplined and hard working and take care to get the job right' (Interview, January 24: 2013).

The Howells Report criticised growing reliance on this source of labour, saying the presence of these workers 'is very often organised by intermediaries who abuse and exploit these workers....these intermediaries are very often involved in tax and welfare fraud and breaches of industrial, health and safety and other laws'.<sup>29</sup> The business of contracting is sufficiently lucrative and unregulated that abuses appear to be rife, with criminality often linked to the exploitation of members of closed ethnic communities by labour hire contractors.<sup>32</sup> Labour contracting systems in Australia are unregulated beyond standard employer obligations. Illegal contractors are labelled such because of their reliance on undocumented workers. Farmers, on the other hand, have until recent times been able to draw upon such contractors with impunity. In 2013, migration laws were amended so that businesses could no longer claim a defence that they were unaware undocumented workers were employed.<sup>33</sup> The effectiveness of these amendments has not yet been assessed, although anecdotal evidence suggests the number of undocumented workers has continued to grow unabated.

There are important points of contrast between the experiences of WHMs and undocumented workers in the labour market. First, most WHMs are hired directly by farmers and need good

job search data to locate vacancies. To maximise their opportunities of finding work, WHMs are great consumers of labour market information from both formal and informal sources. They are aided in this by being generally well educated with adequate English.<sup>19</sup> In contrast, undocumented workers generally depend upon contractors to find them work. As a result they are starved of labour market information, although their employers (the contractors) are not. They cannot find their own jobs, are unaware of employment entitlements, have poor English to access formal information sources, and may be too vulnerable to bullying or deportation to utilise labour market information. In effect the labour market has become fractured into two tiers, the one operating primarily through direct hire by farmers with well informed participants, while the other is run by illegal contractors who control a workforce with little access to job information and no freedom to act independently.

### **OHS in horticulture: Regulation and risk**

The exchange of job information covers more than just work availability and wage rates. It includes OHS regulations and risks. While OHS information may seem unimportant to farmers and workers during the hiring process, it becomes so after employment has commenced. The case of Jessica Pera – an inexperienced 24 year old German backpacker – illustrates the point. Jessica died in December 2009 on her second day picking tomatoes on a farm near Childers in Queensland. Her employer, Barbera Farms, was fined \$25,000 for failing to supply drinking water to minimise the effects of dehydration.<sup>34</sup>

Workplace health and safety standards throughout Australian horticulture are regulated by state-based Workplace Health and Safety Acts (the *Acts*) which mostly apply the federal 'model act'. Two exceptions exist – the states of Victoria and Western Australia. These states have not adopted the national model of workplace health and safety laws but their laws

specify similar obligations thereby creating the same practical obligations on employers, contractors (including labour-hire) and workers.

This legislation imposes uniform obligations upon 'persons conducting a business or undertaking' (the expression which replaced 'employers' when the federal 'model act' came into effect in 2012). Such persons are obliged to ensure the health and safety of workers whilst working in the business or undertaking, 'so far as is reasonably practicable'. This obligation extends beyond the persons' employees to workers employed by contractors and labour hire agencies. They are also required to consult with all workers carrying out work under their direction or influence, notwithstanding their employment by another party. In horticulture, both farmers and contractors providing workers to farms have to ensure the health and safety of the workforce. In the latter case, the extent to which the farmer and the contractor bear responsibilities varies according to the amount of control and influence each party has over the relevant matter. Both parties are obliged to co-ordinate activities to ensure that either the farmer or the contractor is taking the necessary steps to eliminate risks and protect workers.<sup>35, 36</sup> They may, for example, agree upon which party will provide OHS training to avoid duplication of the others' activities. Australian legislation is clearly comprehensive in coverage applying to all farm workplaces, and to all workers whether hired directly or through contractors.

The *Acts* also set out a comprehensive list of duties towards workers. Of particular relevance here are obligations with respect to providing and maintaining a risk free work environment; a safe system of work; adequate facilities for the welfare of workers; the provision of information, training, instruction and supervision; safe handling and storage of substances; and safe plant and structures. Employers are expected to eliminate risks to health and safety,

and where this is not reasonably practicable, to minimise the risks. Workers also have obligations under the *Acts*. These include an obligation to take 'reasonable care' with respect to their own health and safety; that their conduct does not adversely affect the health and safety of others; and that they comply and cooperate with health and safety policies and instructions.

