



WAGE THEFT

THE SHADOW

MARKET

PART TWO: THE HORTICULTURAL INDUSTRY

Unions **NSW**

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Introduction

At time of writing migration to Australia is at an all-time low. Many nations have begun their roll out of vaccines for the COVID-19 virus however the pandemic still poses a serious threat to lives and economies. To limit the spread of the virus in Australia the federal government has continued its restriction on international arrivals and particularly its halt on immigration to Australia. Many industry representatives including those advocating for the horticultural industry have complained the limits on migration are severely impacting their ability to attract workers and as such their ability to harvest produce. In contrast, employee advocates believe ready labour is available in the form of increased numbers of unemployed local workers and the horticultural industry is struggling to attract workers because it has a preference for vulnerable migrant workers who are easily exploited with illegally low wages and poor conditions.

This report reveals exploitation of migrant workers in the horticultural sector has continued during the period of the pandemic and it is severe, despite the ongoing commentary labour shortages. The Horticulture and Wine Industry awards allow farmers to pay workers either a piece rate, according to how much they picked, packed, pruned or an hourly rate¹. Year after year horticultural workers report employer exploitative practices backed by piece rate agreements. Recent reports have provided evidence of migrant workers earning as little as \$3 per hour through the piecework system.²

This report is part two of 'Wage Theft, The Shadow Market.'³ Part one was released by Unions NSW in December 2020 and included the audit of jobs advertised below the minimum wage outside the horticulture industry. This report includes a review of 1,000 job ads for positions in the horticultural industry. Ads were predominately in English, Chinese, Japanese and Korean, and an overwhelming majority (88%) offered a piecework rate. Analysis suggests over 96% of the piece rates advertised would not allow a worker to earn the national minimum wage, and in several instances, workers would earn less than \$1 an hour.

Recent Government enactments mistakenly focus on diversifying the regional workforce to ensure labour supply for regional businesses. They do not address the problems at the core of the horticulture industry, labour exploitation, poor working conditions and wage theft. Incentives to diversify the regional workforce with local workers are a 'low-hanging fruit approach' to address labour distribution imbalances. This approach will not attract workers towards an industry that already has a reputation for underpayment and exploitation.

Key findings

- 88% of the ads for jobs audited offered wages by piece rate;
- 96% of the piece rates advertised would not allow a worker to earn the national minimum wage;
- 65% of the ads for strawberry picking and 22% for grape picking would allow workers to earn less than \$2 an hour;
- 33% of the ads for blueberry picking would allow a worker to earn \$10 to \$12 an hour, and 43% would allow an employee to earn \$13 to \$14 an hour;
- 64% of the ads for capsicum picking would allow a worker to earn \$10 to \$12 an hour;
- 24%, 10% and 29% of the ads for zucchini picking would allow a worker to earn \$10 to \$12, \$13 to \$14 or \$15 to 16 an hour, respectively;
- 5%, of the job ads for raspberry picking would allow a worker to earn less than \$2 an hour, while 5%, 15% and 25% would allow a worker to earn \$3 to \$5, \$10 to \$12 or \$15 to \$16 an hour, respectively;
- The lowest piece rates were identified in Bundaberg, with 80% of the jobs ads advertising a rate that would allow a worker to earn less than \$2 an hour. Similarly, 78% of the job advertisements in Caboolture and Beerwah would enable a worker to earn under \$2 an hour. 71% of picker job ads for Banksia Grove also offered rates that would lead to earn less than \$2 an hour.

Recommendations

1 To amend the Horticulture and Wine Industry awards to guarantee a minimum wage to all workers in the sector. Piece work rates should be abolished due to compelling evidence of their systematic misuse to exploit workers and their inconsistency with minimum wage guarantees contained in modern awards covering other industries.

2 The regional work placement requirement for working holiday makers to extend their stay in Australia by 12 months should be lifted so as to reduce pressure that prevents temporary migrant workers from reporting exploitation.

3 Create a firewall between the Fair Work Ombudsman (FWO) and the Department of Home Affairs (DHA), so that vulnerable workers are not prevented from taking action against their employer for fear of visa cancellation or deportation.

Part 1

Methodology

Commencing in 2017, this is the third year that Unions NSW has conducted an audit of jobs targeting migrant workers and advertising below the minimum wage. From late-December 2019 to early September 2020, more than 1,000 ads, for positions in the horticultural industry were reviewed.

The research, Wage Theft: The Shadow Market in the Horticultural Industry used fundamentally the same methodology as part one, Wage Theft: The Shadow Market, although given the prevalence of job ads offering piece rates this review included additional interviews with workers and focus groups were also necessary to establish the levels of underpayment.

The job ads reviewed were all distributed through online channels, with the majority found on Facebook community groups targeting backpackers and fruit pickers. In a recent survey of 1,000 workers in the horticultural industry conducted by Unions NSW, over 50% of the respondents indicated that they had found their job online and 35% through Facebook.

The audit was conducted by a multilingual and multidisciplinary group of eight researchers, under the supervision of a senior employment lawyer. Researchers joined over 70 community Facebook groups, specifically for backpackers and farm

work job hunting. The majority of job ads for roles in the horticultural sector were written in Chinese, Korean, Japanese or English.

Additionally, researchers audited the most popular websites used by Chinese and Korean speakers, as directed by information gathered through migrant community focus groups and Gumtree ads. Figures 1 and 2 provide examples of websites and social media channels used by migrant workers to find jobs in the horticultural industry.

Researchers used coding, data extraction, online alerts and other IT methods to audit the highest number of ads possible. Of the 1,008 jobs reviewed 88% offered wages by piece rate, and employers were contacted in cases where the advertised piece rate was unclear. Piece rates offered were usually approximated to payments per kilogram.

Importantly, ads that did not provide a rate of pay and repeated jobs ads in the same platform or cross-platforms, were excluded from the analysis. Advertised rates of pay were compared with the legal wage, according to the relevant Award for the horticultural industry and the national minimum wage.

