



THE MCKELL INSTITUTE

Blue Harvest

WAGE THEFT & OTHER LABOUR
INFRINGEMENTS *in the*
NSW MID-NORTH COAST'S
2019/20 BERRY HARVEST

SPONSORED BY THE AWU,
TWU AND SDA NSW

BY EDWARD CAVANOUGH & CONNOR WHERRETT

NOVEMBER 2020

ABOUT THE MCKELL INSTITUTE

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FOREWORD

Australia is enduring a wage theft crisis. Barely a day goes by without another exposé highlighting the scourge of intentional underpayment. Despite becoming part of our everyday conversation, much of the exploitation that is occurring remains hidden, and unaddressed by authorities.

This report shines a light on a single case study area where wage theft is endemic: the Coffs Harbour region in northern New South Wales. It focuses on the area's blueberry industry, where unscrupulous labour hire, severe underpayment, and other mistreatment of workers is documented.

The Coffs Harbour area of New South Wales' Mid North Coast, or the *Coffs Coast*, is one of the state's most popular tourist destinations. It is also home to more than 65 per cent of Australia's blueberry crop,¹ scattered across hillsides and farmlands around Coffs Harbour, nearby coastal communities between Bonville and Corrindi, and adjacent inland communities such as Nana Glen, Grafton, Valery and Macksville.

This industry plays an important role in the local economy. In addition to providing jobs for locals, particularly in fruit packing and farm labouring, the industry is estimated to entice some 3000 Working Holiday Makers (WHMs) every year,² who see the region as an enjoyable beachside location from where they can complete the 88 days of regional work that is required for those seeking a second year in Australia.

The Coffs Coast has continued to attract farm labour during COVID-19 despite the associated border restrictions. 85,691 WHM visa holders remained in Australia as of June 2020³ — many of them in New South Wales — and more than 2000 WHMs were estimated to be present in the Coffs Coast region during the compilation of this report, which coincided with the peak of the 2020 blueberry harvest.⁴

This has permitted the typical dynamics of horticultural wage theft to occur in the Winter and Spring 2020 blueberry harvest that would be expected prior to COVID-19. While there are well intentioned farmers and larger companies operating in the Coffs Coast blueberry industry, the dramatic growth of the blueberry sector in the absence of policy safeguards, and the ever increasing demand for affordable labour, has made the region a target for nefarious labour hirers.

As this report demonstrates, many of these labour hirers are likely operating without an ABN,⁵ are alleged (and in some cases, proven) to be severely and intentionally underpaying their workers, are occasionally disappearing

without a trace, have been documented abusing employees, and are alleged to be coercing some WHMs into unpaid administrative work.

Originally designed as a cultural exchange initiative,⁶ a functional WHM program would see its participants emerge as lifelong ambassadors of the values Australians hold dear. We should expect all WHMs to experience the best of Australia. Instead, too many experience the worst of Australia, often spending months under the employ of exploitative actors who are willing to sacrifice the wellbeing of their staff — and the reputation of Australia — for their own personal profit.

The unfortunate truth is that, despite its geographic focus, this report is not a unique exposé. It adds to a large number of reports and investigations that prove the fundamental problems with the WHM program that have led to widespread exploitation in Australian horticulture.

While we know how severe underpayment is in Australia, we also know strong policy interventions can bring it to heal.

Understanding that, this report charts a path forward, offering recommendations that can be implemented by government today to help bring economic justice and accountability back to the Coffs Coast region, and all Australian workplaces.



SAM CROSBY
CEO, MCKELL INSTITUTE

EXECUTIVE SUMMARY

This report adds to the growing evidence base of widespread underpayment and unscrupulous labour hire practices in Australian horticulture, casting a spotlight on the blueberry industry situated on the NSW Mid North Coast.

It details the nature of underpayment and labour exploitation in the area, demonstrating that even during the 'worker shortages' induced by the COVID-19 pandemic, nefarious behaviour is still occurring in Australian horticulture, leaving both migrant workers and local workers short-changed and aggrieved by their experience.

Part 1 explores the impact of COVID-19 on the horticultural industry, the established evidence base documenting exploitation in the sector, and the power imbalance inherent in the 88 days regional work requirement associated with WHM visas.

For much of the horticultural sector, COVID-19 and associated border closures have imposed legitimate constraints on the ability to source labour. However, not every geographic region in Australia is experiencing acute labour shortages. Throughout 2020, the Coffs Coast continued to attract a large number of the remaining WHMs, who see the region as a desirable beachside location and are drawn to the area through job advertisements posted by both legitimate and illegitimate businesses, labour-hire firms and individual subcontractors.

Part 1 also tables the established evidence of labour exploitation in horticulture. It

highlights findings from studies such as the Commonwealth Government's *Migrant Worker Taskforce* which identified that 15 per cent of migrant workers picking fruit and vegetables have reported earning as little as \$5 per hour. It is estimated that over 400,000 migrant workers are routinely underpaid in Australia, many of whom are working in horticulture.⁷

It also examines the power imbalance inherent in the 88 days regional work requirement that is at the core of the WHM program. 82 per cent of WHMs work in agriculture (when undertaking their regional work requirements),⁸ reflecting how the WHM program has been recast as a solution to labour shortages in regional Australia, rather than a cultural exchange program.

The WHM program grants a unique degree of power to employers over their employees. Employees often tolerate poor conditions and pay simply to 'tick off' their work requirements to meet their visa obligations. There is also a severe asymmetry of information at play between WHMs and their employers, with WHMs rarely understanding the intricacies of Australian labour law, while some employers creatively navigate a flawed system to their advantage.

Part 2 then investigates incidents of wage theft and other forms of labour exploitation and employer malfeasance in the Coffs Coast region during the 2019/20 blueberry harvests.

While there are legitimate and well-meaning farms and labour hirers operating in the region, the rapid growth of the blueberry industry has seen the Coffs Coast emerge as an attractive market for nefarious labour hirers.

Part 2 shares the stories of workers living and working in blueberry farms in the Coffs Coast region during the 2019/20 seasons, sourced through fieldwork undertaken in early October, 2020.

It documents examples of extreme underpayment. In one case, a 28 year old German male worker was documented earning just \$3 per hour during a shift, and an average wage of \$6.21 per hour for 17 days of employment with a local subcontractor. It tells stories of coercion into unpaid administrative work; low-quality, crowded and isolated accommodation conditions; a callous disregard for workers under the threat of active bushfire; and abuse toward employees by both labour hire contractors and farmers.

Complemented by an analysis of open-source evidence, such as job advertisements and blog posts published by workers in the area, this report documents a regional industry rife with unscrupulous and exploitative labour hire, consistent subminimum rates of pay, poor working conditions, and inadequate accommodation that can be highly profitable for landlords.

Ultimately, this report concludes that the exploitative practices evident in the Coffs Coast berry industry is the consequence of not just employer malfeasance – but also a broken WHM program that prioritises meeting regional labour demand over facilitating cultural exchange. The program permits — through an omission of government action — underpayment and employer malfeasance to occur with effective impunity, in northern New South Wales and elsewhere.

It also argues, however, that these problems can be addressed, and offers a series of actionable recommendations aimed at ending the scourge.

KEY FINDINGS

FINDING 1

No worker shortage in research

area: The 'worker shortage' associated with COVID-19 has been somewhat ameliorated in the case study area of the Coffs Coast during 2020, with over 2000 migrant workers (mainly Working Holiday Makers) estimated to be living and working in the region during the study period.

FINDING 2

Rapid growth of industry leading to bad behaviour:

The blueberry crop in the Coffs Coast area has rapidly increased since 2014. While this has presented an economic opportunity for the region, the growth in the industry has resulted in an influx of workers, and labour-hirers who often exploit the situation.

FINDING 3

WHMs are set up to be

exploited: Workers who travel to the area to complete their 88 days of regional work, in order to secure a 2nd year Working Holiday visa, typically work with one or two subcontractors before securing a position with larger farms. This preliminary period — when workers wait to be employed by 'better' employers, but are eager to begin seeing their 88 days 'ticked off' — leaves workers particularly vulnerable to underpayment.

FINDING 4

Wage theft is a business model:

Working Holiday Makers in the area have alleged gross underpayments, orchestrated through an intentional misinterpretation of piece-rates. One WHM documented earning as little as \$21 in a 7 hour workday, after being asked to work on low-yield crops by his subcontractor.

FINDING 5

Coercion evident at all levels:

WHMs in the Coffs Coast area allege that they have been coerced into unpaid work in various forms, including performing unpaid administrative work, as well as picking lower quality fruit that is used in the manufacture of jam, alongside good quality fruit, without being remunerated.

FINDING 6

Illegal labour hire practices:

An audit of job advertisements specific to blueberry picking in the area, and posted between April and October 2020, demonstrates a large role for individual labour-hire subcontractors in sourcing labour. Many individual contractors had no discernible link to an ABN registered entity, with some offering pay rates as low as \$60 a day in their advertisements.

FINDING 7

Culture of silence:

WHMs are reluctant to pursue actions to recover pay, instead simply wishing to complete their 88 days of regional work and return to urban areas. This permits nefarious labour hire contractors to capitalise on these workers' tolerance for poor pay and conditions, given its temporary nature.

FINDING 8

Locals are being exploited, too:

It is not only WHMs who are impacted by these poor conditions: two Australian workers that participated in this study alleged they were not paid for several weeks of work with subcontractors, with one documenting repeated abuse by the contractor through WhatsApp when attempting to receive their pay, and another alleging she was forced to work in proximity to active bushfires alongside '300-400' other pickers during the height of the 2019/20 bushfire season.

FINDING 9

Landlords profiting off

exploitation: Share-houses occupied by WHMs are highly lucrative for landlords. 9-12 person share houses are rented out at between \$125 to \$150 per person, netting the landlords approximately three times the median rent of certain suburban areas in the Coffs Coast region. One share house

cluster of four neighbouring properties in Mullaway with 45 occupants was found to be charging approximately \$1500 per week in rent for each property, despite the median rental price for four bedroom properties in the same suburb sitting at \$480 per week. The lead author also observed a cluster of shipping containers which had been turned into 4-bed dorms catering for Pacific Island workers, and rented at similar prices to 3 and 4 bedroom houses in the same suburb.

FINDING 10

Gaming of wages and industrial relations via piece rates:

Some workers allege that the fluctuating daily piece rate — which employers say is changed each day depending on 'market rates' — is often set arbitrarily, in a way that ensures workers' pay remains well below the minimum wage. Workers allege that when fruit is easier to pick, the daily piece rates are low, and this is inverted when the fruit is harder to pick (i.e., on crops with a lower yield). The ability of employers to reset piece rates each working day enables some employers to sustain low rates of pay for employees, irrespective of the fruit condition, while citing 'market rates' as a justification.

RECOMMENDATIONS

RECOMMENDATION 1 Stronger enforcement & civil society collaboration

The Commonwealth Government should make greater efforts to ensure existing workplace compliance laws are thoroughly enforced, by providing greater resources to existing bodies such as the Fair Work Ombudsman, and by encouraging greater collaboration between government and non-government entities, such as trade unions, to proactively inspect horticultural workplaces. Penalties for bad behaviour must be severe to avoid them being a 'cost of doing business'. Civil penalties should be increased while criminal culpability must be expanded.

RECOMMENDATION 2 Union rights to inspection

The Commonwealth Government should remove right-to-entry barriers for trade unions, particularly in designated areas such as the Coffs Coast where employees are demonstrated to be highly vulnerable to exploitation. Enforcement of inductions rights and rules associated with the Seasonal Worker Program is a starting point. These should be deepened and broadened to include all visa holders.

RECOMMENDATION 3 A redesign of the visa system to eliminate exploitation

Australia's visa system has enabled the effective creation of a two-tiered labour market, with migrant workers often subject to exploitative forms of employment rarely undertaken by local workers. Eliminating incentives for employers to use the visa system to access cheaper labour should be a reform goal for the Commonwealth. Within this context, the Commonwealth should also reform the WHM program, considering how stronger safeguards can be incorporated to guarantee no worker is underpaid or exploited, and that WHMs have greater agency in the workplace. Specific consideration should also be given to how a reformed WHM program can disentangle the need to address a perceived labour shortfall in regional Australia from the cultural exchange intentions of Working Holiday Maker schemes.

RECOMMENDATION Income safety net for piece-rate workers

The Commonwealth Government should introduce legislation that will implement an income safety net for all horticulture employees earning piece rates. The income safety net should ensure that no worker earns below the minimum award wage while working under a piece-rate agreement.

RECOMMENDATION 5 National labour-hire licensing

The Commonwealth Government should legislate a national labour-hire licensing regime, and guarantee such a regime is matched with the resources to enable relevant authorities to ensure strict national compliance.

RECOMMENDATION 6 Realise plans to criminalise wage theft

The Commonwealth Government must proceed with previously announced plans to criminalise wage theft nationally, which have been stalled in the current parliament.

RECOMMENDATION 7 Call a Royal Commission

Given the sustained nature of migrant worker exploitation in Australia, the Commonwealth Government should call a Royal Commission into the Exploitation and Underpayment of Migrant Workers in Australia.





PART ONE: COVID-19, HORTICULTURE, AND LABOUR EXPLOITATION IN AUSTRALIA

COVID-19 and its impact on horticulture

KEY POINTS

- 1** COVID-19 and associated travel restrictions have tightened the supply of labour for some of Australia's horticultural industry.
- 2** Despite the Government's call for backpackers to head home, however, over 85,000 Working Holiday Makers remain in the country.
- 3** The proximity to cities and beachside environment of the Coffs Coast case study area of this report has rendered the region more immune from labour shortfalls than other areas, with an estimated 2000 fruit pickers working in the area during this report's investigation.

The COVID-19 pandemic has served as a major imposition on Australia's economy and way of life. It has curtailed Australians' ability to travel within and outside of the country, led to over one million job losses, and seen Australia's economy contract for the first time in a generation.

Australia's horticulture industry has been challenged by the shortfall in migrant labour resulting from COVID-19. Structurally reliant on seasonal workers and backpackers to meet labour demand, horticulturalists across Australia have cited challenges in harvesting crops during the COVID-19 downturn, leading to widespread media coverage highlighting the challenges facing farmers.⁹ Though the Commonwealth Government has been unable to precisely quantify the scale of the 'worker shortage',¹⁰ research by Ernst & Young estimates that 'Australia's fruit and vegetable farmers need an extra 26,000 workers to harvest their crops this summer'.¹¹

In many Australian regions, these labour challenges are genuine and worrying. However, the nature of the horticultural labour shortfall is not consistent throughout the country. As noted by Iain Campbell, 'harvest labour' — that is, labour associated with 'the seasonal work of picking and packing in horticulture' — is not constituted by one single labour market.¹² Rather, there is a 'high degree of diversity' in regional and seasonal labour markets in Australian horticulture, including an 'unregulated secondary' labour market occupied by workers who are often in violation of their visa conditions, and highly susceptible to exploitation.

Having established the varied nature of horticulture labour markets in Australia, the unique nature of the labour-market in the blueberry industry on the Coffs Coast can be identified. While there remains genuine labour shortages in horticulture, the Coffs Harbour and Grafton blueberry industry has, during the Winter and Spring 2020 season, seen a consistent flow of labour, especially in migrant labour, as some of the Working Holiday

Makers (WHMs) who remain in Australia are enticed towards a fruit picking role that is advertised as 'easy', is located in a desirable beachside location, and is relatively proximate to metropolitan Brisbane and Sydney. For these reasons, the macro trends impacting the national horticulture labour market — that is, the reduction in overall workforce by an estimated 26,000 workers¹³ — is less impactful in the Coffs Coast region than elsewhere. This allows the Coffs Coast to serve as a unique COVID-19 era case study area when assessing the conditions WHMs experience in Australia. Despite rhetoric promising Australians they 'could make \$3,800 a week picking strawberries'¹⁴ because of regional labour shortages, the established dynamics that drive a low-pay, poor conditions and nefarious employer and labour hire behaviour in the Coffs Harbour area remains largely unimpeded by the pandemic.

The horticulture sector has real and manufactured challenges attracting labour

Well before COVID-19, Australia's agriculture sector has struggled to attract labour, with much of the industry dependent on foreign workers, especially those sourced through the Seasonal Workers Program, and the WHM program. There are genuine determinants of the labour shortfall in Australian agriculture. Australia is a majority urban population, with most Australians living in major metropolitan areas. The seasonal nature of agricultural work can lead to inconsistent incomes for those considering a career in the sector. And it is a challenge for agricultural communities to compete with the lifestyles afforded to many living in metropolitan areas.

