

## Compliance and related issues

- 10.1 Towards the end of the inquiry, the Seasonal Worker Programme (SWP) received some negative media coverage over the alleged mistreatment of seasonal worker participants.
- 10.2 These reports alleged that seasonal workers were underpaid, housed in substandard accommodation, refused medical access and pastoral care, and verbally abused and underfed.
- 10.3 This chapter considers whether illegal activity is prevalent within the Seasonal Worker Programme (SWP) and the current compliance regime.

### Illegal labour hire operators

- 10.4 Growcom stated that, while the SWP regulations were robust, it did not prevent exploitation of seasonal workers:

It would appear that the regulations around the Seasonal Worker Program are robust, although this does not prevent rogue employers/labour hire operators from exploiting these workers in a very few cases. The intersection of vulnerable workers with unethical and illegal labour hire operators has been a major concern.<sup>1</sup>
- 10.5 Growcom added that the Department of Employment (DoE) had taken positive steps to address the issue:

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1 Growcom, *Submission 16*, p. 5.

It is positive to note however that the Department of Employment addressed this issue by excluding any business with less than 5 years of 'clean slate' operations. This restriction should see fewer issues of underpayment and exploitation arising in the future.<sup>2</sup>

10.6 Connect Group Pty Ltd observed that the use of illegal contracting operators was rife within the sector, suggesting that they were sourced from:

- Legitimate Working Holiday visa holders who are often exploited as has been demonstrated during the recent Four Corners program.
- Organised gangs brought into Australia on Tourist visas with no legal entitlement to work.
- Common sourcing countries include Vietnam, Cambodia and Malaysia. China is now also emerging as a sourcing nation in this space.
- Australian residents/citizens who are on Centrelink or other benefits and who are paid over and above those benefits. Such incomes are never declared to the appropriate authority.<sup>3</sup>

10.7 Connect Group Pty Ltd recommended implementing a grower reporting system administered by a central body where:

... any grower utilising the services of contractor would by law have to forward all details of any contractor they engaged electronically to a central federal government body.

Such details would include contractors ACN, ABN, Trading Names, addresses, bank details and their workers names & tfn's [tax file number] / visa / passport details and would be contained on a standardised form.<sup>4</sup>

10.8 Connect Group was also of the view that State and Federal bodies need to strengthen their ability to impose fines on contractors or clients acting illegally.<sup>5</sup>

10.9 Vernview Pty Ltd advised that they had experience in working with a labour hire company who may have been involved in illegal practices:

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2 Growcom, *Submission 16*, p. 5.

3 Connect Group Pty Ltd, *Submission 18*, p. 7.

4 Connect Group Pty Ltd, *Submission 18*, p. 8.

5 Connect Group Pty Ltd, *Submission 18*, p. 8.

We were unsatisfied with the labour hire contractors, who churned staff continually. They could supply the labour when we needed it but we were unhappy with their employment practices. We decided not to engage them any longer as we were concerned they may have been employing illegal labour and/or not paying their workers correctly, hence the reason for staff churn.<sup>6</sup>

10.10 Abbotsleigh Citrus commented on the 'need to ensure that the programme is not jeopardised by sub-standard employers and labour hire contractors.'<sup>7</sup>

10.11 MADEC Australia advised that there were some unscrupulous labour hire contractors within the industry:

Via our Harvest Offices and NHLIS [National Harvest Labour Information Service] contract, MADEC staff often hear of cases where employees are not being paid their full entitlement. We are also told on occasion by a grower that the rate they are paying their contractor is far below a rate that could reasonably cover award wages and all statutory costs.

This indicates there is an element of dodgy labour hire contractors who pay cash, underpay workers and do not pay other statutory costs, or gouge workers for accommodation, transport or other 'deductions'. As long as this situation continues, there remains a financial incentive not to use SWP workers.<sup>8</sup>

10.12 AUSVEG stated that it had raised the issue of rogue labour hire operators with the DoE and the Department of Foreign Affairs and Trade (DFAT), noting:

... instances of fraudulent recruiters attempting to exploit interested workers during the Pacific Seasonal Worker Pilot Scheme, and noted that it was important to protect the rights of all parties involved in temporary work programmes.<sup>9</sup>

10.13 AUSVEG called on the Government to target 'labour hire companies to ensure that they are acting ethically and within the law when taking part in any temporary work program.'<sup>10</sup>

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6 Venview Pty Ltd, *Submission 13*, p. 2.