Figure 1. Example of farm worker jobs search social media channels



Figure 2. Examples of focus group findings of popular social media groups and websites

KOREAN	JAPANESE	CHINESE	EXAMPLES OF POPULAR ENGLISH FB GROUPS
www.hojunara	Farm Kangaroo ～オースト ラリアファーム	www. backpackers. com.tw	Farm work Australia - 88daystowork for Backpackers
Hojubada		www.yeeyi.com	Farm work Australia
			Farm Work in Australia 2021
			MILDURA Backpackers (VIC) Farm Work and Fruit Picking
			FARM WORK AUSTRALIA BACKPAKERS 2021
			Australia Farm Jobs for Backpackers
			Australia Solo Backpackers 2020
			BRISBANE - QLD Backpackers
			East Coast Backpackers Australia 2020/2021
Koreans in Sydney		Coffs Harbour Aus working holiday backpacker group	

Characteristics and number of ads

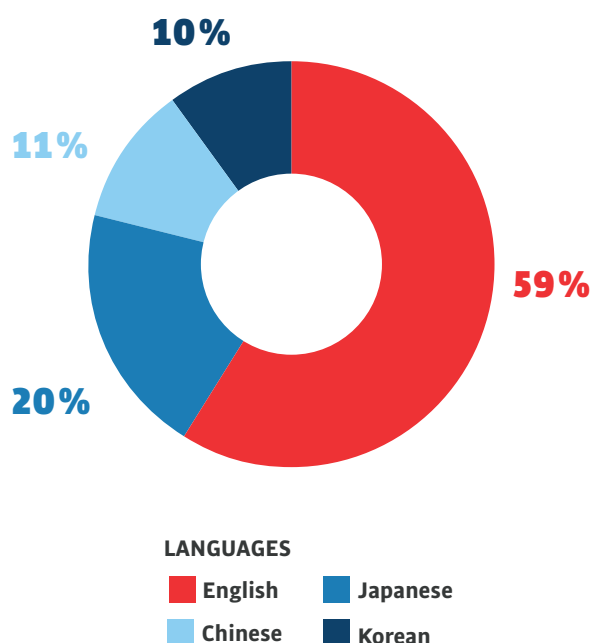
The audit examined over 1,000 ads published on social media platforms between December 2019 and early September 2020, advertising positions in the horticultural sector. A significant decline in the number of job ads was found during the COVID-19 lockdown period, particularly from March to April. An increase in the number of positions advertised was observed in July and August (426), accounting for 42% of the ads audited.

The research analysed ads for positions related to 17 crops, with the majority being for positions for strawberry (34%), blueberry (30%), grapes (10%), zucchini (5%) and raspberry (3%) picking.

Contrary to findings in other industries, a considerable number of the ads reviewed were written in English (59%), following by Japanese (20%), Chinese (11%) and Korean (10%) (Figure 3).

The ads reviewed positions in over ten locations, including Coffs Harbour (29%), Caboolture (15%), Bundaberg (13%), Beerwah (9%) and Mildura (4%).

Figure 3. Ad languages



Under the Horticultural and Wine Industry awards, an employee can agree with their employer to be paid a piecework rate or an hourly rate. Under the piecework rate, an employee's earnings are based on the amount they have picked, packed or pruned. The rate must allow the 'average competent employee' to earn at least 15% or 20% more than the hourly rate established under the horticulture or wine award, respectively.

As illustrated in Figure 4, unsurprisingly, an overwhelming number of the ads reviewed offered piece rate arrangements. The audit revealed farm employers vastly prefer piecework over hourly rates. 88% of ads advertised piece rates, while only 12% offered an hourly rate.

Audit Results

Previous reports and audits have uncovered systematic underpayment and wage theft of workers in Australia. In the horticultural industry, the National Temporary Migrant Workers Survey 2017 reported that 15% percent of fruit and vegetable picking and farm related workers were paid \$5 an hour or less, while 31% earned only \$10 an hour or less. Of all the workers surveyed across different industries, those in crop planting, picking, sorting and packaging were the most underpaid.⁴

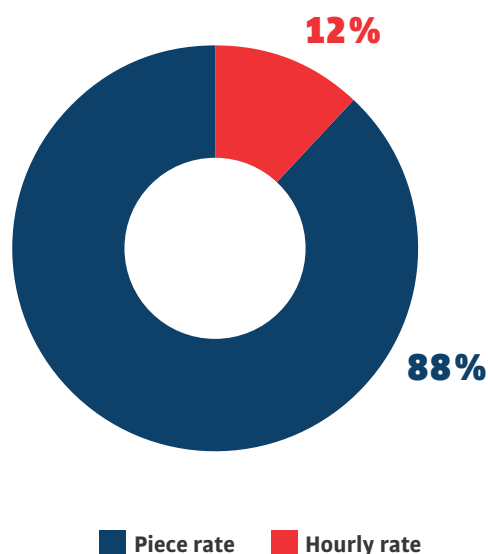
Unions NSW's audit confirms the levels of exploitation in the horticultural industry reported in academic research remains unchanged, despite farm sector's claims of labour shortages.

Payment arrangements such as piece rates were conceived to encourage and reward greater productivity in the industry, however this audit reveals that employers systematically misuse piece rates to underpay horticultural workers. 96% of the piece rates reviewed would not allow a worker to receive the national hourly minimum wage of \$19.84 per hour (Figure 5).

The percentage of ads offering hourly rates below the minimum wage are likely to be higher if comparing the advertised rate with the \$24.80 and \$24.73 award wage for casuals established in the Horticulture Industry and Wine Awards, respectively.