However, perhaps the most significant challenge in attracting Australian labour to the agricultural sector is the perception that workers receive extremely low pay and are subject to poor working conditions. In recent years, major studies¹⁵ into the sector have identified consistent underpayment and wage

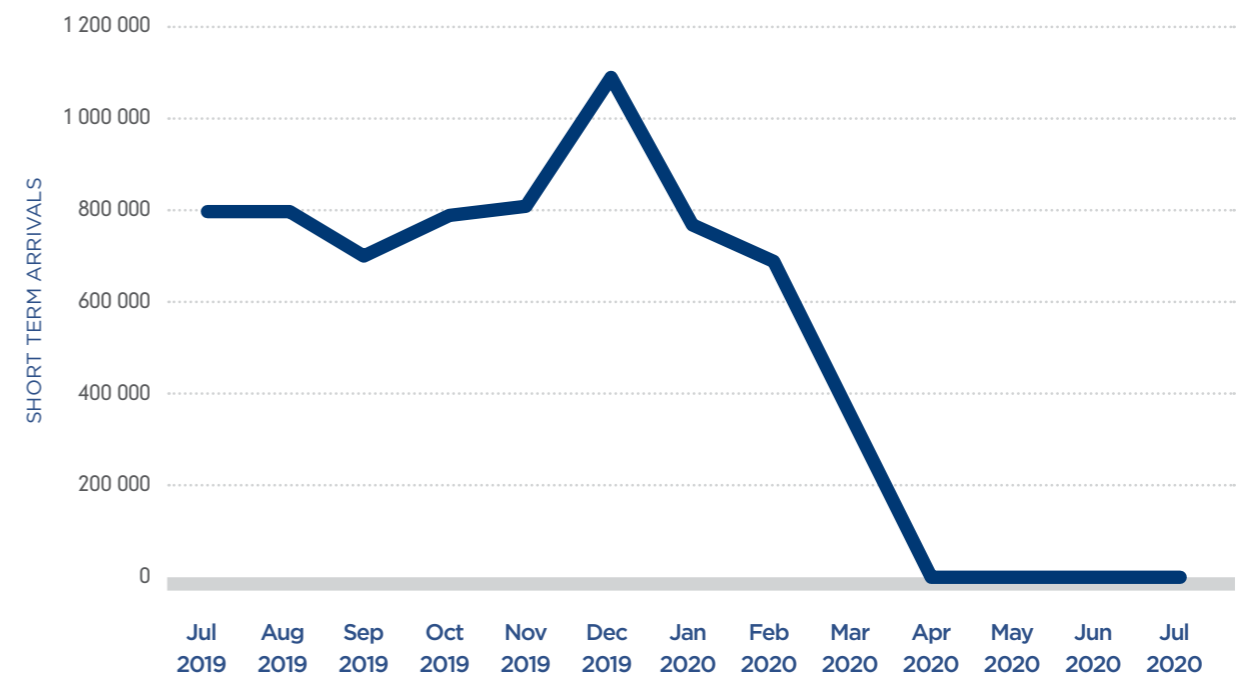
theft, an overreliance on labour-hire, an abuse of the piece-rate pay method leading to some workers earning just a few dollars an hour, and in many highly publicised cases, poor treatment of workers, including verbal and sexual abuse, over-working to the point of exhaustion and even death, and confining migrant workers to near-unliveable accommodation.

Not all agriculturalists in Australia are engaged in illegal employment practices, but the rogue elements of the industry are well known and this has in turn made it hard for the industry more broadly to attract domestic labour. Naturally, few Australian workers are willing to subject themselves to a form of employment some perceive as potentially exploitative, low paid, and labour intensive.

New arrivals into Australia have diminished

COVID-19 and the associated travel restrictions have indisputably seen a collapse in new entrants into Australia. This is evident across all visa categories, as demonstrated in *Figure 1.1*. The Seasonal Workers Program, which allows workers from Pacific Island nations to enter Australia specifically to work in agriculture, has also been impacted, with short term entrants from the Pacific also nearing zero due to COVID-19.

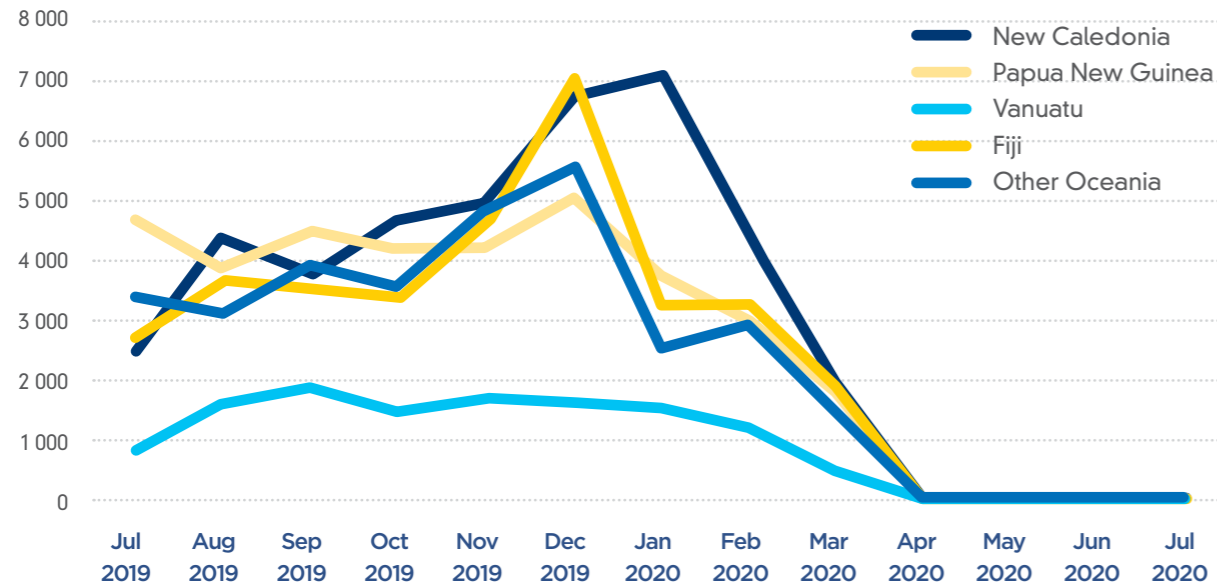
FIGURE 1.1 COLLAPSE IN SHORT TERM ARRIVALS DUE TO COVID-19



Source: ABS Cat. 340105



FIGURE 1.2 COLLAPSE IN SHORT TERM ARRIVALS FROM PACIFIC ISLAND NATIONS, 2019-20



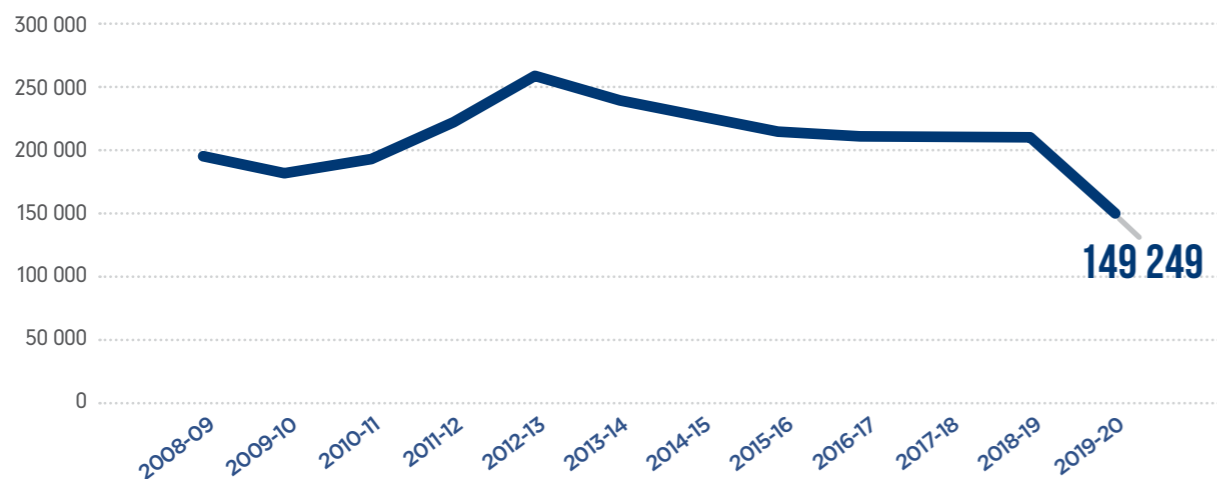
Source: ABS Cat. 340105

However, 85,691 WHMs were still in Australia as of June 2020

Despite the shortfall in incoming labour due to COVID-19 border closures, there remains a considerable number of WHMs in Australia as of October 2020. The 2019/20 financial year still saw 149,249 WHM visas granted, compared with 209,036 in 2018/19. As of June 2020, 85,691 WHMs remained in Australia, compared to 135,263 at the same time in 2019.¹⁶

While the overall number of WHMs and other migrant workers in Australia is certainly lower due to COVID-19, the data demonstrates that a large cohort of these workers still remain in the country.

FIGURE 1.3 TOTAL WHM VISAS GRANTED, 2008/09 TO 2019/20



Source: Department of Home Affairs

Wage theft & exploitation in Australian horticulture

KEY POINTS

- 1 Underpayment and the use of unscrupulous labour-hire is highly prevalent in Australian horticulture.
- 2 Workers, unions, government and certain actors within the industry itself have noted the prevalence of widespread exploitation.
- 3 The Migrant Worker Taskforce, the largest Commonwealth Government examination of labour conditions in agriculture, found that over 400,000 individual migrant workers were likely being underpaid.

The prevalence of wage theft and exploitation in horticulture is well known

Australia's horticultural sector is routinely criticised for the high prevalence of underpayment observable in the industry.¹⁷ The sector's reliance on migrant workers has long enabled unscrupulous labour hire contractors to benefit from the immediate labour demands regularly required by farmers.

Variations in conditions at times dictate that a crop is harvested quickly, which creates a window of opportunity for labour hire firms to capitalise on the immediate labour demands of both well intentioned and less scrupulous farmers. So lucrative is the labour hire opportunity in Australia's horticulture industry that organised crime syndicates from East Asian and South East Asian countries, such as Taiwan and Malaysia, have been reported as having a stake in the sector. As Howe et al noted in their 2019 report:

"It appears that organised crime does have a role in misleading workers in their home countries and enticing them into significant debt to fund an all-inclusive package involving a visa, flights, pre-arranged accommodation and employment".¹⁸

The prevalence of these stories creates a spiral, in which fewer Australian citizens seek employment on farms because of the expectations that the work will be challenging and poorly paid, furthering the reliance of the sector on a cohort of the labour market that is highly susceptible to exploitation.

The industry is rife with 'unscrupulous labour hire'

Labour hire intermediaries have come to play a central role in meeting the labour demand in agriculture, to the extent that the use of labour hire has been described as a 'structural element of the horticultural industry'.¹⁹ For horticultural employers, the remote locations in which they operate often sees them offer accommodation, food and transport to workers in addition to simply employing farm labourers. These additional requirements can be a challenge for some prospective WHM employers, who find utility in tapping into networks of labour hirers and accommodation providers who can offer a 'one-stop-shop' for employers, delivering fruit pickers while managing accommodation and transport without the direct involvement of the farmer.²⁰

Unfortunately, Australia's labour hire industry is poorly regulated, and a minority of labour



hire firms are known to engage in unlawful activity such as illegal phoenixing, where an individual will create a 'new company to continue the business of an existing company that has been deliberately liquidated to avoid paying outstanding debts, including employee entitlements'.²¹ Only Victoria, Queensland and South Australia²² have passed legislation requiring labour hire firms to be licensed. The industry's reliance on a poorly regulated labour hire industry, therefore, adds to the inherent vulnerability of WHMs and other migrant workers.

The Migrant Worker Taskforce also noted the problems associated with labour hire in the industry's most vulnerable to exploitation, which includes horticulture. It argued that:

*"The main driver of unscrupulous labour hire operators is to lower labour costs and associated charges and gain a competitive advantage. In high risk sectors, the work is intensive and low-skilled, and labour costs are a significant part of the overall business costs. Reducing labour and operating costs is a way of increasing the labour hire operator's profit margin. These sectors also often have competitive supply chains, which can mean that price pressure is driven from the top of the chain."*²³

With specific regards to horticulture, the Migrant Worker Taskforce highlighted the fact that "due to the nature of the work, its location, the high prevalence of working holiday visa holders and unlawful non-citizens, and the complex interplay with supply chains, many of the characteristics of unscrupulous labour hire business models can be found in this sector."²⁴

Migrant worker surveys have identified widespread underpayment

The 2017 report *Wage Theft In Australia: Findings of the National Temporary Migrant Work Survey*, was a landmark study examining the plight of migrant workers in Australia. It found that almost 30 per cent of migrant workers were earning \$12 an hour or less. It highlighted, in particular, the low and illegal rates of pay faced by a significant number of workers in horticulture, finding that:

1. One in seven migrant workers working in fruit and vegetable picking earned \$5 an hour or less.
2. One third of all migrant workers working in fruit and vegetable picking earned \$10 an hour or less.²⁵

The report also found that 59 per cent of migrant workers in Australia did not feel they could reclaim their pay, or speak up if they were facing problems with their employment, given the power imbalance they felt in the workplace. Similar results were reported by Elsa Underhill and Malcolm Rimmer, who in writing in the *Journal of Industrial Relations* in 2016, found that the mean hourly wage for migrant workers earning piece rates was \$11.69 per hour.²⁶

Migrant Workers' Taskforce suggests over 400,000 workers underpaid

The Migrant Workers Taskforce, commissioned by the Commonwealth Government in 2017 to examine in depth the claims of exploitation of foreign workers across Australia, comprises one of the largest efforts in recent years to identify the scale of wage theft and exploitation amongst Australia's migrant workforce. As the ABC reported on the project's findings:

*"The review of regulations and protections for foreign workers found as many as half of almost 880,000 migrant workers in the country may be being underpaid."*²⁷



How piece rates work — and should work — in horticulture

KEY POINTS

- 1 Piece rates are legal under the horticulture award but are repeatedly exploited or misinterpreted.
- 2 Piece rates should see an 'average competent worker' earn 15 per cent above the minimum award wage; for casual fruit and vegetable pickers, this equates to \$28.02 per hour — a rate rarely earned by pickers.
- 3 Piece rates can lead to extremely low rates of pay, with some subjects of this report earning just \$3/hour during a 7 hour working day after being asked to pick a low-yield row of blueberry plants.

Workers engaged in fruit and vegetable picking are usually casual workers employed under the Horticulture Award.²⁸ Employers are entitled to offer piece rates to employees under the award. However, the use of piece rates within this Horticulture Award must comply with stringent conditions that are designed to ensure workers continue to earn at least the minimum wage, or slightly higher.

The Fair Work Ombudsman sets out the below conditions for workers:

"An employee can be paid piece rates when:

- ▶ an award or registered agreement allows for piece rate payments
 - the employee isn't covered by an award or registered agreement and they get a pay rate based on how much work they do.
 - There has to be a written and signed

piecework agreement setting out the pay rate per piece and how it is measured.