7 Abbotsleigh Citrus, *Submission 15*, p. 2.

8 MADEC Australia, *Submission 17*, p. 4.

9 AUSVEG, *Submission 25*, p. 6.

10 AUSVEG, *Submission 25*, p. 3.

- 10.14 The State, Society and Governance in Melanesia Program (SSGMP) also believed that ‘some illegal labour activities reduce the demand for workers under the SWP in Australian horticulture, and is a site of worker abuse and exploitation.’<sup>11</sup>
- 10.15 The SSGMP added:
- Encouraging Australian employers to shift their labour hire practises (such as the use of illegal labour hire contractors) will require a stronger ‘carrot and stick’ approach.<sup>12</sup>
- 10.16 The Australian Council of Trade Unions (ACTU) also noted reports on problems within the SWP such as ‘poor accommodation, pay deductions, different employment contracts applying and minimum hour’s requirements not being met.’<sup>13</sup>
- 10.17 The ACTU did acknowledge, however, that it believed the SWP was regulated appropriately:
- The Seasonal Workers Program has largely avoided some of the more serious problems with exploitation that have afflicted other parts of the temporary work visa program, in large part because proper effort has gone into regulating it.<sup>14</sup>
- 10.18 The ACTU suggested that an examination of the risks involved in using labour hire companies should be considered:
- There also needs to be greater consideration given to the risks involved in the continued use of labour hire companies and other intermediaries and what this means for exploitation if the Government opens the program up further. An Australian Institute of Criminology report finds that there is an increased risk of labour exploitation in those cases where an intermediary/labour hire companies are used. Managing the increased risk when intermediaries such as local business organisations and recruiters in the specific countries covered by this scheme are involved is critical. We also note that expansion of the program is being pushed in sectors like hospitality that already have one of the highest rates of sponsor sanctions under the subclass 457 visa scheme.<sup>15</sup>

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11 State, Society and Governance in Melanesia Program, *Submission 38*, p. 8.

12 State, Society and Governance in Melanesia Program, *Submission 38*, p. 8.

13 Australian Council of Trade Unions, *Submission 19*, p. 9.

14 Australian Council of Trade Unions, *Submission 19*, p. 14.

15 Australian Council of Trade Unions, *Submission 19*, p. 9.

- 10.19 As noted in Chapter 3, NT Farmers and Apple and Pear Australia Limited (APAL) surmised that the change to the tax rule for working holiday makers (WHM)<sup>16</sup> would 'encourage more employers into the black market for labour.'<sup>17</sup>
- 10.20 APAL also agreed that 'there are some unscrupulous Labour Hire firms operating within the industry and across the economy more broadly.'<sup>18</sup>
- 10.21 APAL recommended establishing checks to make sure that labour hire firms are paying their workers the appropriate award wage and licencing labour hire firms.<sup>19</sup>
- 10.22 APAL suggested that there was a need for labour hire companies to be licensed and checked.<sup>20</sup>
- 10.23 The National Union of Workers (NUW) asserted that the existing SWP regulations contained key vulnerabilities and gaps including:
- dependency on SWP approved employers makes seasonal workers vulnerable to abuse
  - unlawful deductions from seasonal workers wages
  - working excessively long hours without proper compensation for overtime, or a guaranteed hourly rate of pay
  - overcrowded accommodation and unreasonable above-market rate charges for accommodation and transport
  - no formal, transparent process for redeployment for SWP participants
  - racism and discrimination at work
  - approved employers non-compliance of their SWP requirements (particularly for pre-departure and on-arrival briefings).<sup>21</sup>
- 10.24 The NUW made a number of recommendations intended to strengthen compliance and improving conditions:
- Increase Departmental oversight of the pre-departure and on-arrival briefing process.
  - Add a requirement that local trade unions participate in pre-departure briefings in home countries.