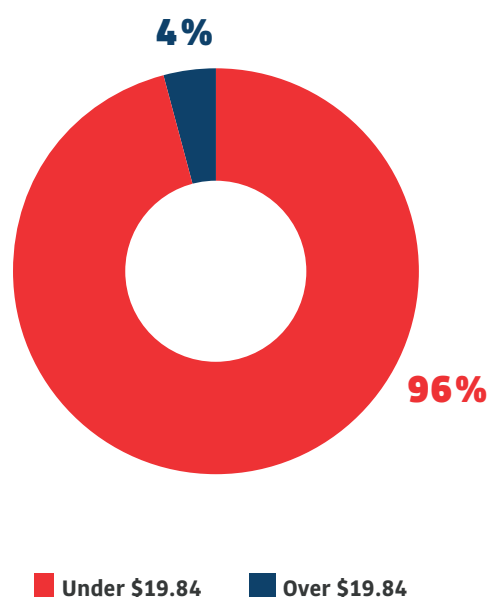
The Horticulture and Wine modern awards state that piece rates must enable an average competent employee to earn 15% or 20% more than the award hourly rate, respectively. However, to assess the

Figure 4. Percentage of ads advertising a piecework rate



'average competent employee' is not an easy task, as there is no clear standard for the industry or its subsectors regarding the performance expected from the average competent employee. Assessment can lead to different outcomes, depending on the employee's level of experience on a specific farm, stability of the workforce, crop type, terrain conditions and the size of the enterprise, among others. Furthermore, even farms with the same crop and location may have a different standard for 'average competent employee'.

Figure 5. Percentage of job ads advertising piece rate positions below the minimum wage



Temporary migrants under the Working Holiday Makers Program (WHMs) undertake the majority of the work in the horticulture sector and most do not have previous experience in the industry. Their level of training is limited to a period of 88 days or six month period, which is the length of farm work required under their visa to gain a second or third year in Australia. During their farm work period, most report little improvement in their wages and under the piece rate work system, are unable to ensure a minimum wage.

Average earned hourly rate

Between December 2019 and early September 2020, Unions NSW researchers interviewed over 100 horticultural workers, enquiring as to the average hourly rate earned per eight hour workday. Information on over 17 crops was collected and grouped per crop. The average and lowest hourly rates earned were able to be identified, and none met the minimum legal wage. The lowest hourly rates earned by workers were in \$1.25 for blueberries, followed by \$4.10 for peaches, \$4.80 for strawberries and \$4.90 for grapes (Figure 7).

Figure 6. Example ad advertising a piecework rate

The image shows a screenshot of a Japanese advertisement for a piecework rate in the horticulture sector. The text is in Japanese and mentions 'Brisbane地域caboolture ラズベリー' (Brisbane area caboolture Raspberry). It lists rates for raspberries and strawberries, and mentions a second or third year visa. The ad is for a piecework rate system.

Figure 7. Piece rate focus groups findings

CROP	LOWEST HOURLY RATE	AVERAGE HOURLY RATE	LOWEST NUMBER OF KG PICKED PER HOUR
Blueberries	\$1.25	\$15	0.75
Blackberry	\$7.81	\$15	0.45
Raspberry	\$6.30	\$15.52	0.5
Cherry	\$6.25	\$16	2.7
Strawberry	\$4.80	\$14	1.42
Apple	\$7.30	\$16	30
Dragon fruit	\$9.90	\$12.20	5.71
Pear	\$10	\$11	5
Peach	\$4.10	\$14.37	15
Avocado	\$6.36	\$13	50
Mango	\$14	\$17	25
Grape	\$4.90	\$12	2.5
Capsicum	\$8	\$17	10
Eggplant	\$15	\$19	100
Onion	\$18	\$19	51
Tomato	\$8	\$17	-
Zucchini	\$9	\$16	60

CASE STUDY: HELEI

Helei is a 30-year-old working holiday visa holder from Taiwan. She worked on the Robinvale grape farm in Victoria from March 2020 until June 2020 under a piece rate agreement, to fulfil her 88 day farm work requirement. When she started to pick grapes, she earned about \$40 a day for 8 hrs work, and was required to pay \$100 per week to her employer for rent. After several weeks, her speed increased and she was able to pick around 200 kg/day, which earned her an extra \$10 a day (\$50/day in total).

Helei summarised the breakdown of pickers daily income on her farm:

- 20% earned less than \$30 per day
- 25% earned \$31 - \$50 per day
- 25% earned \$51 - \$100 per day
- 30% earns more than \$100 per day

Helei considered it very unlikely that a working holiday maker could earn \$100 a day, with just 88 days of experience.

Figure 8. Example piece rate agreement

Piecework Agreement

Agreement between: _____ (Employer) and _____ (Employee)

The Employer and the Employee agree to enter into this Piecework Agreement (Agreement) under clause 15 (piecework) of the *Harvesting Award 2010 (MA000004) (Award)*. The employer and employee mutually agree as follows:

1. The work to be performed under this Agreement is as described in **Schedule A**.
2. The minimum piecework rate/s which must be paid by employer to the Employee for performing the Work is as specified in **Schedule A** to the Agreement.
3. The piecework rate/s fixed by this agreement enables the average competent Employee to earn at least 125% more per hour than the minimum hourly rate prescribed in the Award for the type of employment and the classification level of the employee.
4. The piece work rate/s in this Agreement must be paid for all work performed in accordance with this Agreement and will be paid instead of the hourly or weekly wages specified in clause 14 of the Award. The calculation of piecework rates for casual employees will include the prescribed casual loading.
5. The piecework rates in this Agreement will be reviewed in light of any changes in the Award rate, or in the nature of the work, or the conditions under which it is performed. This ensures that the minimum requirements set out in clause 15 of the Award continue to be met.
6. The Employer's earning will depend on their productivity. This Agreement does not guarantee that the Employee will earn at least the minimum ordinary time weekly or hourly wage in the Award for the type of employment and the classification level of the Employee or the National Minimum wage.
7. The Employer and Employee will each keep a copy of this Agreement.
8. The Employee is employed as a casual employee.
9. The date this agreement starts is 22/4/2019.