The importance of regulating farm OHS is underlined by the industry's poor record. Farm work is not safe. In 2007/8 the incidence of workers' compensation claims in agriculture, forestry and fishing (24 per 1,000 workers) exceeded Australia's two other most dangerous industries – construction (22 per 1,000) and mining (18 per 1,000).<sup>37</sup> Fatalities were lower than in construction, but still averaged 16.5 per 1,000 workers between 2008/9 and 20010/11 or seven times the national fatalities rate.<sup>21</sup>

The causes of severe OHS incidents reflect the high level of mechanisation in Australian agriculture. On average one person a year now dies falling from a horse while 33 are killed by vehicles and machinery including aircraft, tractors, quad bikes and motor cycles. OHS authorities are correspondingly 'vehicle and machinery' focused although they also seek to promote awareness of a wider range of risks. For example, WorkSafe Victoria produces a Horticultural Safety Guide<sup>38</sup> which provides advice on how to minimise the risks associated with a comprehensive list of hazards, including:

- Working with and around machinery (tractors, quad bikes, elevated work platforms)
- Environmental hazards (heat stress, sunburn and cold)
- Isolation in remote locations
- Cuts, abrasions, contusions and blisters

- Chemical hazards
- Muscular skeletal strain caused by repetitive work in awkward positions
- Dangers picking at heights (falls) and
- Animal hazards.

The challenge OHS agencies face has been to ensure farmers and contractors act upon advice they are given about risks. Fragar et al.<sup>37</sup> describe a range of ways that farmers can improve OHS including design interventions (such as Rollover Protection Systems on tractors) and farm safety audits. However, horticulturalists and contractors must go further than adopting safe design and complying with audits; they also have a duty to provide information, training, instruction and supervision upon a range of matters including safe work practices.

One issue here is that farmers and contractors need to receive OHS information before they can in turn inform and train harvest workers. It has been suggested that raising farmer awareness of OHS risks remains difficult because of identified cultural factors including resistance to external interference, individualism, and intolerance for information that does not appear immediately relevant.<sup>37, 39</sup> Harvest workers may also be unreceptive to OHS information and training. These workers fall into identified 'at risk' groups because of the dangers of their industry, their youth,<sup>40</sup> and short job tenure.<sup>41</sup> There is evidence that questions the effectiveness of OHS training targeted at them.<sup>42, 43</sup> Thus there are several points at which the flow of OHS information and training can be interrupted causing it to fall short of achieving its intended purpose.

### **OHS risks and responses: The view from below**

In this section we look at focus group and survey evidence to uncover harvest workers' perceptions of and responses to OHS risk. We distinguish between hiring arrangements (hired by farmer or contractor), and payment systems (hourly or output based wages) where these are associated with different OHS risks. Both are well-documented sources of risk in other industries; the findings here are consistent with those studies. Undocumented workers were unlikely to respond to the survey, cannot be identified, and are not reported.

Focus groups quickly established three common opinions amongst young WHM harvest workers – that all farm work is safe, hazard avoidance is commonsense, and incidents will not happen to them. However focus group discussions also went on to reveal risks. The most common complaints concerned back pain ('strawberries do your back in'); falls (stretching to reach apples); dehydration (followed by hosing down between the rows of grapes); blisters and skinned fingers ('you have to work through the pain barrier picking peas'); and scratches ('even when you wear gloves to pick oranges'). Survey responses showed they regularly experienced low level injuries and near misses, irrespective of whether they were employed by farmers or contractors. Table 2 shows survey data on the relative incidence of injuries, minor incidents and near misses.



**Table 2: Harvest workers' experience of minor incidents and near misses**

Issue (n=275)	Frequency of exposure			
	Never/rarely (%)	Sometimes (%)	Often/Always (%)	Total
Sore backs	19.3%	29.1%	51.6%	100%
Sore arms, shoulders and/or hands	19.6%	30.2%	50.2%	100%
Cuts, scratches, grazes to arms, legs or face	20.7%	36.4%	44.9%	100%
Blisters on hands	33.5%	32.7%	33.8%	100%
Sunburn	36.0%	37.5%	26.5%	100%
Dehydration	47.6%	34.5%	17.8%	100%
Almost being hit by tractor/farm machinery	82.9%	14.2%	2.9%	100%
Almost falling off a ladder	78.5%	14.9%	6.5%	100%
Exposure to chemicals and/or pesticides	65.5%	21.5%	13.1%	100%

Half the respondents often or always experienced body stressing, indicated by sore backs, and sore arms, shoulders and /or hands. A substantial minority regularly experienced cuts, grazes and scratches, and one-third often or always developed blisters on their hands. Over-exposure to sun and heat were common and one in ten reported frequent exposure to chemicals.