- An employer has to keep the agreement as part of their records and give a copy to the employee.
- ▶ If the agreement is varied, it must be agreed to in writing by the employee and employer."²⁹

The casual rate for horticultural workers is \$24.36 per hour

During the study period, the Horticulture Award mandated a minimum hourly rate of pay of \$19.49 for Level 1 full-time and part-time workers, rising to \$24.36 for the Level 1 casual workers. These rates rose slightly in November 2020, reflecting the modest adjustment in the minimum wage from \$19.49 to \$19.84 in July, 2020.³⁰

FIGURE 1.4 CASUAL RATES OF PAY AS PER THE HORTICULTURE AWARD

| Casual Horticulture Award | Hourly pay rate | Public holiday | Outside span of hours | Overtime | Working through a meal break | Minimum break between shifts |
|---------------------------|-----------------|----------------|-----------------------|----------|------------------------------|------------------------------|
| Level 1 | \$24.36 | \$43.85 | \$27.29 | \$34.11 | \$43.85 | \$34.11 |
| Level 2 | \$25.08 | \$45.14 | \$28.08 | \$35.11 | \$45.14 | \$35.11 |
| Level 3 | \$25.79 | \$46.42 | \$28.88 | \$36.10 | \$46.42 | \$36.10 |
| Level 4 | \$26.76 | \$48.17 | \$29.97 | \$37.47 | \$48.17 | \$37.47 |
| Level 5 | \$28.38 | \$51.08 | \$31.78 | \$39.73 | \$51.08 | \$39.73 |

Source: Fair Work Ombudsman

FIGURE 1.5 FT/PT RATES OF PAY AS PER THE HORTICULTURE AWARD

| FT/PT Horticulture Award | Weekly pay rate | Hourly pay rate | Public holiday | Afternoon shift - Monday to Friday | Night shift - Monday to Friday |
|--------------------------|-----------------|-----------------|----------------|------------------------------------|--------------------------------|
| Level 1 | \$740.80 | \$19.49 | \$38.98 | \$22.41 | \$22.41 |
| Level 2 | \$762.10 | \$20.06 | \$40.12 | \$23.07 | \$23.07 |
| Level 3 | \$784.00 | \$20.63 | \$41.26 | \$23.72 | \$23.72 |
| Level 4 | \$813.70 | \$21.41 | \$42.82 | \$24.62 | \$24.62 |
| Level 5 | \$862.50 | \$22.70 | \$45.40 | \$26.11 | \$26.11 |

Source: Fair Work Ombudsman

Piece rates are meant to equate to 115 per cent of the award minimum, or \$28.02 per hour

While some employer representatives often cite the complexity of awards as a justification for underpayment or miscalculated pay rates,³¹ the Horticulture Award's description of how piece-rates should be applied is notable in its clarity. As Fair Work succinctly details on its page 'How to Use Piecework Agreements':

"The piecework rate has to allow the average competent employee to earn at least 15% more per hour than the relevant minimum hourly rate in the Horticulture Award"³²

In the context of the Horticulture Award, piece rates should see 'average competent employees' typically earn \$22.41 per hour — 15 per cent above the award minimum — if they are categorised as full time or part time. However, very few if any WHMs are employed on a full time or part time basis in horticulture; rather, they are casuals. Casual workers earning piece rates should be earning 115 per cent of the minimum casual rate or \$24.36, which would equate to \$28.02 per hour for 'average competent employees'.

Evidence from national surveys and the Migrant Worker Taskforce make it clear that WHMs engaged in fruit and vegetable picking rarely earn \$28.02 per hour.³³ However, there is little transparency over the pay and conditions of this cohort of workers. A lack of data is available about average picker performance, allowing employers to define what constitutes

an 'average competent employee' based upon their own subjective assessments. As the Fair Work Ombudsman states, "an employer will be required to identify the average competent employee and their pick rate at the time the piecework agreement is entered into".³⁴ Despite employers being required to factor in "the experience of the workforce available or potentially available"³⁵, the wording of the piece rate considerations within the award effectively enables employers to cite above-average performers as 'average competent pickers'. This permits their piece-rates to be lowered, which is detrimental WHMs working in horticulture who are usually inexperienced.

Interactions with contractors demonstrate employer misinterpretations of the award

The researchers spoke with three labour hire contractors — one over the phone and two online between October 5 and 16, 2020 — inquiring about the positions they were offering. One who worked for an ABN registered entity told the researchers via phone that "most workers are picking between 20-30 kilograms a day", but also conceded that the average piece-rate they were offering was \$3 per kilogram — similar to the rates advertised in most blueberry picking job advertisements (see Part 2). When the researchers informed the contractor that this equates to between \$7.50 and \$11.25 per hour, depending on whether the WHM engages in a 6 or 8 hour shift, the contractor simply noted that "it is piece rates...the less you pick the less we pay".



The contractor also excused the low pay by suggesting that “some workers are lazy and some come late”. Having already conceded that “most” workers are picking between 20-30 kilograms per day, this exchange suggested that the contractor was ill-informed about the requirements of piece-rate agreements, or that the labour-hire firm was intentionally misinterpreting the award. The insinuation from this conversation is that the ‘average competent picker’ under this particular employer picked 20-30 kilograms a day, which would require a piece-rate over \$6/kilogram to allow some to meet the minimum wage.

The power imbalance at the heart of the WHM program

KEY POINTS

- 1 Working Holiday Makers are required to complete 88 days of approved regional work to qualify for a 2nd year visa. If seeking a 3rd year visa, WHMs must complete 188 days of regional work.
- 2 The need for WHMs to complete this work period as a condition of their visa grants employers considerable power over their employees.
- 3 For some WHMs, the need to ‘tick off’ the 88 days is more pressing than receiving fair remuneration.

The Working Holiday Maker program allows young (18-30 year old in most cases) foreign nationals from selected countries to conditionally live and work in Australia for a prescribed period. Commencing in 1975, the reciprocal program was initially available only to workers from the United Kingdom, Ireland and Canada, before gradually expanding to include other countries.³⁶ As of June 2020, there are 45 countries participating in the program, with the quantity of WHMs entering Australia different for each participating nation.³⁷

The WHM program’s purpose has shifted considerably since its initial inception. Originally, it aimed to facilitate cultural exchange, permitting young Australians and citizens from other Commonwealth nations to travel extensively in each others countries with access to employment to support extended stays. In 2005, however, the Commonwealth Government expanded the program, permitting a ‘2nd year’ visa for WHMs who completed a prescribed period of

regional work during their first year in Australia. Concurrently, the number of participating countries was expanding.³⁸ In order to achieve a ‘2nd year visa’, WHMs are now required to complete 88 days of prescribed regional work. Much of regional Australia is included in the program, with 82 per cent of WHMs in 2019/20 seeking a 2nd year visa after working in agriculture.³⁹ In 2018, WHMs became eligible to apply for a 3rd year visa, which required them to complete 188 days of prescribed regional work.⁴⁰

While WHMs still engage in some form of informal cultural exchange merely by being located in Australia for a time, the growth of the WHM program has seen more WHMs entering Australia to fill what are deemed to be critical skills shortages rather than engaging in cultural exchange.⁴¹ This shifting policy intention was highlighted by the Fair Work Ombudsman in its 2016 report into the program, which found that:

“While the public policy intention of the 417 [Working Holiday Visa] visa remained, and remains, one of cultural exchange, the ‘second year’ option was introduced in part to address identified labour shortages in regional areas of Australia and, more specifically, the horticulture industry.”⁴²

The reliance on WHMs to meet the basic labour needs of regional horticulturalists has been made clear during the COVID-19 pandemic. The decline in temporary arrivals has caused the horticulture industry to plead with government to allow WHMs back into the country to pick crops, not in order to reengage with the cultural aspects of the WHM program.⁴³ At the same time, however, stories have emerged of Australian labourers unable to secure employment in horticulture, due to the competition imposed by WHMs and other migrant labour, who are perceived to be willing to work for less than Australian citizens.⁴⁴

The 88 day element of the program creates a unique power imbalance

The 88 day regional work requirement of the WHM program is taken advantage of by nefarious actors who understand the inherent vulnerability of WHMs, and their reliance on employers who provide the documentary evidence required by WHMs’ to achieve a 2nd or 3rd year visa. As the composition of WHMs has transformed over several decades, so too has the overall cohort of WHMs grown more vulnerable to exploitation. As Reilly notes,

“Many Working Holiday Makers will be employed in jobs requiring hard manual labour that they have not previously encountered. An increasing proportion comes from non-English-speaking backgrounds, which makes it difficult for them to understand safety requirements or to ascertain employment protections. They do not have secure residence status, and as non-citizens, they have limited social and political power.”⁴⁵

Howe et al expand upon Reilly’s analysis, identifying that:

“The 88-day work requirement for a visa extension introduces a condition that makes WHMs highly dependent on employers. According to the Fair Work Ombudsman’s report the 88-day requirement has created ‘a cultural mindset amongst many employers wherein the engagement of 417 visa holders is considered a licence to determine the status, conditions and remuneration levels of workers ... without reference to Australian workplace laws’.”⁴⁶

This report is yet another illustration of the prevalence of exploitation amongst WHMs – evidence of which has been steadily growing since at least 2014. In that year, the Fair Work Ombudsman commenced a review into the conditions of those working in the program, noting that ‘allegations have been raised with the Fair Work Ombudsman that the 88-day requirement is being exploited by some unscrupulous operators to attract free labour.’ As the Fair Work Ombudsman also noted in its 2018 Harvest Trail report:

“The FWO has been concerned that while some workers request the FWO’s assistance once their employment has ceased and the 88-days have been signed-off, it is likely that many instances of exploitation are never reported.”



FIGURE 1.6

A FAIR WORK OMBUDSMAN EXAMPLE OF A NOTICE LEFT TO WHMS BY AN EMPLOYER. THE IMAGE TYPIFIES THE POWER IMBALANCE BETWEEN WORKERS AND THEIR EMPLOYERS; IF THE WORKER DISOBEYS THE WISHES OF THE EMPLOYER, THEY CAN THREATEN TO WITHHOLD DOCUMENTATION WHICH MIGHT THREATEN THE WORKERS 2ND YEAR VISA

Source: Fair Work Ombudsman

Images such as those above illustrate succinctly the reliance WHMs have on the willingness of their employer to validate the WHMs regional employment. ABC coverage of the preliminary findings of the Harvest Trail Inquiry which covered the Coffs Harbour blueberry industry, quoted a senior Fair Work Ombudsman official explaining the findings of the FWO in the fruit and vegetable picking industry. The official found:

*"In some cases the FWO encountered situations where a person is virtually bonded like a slave to a particular [labour hire] provider, on the basis they have been told they won't have their visa extension signed unless they see out the season with them."*⁴⁷

The official continued:

"We saw backpackers being lured to regional centres by dodgy labour hire operators, treating them poorly, bullying and sexually harassing them and ripping them off to the tune of hundreds — and sometimes thousands — of dollars per person."

This fundamental power imbalance renders WHMs uniquely vulnerable to exploitation in Australia. In effect, it creates a second-tier labour market, in which a minority of nefarious employers — often labour hirers — can source cheaper labour than otherwise would be available

in Australia, under the auspices of a program with very little oversight that is designed to meet labour demands in often remote locations.

The failures of the WHM program is damaging Australia's reputation

In addition to the economic and individual consequences of the 88 days program, the repeated exposure of exploitative practices WHMs are subjected to is creating reputational risks to Australia's horticultural industry, as well as Australia more broadly. Since 2014, major media investigations into exploitation in the industry have led to numerous headlines, TV specials, and social media campaigns that bring considerable attention to the poor working conditions WHMs are subjected to. Headlines that read '88 days of backpacker hell'⁴⁸, 'Documentary exposes dark side of backpacking farm work in Australia'⁴⁹, and 'Hidden dangers to be aware of when finding farm work in Australia'⁵⁰ rank as top Google searches for prospective WHMs.

A frequently used 'hashtag' which WHMs use to share their experiences is '#88DaysASlave', a tag which has been used in more than 5000 social media posts on Instagram alone.⁵¹ The prevalence of the "88 Days a Slave" moniker for the WHM program was also reported by the Guardian Australia in 2019.⁵² The authors of this report also noted the occasional use of the term 'slave' by research participants when referring to their working experience in the Coffs Coast region.

This is occasionally used to express frustration with conditions that, while not typically constituting slavery, represent a form of employment in which the workers have little to no agency, earn sub-minimum wages that barely cover living expenses, and feel bonded to their employer, albeit for a prescribed period.

Images ascertained during the on-ground investigation expanded on in Part 2 of this report, taken in a backpacker hostel in Woolgoolga, New South Wales, demonstrate WHMs feelings of discontent levied towards one regional employer. On the hostel walls, past residents have left written messages, praising the environment created by the very popular accommodation provider, while also expressing their frustrations with their employer. The following two images are examples of messages where the term 'slavery' and 'enslaved' is used:

FIGURE 1.7 IMAGE OF A NOTE LEFT IN A HOSTEL IN WOOLGOOLGA, NSW

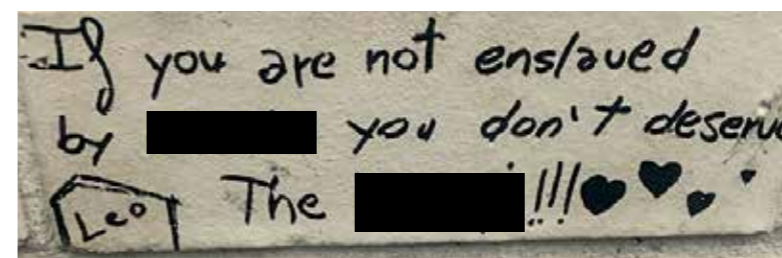


Photo: Edward Cavanough.

FIGURE 1.8 IMAGE OF A NOTE LEFT IN A HOSTEL IN WOOLGOOLGA, NSW

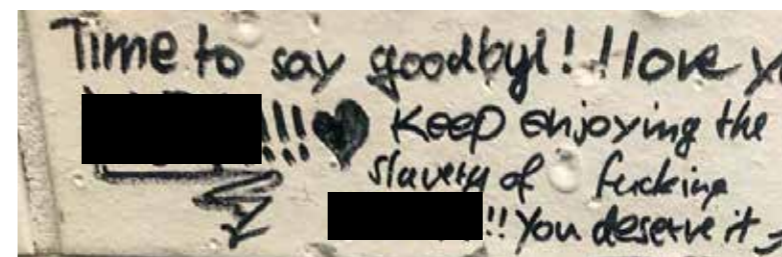


Photo: Edward Cavanough (October 2020).

The failures of the WHM program is discussed by WHMs themselves, and is undermining the original 'cultural exchange' intention of the WHM program. One research subject, a 28 year old Japanese male (whose story is covered at length in Part 2 of this report), told the researchers that his friends would not return to Australia if given the choice:

*"Even most of my Japanese friends, they hate Australia. [They say] 'f**k Australia, I'm never coming back here'. I actually don't like it [the friend's opinion], it's only one part of Australia. But some of the people ruined [my friend's] limited time [in Australia]."*⁵³

Once envisaged as a cultural exchange program aimed at strengthening ties between the global youth and Australia, the WHM program has now morphed into something fundamentally different. Instead of WHMs experiencing the best of Australia, too many experience the worst. Instead of homeward-bound WHMs becoming ambassadors broadcasting Australia's virtues, too many return having borne witness to a largely hidden undercurrent of illegal labour practices that most Australians would be shocked to discover.

PART TWO: INVESTIGATING UNDERPAYMENT IN THE BLUEBERRY INDUSTRY IN THE NSW MID NORTH COAST

Scope & approach

KEY POINTS

- 1 Field research was conducted between 5-12 October 2020.
- 2 Research participants were interviewed at length, with other subjects asked to complete a short digital survey which allowed them to anonymously share their experience. Pay slips and records kept by research participants were examined.
- 3 Open-source data, including job advertisements and blog posts by current and former workers in the area, were also examined.

The NSW Mid North Coast offers a unique COVID-era case study

The New South Wales Mid North Coast is a popular destination for migrant workers to pick fruit and meet their 88 days regional work requirement under the conditions of a Working Holiday visa. The site also offers a unique case study of the horticultural sector during COVID-19. Throughout the pandemic, the horticulture sector has been strongly advocating for federal government assistance due to a reported collapse in the supply of labour. In certain regions of Australia, the shortfall in backpacker labour is clear and apparent.



For those remaining in New South Wales, there have been few options in terms of interstate travel within Australia during the pandemic. New South Wales' physical borders with Queensland, Victoria and South Australia have each been closed for significant periods of time, necessitating WHMs and other visa holders to seek regional employment within the state. The loss in employment opportunities within major centers like Sydney has also likely contributed to migrant workers seeking work outside of the urban centers.

Blueberry picking is marketed as an 'easy' option for migrant workers, while both well intentioned and unscrupulous employers promote the job as an accessible one.⁵⁴ Often, advertisements specify that the work is well suited to both men and women, citing perceived concerns by some prospective employees that farm work is too arduous. The blueberry harvest in Coffs Harbour is also lengthy, with the Winter/Spring harvest running from June almost continually until early November, allowing workers who need to complete their 88 day requirement the opportunity to remain in situ for the duration of that period. Many blueberry or other orchards are also under cover, allowing workers to continue to work during rain, ultimately minimising the duration of their regional work obligations. Some blueberry farms without shelter are also rumoured to sign off workers' days when it is raining, even if they are unable to undertake work that day, which further encourages workers to meet their 88 day obligation in the area.

Additionally, the New South Wales Mid North Coast is a desirable holiday area. Coffs Harbour is a large regional centre. For backpackers and other WHMs, the area offers the social virtues of foreign travel more than other remote regional employment destinations. Coffs Harbour is also on the Harvest Trail, a formal network of horticultural regions through which WHMs are encouraged to travel and work. For these reasons, the labour shortfall experienced in some regional centers due to a decline in incoming migrant worker stock has been

significantly negated in Coffs Harbour, Grafton, and the surrounding areas explored in this study.

Interview approach

Throughout 2020, the researchers maintained dialog with numerous WHMs based in New South Wales. These relationships were primarily maintained through social media. These contacts served as linchpins into broader communities of backpackers and migrant workers who were traveling to the Coffs Harbour area for work or had already spent time in the area during 2020. The lead author travelled to the Coffs Coast between 5 October and 12 October, engaging in semi-structured interviews with current and former blueberry pickers across three locations.