Employer signature: _____ Date: 22/4/2019

Print name: _____

date 22/4/2019

CONTRACT RATE : SCHEDULE A

Piece work rates:
Starting date: _____
Property name: _____
Property address: _____

Piece work rate 1:	Piece work rate 2:	Piece work rate 3:	Piece work rate 4:
STRAWBERRY	STRAWBERRY	STRAWBERRY	STRAWBERRY
Planting Strawberry plants	Picking Green Tree Normal Pickers	Grooming Strawberry plants	FLAT PACK
\$35 per 1000 plants	\$0.55 per kg	\$40 per 1000 plants	\$0.15 Per Pallet

Piece work rate 5:	Piece work rate 6:	Piece work rate 7:
STRAWBERRY	STRAWBERRY	
SQUARE PACK	SECOND PACK	
\$0.17 Per Pallet	\$0.17 Per Pallet	

MINIMUM SET WAGE RATES

Important notes

- The rate for an average competent pieceworker may change from day-to-day depending upon variables like weather, conditions, loading process, type of bay, type of packing bag, selective or shipping, size of bins/pallets, density of trees/plants. These variables need to be factored into a piecework agreement.
- If the piece work rate/s is varied, it must be agreed with the Employee, put in writing and signed by the Employer and the Employee.
- The Employer must be give the employee a copy of the piecework agreement and keep it with their time and wages records.
- The following clauses of the Award do not apply to an employee on a piecework rate:
 - (a) Clause 22 - Ordinary hours of work and rosters;
 - (b) Clause 24 - Overtime and
 - (c) Clause 24.1 - Meal allowance.
- Any party can end this agreement at any time.

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A disaggregation of the piece rates advertised in the ads reviewed by Unions NSW per crop revealed in several crops, underpayment of less than \$2 an hour was not rare.

65%, 22% and 5% of the job ads for strawberry, grape and raspberry picking, respectively, would see a worker make under \$2 an hour.

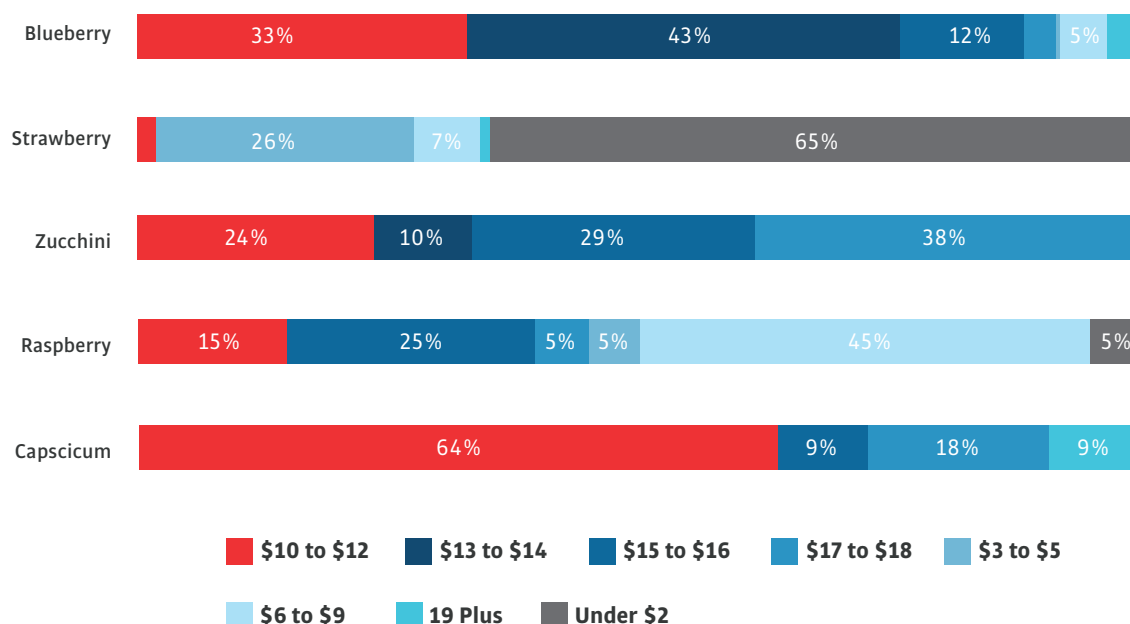
33%, 64%, 24% and 15% of the ads for blueberry, capsicum, zucchini and raspberry, respectively would see a worker earn \$10 to \$12 an hour.

43% of the ads for blueberry picking and 10% of those for zucchini picking would allow a worker to earn \$13 to \$14 an hour. 25% of the ads for raspberry and 29% of those for zucchini picking would see a worker earn \$ 15 to \$16 an hour.

Figure 9. Example of payslip - average competent employee

PAYSリップ			
EMPLOYEE NO.		2	
PAY PERIOD		29.08.2019~04.09.2019	
Pay Date		12. Sep 2019	
EMPLOYEE NAME		[REDACTED]	
Passport name		[REDACTED]	
JOB CLASSIFICATION		Fruit Picker	
DESCRIPTION	Rate per unit	Unit	Amount
Hourly	24.36	0.00	0.00
29/8	1.52	110.00	167.20
30/8	1.51	83.00	125.33
1/9	1.50	108.00	162.00
2/9	1.49	130.00	193.70
4/9	1.47	105.00	154.35
30/8 Hand	2.80	0.00	0.00
2/9 Hand	2.23	0.00	0.00
Gross			802.58
Tax			120.39
Net pay			682.19
Deduction - Accom	0.00	1.00	0.00
Net pay			682.19
Gross YTD			7147.96
Tax YTD			1072.19
NET YTD			6075.77
If you have any enquiry or problem		Formet	
Please leave a text message as this format.		worker num. name	
		problem or enquiry	

Figure 10. Piece rate ranges per crop



Piece rates per location

As shown in Figure 11, the lowest piece rates were identified in Bundaberg, with 80% of the jobs advertising a rate that would see a worker earn less than \$2 an hour. This is consistent with media reports suggesting high levels of exploitation across the area.

Similarly, 78% of the ads advertising jobs in Caboolture and Beerwah would allow a worker only to make under \$2 an hour. Additionally, 71% of Banksia Grove job ads offered rates that would see a worker earn less than \$2 an hour.