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16 The Government announced changes to the working holiday maker (WHM) visa in the 2015-16 Budget. It proposed to remove the tax free threshold for WHMs: who would now be taxed at 32.5 per cent tax on every dollar they earned.

17 NT farmers, *Submission 41*, p. 2; Apple and Pear Australia Limited, *Submission 33*, p. 7.

18 Apple and Pear Australia Limited, *Submission 33*, p. 8.

19 Apple and Pear Australia Limited, *Submission 33*, p. 8.

20 Mr Dollisson, Apple and Pear Australia Limited, *Transcript*, 28 October 2015, p. 8.

21 National Union of Workers, *Submission 33*, pp. 2-6.

- Include a provision in the Implementation Arrangements that states a guarantee that workers<sup>1</sup> will not jeopardise their employment, visa or future participation in the Programme by exercising a workplace right, and/or exercising their right to organise alternative accommodation and transport arrangements.
- Develop a transparent process for the redeployment of workers who wish to return.
- Consider changes to the Migration Act that would provide returning workers (and their families) with access to the permanent migration scheme.
- Make it compulsory for approved employers to offer skills and other training.<sup>22</sup>

10.25 The Uniting Church in Australia (UCA), Synod of Victoria and Tasmania, recommended enacting legislation requiring labour hire companies to be licensed. The UCA suggested that the licensing regime could include:

- a public register of licensed labour hire providers
- a requirement to reveal the real beneficial owners of a labour hire business
- a test that a person establishing, or participating in the management of, a labour hire business is a fit and proper person and does not have a relevant criminal record
- the payment of a bond by the labour hire business as a deterrent against phoenix activity
- thresholds of capitalisation of assets owned by the labour hire business as a further deterrent against phoenix activity
- the creation of an offence to conduct labour hire activities without being licensed
- the creation of an offence for intentionally structuring an employment relationship to avoid the obligation of being licensed as a labour hire business
- the creation of offences for providing false or misleading information in registering a labour hire business
- an offence for another business to use labour hire services from a business that is not licensed as a labour hire business.<sup>23</sup>

10.26 The UCA asserted that a licensing regime would provide a number of benefits:

- make it harder for criminals and other unsuitable people to set up or control labour hire businesses

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22 National Union of Workers, *Submission 33*, p. 7.

23 Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 43*, p. 5.

- make it easier to detect and identify unethical labour hire businesses
  - make it easier for the users of labour hire services to know they are dealing with a reputable provider
  - provide a level of safeguard against phoenix activity
  - make it harder for labour hire businesses to be set up with 'front' people who are not the real owners or controllers of the business
  - reduce the incidence of human trafficking and forced labour through labour hire providers
  - reduce the likelihood of people on temporary work visas will be subjected to unlawful treatment in their wages and conditions
  - increase the ability of third party bodies to find people on temporary work visas in need of assistance, as a public register of labour hire businesses will make it easier to find where these businesses are operating.<sup>24</sup>
- 10.27 The UCA noted that most European countries and a few in Asia (Japan, Singapore and South Korea) have established licensing regimes for labour hire companies.<sup>25</sup>
- 10.28 In addition to the recommendation to establish a licensing regime, the UCA also recommended:
- the DoE ensure that SWP participants have access to community groups and a union
  - the DoE provide public guidelines on making a complaint about an SWP approved employer
  - publishing details of when disciplinary action has been taken by the DoE, the Fair Work Ombudsman (FWO), the Department of Immigration and Border Protection or other relevant authority against an SWP approved employer.<sup>26</sup>
- 10.29 Dr Howe, senior lecturer in law at the University of Adelaide Law School, agreed with the suggestion of requiring labour hire companies to be licensed or accredited:

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24 Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 43*, p. 5.

25 Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 43*, p. 6.