The research focused on three clusters of workers in Coffs Harbour, Woolgoolga and Mullaway, NSW

The research subjects were located in three separate groups. The first was in a backpacker hostel in the Park Beach area of Coffs Harbour, populated by 40 individuals, the second at a backpacker hostel in Woolgoolga, populated by 56 individuals, and the third at a privately rented cluster of four neighbouring share houses in Mullaway, populated by 45 individuals.

Additional open source evidence was collated

The researchers also undertook a detailed audit of job advertisements specific to the Winter/Spring 2020 blueberry harvest in the Coffs Coast region. Each season, hundreds of advertisements are distributed on message boards, job-search platforms, and social media. This study examines unique ads during the period spanning April to October, 2020. It also examined blog-posts by former WHMs, who have taken to online platforms commonly used within their ethnic community to share their experience in the blueberry industry in the Coffs Coast region.

The fruit picking industry on NSW's Mid North Coast

KEY POINTS

- 1 The NSW Mid North Coast is home to 65-70 per cent of Australia's blueberry crop.
- 2 The region is also populated with significant raspberry, strawberry, tomato and banana crops.
- 3 Up to 2000 Working Holiday Makers are thought to travel and work in the region during the peak of the blueberry season, between July and October.
- 4 While there are many well operated farms, the area has a documented recent history of worker exploitation, especially through nefarious labour hire.

A majority of Australia's blueberry industry is located near Coffs Harbour, NSW

Horticulture is an essential industry in the New South Wales' Mid North Coast region. The climate allows for extended picking seasons for multiple berry crops — predominately blueberries, but also raspberries, strawberries, and blackberries. Despite being famous for the 'Big Banana', the Coffs Coast area's banana crop has dwindled in recent years, instead being replaced by an influx of blueberry plantations that litter the hillsides in communities such as Valery, Coffs Harbour, Nana Glen, Woolgoolga, Moonee Beach, Sandy Beach, Corrindi, Mullaway, and further north to the Grafton and South Grafton areas.

FIGURE 2.1 A BLUEBERRY CROP NEAR COFFS HARBOUR

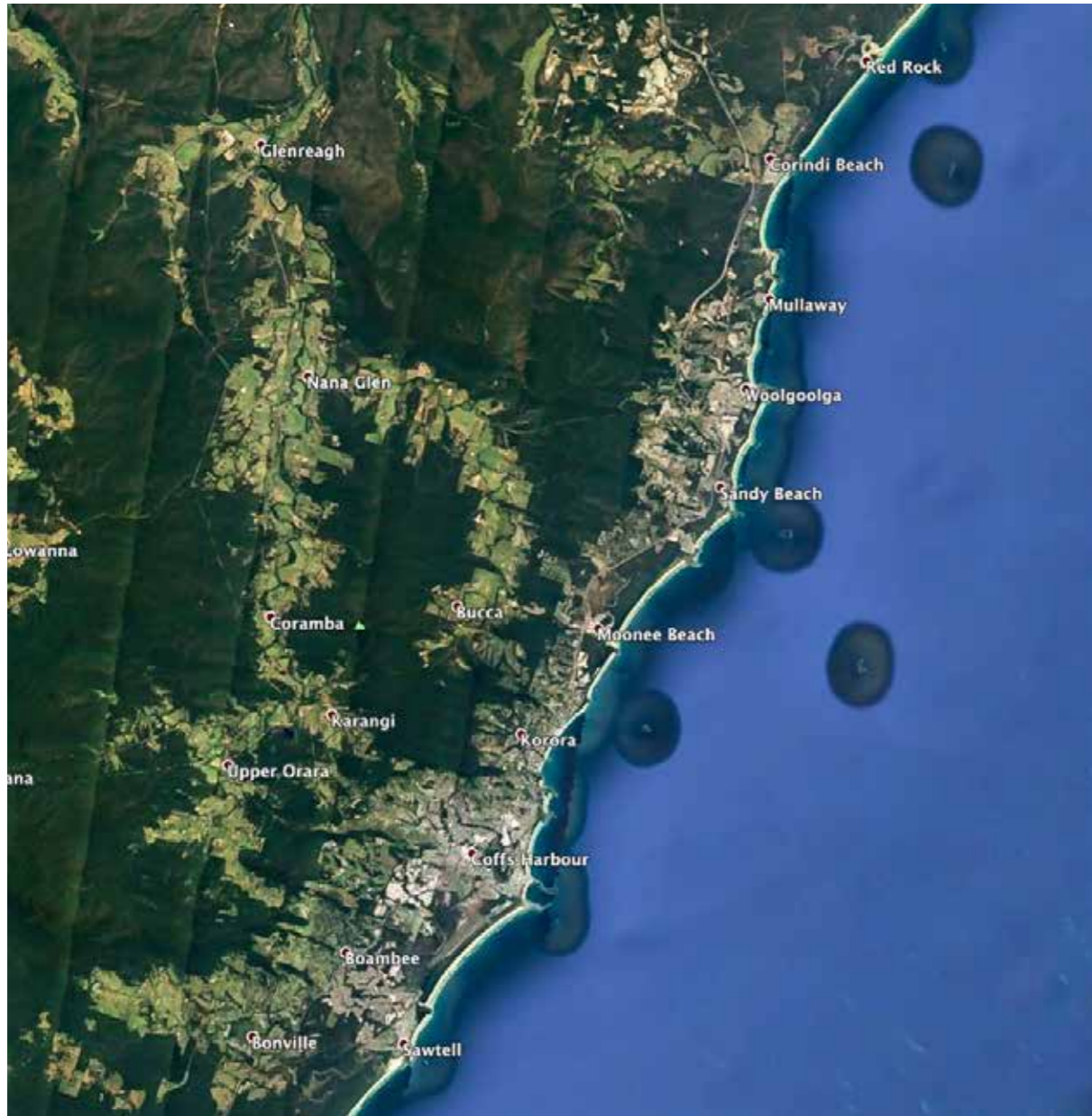


Photo: Edward Cavanaugh.

Blueberry crops are 'capital intensive and with high development and labour costs', but 'the short time interval between establishment and first returns...gives growers a positive cash flow within only a few years', making it a lucrative opportunity for landholders in the area.⁵⁵

The industry provides hundreds of local hourly jobs in fruit packing,⁵⁶ which are often filled by local workers, suggesting that, when remunerated adequately, domestic labour is willing to work in the industry. In addition to the hourly paid positions in packing, however, there are thousands of piece-rate jobs available almost year-round in fruit picking.

FIGURE 2.2 THE COFFS COAST



Source: Google Earth Pro.

Much of the region's crop is located near Corrindi, Woolgoolga, and Sandy Beach

There are large concentrations of berry crops immediately adjacent the Pacific Highway all along the Coffs Coast. Many have been well established for over a decade, according to historic satellite imagery examined. The proximity of these workplaces to beaches and suburban-style accommodation makes the region highly attractive to WHMs.

FIGURE 2.3 A LARGE BLUEBERRY GROWING AREA NEAR SANDY BEACH AND WOOLGOOLGA



Source: Google Earth Pro.

Significant tracts of land have been converted into blueberry crops since 2014

The blueberry industry in the Coffs Coast area has grown considerably since the early 2010s, as demonstrated by satellite imagery documenting the transformation of farmland. Newer crops have been emerging in farmland near Valery, Nana Glen, Bucca and South Grafton, particularly since 2014.

The influx of new crops in the area increases the demand for labour, and creates an opportunity for the unscrupulous labour hire operators identified in this report to operate in the area. One research participant explained that he had been told labour-hirers examine Google Earth imagery to identify new blueberry farms in the area they hope to staff.⁵⁷ The increase in blueberry supply also fuels competition between growers in a labour intensive business, facilitating an environment in which the cost-savings associated with using labour-hire firms rather than directly employing staff becomes more attractive.

FIGURE 2.4 A BLUEBERRY GROWING AREA NEAR CORRINDI, NSW



Source: Google Earth Pro.

Valery — 2014-2020

FIGURE 2.5 FARMLAND IN VALERY IN 2014



Source: Google Earth Pro.

FIGURE 2.6 THE SAME FARMLAND IN VALERY IN 2020, DEMONSTRATING NEW CLEARING FOR BLUEBERRY CROPS



Source: Google Earth Pro.

Bucca — 2014-2020

FIGURE 2.7 FARMLAND SURROUNDING BUCCA IN 2014



Source: Google Earth Pro.

FIGURE 2.8 THE SAME FARMLAND SURROUNDING BUCCA IN 2020



Source: Google Earth Pro.

Nana Glen — 2014-2020

FIGURE 2.9 FARMLAND EAST OF NANA GLEN, 2014



Source: Google Earth Pro.

FIGURE 2.10 THE SAME FARMLAND EAST OF NANA GLEN, 2020



Source: Google Earth Pro.

Farmland east of South Grafton — 2014-20

FIGURE 2.11 FARMLAND EAST OF SOUTH GRAFTON, 2014



Source: Google Earth Pro.

FIGURE 2.12 FARMLAND EAST OF SOUTH GRAFTON, 2020



Source: Google Earth Pro.

A region with a history of unscrupulous labour hire and underpayment

Among the community of WHM's in the Coffs Coast region, the continuing risk of underpayment and exploitative labour hire arrangements is frequently discussed. Some of this information is shared between individuals on social media pages, or through personal anecdotes. But this information is not simply hearsay – it reflects a documented recent history of nefarious employment practices that validate the ongoing concerns of migrant workers populating the region.

In 2015, the Fair Work Ombudsman identified a severe case of underpayment on a large blueberry farm in Sandy Beach, an area just north of Coffs Harbour. The operators of the farm, the FWO found, 'underpaid their workers tens of thousands of dollars'. The FWO media release continues:

*"Almost 140 seasonal workers were short-changed a total of more than \$46,000 between July last year and January this year. The largest single underpayment was \$966. Many of the employees were overseas backpackers in Australia on the 417 working holiday visa".*⁵⁸

The FWO ordered the employer to reimburse their employees, and sign an Enforceable Undertaking, which mandated the business engage external auditors and make their remaining employees aware of the workplace contraventions they had engaged in.

In 2016, another significant breach of workplace laws was identified on a blueberry farm in the area. After a raid on the property Australian Border Force, 34 Malaysians nationals were detained and deported to Malaysia.⁵⁹ ⁶⁰ The ABF believed the 34 Malaysian nationals were working on the property as part of an 'underground labour hire syndicate hiring foreign workers in the coastal town of Woolgoolga'.⁶¹

Again in 2016, the Coffs Coast Advocate reported further breaches of workplace

conditions on a blueberry farm, affecting ni-Vanuatu workers in Australia as part of the Seasonal Workers Program:

*"The Vanuatu workers were 416 visa-holders sent to work on a blueberry farm at Crossmaglen, west of Bonville, between September last year and January this year. Apart from being short-changed the penalty rates they were entitled to on public holidays under their piece work agreements, the employees were denied appropriate rest breaks when they worked 36 consecutive days from September 29 to November 2, stopping work intermittently when rain interrupted harvesting."*⁶²

In 2019, further reports of underpayment in the region emerged, with 30 year old French backpacker Jerome Haize publicizing his experience. Unable to find work through a reputable employer, Haize sought employment through a contractor in Coffs Harbour. He claims that he was working up to 10 hours a day, yet only receiving \$110 per week after picking blueberries on several different farms, despite being an able employee.⁶³ The fact that Haize was placed on numerous individual farms matches the experience of this report's research subjects, who claim that when working with contractors, they are often transported to a number of farms, some of which have very low yields. This can result in long hours, but very low quantities of fruit picked, with some workers claiming they were earning as little as \$20-30 a day.

Harvest Trail Report provides further evidence of exploitation

The Coffs Coast's horticulture sector also fell under the auspices of the Fair Work Ombudsman's 2013-18 *Harvest Trail Inquiry*. The Harvest Trail 'comprises thousands of horticulture and viticulture enterprises throughout every state and territory in Australia'.⁶⁴ The trail allows workers to follow seasonal harvests and find work among 8023 'employing entities'.

In 2013, the FWO commenced an inquiry into businesses across the Harvest Trail, responding to what it described as 'employee and community concerns about non-compliance with Australian workplace laws'. The inquiry, which focused on the blueberry industry in the Coffs Coast region among dozens of others identified five key findings:

1. There was widespread non-compliance amongst the employers investigated.
2. A misuse of piece-rates was identified.
3. A 'significant reliance by growers on overseas workers' was identified.
4. A 'negative impact [on compliance] where labour hire arrangements were illegally used'.
5. That 'consumers have a role in addressing exploitation'.

In terms of its enforcement during the process, the FWO reported that its inquiry led to 1300 education and compliance activities, with many businesses of all sizes audited, more than \$1 million recovered for underpaid workers, half of all businesses investigated breaching workplace laws, 70 per cent of Harvest Trail businesses found to be relying on visa holders to meet labour demand, and eight employees targeted for further legal action by the FWO.⁶⁵

Underpayment and bad conditions have been documented by workers themselves

An analysis of public posts by workers from previous seasons in the Coffs Harbour area testifies to the conditions and pay experienced by many Working Holiday Makers. This is particularly the case on blog platforms whose target audience are Chinese-language Australians, or Chinese nationals in Australia on Working Holiday Visas.

One user, writing in 2019, states that:

"My salary in the first week is 370 [dollars]. The fast[est] in our team is about twice as much as mine. But there is basically no... volume this week. It is normal after 7 days and 6 and a half days to get this salary".⁶⁶

Another user, writing in December 2019, reflected on her experience. Despite also noting she enjoyed much of the experience in the Coffs Harbour region, she shared payment records that reflected a low and fluctuating rate of pay.

Figure 2.13, extracted from the blog, reflects personal records, kept by the worker, of the quantity of fruit picked during the week of 2-7 September, 2019, and the quantity of fruit picked during a four day period of 21-24 October, 2019. The left column reflects the date worked, and the right the kilograms of fruit picked on each day. The final rows, in bold, reflect the total pay for the period, and then the total pay after tax is withdrawn. The user demonstrates that, between 2-7 September 2019, she earned \$524.88 after tax for six days blueberry picking. For four days picking between October 21-24, she earned \$225.25 after tax.

Workers typically spend 6-8 hours blueberry picking per day, though this can vary depending on weather conditions. Few workers, nor employers, keep a record of the *hours worked* by the employees, which makes quantifying a precise hourly rate challenging. Applying a conservative estimate, had the worker picked for just five hours per day between 2-7 September, she would have been earning an effective rate of \$20.58 per hour, or around \$4 per hour below the minimum casual rate. If the same method were applied to the period of 21-24 October, the worker would have been earning \$13.25 per hour, or more than \$10 below the minimum casual rate.

9.2: 14+3=17
 9.3: 23.5
 9.4: 26
 9.5: 25.5
 9.6: 18
 9.7: 20
TOTAL: AUD617.5
9.18税后实发: AUD524.88

10.21: 16
 10.22: 14
 10.23: 11
 10.24: 12
TOTAL: AUD265
11.07税后实发: AUD225.25

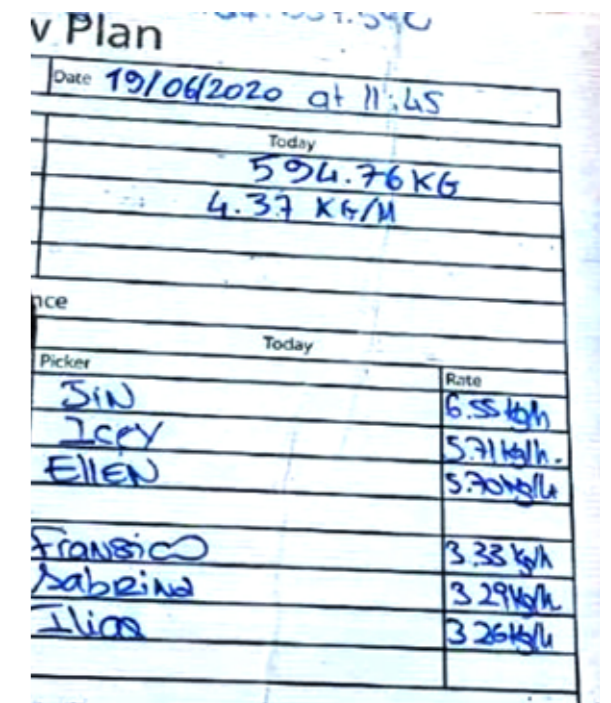
Source: AUWHVAssist.