Figure 11. Piece rate ranges per location

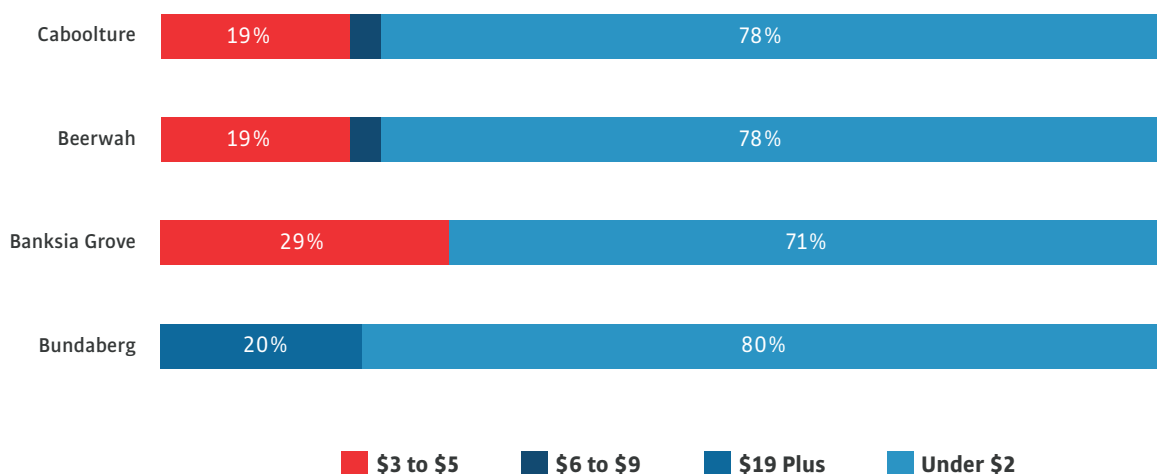


Figure 12. Lowest piece rates per location



Figure 13. Temporary migrant warning about exploitative piece rate in strawberry picking



CASE STUDY: ELLEN

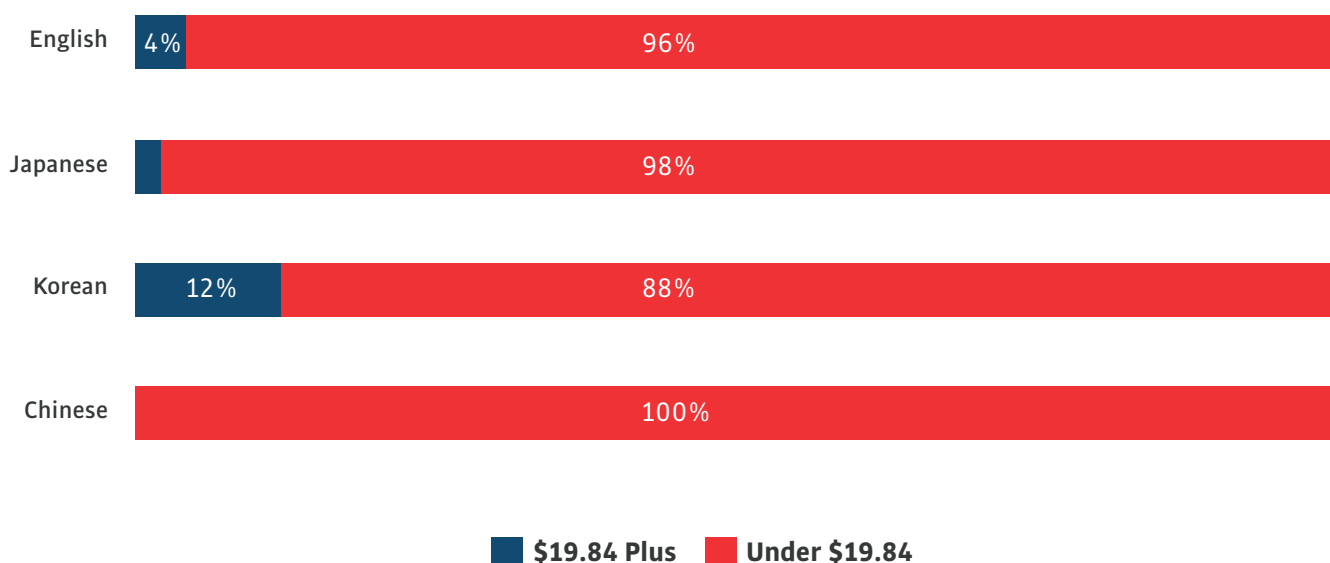
Ellen is a 26-year-old working holiday visa holder from Taiwan. She worked for a month on a cherry farm in Cobram, earning \$8 to \$9 an hour, for picking 30 kg a day. She stressed the salary was not enough to allow her to pay her living expenses, and was disappointed she could not earn close to the \$1000 a week, which the Facebook job ad suggested.

Underpayment piece rate vs ads language

As mentioned previously, the majority of reviewed ads were written in English (59%), following by Japanese (20%), Chinese (11%) and Korean (10%). See, Figure 5. However, the analysis does not suggest piece rates were substantially lower in ads written in languages other than English. 100% of the ads in Chinese advertised piece rates that would not allow a worker to earn the national minimum wage, as did 98% in Japanese, 96% in English and 88% in Korean.



Figure 14. Underpayment piece rate per language



CASE STUDY: NADIA

Nadia Wang was a working holiday maker from Taiwan, who worked throughout December 2019 and January 2020 picking strawberries.

She indicated that she had been badly exploited by the foremen, who were contracted by the farm owners. She was forced to work during harsh weather, including rainy days, and was threatened with their payslips being withheld if they complained about the poor working conditions. She remained silent and endured so she could apply for her second year visa.

She also reported the pickers did not have a toilet in their workplace and were not given time to drink water.

70% of the pickers in her workplace were making less than \$10 an hour and more than half were working to fulfil their 88 days farm work requirement.

Nadia believed the piece rate is problematic because in reality, the amount workers can earn is not dependent upon how skilful or experienced they are.