26 Uniting Church in Australia, Synod of Victoria and Tasmania, *Supplementary Submission 43.1*, p. 1.

I think that you could have a regulatory system similar to the UK [United Kingdom] gangmasters model.<sup>27</sup> Where migration intermediaries – whether that is an on-hire labour company or a migration agent – are placing workers for a particular employer, if you have some kind of licensing arrangement and some kind of regulatory oversight around that arrangement, then there is going to be greater compliance with the laws and policies.<sup>28</sup>

10.30 On the licensing arrangement, Dr Howe added:

A licensing arrangement would at least create a way of ensuring that we know what labour hire companies or migration intermediaries are in operation and which workers they are placing. So there could be some kind of online database where they not only register but also register the names of the workers and perhaps the pay rates that the workers that they are placing are on, and then they might have to attach two payslips or something. That would perhaps provide some checks and balances. There could also be random audit checks around that. That would be one way of at least trying to get a sense of the way migration intermediaries are working in this sector.<sup>29</sup>

## Exploitation of workers

10.31 The Office of the Chief Trade Advisor (OCTA) asserted that the use of illegal workers was adversely impacting on recruiting seasonal workers for the SWP:

Another issue that needs redress involves the use of illegal workers in Australia, who also effectively compete with FIC workers. One estimate puts the number of located illegal workers at over 17,000 in 2013-2014, again significantly more than the number of workers arriving under the SWP. Certainly, more could be done to clamp down on the hiring of these illegal workers.<sup>30</sup>

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27 The Gangmasters Licensing Authority regulates businesses who provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law.

28 Dr Howe, University of Adelaide, *Transcript*, 13 November 2015, pp. 15-16.

29 Dr Howe, University of Adelaide, *Transcript*, 13 November 2015, p. 16.

30 Office of the Chief Trade Advisor, *Submission 5*, p. 9.



- 10.32 The Australian Council of Trade Unions (ACTU) believed that employers preferred to use, in part, 'illegal overseas workers without valid work rights.'<sup>31</sup>
- 10.33 Union Aid Abroad – APHEDA (UAB), remarked that exploitation of SWP participants was common and that approved employers were not fulfilling their requirements:
- Evidence from unions in Australia, Pacific Island countries, and East Timor indicates that exploitation of workers participating in the seasonal worker program is common. Complaints include the provision of substandard accommodation, deductions of up to 60% of wages for lodging and board, long hours and excessive or unpaid overtime, and lack of access to health care. Civil society organisations representing Pacific Island communities in Australia, and church organisations in communities with a large representation of participants in the program report that in addition to providing pastoral care, they are often required to support workers to access health services and supplement food. These organisations are effectively subsidizing employers, by fulfilling the requirements that are set down for employers participating in the program.<sup>32</sup>
- 10.34 UAB added that workers were generally disinclined to complain about improper treatment for fear that it will adversely impact on their potential earnings over multiple seasons:
- With their visa tied to their employer, they fear that any complaint will see them sent home before the end of their contract, resulting in a significant loss in income. With the majority of participants in the program returning to Australia for multiple seasons, workers also fear that their complaints will affect their selection in future seasons, with a significant and ongoing impact on their earnings and the benefits that accrue to their families.<sup>33</sup>
- 10.35 UAB called for increased regulation of the industry by:
- Ensuring that [seasonal workers have] the right to join a trade union and have union representation at any time is upheld.
  - Informing workers of their rights and entitlements through pre-departure training, involving local Pacific Island and Australian unions.

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31 Australian Council of Trade Unions, *Submission 19*, p. 11.

32 Union Aid Abroad – APHEDA, *Submission 40*, p. 1.

33 Union Aid Abroad – APHEDA, *Submission 40*, p. 2.

- Ensuring that workers who lodge complaints about exploitative or abusive employers, independently or through their union, do not suffer a loss of income through loss of employment and the subsequent impact on their visa status.
- Ensuring greater transparency around the selection process, so that workers are not screened out of future seasons due to union activity or lodging complaints about exploitative or abusive employers.<sup>34</sup>

10.36 The Development Policy Centre (DPC), in its joint submission with the World Bank, reported on the findings of two surveys it which asked questions about the use of illegal labour in the horticulture industry:

In our 2011 survey, only 12% of employers were prepared to say that there was no use of illegal labour in the horticultural sector. In our 2014 survey, four out of five (79 percent) growers recognized that undocumented workers were used to at least some extent in the horticulture industry.<sup>35</sup>

10.37 The DPC recommended:

Crack down on illegal labour in horticulture in all its forms. Increasing funding for the compliance activities undertaken by both the Department of Immigration and Border Protection and the Fair Work Ombudsman would help remove the remaining illegal workers in the horticulture industry.<sup>36</sup>

10.38 Dr Howe commented more specifically on the vulnerability of WHMs:

The lack of regulation of the WHM visa means an increase in the vulnerability of WHMs to exploitation. The vulnerability of WHMs in the Australian labour market has been recognised by the courts as creating ‘a particular class of employee who are potentially vulnerable to improper practices by their employer’. Increasingly, stories of exploitation of WHMs are emerging.<sup>37</sup>

10.39 The Democratic Republic of Timor-Leste’s Secretary of State for Professional Training and Employment Policy (SSPTEP) stated that it was important for the Australian Government to address the utilisation of illegal workers in the labour force by farmers/growers.<sup>38</sup>

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34 Union Aid Abroad – APHEDA, *Submission 40*, p. 2.

35 Development Policy Centre and World Bank, *Submission 22*, p. 7.

36 Development Policy Centre and World Bank, *Submission 22*, p. 7.

37 Dr Howe, *Submission 36*, pp. 3-4.

38 Secretary of State for Professional Training and Employment Policy, Democratic Republic of Timor-Leste, *Submission 6*, pp. 2-3.

- 10.40 The DoE advised that it had no information on the number of illegal workers currently employed within the agriculture, tourism, and accommodation sectors.<sup>39</sup>

## Protections and support for seasonal workers

- 10.41 The DoE outlined a number of protections and support in place for seasonal workers:
- guaranteeing a minimum average of 30 hours of work per week and a net financial benefit of at least \$1,000 for the period of employment
  - they subject to the same protections as Australian workers (awards, agreements, workers' compensation and work health and safety)
  - the DoE in partnership with other agencies monitors the employment of seasonal workers to make sure approved employers are meeting their obligations under the SWP and workers are employed in accordance with Australian work standards
  - approved employers must submit a recruitment plan to the Australian Government before approval to recruit workers is granted
  - SWP participants receive pre-departure briefing delivered by the labour sending county and an on-arrival briefing delivered by their employer
  - the DoE also conducts workplace visits from time to time.<sup>40</sup>
- 10.42 The DoE added that it had implemented:
- ... a number of new initiatives to improve compliance; these include the formation of a joint Fair Work Ombudsman and Department of Immigration and Border Protection taskforce – Taskforce Cadena – to investigate allegations of exploitation.<sup>41</sup>
- 10.43 Established in June 2015, Taskforce Cadena aims to:
- Reduce visa fraud, illegal work and the exploitation of foreign workers in Australia
  - Utilise intelligence from a range of sources to identify and investigate major targets of interest

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39 Department of Employment, *Supplementary Submission 2.2*, p. 26.

40 Department of Employment, Department of Immigration and Border Protection, Department of Agriculture, Fair Work Ombudsman, *Supplementary Submission 2.1*, pp. 7-8.

41 Senate Standing Committee on Education and Employment, *Supplementary Budget Estimates 2015 – 2016*, Department of Employment Question No. EMSQ15-000396.

- Influence Australian businesses in order to enhance compliance with Australian workplace laws and regulations in relation to foreign worker rights and obligations.<sup>42</sup>

10.44 In an opening statement to Senate Legal and Constitutional Affairs Legislation Committee on 19 October 2015, the Australian Border Force Commissioner stated:

In the past few months this task force has undertaken five compliance operations, detaining 60 unlawful non-citizens and arresting three persons for breaches of the Migration Act. The task force is currently assessing 31 allegations of organised labour exploitation and has developed a target list of 65 entities, a priority cohort of which are 13 labour hire companies.<sup>43</sup>

10.45 Additional protections and compliance related activities conducted by the DoE include seeking additional evidence from labour hire contractors, imposing sanctions, and monitoring SWP participant working hours.