FIGURE 2.13 PAY RECORDS KEPT BY A FRUIT PICKER IN THE COFFS COAST AREA, 2019

Another user, writing in July 2019, highlighted the initial concerns when arriving in the area.

"I came to the farm... there are already many backpackers living in it. In addition, I have almost 15 people living in a garage. Although I was used to living in youth hostels before, I suddenly became scared when I saw such a living environment."⁶⁷

FIGURE 2.14 A LEADER BOARD AT A COFFS HARBOUR REGION BLUEBERRY FARM. THE IMAGE, TAKEN ON 19 JUNE 2020 AT 11:45 AM, DEPICTS THE PICKING PERFORMANCE OF 6 INDIVIDUAL PICKERS. THE 'BEST PERFORMING' PICKER IS MANAGING TO GATHER 6.55 KG/HOUR OF FRUIT, WITH THE 'POOREST PERFORMING' PICKER COLLECTING 3.26 KG/HR.



Source: AUWHVAssist.

In another blog post, an image of a 'leader board' at a Corrindi based farm is shared. Leader boards on some farms are used to highlight the best performers on the day. Figure 2.14 is a cropped photograph of a large leaders' board on a farm in Coffs Harbour, extracted from a Chinese-language blogpost written in September 2020. Taken on the 19th of June, 2020, the image demonstrates the variability in picking performance on certain days and by certain individuals. The aggregate kilogram per hour ratio achieved on the day this photograph was taken was 4.37kg/hr.⁶⁸

FIGURE 2.15 THE QUANTITY OF FRUIT THAT PICKERS WOULD HAVE TO PICK PER HOUR AND PER DAY TO MEET THE MINIMUM WAGE, UNDER VARIOUS PIECE RATES

| Rate offered per kilo | Number of kilos/hour to achieve absolute minimum wage | Kilos/day to meet casual award minimum | Kilos/day to meet 'average competent employee' rate |
|-----------------------|-------------------------------------------------------|----------------------------------------|-----------------------------------------------------|
| \$2.50 | 9.74 | 77.95 | 89.66 |
| \$3 | 8.12 | 64.96 | 74.72 |
| \$3.50 | 6.96 | 55.68 | 64.05 |
| \$4 | 6.09 | 48.72 | 56.04 |
| \$4.50 | 5.41 | 43.31 | 49.81 |
| \$5 | 4.87 | 38.98 | 44.83 |
| \$5.50 | 4.42 | 35.43 | 40.76 |
| \$6 | 4.06 | 32.48 | 37.36 |
| \$6.50 | 3.75 | 29.98 | 34.49 |
| \$7 | 3.48 | 27.84 | 32.02 |

Source: Author Analysis.



How nefarious labour-hire firms attract staff

KEY POINTS

- 1 Labour hire firms and unregistered individual subcontractors advertise jobs in the area largely on language specific platforms.
- 2 Many paint a rosy picture of the work, referring to blueberry picking as the easiest way to complete the 88 days of required work.
- 3 Some job advertisements offer clearly illegal rates of pay, with one contractor advertising between \$60-100 daily rates.

To understand how workers are identified and approached by various hirers, the authors of this report have searched for job advertisements specifically advertising blueberry picking in the Coffs Coast region during the period of April to October, 2020. The below analysis demonstrates that a considerable proportion of the advertisements are linked to labour hire subcontractors, who use language specific platforms such as *Yeeyi*, *Sydney BSS*, *BBKZ*, *Backpackers Taiwan*, *Hokunara*, *SydneyToday*, *SunQueensland* and dedicated groups on Facebook to distribute job opportunities, and attract WHMs and other workers to the area.

An audit of job advertisements demonstrates high rates of labour hire and pay rates offered below minimum wage

This report examined 100 individual and unique job advertisements specific to the NSW Mid North Coast Winter and Spring 2020 blueberry picking season. The audit identified the actors involved in courting prospective pickers, and assessed the quality and quantity of work the prospective employers were publicly offering. The researchers omitted repeat advertisements (i.e., the same job ad posted repetitively on the same platform, or an identical job ad cross-

posted on multiple platforms). Each of these job advertisements is targeted to more than one employee at a time, suggesting that successful job advertisements lead to the employment of multiple individuals.

Many job ads were listed by entities with no discernible ABN

A majority of job ads placed on various social media and job advertisement platforms are posted by individuals, some representing ABN registered businesses. A significant number of job ads have no discernible link to an ABN registered entity, instead asking prospective employees to text over WhatsApp, Line, WeChat or similar messaging services with regards to the details of their employment. Some explicitly ask prospective employees not to call the listed phone number, requesting text messages instead.

Some job ads are posted with a clear link to a named business or labour hire firm, but the researchers in several instances were unable to identify the formal existence of those businesses through any Australian business registry. While it is not certain whether every incidence of a job ad posted without any link to a formally registered business means the prospective employer is an unregistered contractor, the

historically documented occurrences of illegal labour hire, anecdotal evidence shared by research subjects, and job advertisement analysis suggests such nefarious actors are rife in the Coffs Coast region.

A lack of ABN registration is not just illegal, but it is detrimental to fruit pickers who require legitimate documentation of their 88-days of regional work needed to secure a 2nd year visa. Some research subjects expressed concern that some of their work may not have been valid,⁶⁹ because they weren't certain whether their original contractor was registered and that the pay slips they plan on presenting to the Department of Immigration to achieve a visa renewal are genuine.

FIGURE 2.16 COUNTS OF JOB ADS WITH A DISCERNIBLE LINK TO AN ABN REGISTERED ENTITY



■ Link to ABN
■ Don't link to ABN

Source: Author Analysis.

The job advertisements posted by entities without an identifiable ABN can further be broken down into three categories: First, some ads were posted where the organisation was listed, but an ABN lookup discerns that this is not an Australian company, or the ABN has been deregistered. Where the ads are "Unspecified", no link to any named business entity is identifiable.

FIGURE 2.17 COUNTS OF JOB ADS BY THE ADVERTISEMENT POSTERS' LINK TO ABN REGISTERED ENTITIES, DETAILED



■ ABN Registered Company
■ Unlisted business
■ Unspecified
■ Individual Subcontractor

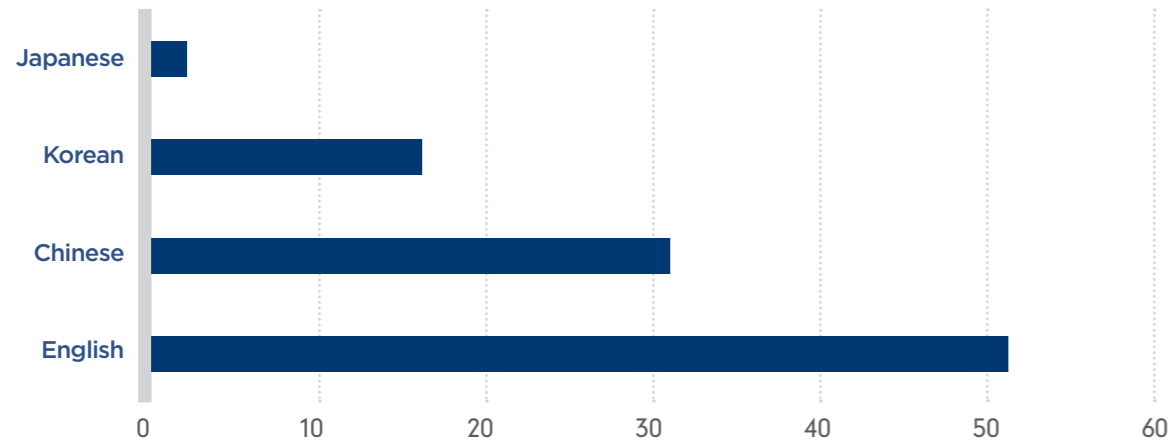
Source: Author Analysis.

Where there is an "individual subcontractor", this usually takes the form of an individual "user" on a forum repeatedly posting job advertisements. This reflects a tactic by labour-hirers to encourage employees, or individuals they have promised employment to, to engage in the time-consuming process of posting jobs and facilitating prospective WHM's employment, as described by a 28 year old Japanese research participant.

Job advertisements were predominately in English, Chinese and Korean

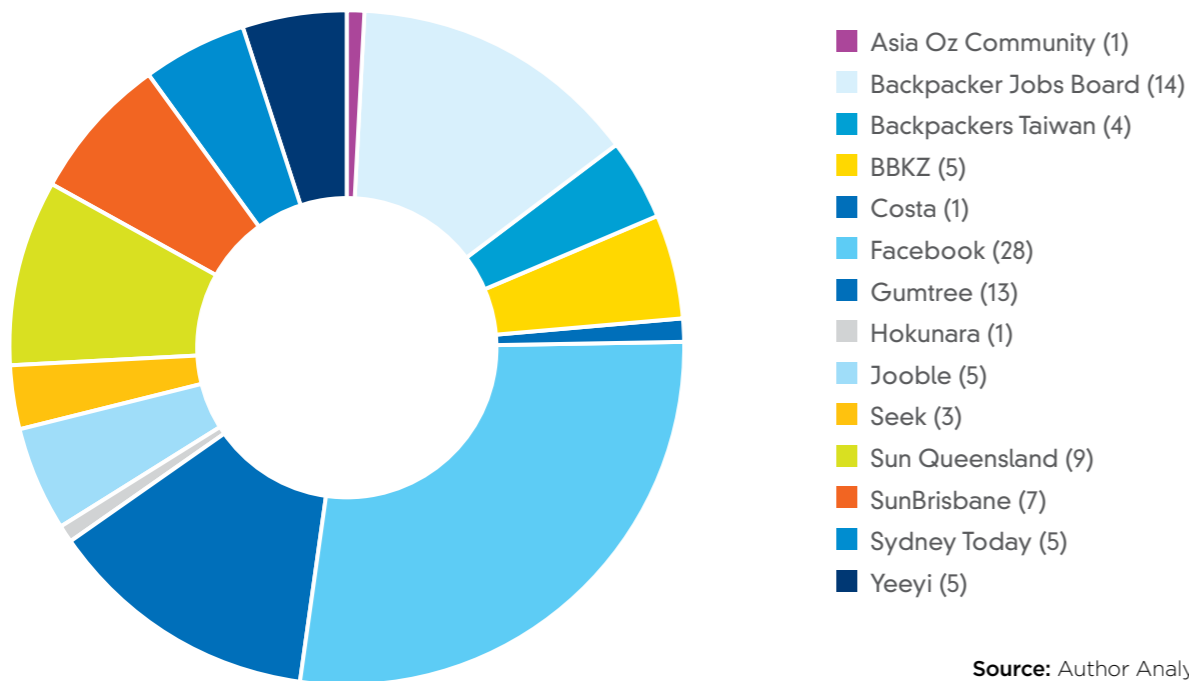
As shown below, the fruit-picking industry has a deep focus in East Asian nations, and also advertising in English.

FIGURE 2.18 COUNTS OF LANGUAGE OF JOB ADS AUDITED



Source: Author Analysis.

FIGURE 2.19 DIVISION OF PLATFORMS ON WHICH JOB ADS WERE IDENTIFIED



Source: Author Analysis.

The audit of job ads demonstrates that there are numerous legitimate employers in the Coffs Coast blueberry industry, posting job advertisements that reflect positions and offer applicants a degree of certainty in the validity of their prospective role. The audit also demonstrates that alongside these legitimate advertisements, however, are large numbers of advertisements posted by unidentifiable businesses, some of which are explicitly advertising rates of pay below the minimum award wage.

Lengthy delays in the hiring process of popular farms create a window of opportunity for labour hire firms

There are several large companies operating in the region that provide opportunities for WHMs to complete their 88 days of regional work. While some research participants noted continuing low pay even with the larger farms, most WHMs aspire to eventually securing a job working directly with one of the region's larger berry farms, rather than through a subcontractor. Once WHMs apply for a role at these larger firms, however, their application can take up to six weeks to process. It is in this interim period that many WHMs accept any work they are offered so long as it contributes to their 88 days of regional work requirements associated with their WHM visa. Labour hirers are cognisant of this. Job advertisements often claim that they are able to offer employment immediately, which encourages WHMs needing to quickly commence their 88 days of regional work to take up positions through the very subcontractors that are more likely to engage in exploitative behaviour.

FIGURE 2.20 AN EMAIL FROM A MAJOR REGIONAL EMPLOYER POSTED BY A BLOGGER. THE RECIPIENT HAD APPLIED FOR WORK ON A LARGER FARM WITH A BETTER REPUTATION THAN MANY CONTRACTORS, WHICH SUGGESTED IT WOULD BE 4-6 WEEKS BEFORE THEIR INDUCTION.

2018年6月6日周三 早上8:09

I wanted to take the opportunity to update you on your application with [REDACTED]
 We have processed your application and you are ready for induction. Based on the progress of our harvest season we expect you to be invited to induction within the next 4 to 6 weeks however this could change.
 Keep an eye on your emails, and we will contact you as soon as we have an induction available.
 Best wishes

Source: AUWHVAssist

Job advertisements vary depending on the target audience

Fruit pickers on the NSW Mid North Coast represent a disparate spread of nationalities, ages and backgrounds. The manner in which employers or labour-hire firms seek to attract these workers is equally diverse, and often targeted to the prospective employees' demographic.

The region's most respected farms often advertise through Facebook and Gumtree, promising wages and conditions that often appear in line with the conditions expected under the Horticulture Award, with some piece rates advertised as high as \$7 per kilogram.

Another means of accessing work is by communicating directly with accommodation providers in Coffs Harbour. The three most popular hostels in the city each advertise working holiday experiences, in which prospective fruit pickers receive special deals on accommodation while completing their 88 day requirements and the hostels facilitate placements on farms for their prospective guests.

Individual contractors offer pay as low as \$60 per day

However, there are numerous contractors on a variety of platforms that, even in their advertisements, offer employment that pays far below the minimum wage. Job ads promoting blueberry picking opportunities in Coffs Harbour on Chinese, Korean and Japanese language job-boards routinely offer well below wages that would be deemed legal. One August 17, 2020 advertisement on the Chinese-language message board Yeeyi, posted by a labour hire contractor which is unable to be identified on any Australian business registry, offered prospective employees "\$60-\$100 in the first three days" to pick blueberries. This equates to an advertised rate as low as \$7.50 per hour, assuming a full day's work is on offer.

FIGURE 2.21 A JOB AD POSTED ON THE YEEYI PLATFORM, OFFERING JOBS THAT PAY \$60 PER DAY IN BLUEBERRY PICKING IN THE COFFS HARBOUR AREA.

Source: Yeeyi.



FIGURE 2.22 THE LANGUAGE EXTRACTED FROM THE YEEYI JOB ADVERTISEMENT ABOVE

Work: Blueberry picking is easier to pick than other outfields, but the topography of each farm is different, there are easy and hard, but as long as the speed of picking is your biggest competitor to Make Money: **novices start 60\$-100\$ in the first three days**, and look at the back for the amount and speed, **100\$-150\$ is absolutely possible**, just waiting for you to challenge.

Now is a good time to join the Blueberry Summer Camp. If you want to have this experience and benefits when collecting the second or third visa, please contact me and sign up for it. For more information, please contact the following:

Source: Yeeyi.