Hazards with potentially severe consequences such as near-misses involving farm tractors or machinery and falls from ladders were less common.

Respondents' exposure to hazards mostly reflects the physically demanding nature of their tasks and the harsh environment in which they are undertaken. Fruit and vegetable picking is not amenable to mechanisation and harvesting work must be undertaken when the product is ready, usually in high summer. However, both farmers and contractors have a legal obligation to control or minimise these risks. To minimise muscular strains and sprains, for example, they are obliged to train workers in manual handling techniques, provide sufficient rest breaks, consider task rotation, and ensure tubs of products are not overfilled nor lifted over shoulder height.<sup>38</sup> They are also obliged to provide personal protective equipment to

minimise the risk of injuries such as scratches, grazes, blisters, and sunburn as well as provide workers with cool, palatable drinking water.<sup>38</sup> The responses in Table 2 suggest a low level of compliance with these obligations. It appears that farmers are most responsive to high hazard risks, such as separating workers from machinery and providing stable ladders, leaving workers to shoulder the responsibility for managing risks which farmers regard as 'common sense' and 'part of the job' of harvesting work (Interview, February 9: 2013).

The extent to which workers received health and safety instructions, and were provided with personal protective equipment reflects this approach. Survey respondents were asked whether, and when, they were informed about the need for protections against environment risks and received health and safety instructions. Table 3 provides their responses.

**Table 3 Provision of health and safety information and protections**

Information provided	When information was provided				
	Before starting at farm	On first day at farm	Not told at all	No.	Total %
Need to wear protective clothing	56.3%	30.5%	13.2%	302	100%
Need for sun protection	53.3%	30.5%	16.2%	302	100%
Need to carry drinking fluids	54.6%	33.4%	11.9%	302	100%
Safety Instructions: Brief (< 5 minutes) Detailed (> 5 minutes)	3.3% 21.5%	20.5% 40.7%	13.9%	114 <u>188</u> 302	100%
Health & safety risks they may encounter	21.5%	28.5%	50%	302	100%

Arriving at a farm with adequate protection such as a long sleeved shirt, sun hat, UV sun blockout and sufficient drinking water is important to minimise the risk of exposure hazards,<sup>44</sup> yet almost one-third of survey respondents were not informed in advance of commencing their job and another 12-16% said they were not informed at all.

Notwithstanding a statutory obligation to do so, workers could not depend on farmers or contractors to provide these protections (40% of respondents said the farmer or contractor never or rarely provided UV blockout for sun protection). All but 14% of survey respondents received some form of safety instructions. Instructions of more than 5 minutes duration were most common but the quality of that instruction is questionable. Half of all respondents said they were not informed about the risks they may encounter. Instead, safety instructions appear to have been limited to the immediate work tasks.

The obligation on farmers and contractors to provide induction, training and instructions to workers is fundamental to providing a safe and healthy working environment. According to guidance material issued by one government OHS agency, harvest workers should be treated as 'new, inexperienced workers' because their seasonal employment means they lack familiarity with the workplace and associated risks.<sup>38</sup> Reflecting the brevity of survey respondents' training, 21.8% of farm employees and 35.8% of contractor employees believed the training they received was not sufficient to perform their work safely, and a further 18% of farm employees and 30.9% of contract employees were ambivalent about its effectiveness ( $\chi^2 = 17.732$ , DF 3,  $p < .01$ ). Examples provided by survey respondents illustrate the brevity of information provided: 'told to keep clear of machinery and to avoid putting hands/arms into moving conveyor belts etc. Not very much information really'; and 'only that I may get incredibly hot and would always need to keep rehydrated from my own supply'. There were some exceptions. A Tasmanian orchardist, for example, gave a 30 minute safety talk before the start of each working day; and a hostel showed pickers an industry developed safety training DVD before commencing work; but these were rare instances.

Focus group participants instead reported a strong reliance on word-of-mouth communication about clothing, water and sun protection. But informal communication is not systematic, comprehensive nor necessarily accurate. If workers are not aware of the need for protections before arriving at a job, and the farmer is not providing those protections, workers are immediately at risk. To illustrate, in one case a backpacker who had arrived from England only 3 days earlier was told by fellow-hostel stayers that he needed to take enough drinking water for the day. He interpreted this to mean about 750 millilitres of water (barely half of what was required); by midday his co-workers had to hose him down for 20 minutes under the shade of a tree to overcome dehydration and heat stress. Many WHMs come from cooler climates and have not experienced working in extreme heat for extended hours. The assumption that their 'common sense' will ensure they protect themselves from exposure is misplaced.