The income of pickers depends on numerous factors, such as the weather, management of the farm and the density of fruit on the terrain. "Piece rate work is unable to ensure that workers are paid the minimum legal wage."

Migrant workers views on piece rates

“

Piece rates are a form of abuse. We don't earn much, and farmers should be forced to pay a minimal hourly wage. They could provide incentives to make us work more, but we should all be paid a minimum wage.

“

Please be fair to all humans in Australia, no matter which country they're from! Please set clear rules for paying hourly rates for all pickers! No more piece rates! No more grey areas, which allow dodgy contractors to do the wrong thing! Please do the hiring directly and don't try to hire 'contractors' in order to avoid paying taxes!

“

Lots of blueberry farms in Coffs Harbor pay low piece rates. Plus, the fruit is sparse and they hire lots of people. They also post very misleading advertisements on every Facebook job seeking group.

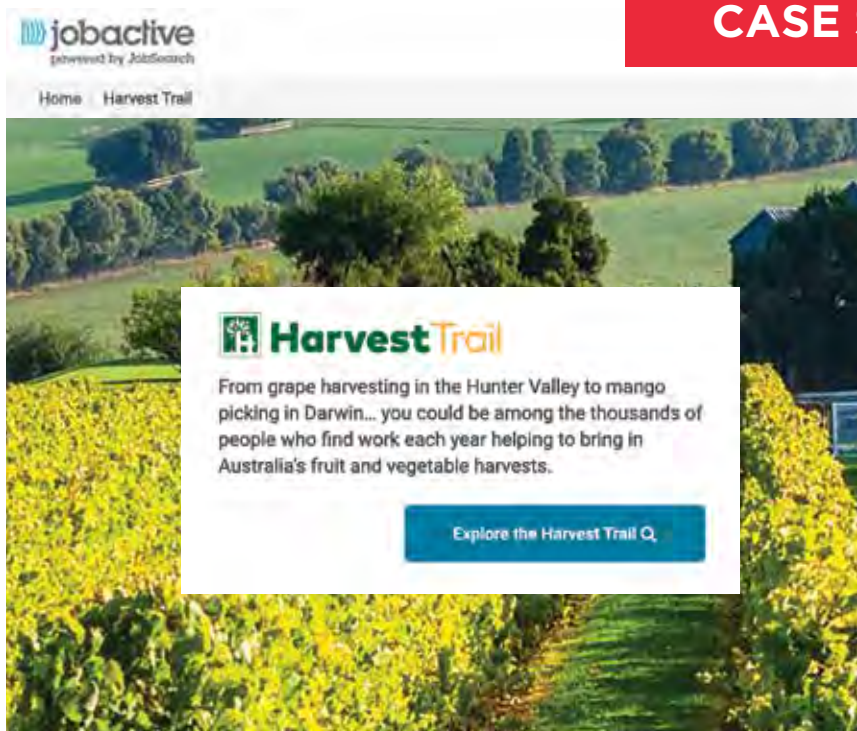
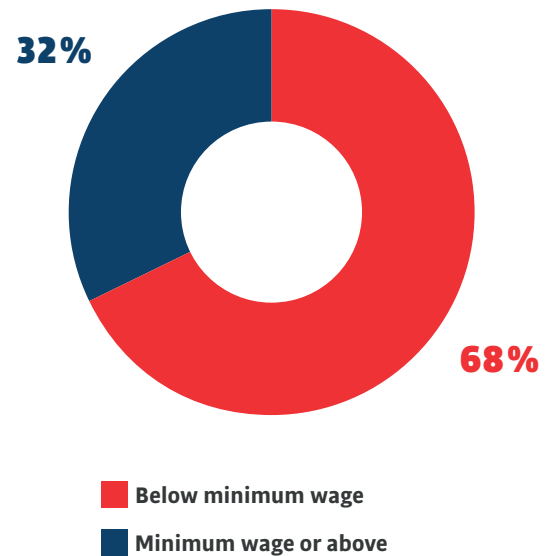
Underpayment ads offering hourly rate

Only 12% of the ads reviewed offered an hourly rate, with the average offered being \$18.53. This is below the national minimum wage of \$19.84. The level of underpayment in the hourly rate ads is likely to be higher if compare with the relevant casual award rates of \$24.80 and \$24.73 for the Horticulture and Wine Industries, respectively.

These comparisons do not account for the required unpaid overtime reported by some workers due to weather conditions.

In almost 70 percent of ads offering an hourly rate, the wage was below the National Minimum Wage.

Figure 15. Percentage of underpayment - ads offering an hourly rate



CASE STUDY: CATALINA

Catalina applied for a picker job through the Harvest Trail. It wasn't until the end of her first day that she was told she would only earn \$15 per hour. When Catalina told the contractor that it was illegal, he threatened to not provide payslips or payment at all. The accommodation provided by the employer had no bathrooms or showers.

Figure 16. Examples of ads offering hourly rates below the minimum wage



澳盛集团 顶级培训, 专业保驾护航

Job Offers

City: Springvale 3171, Melbourne
 Specific position: Technician/worker/apprentice cutting grapes
 Company Name: Cut grapes
 Nature of the work: Unlimited
 Visa status: Unlimited
 Experience requirements: Not needed
 Number of recruits: 5 people
 Superannuation: no
 annual leave: no
 annual leave: no
 Wages: Hourly Wage \$15 or less
 Contact: [redacted]
 phone: [redacted]
 WeChat: [redacted]
 Live in springvale/clayton for convenient pick-up

Job Offers

City:	Rochester, Melbourne	Specific position:	Packer
Company Name:		Nature of the work:	full time
Visa status:	Unlimited	Experience requirements:	Not needed
Academic requirements:		Number of recruits:	3 people
Superannuation:		Annual leave:	
Wages:	Hourly rates under \$15	age requirement:	Unlimited
Contact:	[redacted]	mailbox:	
phone:	[redacted]	WeChat:	[redacted]
QQ:			

[Recruitment] Fruit packaging plant recruitment

Other forms of exploitation

Accommodation

Due to the lack of regulation of secondary services, the bundling of wages to secondary expenses such as food, transport and accommodation are common practice across the industry.⁵ These arrangements do not give the worker the option to choose more suitable or affordable options to cover these services. Migrant workers are often left with high fixed costs, which obligate them to remain in those jobs to be able to pay for the secondary services.