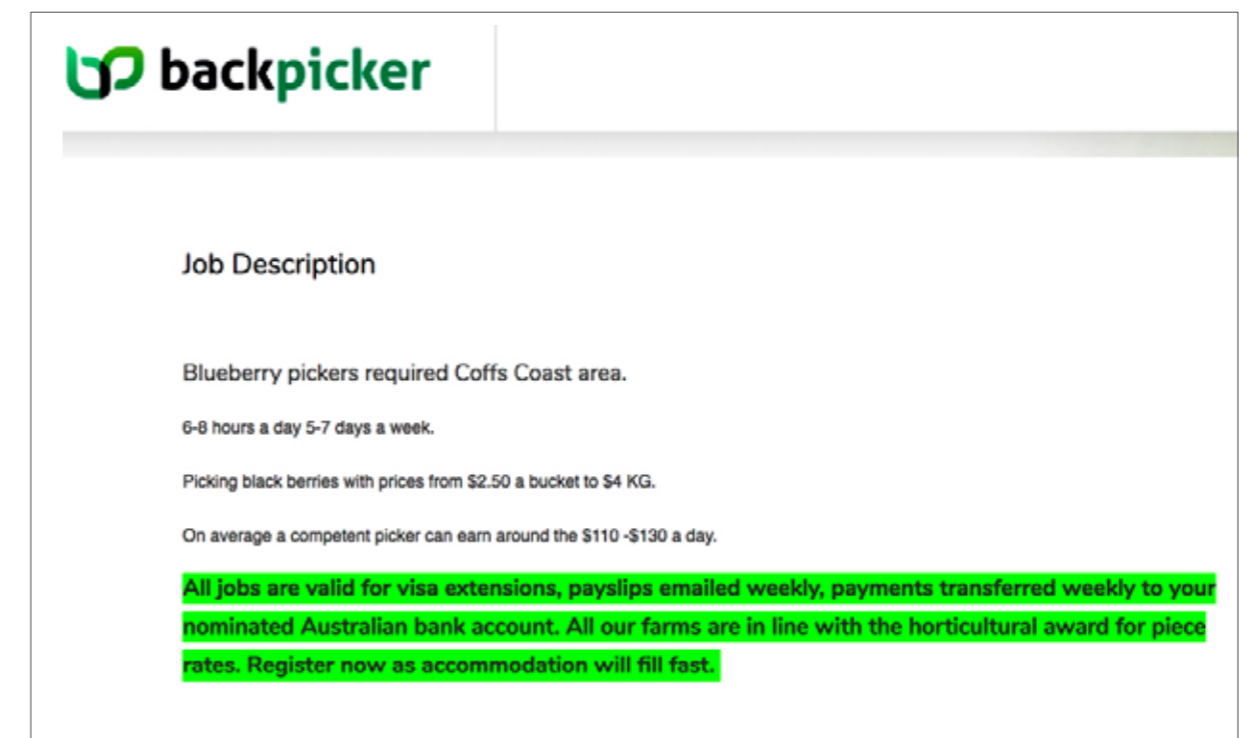
FIGURE 2.23 A BLUEBERRY PICKING JOB AD POSTED BY A LABOUR HIRE FIRM OPERATING IN COFFS HARBOUR. THE PAY OFFER IS LISTED AT 'AU\$100/ DAY'. THE NAME OF THE EMPLOYER HAS BEEN OMITTED.



Source: Facebook.



FIGURE 2.24 A JOB AD POSTED ON THE BACKPICKERS PLATFORM, OFFERING A JOB UP TO 8 HOURS WORK FOR \$130 — A RATE OF \$16.25 PER HOUR



Source: BackPickers.

CASE STUDY

INTERACTION WITH LABOUR HIRE CONTRACTOR ON LINE MESSENGER, A SOCIAL MEDIA APP

Using an alias, the project lead author responded to an advertisement for a fruit picking job in Coffs Harbour in late September, 2020.

The exchange occurred through the Line messenger app, an application commonly used in North East and South East Asian communities both in Australia and internationally.

The job advertisement was on the Korean language message board Sun Queensland (sunqld.com) and offered a position at \$3.50-\$4 per kilo picking blueberries in Coffs Harbour during the Spring 2020 harvest.

After inquiring, the contractor stressed the virtue of the position he had on offer, before proceeding to offer a position that would constitute a 63 hour working week (working seven days a week, from 7 am to 4 pm), while offering \$600 per week “for beginners”, and subtracting \$130 from that pay for share house style accommodation in South Grafton.

Prior to subtracting expenses for accommodation, the position on offer was the equivalent of just \$9.50 per hour, however that rate could be higher if the picker was able to collect more than the quantity of blueberries expected in the advertisement. When further reducing the weekly pay by the cost of the accommodation, the hourly rate is reduced to \$7.50 per hour — less than a third of the casual loading on the Horticulture Award.

As per the Horticulture Award (and any other award), payment must be made in money. Any form of in-kind contribution such as food or accommodation is considered to be a contravention of the award, irrespective of the willingness of a labourer to engage in such an arrangement.

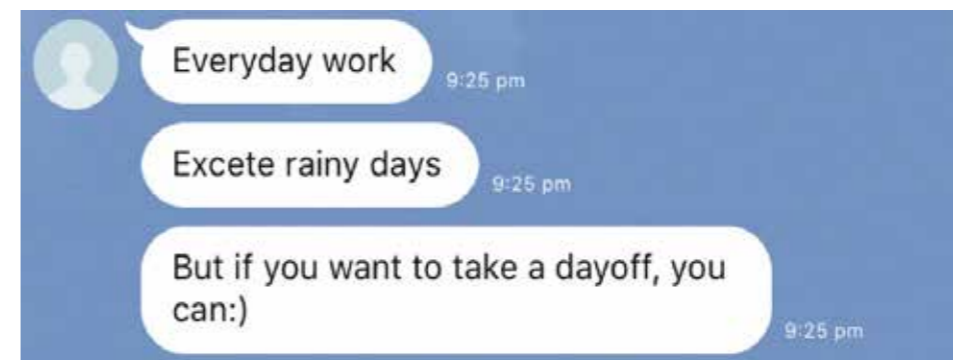
FIGURE 2.25 AN EXCHANGE WITH A LABOUR HIRE CONTRACTOR, WHO WAS OFFERING \$600 PER WEEK FOR 6 OR 7 DAYS' WORK.



When asked what the hours are:



When asked what days the employee would be expected to work:



When asked about pay and conditions:



Source: Author exchange with contractor.

WORKER TESTIMONIES FROM THE 2019/20 HARVEST

KEY POINTS

- 1 Workers in the area allege serious cases of underpayment, illegal labour-hire operations, and even abuse.
- 2 Some workers report not being paid at all for several weeks work in the area.
- 3 In the most egregious documented case, a 28 year old German male worker earned an average of \$6.21 per hour over a period of 17 working days with a local subcontractor.

CASE STUDY

ALLEGEDLY FRAUDULENT PAY SLIPS & ABUSE OF AN AUSTRALIAN LABOURER

Sally⁷⁰ is an Australian citizen who travelled to the NSW Mid North Coast region in mid-September looking for work. She replied to a job advertisement on a Facebook group, and after being offered a position, travelled to the region with her partner.

Sally was quickly confronted by the situation she found herself in. "We worked for a company we don't even know the name of, contact number on the payslips isn't even connected. Realis[ed] we were working without getting paid", she said. Though Sally received payslips, she didn't receive any pay. On inquiring with her labour hirer about her pay, she was continually berated by the labour hirer via WhatsApp message. The labour hirer spammed her phone with almost 2000 messages, harassing her and calling her a 'dog' repeatedly, while ignoring pleas to be paid. The labour hirer was not registered with an ABN, despite issuing payslips, and the contact details attached to the labour hire firm were not operational.

FIGURE 2.26 ABUSE FROM AN ALLEGED LABOUR HIRER, DIRECTED TOWARDS SALLY.



Source: Supplied.

CASE STUDY

JONAS, A 28 YEAR OLD MALE, EXPERIENCING SUSTAINED UNDERPAYMENT, AND ALLEGES LACK OF PAYMENT FOR JAMMING FRUIT PICKED

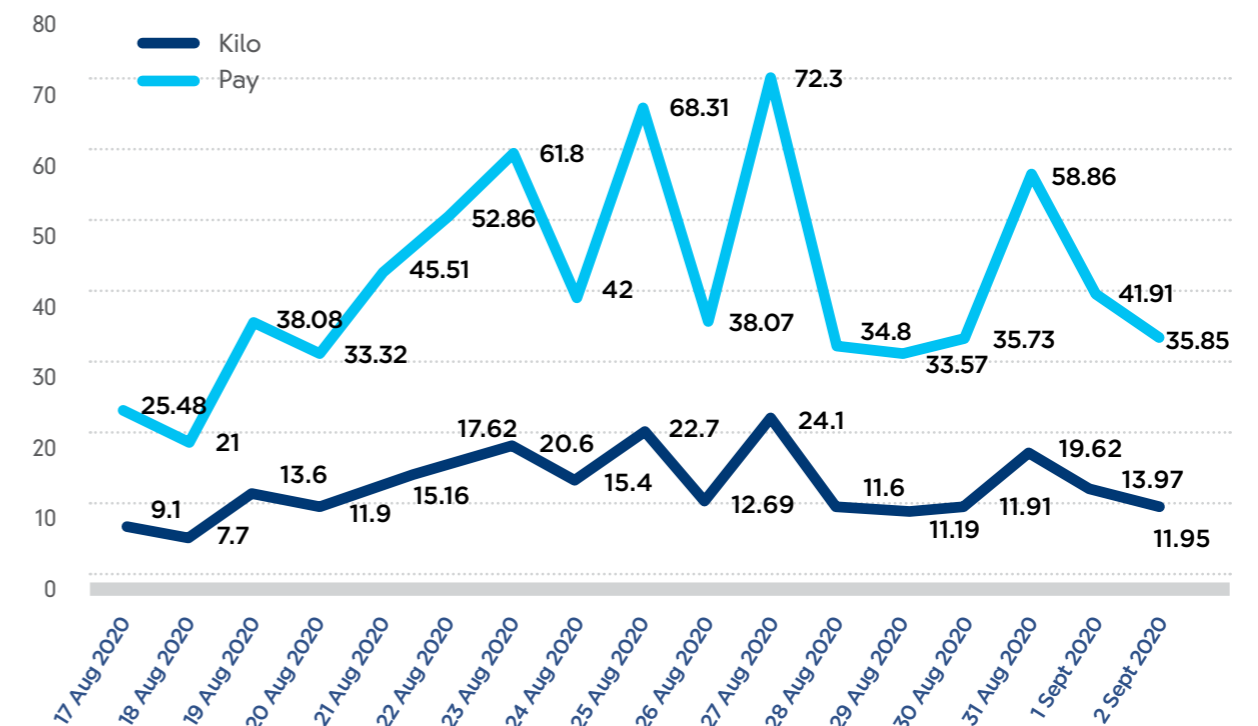
Jonas⁷¹, a 28 year old German male, began working in the Coffs Coast region in mid-August, 2020. Like many newcomers to the region, Jonas began picking through a local subcontractor.

Jonas has documented his own pay, and the quantity of fruit he has collected each day, during his period in the Coffs Coast region.

For his first 17 days in the area, Jonas picked fruit every day, for between 6 and 8 hours.

His records demonstrate an extraordinarily low rate of pay for those 17 days, and represent a rate of pay that is indisputably in contravention of the piece-work arrangements in horticulture. While some contractors would argue this reflects a poor work ethic, Jonas argued that during this period he was asked to pick crops with extremely low yields, which led to such a low rate of pay.

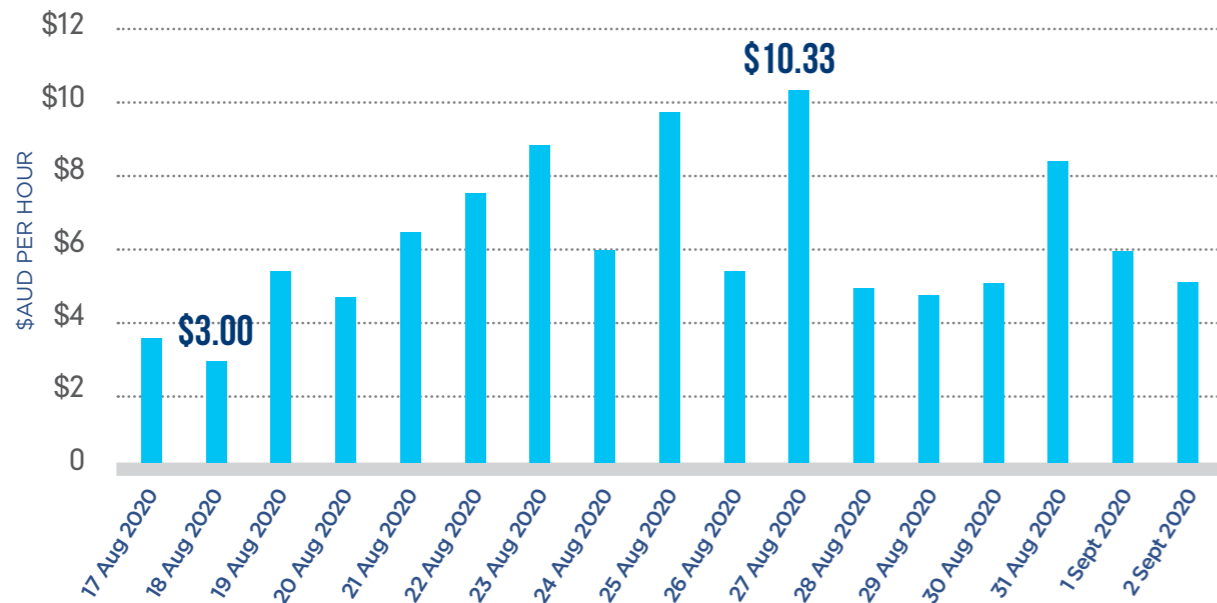
FIGURE 2.27 JONAS' PAY FOR THE FIRST 17 DAYS OF HIS EMPLOYMENT. THE BOTTOM LINE REFLECTS THE QUANTITY OF FRUIT HE PICKED EACH DAY; THE ABOVE LINE REPRESENTS HIS TOTAL PAY PER DAY.



Source: Author Analysis.



FIGURE 2.28 JONAS' EFFECTIVE HOURLY RATE FOR THE FIRST 17 DAYS OF HIS EMPLOYMENT.



Source: Author Analysis.

Jonas' records demonstrate that, for the first 17 days of his employment through a local contractor, his minimum effective hourly rate dipped to \$3/hour on August 18, 2020, and rose to a peak of \$10.33 per hour on August 27, 2020.

FIGURE 2.29 THE SUM OF JONAS' TOTAL REMUNERATION WHILE WORKING FOR A LABOUR HIRE CONTRACTOR.

| | Kilograms Picked | Total Remuneration | Total Hours of Employment | Average Hourly Rate |
|-------------------------------------------|------------------|--------------------|---------------------------|---------------------|
| Jonas' Pay with Initial Contractor | 250.81 | \$739.45 | 119 | \$6.21 |

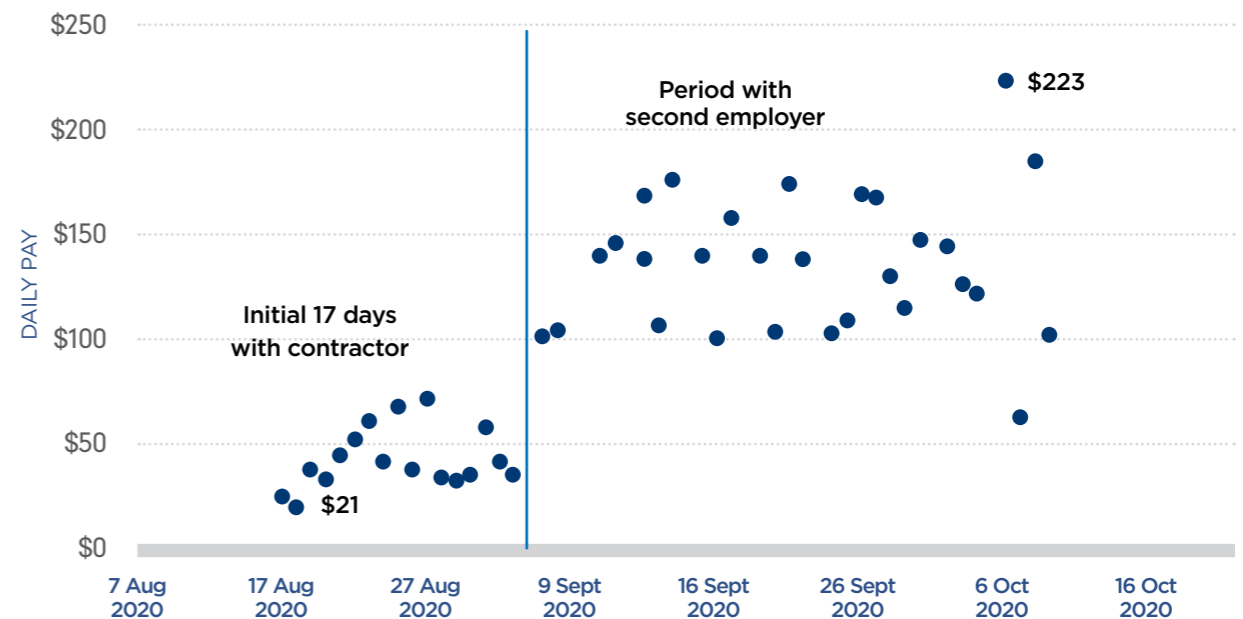
Source: Author Analysis.

His total pre-tax earnings while with the contractor was \$739.45. During those 17 days, Jonas was earning an average rate of pay of \$6.21 per hour.

After three weeks of working for the initial contractor, Jonas was offered a position in a larger operation in Corrindi, near Mullaway.