Turning to ways in which employment characteristics impacted upon WHMs' OHS experience, the two least preferred employment practices encountered by WHMs were being forced to work for a contractor (when farmers were not hiring their own workers) and being paid piece rates. Both practices were regarded as unfair by WHMs; and both carried greater risks. Table 4 provides survey responses on four OHS issues on which employers had discretion, where significant differences were found between the practices of farmers and contractors.

**Table 4 Mode of employment and risk taking by workers**

Issue	Frequency of event					
	Never/rarely (%)		Sometimes (%)		Often/Always (%)	
	Farm employee (n=195)	Contractor employee (n=75)	Farm employee (n=195)	Contractor employee (n=75)	Farm employee (n=195)	Contractor employee (n=75)
Discouraged from stopping to drink water <sup>1</sup>	60.6%	41.3%	23.3%	34.7%	16.1%	24.0%
Working in extreme heat (35 degrees+) <sup>2</sup>	41.5%	30.7%	28.5%	22.7%	30.1%	46.7%
Drinking water supplied <sup>3</sup>	21.8%	39.2%	17.1%	27.0%	59.1%	29.7%
Raise OHS issues without negative consequences <sup>4</sup>	26.4%	31.1%	25.9%	32.4%	37.3%	20.3%

1.  $\chi^2 = 8.127$ , DF 2,  $p < .05$ ; 2.  $\chi^2 = 6.614$ , DF 2,  $p < .05$ ; 3.  $\chi^2 = 18.605$ , DF 3,  $p < .01$ ; 4.  $\chi^2 = 7.534$ , DF 3,  $p < .05$ .

Those employed by contractors experienced less discretion and endured more intense work pressures, measured by being discouraged from drinking water when it took too long to access the water (such as having to walk 5 minutes) and working in temperatures greater than 35 degrees Celsius (focus group participants employed by farmers reported a standard practice of finishing work when this temperature was reached). These responses are consistent with the pressures which flow from the contractor promising the farmer a defined output within a set timeframe. Contractors' employees were also half as likely as farmers' employees to be regularly supplied with water by the farmer, suggesting farmers pass responsibility for workers' safety over to contractors. They were also less confident than farmers' employees that they could report OHS issues without negative consequences.

Around 40% of survey respondents, irrespective of whether they were hired by a farmer or contractor, were paid piece rates. Their average hourly earnings were significantly lower than those paid hourly rates (A\$11.69 compared to A\$16.20 for hourly rates) and, as shown in Table 5 below, they responded to incentives to speed up production by taking more risks.

**Table 5 Payment system and risk taking by workers**

	Frequency of event					
	Never/rarely (%)		Sometimes (%)		Often/Always (%)	
	Hourly wage	Piece rates	Hourly wage	Piece rates	Hourly wage	Piece rates
Issue (n=268)						
Not stabilising ladder before climbing on it <sup>1</sup>	84.2%	62.1%	11.8%	24.1%	3.9%	13.8%
Working in extreme heat (35 degrees+) <sup>2</sup>	46.7%	26.7%	28.3%	25.0%	25.0%	48.3%
Carrying excessive loads <sup>3</sup>	65.1%	37.9%	23.7%	30.2%	11.2%	31.9%
Discouraged from taking lunch breaks (n=259) <sup>4</sup>	45.0%	20.7%	27.2%	30.2%	23.8%	47.4%

1.  $\chi^2 = 17.886$  DF 2,  $p < .01$ ; 2.  $\chi^2 = 17.332$ , DF 2,  $p < .01$ ; 3.  $\chi^2 = 24.176$ , DF 2,  $p < .01$ ; 4.  $\chi^2 = 23.296$ , DF 3,  $p < .01$ .

Those paid piece rates were four times as likely to often or always not stabilise a ladder before climbing on it (noting that orchards typically have uneven terrain); twice as likely to work in extreme heat; three times more likely to carry excessive loads such as climbing a ladder with a heavy bag of fruit; and twice as likely to be discouraged from taking lunch breaks.

Were harvest workers aware of the risks they were taking? Focus group participants treated such risks as 'part of the job' which could be managed through common sense. Survey responses showed that harvest workers were often poorly placed to make informed decisions about such risks. Asked whether they had performed tasks which they believed to be unsafe, 86% said they had not. Of those who answered in the affirmative, their descriptions of unsafe tasks pointed to highly dangerous work, such as 'working in close proximity to tractors with an obstructed view', 'working in a field sprayed with chemicals at the same time', 'climbing broken ladders', 'working in thunderstorms', 'being in an isolated paddock alone without phone coverage' and 'animal baits (poisonous) on bare skin'.