10.46 At a public hearing, the DoE remarked that it had amended the application requirements for labour hire contractors in March 2015. Labour hire contractors are now required to provide evidence that they have a 'clean slate for five years around their workplace relations provisions.'<sup>44</sup>

10.47 The DoE also stated that it could impose a number of sanctions in circumstances where concerns had been identified:

Where concerns have been identified, the Department can issue approved employers with a notice to report and/or a notice to rectify. The Department may impose additional reporting requirements, suspend an employer's ability to recruit workers under the programme or terminate their Deed for serious violations.<sup>45</sup>

10.48 Asked how the SWP is monitored to guarantee seasonal workers a minimum average of 30 hours work per week, the DoE advised:

Approved employers must provide the Department of Employment with data to demonstrate a minimum average of 30 hours per week for all seasonal workers employed.<sup>46</sup>

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42 Department of Immigration and Border Protection, *Supplementary Submission 39.1*, p. 14.

43 Department of Immigration and Border Protection, 'Estimates Hearing, Statement by Roman Quaadvlieg APM, Australian Border Force Commissioner, 19 October 2015', viewed on 14 April 2016, <https://www.border.gov.au/about/news-media/speeches-presentations/2015/commissioner-opening-statement-19oct-2015>.

44 Ms Durbin, Department of Employment, *Transcript*, 2 March 2016, p. 5.

45 Department of Employment, *Supplementary Submission 2.4*, pp. 3.

46 Department of Employment, *Supplementary Submission 2.4*, pp. 2.

- 10.49 In addition to the compliance activities of the DoE, the FWO addresses allegations of approved employer non-compliance and investigates 'complaints in relation to the payment of minimum wages and employment conditions of seasonal workers contained in the *Fair Work Act 2009* and relevant industrial instruments.'<sup>47</sup>
- 10.50 The FWO also:
- ... offers specialised services to programme participants including:
    - tailored advice to employers and seasonal workers
    - developing and maintaining relationships with new approved employers
    - providing a single expert contact point and priority service channel to deliver advice quickly to approved employers
    - providing relevant educational resources to approved employers to assist them to understand their obligations under Commonwealth workplace laws
    - conducting face-to-face briefings for groups of new seasonal workers; and
    - providing in-language factsheets and other educational resources to new seasonal workers.<sup>48</sup>
- 10.51 The FWO acknowledged that there were challenges in conducting compliance activities such as 'the transient nature of visa holders; language barriers; visa holders' limited understanding of workplace entitlements; and their concerns about their visa status.'<sup>49</sup>
- 10.52 The FWO conducts a number of additional compliance and related research activities, including:
- conducting background checks on prospective employers who are seeking to participate in the SWP<sup>50</sup>
  - conducting targeted and random proactive audits of approved employers
  - commencing a three-year inquiry into the horticulture industry that follows the Harvest Trail initiative looking at the drivers of non-compliance with workplace laws in the horticulture industry and labour hire arrangements

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47 Department of Employment, Department of Immigration and Border Protection, Department of Agriculture, Fair Work Ombudsman, *Supplementary Submission 2.1*, pp. 8-9.

48 Department of Employment, Department of Immigration and Border Protection, Department of Agriculture, Fair Work Ombudsman, *Supplementary Submission 2.1*, p. 9.

49 Department of Employment, Department of Immigration and Border Protection, Department of Agriculture, Fair Work Ombudsman, *Supplementary Submission 2.1*, p. 21.