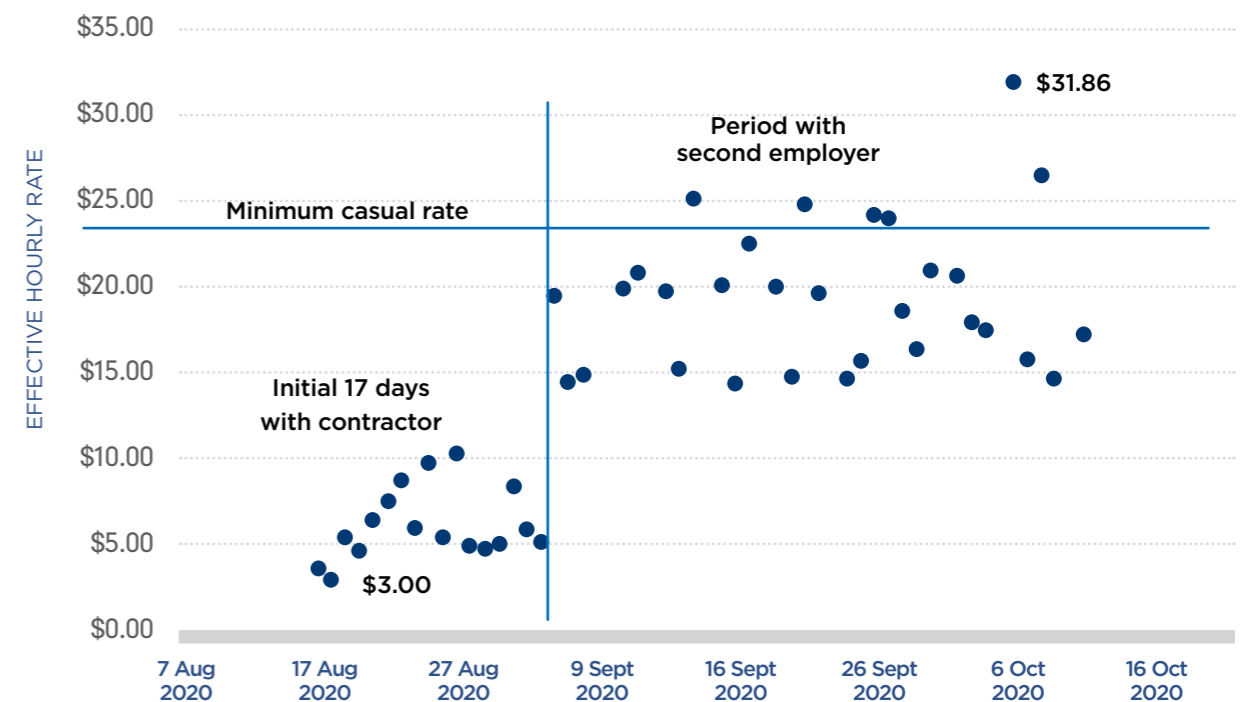
The immediate lift in pay, reflected in the detailed records kept by Jonas and assessed by the researchers, demonstrates that his relative inexperience in his first 17 days are unlikely to be the major determinant in his considerably low rate of pay. While Jonas' pay increased significantly when he shifted to a larger employer, his pay remained considerably below the casual award minimum of \$24.36 per hour. In only six of the thirty days with the second employer did Jonas earn at or above the casual award minimum.

FIGURE 2.30 THE DAILY PAY JONAS EARNED WITH BOTH HIS FIRST AND SECOND EMPLOYER.



Source: Author Analysis.

FIGURE 2.31 THE AVERAGE HOURLY PAY JONAS EARNED EACH DAY BOTH HIS FIRST AND SECOND EMPLOYER. ON ONLY 6 OUT OF 47 DAYS OF WORK DID JONAS MEET THE MINIMUM CASUAL RATE OF \$24.36 PER HOUR.



Source: Author Analysis.



CASE STUDY

NATALIE TRIGWELL, A 46 YEAR OLD AUSTRALIAN WOMAN WHO WAS FORCED TO WORK PROXIMATE TO ACTIVE BUSHFIRES, AND DIDN'T RECEIVE PAY FOR THREE WEEKS OF PICKING.

Natalie Trigwell is a 46 year old Australian based in northern New South Wales.

Her experience in blueberry picking falls on the early end of the study period for this project, however, her story from November 2019 demonstrates the cavalier attitude of some employers in the region towards the health and safety of their staff.

Ms. Trigwell has worked a multitude of farmhand jobs in her life, but has not recently had any fixed or long-term employment. In October 2019, her home near Nimbin in New South Wales was lost to bushfire, forcing her to live in her van. With no income, Ms. Trigwell sought employment opportunities on Gumtree, and found a job advertisement through a contractor for blueberry picking in the Coffs Coast area.

"I packed everything in the campervan and headed off berry picking, just out of sheer desperation", she says.

"I went down there and found that I was earning \$15-20 per day", she says.

"The farm I was working on was a very big one... there was no reception out there and the fires were headed that way" she says. "I was out there with probably 300-400" other workers.

The over-supply of workers, mixed with a poor yield on that particular crop, meant Ms. Trigwell and other workers were picking low quality and small quantities of fruit each day, working 6-8 hours for extraordinarily low rates of pay.

Ms. Trigwell alleges that the contractors managing the fruit pickers on the farm would aggressively yell at the workers: "Middle, middle, pick the middle!" she said they exclaimed.

Contractors were alleged to show a callous disregard for approaching bushfires

Having recently experienced the severity of northern New South Wales' bushfires, Ms. Trigwell fully understood the dangers and pace of fire. She claims that there were fires so close to the blueberry

orchard she was picking that she "couldn't see the berries because of smoke".

"There was no phone reception, we couldn't get alert messages, and [the contractors] wouldn't let us leave", she says.

"And I walked out. I didn't get paid for three weeks' worth of work for that one. I went and did some cash work in other farms, and one of those jobs ... they were very good. They paid a very good rate... they paid \$25 cash in hand".

She worked on the better paying farm for several weeks before deciding to leave the area in search for better work.

Sustained low payment led to effective homelessness

Having already lost her home in the bushfire, and now residing in her car, Ms. Trigwell had earned such little money during this period that she was unable to sufficiently feed herself, nor fill her car with petrol.

"At that time...no petrol in the car so I couldn't actually drive to another job to get any money".

At this point, Ms. Trigwell characterised her situation as effective homelessness. Though she had a roof over her head in the form of a campervan, she was unable to afford basics.

"I couldn't afford to get a powered site [for my campervan]...you're working all day out in the field and unable to have a shower, or get to cook hot food", she says.

Ms. Trigwell felt uncomfortable informing her immediate family that "things had gone pear shaped", and instead sought financial assistance from close friends currently living overseas. Her friends formed a GoFundMe page which sought a modest financial contribution to help Ms. Trigwell relocate and search for more secure work and accommodation.

CASE STUDY

MAKATO, 28, UNDERPAID AND COERCED INTO PERFORMING UNPAID ADMINISTRATIVE WORK FOR A CONTRACTOR

Makato lost his wallet in the Australian summer of 2019/20, which left him unable for a period to access his money saved in Japanese bank accounts. During this period, Makato borrowed money and quickly looked for work. Unable to find work in Sydney, Makato approached contractors.

FIGURE 2.32: MAKATO



Photo: Edward Cavanough, October 2020.

"I decided to go do farm work because there was not much city work" says Makato.

Makato left Sydney in May for Coffs Harbour.

"I made a connection with a local contractor here, and I kept in touch with him. When the season [in Coffs Harbour] began in May I travelled here", he says.

"The contractor is a Korean guy, he lived in Australia for 20 plus years."

"The contractor...he never pays tax, he always delayed the payment. He's always saying that he didn't get paid from the farmer yet, but when I asked the farmer, he [says] he's already paid for it".

Delays in payment, bullying and coercion into unpaid administrative work

"At first [the contractor] was nice, but after that he keep forcing me to work but never pays me", he says.

Makato claims that his contractor would often negatively compare his work to that of previous workers the contractor had employed in past seasons.

Makato was then asked to help find other pickers for the contractor to employ.

"I worked for this contractor for three months. It was rainy season, I did loads of desk work... posting ads and contacting the people".

Makato was not paid for the administrative work, despite sharing with the researchers evidence of interactions with over 100 prospective pickers on WhatsApp.

"I had over 260 applications on my ads", he stated, referring to ads he had posted on various online bulletin boards.

The contractor told Makato that if he helped with the administrative work, he would be able to provide Makato an hourly job. Makato claims that the hourly job was never offered, and after one month, Makato actively sought work through with a better employer.

"He only pays me when I'm at the farm", and he wasn't remunerated for the work he was asked to do off the farm.

Makato stated that he had to asked up to three weeks for payment he was owed.

"I wanted \$400-500 per week", but Makato claims he never received that much money.

Having worked for this contractor for three months, Makato shifted to a second contractor, who was fairer despite continuing to pay Makato less than the minimum casual rate.

Allegations that the FWO were ineffective in Makato's case

Makato was aware that he was being underpaid, and sought assistance.

"I asked the Fair Work Ombudsman for help. It [wasn't] worth it to go through the process. My English was not good and it was too complicated".

"The translator was not that good I think", he says.

After a difficult experience engaging the FWO, Makato simply moved on to another employer.

Despite being an experienced picker, Makato's pay continued to be below minimum wage

FIGURE 2.33: MAKATO'S BLUEBERRY BUCKET



Photo: Edward Cavanough, October 2020.

Makato claims to be an experienced picker.

"I have picked strawberries, capsicums, watermelons, mangos, a lot. Blueberries is the worst pay. Picking blueberries is the worst".

"Sometimes I can make more than hourly rate, but only when the fields are good".

"When it's nearly peak season, and there's no rain during the week, you can work seven hours a day, seven days".

When asked how much he would earn from the 48 hour week in peak season, he claimed he would often earn only \$350 before tax and superannuation.

Makato also claims that other workers in the area have had a much worse experience than him.

"Some other pickers who worked with other contractors didn't even get paid at all. The contractors just disappear".

ECUADORIAN FEMALE, 28, CONSISTENTLY UNDERPAID AND INITIALLY ISOLATED IN LOW-QUALITY AND REMOTE ACCOMMODATION

Sara⁷² is a 28 year old Ecuadorian Working Holiday Maker, who arrived in the Coffs Coast area in mid-July.

“I was in the middle of nowhere. I had nowhere to go. No transport. Not buses around. Nothing. It was an awful place.”

She described her room as having no windows, and with no bedding provided.

“I was feeling awful. I went to bed. The next day was Monday and went to the farm around 7:30 am. Lots of the people were from Asia; the workers didn’t speak English”.

“We didn’t really say anything to [the contractors] because we were afraid... on that first day, I did \$20. And it was all day, from 8 to 4”.

Sara also claims others working on that farm were exposed to abuse.

“After I met the director [of the farm] he was... very rude. There was a French guy who wasn’t feeling well you know, and he was taking days off to rest, and then when he went back the farm the

supervisor yelled at him: ‘you are not allowed to take days off, you should have talked to me’”.

“I wasn’t feeling that lonely after the first week because I met this Japanese guy and his wife...I thought if something happens we are going to be together”.

Toilet breaks discouraged, and use of ‘illegal’ migrant labour alleged

After two weeks, Sara moved to a second premises in a more established share house. Her housemates included a couple from Malaysia.

“They told me that they were here for two years and they were illegal. If you see people who don’t speak English, you think they’re illegal”, Sara says,

“Sometimes they [the contractors] would give orders in Malay or in Mandarin and you don’t know nothing, and I was like ‘English please’ as I couldn’t understand”, she says.

“I didn’t know anything about [the work conditions], I didn’t know the [piece] rate, nothing”.

“If you don’t work you don’t get money so people rather work every day as many hours as they can to make money”.

Sara’s first weeks as a blueberry picker were based at a farm in Valery, around 45 minutes southwest of Coffs Harbour. The researchers travelled to the farm, identifying a large and remote facility located at the end of an unsealed road and with poor phone reception.

Sara also noted that toilet and rest breaks were discouraged by contractors.

“The [blueberry orchard at Valery] is so huge so the toilets are far away from the row [of fruit trees]”.

When she asked for a toilet break, she alleges that “[the contractors were like ‘no sorry, go to a place where there is no people...and I was like ‘are you serious’?”.

New beginning with a better employer, but subminimum wages continue

Similar to other workers in the area, Sara endured these poor conditions while awaiting a more comfortable and better paid position with another employer in the area. She has since found employment, but still regularly earns well below the minimum wage.

FIGURE 2.34 SARA’S PAYS LIP FOR THREE DAYS WORK BETWEEN 20 AND 26 JUNE, 2020. ON THE 20TH OF JUNE, SARA CLAIMS SHE WORKED FOR MORE THAN 6 HOURS, BUT ONLY RECEIVED \$22 PAY. FOR 18 HOURS WORK THAT WEEK, SHE RECEIVED JUST \$143 BEFORE TAX, FOR AN EFFECTIVE RATE OF \$7.95 PER HOUR.

Source: Supplied.

Pay Period: 20/07/2020~26/07/2020

| Date | Task Description | Quantity | Rate | Total |
|---------------------|-------------------|----------|---------|-----------|
| 20/7/20 | Blueberry picking | 3.5 | \$ 6.50 | \$ 22.75 |
| 21/7/20 | - | | \$ - | \$ - |
| 22/7/20 | Blueberry picking | 9.5 | \$ 6.50 | \$ 61.75 |
| 23/7/20 | Blueberry picking | 9 | \$ 6.50 | \$ 58.50 |
| 24/7/20 | - | | \$ - | \$ - |
| 25/7/20 | - | | \$ - | \$ - |
| 26/7/20 | - | | \$ - | \$ - |
| Gross pay | | | | \$ 143.00 |
| 15% tax deduction | | | | \$ 21.45 |
| Transport deduction | | | | \$ - |
| Net pay | | | | \$ 121.55 |

BRITISH FEMALE, 24, LURED TO REGION WITH PROMISE OF \$700-1000 A WEEK, BUT UNDERPAID AND STUCK IN CROWDED, EXPENSIVE ACCOMMODATION

Jessica⁷³ is a 24 year old British female who worked in the Coffs Coast blueberry industry between May and September, 2020. She travelled to the area after seeing job advertisements online promising the opportunity to earn up to \$1000 per week. Her experience, however, typified the low rates of pay, poor accommodation, and even verbal abuse often seen in the area.

Jessica was immediately exposed to sub-standard accommodation

Jessica was met by her employer when she first arrived in the region.

"I got to Coffs Harbour, got picked up...they took me to the house and they didn't really explain anything... the house was pretty decent but they crammed four beds in one room. They had a downstairs bit, an open space area...they put two beds there too", she says.

"So yeah it was sort of a studio but it was really crap...we complained about this because we were all paying \$140 for the share house, and there was mould everywhere."

"We had some s**t situations...our [employer] was the tenant...he would come and go as he pleased, he'd keep letting himself in. The landlords would come in without giving us a heads up", says Jessica.

"So it was all pretty shady...when it was time to collect rent they'd always ask for cash".

"We looked into it and we were supposed to get receipts every time we paid rent and that wasn't happening".

"We had two fridges amongst 14 people... it wasn't enough. We just had to make do because we were all struggling"

Jessica experienced much lower pay and less working days than promised

When she commenced working, Jessica quickly realised the pay and amount of work on offer were not what was originally promised.

"We had a [labour hire] contractor called [name omitted]...one of the worst contractors ever. I think he has a couple of businesses and contracts all over Coffs Harbour", she says.

"He was ok at the beginning, but most of us were not really getting work because the season hadn't started. There were so many ads from [the labour hire contractor] saying 'come on down to Coffs Harbour, we've got full time work earning 700-1000 per week picking blueberries'...so you know obviously people are drawn to that even though it's all bulls**t".

"It was a massive scam to get people to come [to Coffs Harbour], fill the house as much as possible. But there was no work to do", says Jessica.

"The picking was really terrible at the beginning... In the first couple of works I probably made like a hundred dollars"

"You can't make any money like this but it was all like a scam cos you've got people posting things saying \$700-1000 a week when its literally like \$100. The most I ever got paid one week was \$700. As a WHM no matter how much you earn you're taxed 15 per cent of anything you make...you can't really make any money. One time I had to transfer myself money because I can't live".

"We all just wanted to get our days done... we were desperate."

Labour hire contractors and farmers were abusive

Jessica also had bad experiences on the farms themselves.

"The farmers...they were really horrible as well. If you dropped any berries on the floor they'd scream at you and tell you to go home".

"Sometimes you'd go to the farm and the berries are... really s**t...you can't really make any money and you have to stay there all day. [Our labour hire contractor] would get pissed off [if we wanted to leave work] and we wouldn't get work the next day" she says.