Figure 17. Example of accommodation provided charging \$165 per person weekly

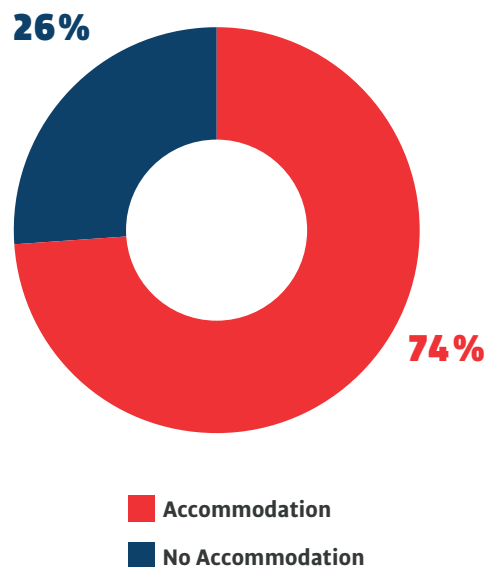


Other common practices identified during the round of interviews of workers conducted by Unions NSW include:

- requesting the employee to take the employer's choice of accommodation as a condition to receiving the job;
- contracts requiring disproportionate upfront payments of bonds and rent;
- accommodation that does not comply with tenancy and safety laws; and
- misrepresentation of accommodation quality and their rates.

Unions NSW audit found 74% of the ads included a fixed cost for accommodation provided by the employer. These ads did not give employees the option to make separate arrangements.

Figure 18. Ads offering accommodation



CASE STUDY: HUN

Hun worked on a strawberry farm and was forced to stay in the accommodation provided by the employer. The house was overcrowded, with 8 people having to share 1 kitchen and 1 bathroom. Each person had to pay \$165 for the accommodation, although only earned around \$100 a week for the first 7-8 weeks. Essentially, during this period, she paid the employer for the opportunity to work on their farm. When the busier season started, she never made more than \$400 a week. Whenever they questioned anything to do with pay or expenses, the owners became very vulgar and basically said, 'if you don't like it, fuck off'.

Sexual harassment

Unions NSW audit confirms academic research and media stories of sexual harassment perpetrated by employers.⁶ The audit observed a proliferation of Facebook posts created by migrant workers to provide mutual support and warn others about events of abuse. These social media posts uncover a lack of processes that are both appropriate and safe for temporary migrant workers to report sexual harassment and other forms of abuse. Migrant workers in remote areas are constantly seeking help, although confused about the correct avenues and available assistance. There are also reports of local authorities in regional and remote areas not dealing with complaints of sexual assault or harassment (Figure 19).

Impact of COVID-19

Temporary migrant workers have been severely affected by COVID-19 and government related responses. They have not received any form of financial support during the crisis with many suffering severe financial hardship.

A large-scale survey of over 5,000 respondents conducted by Unions NSW between late March and mid-May 2020, indicated that working holidays visa holders were one of the demographics most impacted by job losses in the early stages of lock down. Close to 70% of farm workers surveyed reported to have lost their jobs during the crisis.⁷ A reduction in the number of hours also impacted 13 percent of farm workers.⁸

Facing government restrictions and difficulties maintaining a source of income to meet their basic needs, a considerable number of working holiday makers left the country. The Department of Home Affairs estimated that around 28 percent of working holiday makers have left Australia between March and June 2020.⁹

This finding is consistent with media reports between late March and April, exposing the mobilisation of backpackers to rural Australia in search of farm work due to the collapse of hospitality jobs in cities.¹⁰ While farmers also had to cope with the security restrictions that prevented them from offering jobs to already displaced backpackers, the latter had to face the imminence of homelessness and inability to meet their most

Figure 19. Temporary migrant reporting sexual harassment



basic needs. Ultimately, the difficult situation faced by backpackers force them to depart Australia, a decision that contributed to the horticulture industry's struggle to find a labour force for the 2020-21 fruit and vegetable season.

Despite Australia depending on this labour to sustain economic growth, temporary migrants were denied financial support during the COVID-19 crisis. This is a government policy which has directly impacted labour sources in regional and rural areas.

Furthermore, despite the claimed labour shortages, new forms of exploitation have been incentivised by the government's lack of support for working holiday makers. Unions NSW audit identified a proliferation of social media forum ads offering work for accommodation and food only (Figure 20).

Hundreds of social media groups were created in every state to control homelessness and labour shortages through the move from systematic underpayment to unpaid work. This finding is consistent with an academic survey conducted by the University of New South Wales (UNSW) and the University of Technology Sydney (UTS) on the impact of COVID-19 on temporary migrants,¹¹ in which 29% of backpackers reported since 1 March, they had performed work in return for food and housing rather than wages.

Figure 20. Example of a backpacker group offering work for accommodation



Discrimination

Unions NSW audit also found an increase in the number of backpackers reporting through social media channels they had been the victim of workplace discrimination. Hundreds of Facebook posts reported abusive language and mistreatment by their employer based on their nationality. This finding is consistent with the UTS and UNSW survey finding that 1,600 of the 5,000 surveyed respondents had experienced racist 'verbal harassment, physical abuse or being shunned in public spaces, workplaces and housing.'¹²