50 Mr Campbell, Fair Work Ombudsman, *Transcript*, 24 February 2016, p. 1.

- consultations with key stakeholder groups including consulates, unions, community groups, employer organisations and local government to understand the underlying drivers of non-compliance in the horticulture industry.<sup>51</sup>
- 10.53 The FWO advised that in the last financial year it 'received a little over 200 requests for assistance from workers in the horticultural sector.'<sup>52</sup>
- 10.54 In relation to the number of investigations and requests for assistance involving the SWP, the FWO advised it received:
- 20 complaints related to approved employers in the programme between 8 August 2008 to December 2014<sup>53</sup>
  - 11 requests for assistance involving SWP participants between 1 July 2014 and 31 June 2015<sup>54</sup>
  - four requests for assistance this financial year which are being considered.<sup>55</sup>
- 10.55 On its compliance outcomes, the FWO added that it had:
- recently put into court one matter involving seasonal workers.
  - four ongoing investigations into those allegations that have arisen through those requests for assistance<sup>56</sup>
  - recovered \$125,000 for 15 employees
  - issued one letter of caution and two infringement notices on employers so far this financial year.<sup>57</sup>

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51 Department of Employment, Department of Immigration and Border Protection, Department of Agriculture, Fair Work Ombudsman, *Supplementary Submission 2.1*, p. 21.

52 Mr Campbell, Fair Work Ombudsman, *Transcript*, 24 February 2016, p. 2.

53 Department of Employment, Department of Immigration and Border Protection, Department of Agriculture, Fair Work Ombudsman, *Supplementary Submission 2.1*, p. 21.

54 Mr Campbell, Fair Work Ombudsman, *Transcript*, 24 February 2016, p. 2.

55 Mr Campbell, Fair Work Ombudsman, *Transcript*, 24 February 2016, p. 5.

56 Mr Campbell, Fair Work Ombudsman, *Transcript*, 24 February 2016, p. 2.

57 Mr Campbell, Fair Work Ombudsman, *Transcript*, 24 February 2016, p. 5.

10.56 The FWO were of the view that the current protections were robust and recommended:

... that we [the FWO] continue to monitor to make sure that the information being provided is up to date, it is accurate and it is as helpful as possible. We need to respond to feedback from participants to see whether or not it is helpful and, if it is not, we need to be flexible enough to provide additional information. The parameters seem sound, in my personal opinion, in the sense that we provide a range of information both in country and then on arrival and then there are the compliance checks at the back end.<sup>58</sup>

10.57 On 15 October 2015, the Government announced that it had established a Ministerial Working Group aimed at protecting vulnerable foreign workers.<sup>59</sup>

## Committee comment

10.58 The Committee notes that the number of complaints and investigations conducted by the Fair Work Ombudsman into non-compliance by approved employers is relatively low compared to all industries Australia wide.

10.59 However, one case of exploitation is one too many, especially considering the small number of approved employers currently participating in the Seasonal Worker Programme (58 in total).

10.60 The Committee is of the view that labour hire companies and, in particular, the so called 'phoenix' operators are particularly harmful to the industry and seasonal workers.

10.61 The Committee notes the Senate Education and Employment References Committee's recommendation that:

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58 Mr O'Shea, Fair Work Ombudsman, *Transcript*, 24 February 2016, p. 3.

59 Senator the Hon Michaelia Cash, Minister for Employment; 'Ministerial Working Group to help protect vulnerable foreign workers', Media Release, 15 October 2015.

... a licensing regime for labour hire contractors be established with a requirement that a business can only use a licensed labour hire contractor to procure labour. There should be a public register of all labour hire contractors. Labour hire contractors must meet and be able to demonstrate compliance with all workplace, employment, tax, and superannuation laws in order to gain a license. In addition, labour hire contractors that use other labour hire contractors, including those located overseas, should be obliged to ensure that those subcontractors also hold a license.<sup>60</sup>

- 10.62 The Committee supports the recommendation of our Senate colleagues and urges the Australian Government to establish a licensing regime for labour hire contractors.

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### **Recommendation 9**

**The Committee recommends that the Australian Government implement Recommendation 32 of the Senate Education and Employment References Committee report on the impact of Australia's temporary work visa programs on the Australian labour market and on the temporary work visa holders.**

**Mrs Louise Markus MP  
Chair**

**5 May 2016**

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60 Senate Education and Employment References Committee, *A National Disgrace: The Exploitation of Temporary Work Visa Holders*, March 2016, p. xiv.