"Most people don't really realise all the s**t that people have to go through to get their 88 days...it is like slave labour. "

"It is kind of like prison...like prison guards walking up and down. Everyone [of the WHMs] was really pissed off and upset towards the end [of their 88 days]. As soon as anyone completes their days, they're gone".

"Also, it was a bit shady with the payslips cos some people didn't get paid properly...I had a day missing on mine but I only picked 4 kg [that day] and we left because it was raining...but they didn't pay us for that".

Jessica alleges one farmer gloated about profits while underpaying her

Jessica's experience was exacerbated by what she alleges was boasting by her employers about how much money they were earning.

"Everything revolved around money. Our contractor was so annoying with cash. He was just money hungry", she says.

"On [one] farm, [the farmer] paid our labour hire contractor 25 per cent of what he makes. One week, he paid [my labour hire contractor] 50k".

"[The farmer] actually showed me his bank statement one time...and he's like at the beginning I make about 60-80 grand a week...when it gets to peak season I make 150-200k a week...he is happily showing me the Commonwealth Bank receipts. And I said 'you're happily paying me \$6 per bucket [\$3/kilogram]!'" she says.

Jessica is continuing to complete her 88 days, but has since moved to a cucumber farm in northern New South Wales, which is paying her the casual award rate of \$24.36 per hour.

| Your Payroll Details | | | | |
|----------------------|------------|--------|------------|-----------|
| Company | Name | Rate | Units | Amount |
| [REDACTED] | [REDACTED] | 5.50 | 20.00 | 110.00 |
| [REDACTED] | [REDACTED] | 6.50 | | |
| [REDACTED] | [REDACTED] | 2.80 | | |
| [REDACTED] | [REDACTED] | 5.50 | 16.00 | 88.00 |
| [REDACTED] | [REDACTED] | 6.50 | | |
| [REDACTED] | [REDACTED] | 2.80 | | |
| [REDACTED] | [REDACTED] | 5.50 | 19.00 | 104.50 |
| [REDACTED] | [REDACTED] | 6.50 | | |
| [REDACTED] | [REDACTED] | 2.80 | | |
| [REDACTED] | [REDACTED] | | | |
| [REDACTED] | [REDACTED] | | | |
| [REDACTED] | [REDACTED] | 2.80 | | |
| [REDACTED] | [REDACTED] | 6.00 | 21.97 | 132.12 |
| [REDACTED] | [REDACTED] | 2.80 | | |
| [REDACTED] | [REDACTED] | 6.00 | 45.77 | 274.56 |
| [REDACTED] | [REDACTED] | 2.80 | | |
| Before Tax Earnings | | | | \$ 496.37 |
| Taxes & Deductions | | Rate | Value (\$) | |
| Tax | | 15.00% | | 74.46 |
| Bucket & Belt | | | | 80.00 |
| Transportation | | | | |
| Accommodation | | | | |
| Gross Deduction | | | | \$ 154.46 |
| Net Pay | | | | \$ 341.91 |

FIGURE 2.35
JESSICA'S PAYSリップ FOR THREE DAYS WORK BETWEEN 20 AND 26 JUNE, 2020. ON THE 20TH OF JUNE, SARA CLAIMS SHE WORKED FOR MORE THAN 6 HOURS, BUT ONLY RECEIVED \$22 PAY. FOR 18 HOURS WORK THAT WEEK, SHE RECEIVED JUST \$143 BEFORE TAX, FOR AN EFFECTIVE RATE OF \$7.95 PER HOUR.

Source: Supplied.

IN THEIR OWN VOICES, PICKERS OF ALL BACKGROUNDS TELL A STORY OF UNDERPAYMENT

"I was working with a contractor in blueberries. Different small farms. My best day was 24.1kg and earned about \$70."

28 YEAR OLD MALE FROM GERMANY.

"It's actually full on slave labour and a struggle especially with the negative view of backpackers in general right now"

21 YEAR OLD FEMALE
FROM THE UNITED KINGDOM.

"88 days a slave, that's for sure...we got paid a full week, 7 days \$300."

21 YEAR OLD FEMALE FROM ITALY.

"It's just so bad, but I don't have any other choice. It's sad and felt being used like modern slavery"

28 YEAR OLD MALE FROM THE NETHERLANDS.

"Good experiences were definitely just the experience as a whole living in a working hostel, making loads of friends, all working together, Coffs Harbour in general is beautiful, *[hostel name omitted]* is a brilliant working hostel with a very nice and helpful manager and staff. Bad experience was all of the different contractors trying to promise you money from blueberries and some of them aren't even ABN registered and pay so so low per kilo. I worked with 2 contractors getting no days and no money until I

came across *[employer name omitted]* who would sign you off on rainy days and would pay more than other farms even though it was just enough to cover bills and we were working 6 days a week. Farm work resembles slave labour."

26 YEAR OLD FEMALE
FROM THE UNITED KINGDOM.

"I sign contract for maintenance and after 3 months, they tell you, you pick or you leave. That it, they pick sometime 11 hours per days, 6 days a week, if you want money you can have it but you really have to want it. Sometime the price for punnet is 52 cents for raspberry and sometimes it's 1.05 dollars per kilo of blueberry, welcome to *[employer name omitted]* you can compete how you have to make during the day to make money, of course is sometime better like 70 cents per punnet is good for raspberry and 3 dollars is good per kilo for blueberry."

23 YEAR OLD FEMALE FROM FRANCE.

"This is my third season picking berries, now I can say I'm an "experienced" picker and I'm fast but this year the prices are way below under minimum wage. Before by this company everyday they would adjust the price with the average picker but this year they set a price without even checking the conditions of the field."

31 YEAR OLD MEXICAN FEMALE.

"I got paid better when I changed from a contractor to *[employer name omitted]*."

30 YEAR OLD GERMAN FEMALE.

"Farm owners are good with me, where I worked here, but some contractors and farm owners are not right with people sometimes, some of my friends got bad experiences."

28 YEAR OLD MALE FROM REUNION.

"The contractor was temperamental and continually threatened not to pay his workers."

24 YEAR OLD FEMALE
FROM THE UNITED KINGDOM.

"The only thing that makes the farm picking worthwhile is meeting new people and making friends. The bad side is using up your savings that you worked hard for to pick berries."

25 YEAR OLD FEMALE FROM IRELAND.

"Good side is you meet a lot of people and make friends, bad side you have to use a lot of your savings to be here."

26 YEAR OLD FEMALE FROM IRELAND.

"The only thing that makes the farm picking worthwhile is meeting new people and making friends. The bad side is using up your savings that you worked hard for to pick berries."

26 YEAR OLD FEMALE FROM IRELAND.

"Some contractors they scale right kilo, some they adjusted the scale so they can steal 100-200g each sending fruit. Someday good fruit, someday really bad fruit but they pay the same piece rate, someday [I earn] \$30-40 [and] spend 8 hours at work."

26 YEAR OLD FEMALE FROM VIETNAM.

"Most of the farmers/contractors in this area doesn't pay superannuation. sometimes even taxes as well. Dodgy farm work area."

28 YEAR OLD MALE FROM JAPAN.

FIGURE 2.36 QUALITATIVE EVIDENCE OFFERED BY RESEARCH SUBJECTS, COLLECTED THROUGH A TARGETED DIGITAL SURVEY BETWEEN OCTOBER 1-20, 2020.



EXPLOITATIVE TECHNIQUES ALLEGED & OBSERVED

Numerous workers allege they are not being paid for picking 'jamming fruit'

Blueberry and raspberry pickers are typically asked to pick fruit of a certain quality, while discarding the remainder of the fruit. However, multiple workers based in Mullaway, slightly north of Woolgoolga, also described being asked to pick 'bad' fruit, separate that fruit into different buckets, and hand in that fruit alongside the fruit that is suitable for eating. This is typical in raspberry picking, where lower quality fruit can be utilised in the production of jam, and is worth collecting.

Many of the Mullaway group of workers are completing their 88 day requirements at one of the largest berry companies in the region, a business which has both blueberry and raspberry crops.

One research subject working at that farm stated that "even if we were just paid \$1 per kilogram for the bad fruit, it would be better than nothing".

The researchers are unable to independently verify these claims. But they demonstrate a resentment by some workers with their conditions, driven by a belief that they are being forced to collect fruit without pay.

Labour hirers coercing workers into unpaid administrative work

One subject, noted above, alleged that he was coerced by a labour hire contractor into working for many hours advertising for picking jobs, and hiring other workers. The worker alleged that he did this work for one month without receiving any pay. The worker explained that he felt coerced into doing that work, and was offered a highly desirable hourly-paid position at some point, which never materialised.

Workers allege piece rate fluctuations are arbitrary, and designed to minimise net pay

The nature of piece rate payments in the blueberry industry, in particular, is that the rate of pay fluctuates considerably each day. Some participants noted that pay has been as low as \$1.50 per kilogram of fruit picked, but can exceed \$5 per kilogram. These fluctuations are daily, and attributable to 'market rates'. Workers claim that when the fruit is easier to pick, the piece rate is lowered, and when the quality and yield of fruit is lower, the piece rate is marginally higher. For some workers, this daily fluctuation saw their overall pay consistently remain below the minimum wage, and far below the expected minimum for an 'average competent employee' picking fruit as per the *Horticulture Award*, which should sit at \$28.02 per hour.

Workers are often required to purchase their own blueberry buckets

Workers noted, often with incredulity, that some contractors would request that the buckets into which the blueberries would be collected must first be purchased by the employee for a fee of \$10. This does not occur on most farms, but is seen as an exploitative technique deployed by a number of rogue labour hire contractors operating in the region.

Transportation to and from farms can be expensive for workers

Workers are often required to be transported in a shared car or minibus organised by their contractor. The rates stipulated for this service range between \$5-10 a day, and the driving is typically performed by workers themselves,

who receive payment for the service. For some workers, there is little to no choice in paying for this service, which ultimately deducts up to \$70 per week from the workers' net pay.

Workers speak of a 'three strike' system with a major regional employer, which may threaten future employment in other locations

One of the region's major employers is said to have implemented a 'three strike' rule, through which feedback tickets are issued, and poor feedback can lead to either a termination of employment, or inability to secure roles in other locations operated by the same company. The practice demonstrates that way in which employers can utilise the power imbalance inherent in the 88 days program to encourage pickers to continually work.

At times, workers feel it may not be worth working a certain day given the low-yield section of crop they have been asked to work, or some might wish to take a rest or sick day when expected to work. While employers are willing to offer rest days, some individual workers, interviewed in the Mullaway group, cited their concerns — real or perceived — that if they did not work on a certain day, it might impact their feedback slips, and potentially undermine their employment prospects, and therefore their visa.

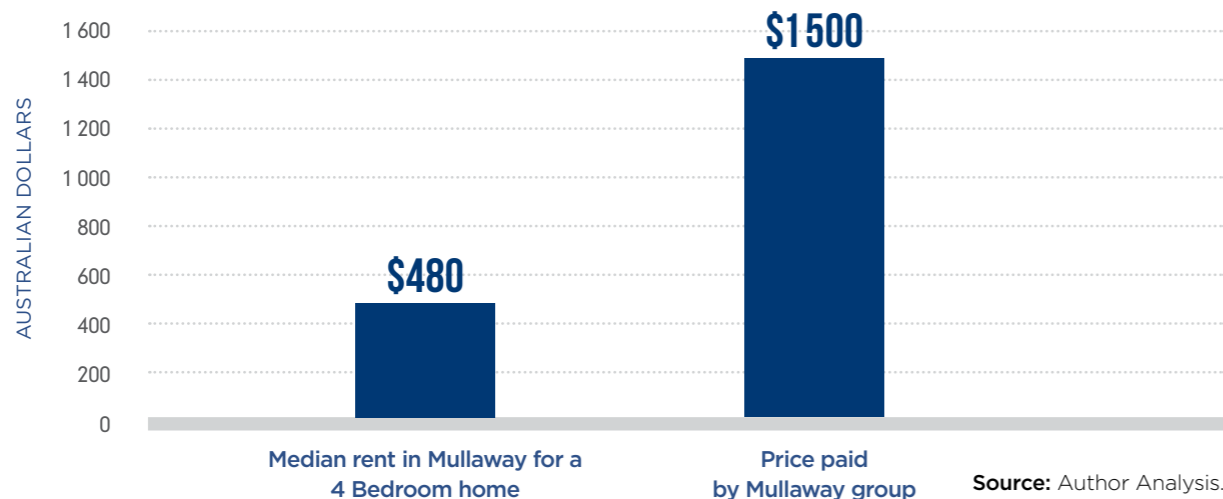
Accommodation providers make considerable sums off migrant worker tenants

While there are four popular hostels in the area, a vast majority of WHM's in the Coffs Coast region reside in share houses. These are often organised by the labour hirer, and cost between \$120-150 per week for each tenant.

The lead researcher travelled to one case study share house in Mullaway, a small beachside suburb north of Woolgoolga. The accommodation consisted of four individual residences in a single compound, with a total population of 45 residents spread across the four premises (three houses with 12 people, and one with 9). Most residents share 4-bed dorms within otherwise conventional residential premises. One resident alleged that the landlord permitted two additional residents to sleep in their cars in the house driveway, while charging the driveway tenants the same rate (\$125 per week) because they would be allowed to use the amenities in the house.

The owner of the Mullaway share house was charging \$125 per week for the accommodation, or \$500 per room per week. For the three 3 bedroom houses, this equates to a rate of \$1500 per week, with the three bedroom house with 9 residents earning the landlord \$1125 per week. The median price of available homes for rent in Mullaway is \$480 per week.

FIGURE 2.37 MEDIAN RENT IN MULLAWAY VS THE PRICE PAID FOR BY WHMS RENTING A SHARE HOUSE IN THE SAME SUBURB



4-bed dorms in shipping containers costing \$480 per week

In addition to larger share-houses, the lead author also observed substandard accommodation provided for predominately Tongan and ni-Vanuatu workers based in Arrawarra – a community north of Woolgooga – who are in the region under the Seasonal Workers' Program. The community of seasonal workers based in Arrawarra live in converted shipping containers, which each have two bunk beds and cater for four residents. A resident present at the facility told the lead author that the premises catered for 90 individuals, all from Pacific Island nations, with the standard of the accommodation varying considerably between shipping containers.

Each tenant pays \$120 per week for one of four beds in the dormitory, plus \$50 per week in transport fees to and from their worksite. The accommodation within the campus is considerably lower quality than comparably priced accommodation in Arrawarra township or other neighbouring communities.



Photo: Edward Cavanough, October 2020.

FIGURE 2.38 A CONVERTED SHIPPING CONTAINER IN ARRAWARRA, NEW SOUTH WALES. THIS CONTAINER HOUSES 4 PACIFIC ISLANDER WORKERS IN THE COFFS COAST AREA UNDER THE SEASONAL WORKERS PROGRAM. EACH BED IN THE SHIPPING CONTAINER DORM COSTS \$120 PER WEEK, RESULTING IN A SINGLE SHIPPING CONTAINER BEING RENTED OUT FOR A SIMILAR PRICE TO A THREE BEDROOM HOUSE IN THE SAME SUBURB.

CONCLUSION

While increasingly well understood, the exploitation of migrant workers remains unaddressed in Australia.

Though COVID-19 has imposed some challenges on labour supply in the regions, this has been ameliorated on the Coffs Coast, which has seen a continued inflow of migrant workers — predominately WHMs — throughout 2020. During this period, the standard dynamics that lead to exploitation and underpayment in the area have continued.

The unfortunate truth is that this report adds to a growing pool of evidence that demonstrates the prevalence of wage theft in Australia, and in particular, the underpayment of migrant workers. And while government commissioned research has demonstrated the prevalence of migrant worker exploitation in Australia, only piecemeal efforts have been made to address the issue.

This report has identified case studies demonstrating the gross underpayment of migrant workers, the callous disregard for worker safety, and a high rate of nefarious labour-hire in the Coffs Coast region's blueberry industry. What was found demonstrates that, even during the pandemic, nefarious actors operating within Australia are willing to subject foreign and domestic workers to illegal wages and poor conditions for their own economic advantage.

While not every employer is doing the wrong thing, too many are. Ultimately, the illegal practices observed in this report do a disservice not only to the workers who are being underpaid, but to Australia's reputation.

This report further illustrates how the WHM program has transformed from a policy aimed at facilitating cultural exchange, to a program that is primarily used to meet labour demand in regional Australia. WHMs should be returning home as ambassadors of Australian culture and society, but the widespread exploitation of this cohort of workers is instead creating a generation of young foreign nationals whose predominate experience of regional Australia is one of underpayment and poor working conditions.

Without serious government intervention, the WHM program will continue to be exploited — on the Coffs Coast and elsewhere — to the detriment of all WHMs in Australia, the reputation of the horticulture industry, and Australia more broadly.

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