Figure 21. Facebook post, working holiday maker reporting discrimination



Recommendations

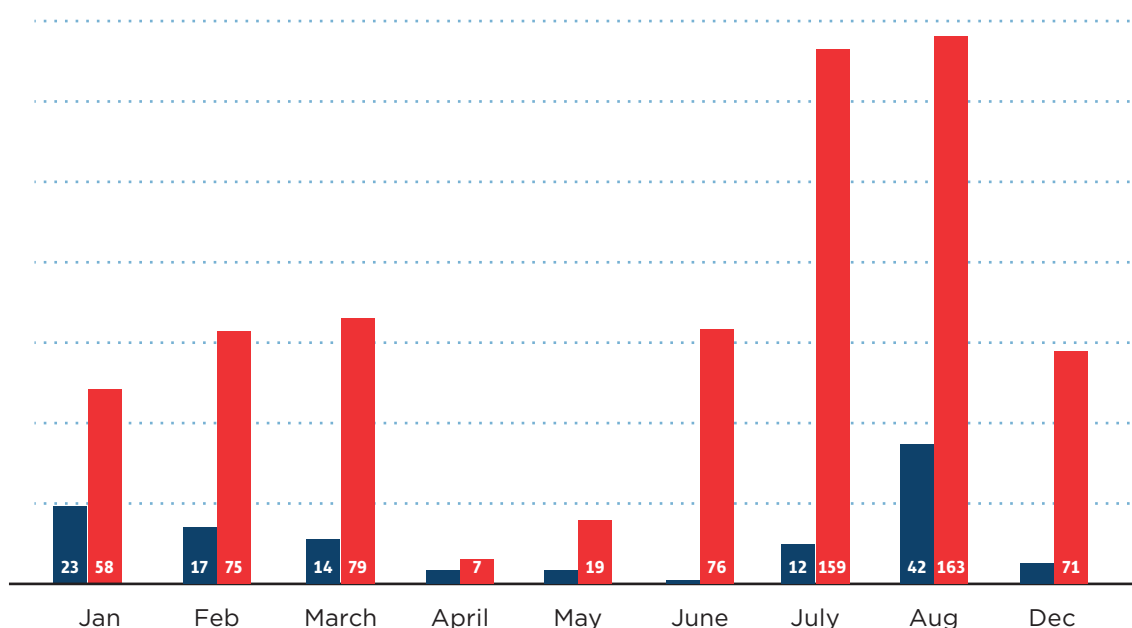
Piecework rate abolishment

The government's recent policy changes are focused on addressing claimed labour shortages in regional areas.¹³ The new measures concentrate on diversifying the regional workforce allowing international students to work more than 20 hours if performing farm work and giving junior workers receiving youth allowance incentives to work on farms. However, the experiences of young workers reveal the policy focus should be about combating labour exploitation, poor working conditions and wage theft from dominating the Australian horticulture industry. Young Australians who undertook the experience to do farm work stated it was impossible to make over \$1,000 a week and characterised the job as physically demanding, with health and safety risks.¹⁴ Many reported that hostel costs were higher than the wages earned under the piece rate agreement.

The Horticulture and Wine Industry awards should be amended to abolish piece rates. Unions NSW's audit, academic research and media coverage have provided compelling evidence to demonstrate that despite the claimed piece rate benefits to incentivise higher productivity, instances of employees working under piece rates earning 15% or 20% more than the relevant hourly award rate are less than rare.

Research has consistently shown over the years that piece rate agreements are systematically misused to pay workers below the minimum wage. The employees' preference to earn an hourly rate is evidenced in Unions NSW audit which showed an increase in the number of ads offering an hourly rate during August, a month in which there was an increase in the number of positions advertised, suggesting a higher demand for workers (Figure 22).

Figure 22. Number of ads offering an hourly rate per month vs number of ads per month



Recommendations

Visa reform

The exploitation of workers and wage theft in the horticulture sector is a significant policy and rights issue. Temporary migrants under the working holiday maker program undertake most of the work in the horticulture sector, whilst being a very vulnerable group subject to abusive employment practices and poor and unsafe working conditions.¹⁵

The requirement for working holiday makers to undertake 88 days of regional work to receive a second-year visa or 6-months to attain a third-year visa intensifies the employer's power and the vulnerability of temporary migrant workers, who are afraid to report exploitation for concern of a negative impact on their visa.

The Fair Work Ombudsman inquiry into the 417 Working Holiday Visa Program acknowledged the 88-day requirement has facilitated the extensive exploitation of workers highly dependent on employers to comply with their visa conditions.

The requirement has facilitated workers to work for less than the minimum wage and increased the exposure of migrant workers to unsafe situations. Extremely long working hours, hazardous work environments, discrimination, sexual harassment and other criminal offences are a frequent occurrence in regional worksites.

The conditioning of a migratory status to the performance of work through second- and third-year visa extensions makes employees in the horticulture industry targets for exploitation from contractors and recruitment agents.¹⁶ Visa extensions without proper and regular oversight and monitoring of working conditions will favour and perpetuate non-compliance of labour standards and workplace regulations in this industry. The requirement for working holiday makers to undertake farm work to extend their time in Australia should be abolished in its current form.



Conclusions

Unions NSW audit confirms the systematic exploitation of workers in the horticultural industry aided by the piece rate system. Despite arguments piece rates encourage higher productivity, research consistently shows employers' preference for piece rates, to systematically pay workers below the minimum wage. The government has mistakenly focused on diversifying the regional workforce to ensure labour supply for horticultural businesses. However, the focus should be shifted to addressing poor working conditions and wage theft. Any other measures will be ineffective at attracting a workforce towards an industry with a reputation for underpayment and exploitation. Piece rates should be replaced by a minimum hourly wage for horticultural workers.

Temporary migrants on working holiday maker visas perform the majority of work in the horticultural industry and are especially susceptible to poor employment conditions, underpayment and abusive practices from employers. Most are afraid of negative impacts upon their visa if they report exploitation. The requirement for working holiday makers to perform farm work to gain a second or third year visa extension should be abolished to ensure that migrant workers can enforce their rights.



Endnotes

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10. Brad Thompson, David Marin-Guzman and Elouise Fowler, Farmers swamped by displaced backpackers wanting work, Financial Review (24 March 2020) accessed 6 October 2020.
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15. Fair Work Ombudsman, Harvest Trail Enquiry (Report on workplace arrangements along the harvest trail, 2018).
16. Joanna Howe et al, 'Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry (2020).