A small number (15) of WHMs incurred workplace injuries which required medical attention. Of these, three involved farm machinery, three arose from environmental exposure (sunburn

and heat) two involved animals (spider and insect bites), two involved mango sap burns, and one was hospitalised with chemical poisoning. Of these, six believed their inexperience with the outdoor environment caused their injury, and only two attributed their injury to insufficient safety training. All workers in Australia are eligible for workers' compensation (the payment of medical costs and lost wages) irrespective of visa status, yet forty percent of those requiring medical attention paid their own medical costs. Of those whose injury prevented them from working, two-thirds were not compensated whilst off work.

Survey respondents included a minority of young Australian workers (15%) who might be expected to fare better than WHMs less familiar with the legal environment supporting workers' health and safety in Australia. The Australian survey respondents were more likely to claim they understood their rights and entitlements (56.8% agreed compared to 44.5% of WHMs), yet their experience of harvesting work was similar to that of WHMs. Differences arose only with respect to being employed for fewer average hours, receiving a lower average hourly rate of pay, and being more likely to be provided with sun screen protection by farmers. These differences reinforce the unattractiveness of harvesting work for local workers. They also suggest their expectations regarding healthy and safe harvesting work practices may be commensurately low.

## **Conclusion**

Temporary migrant workers form a small but significant part of the precarious workforce, crossing national borders to take jobs that cannot be filled by the native workforce.

Horticultural work, because of its seasonal nature, is especially reliant on such workers who may, depending upon national immigration policies, be documented or undocumented.

Australian horticulture has, in the past two decades, become reliant upon both documented

migrants (usually WHMs) and undocumented migrant workers. While nominally afforded employment protection at law, their knowledge of OHS rights and capacity to claim them is open to question. It was noted that a two tier labour market exists, one level (Australians and WHMs) which is better informed about jobs and able to access information about rights, and another level (undocumented workers hired by contractors) living in a clandestine environment where they cannot access information about their rights, are intimidated, and would be unlikely to claim OHS protections. The evidence reported in this paper does not inform us of the OHS risks experienced by undocumented workers who are difficult for researchers to access.

Information about OHS is important because farming (including horticulture) is a high risk industry with a very high incidence of fatalities and workers' compensation claims and a wide range of risk factors. Legislation requires horticulturalists and contractors to both provide a safe working environment and to provide workers with OHS information and training. While there are copious industry level OHS resources, the extent to which these filter down to the workforce through comprehensive and accessible training is open to question.

While focus group evidence found harvest workers to be initially cavalier about OHS risks, survey data told a different story. A majority of respondents routinely experienced sore backs and limbs, cuts, blisters, and heat stress problems. More rare were dangerous encounters with machinery, chemicals, or falls from ladders – the likely causes of severe injuries. This pattern is symptomatic of an industry which has routinised worker suffering, despite public promotion of a 'fit and healthy lifestyle'.<sup>31</sup> Given the young and inexperienced workforce



upon which farmers now rely, the need for farmers to educate workers about their exposure to risks, and manage that exposure, cannot be taken lightly.

The tendency to ignore OHS risks is further reinforced by piecework which encourages workers to take OHS risks to increase earnings. The low level of piece rate earnings reported by focus group and survey participants highlight problems with the way minimum piece rates are currently regulated. As long as piece rates fail to provide a living wage, workers will continue to take chances with their safety. Also the contractor system seems to be associated with work intensification under hostile conditions and with weaker environmental protection (such as water and sun blockout). Farmers place their confidence in contractors to manage the harvesting work, but mistakenly also appear to pass their OHS responsibilities onto contractors who, in turn, shirk it. The failure of both parties to assume OHS responsibilities suggests there is considerable need for education about OHS law. While almost four fifths of survey respondents received some level of OHS training, most often this training was brief and superficial. Survey respondents instead relied upon word-of-mouth information.

Horticulture appears to suffer from a minimalist and unsystematic approach to meeting legal OHS obligations.

Over the past few decades the Australian horticultural workforce has changed to introduce a large proportion of temporary migrant workers. The evidence in this paper clearly points to the OHS risks encountered by these workers, the accentuating affects of work organisation, contracting, and payment systems in the industry and the unsystematic nature of compliance with OHS laws. This leaves these especially vulnerable workers to carry the burden of OHS risk.

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