

Working for \$9 a day

WAGE THEFT & HUMAN RIGHTS ABUSES ON AUSTRALIAN FARMS



A JOINT STUDY FROM UNIONS NSW
AND THE MIGRANT WORKERS CENTRE



About Migrant Workers Centre

The Migrant Workers Centre (MWC) is a non-profit organisation open to any workers in Victoria who are born overseas. The MWC assists and empowers workers from emerging communities to seek long-term solutions to migrant worker exploitation. The centre organises workshops, conducts research, develops policy recommendations, and bridges language barriers that limit workers' access to information.

About Unions NSW

Unions NSW is the peak body for trade unions and union members in New South Wales, with 48 affiliated trade unions and Trades and Labour Councils, representing approximately 600,000 workers across New South Wales. Affiliated trade unions cover the spectrum of the workforce in both the public and private sectors. Unions NSW aims to create a fairer and just society and actively campaigns to improve workplace pay and conditions for all workers in New South Wales, regardless of their linguistic or cultural background.

In 2019, Unions NSW, in partnership with the Immigration Advice and Rights Centre (IARC), created Visa Assist, a non-for-profit service which provides free immigration advice and legal support to migrant workers in New South Wales who are union members. Campaigns led by Unions NSW under the Visa Assist umbrella have engaged over 20,000 migrant workers. The Visa Assist program has also provided over 500 legal services since its creation a year ago.

Acknowledgements

The Migrant Workers Centre (MWC) and Unions NSW respectfully acknowledge Australia's Aboriginal and Torres Strait Islander community and their rich culture and respect their Elders, past and present. We acknowledge Aboriginal and Torres Strait Islander peoples as Australia's first peoples and as the Traditional Owners and custodians of the land and water we rely on.

We recognise and value the ongoing contribution of Aboriginal and Torres Strait Islander people and communities to Australian life and how this enriches us. We embrace the spirit of reconciliation, working towards the equality of outcomes and ensuring an equal voice.

We also acknowledge and respect the Traditional Owners of lands across Australia, their Elders, Ancestors, cultures, and heritage, and recognise the continuing sovereignties of all Aboriginal and Torres Strait Islander Nations.

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“ When I worked in a Mildura citrus farm. They only paid me \$19 after 7 hours work. - **Malaysian Worker**



EXECUTIVE SUMMARY

Labour is vital to the Australian horticulture industry. Seasonal variation and the transient nature of the work makes the farmworker population difficult to measure. It is estimated that approximately 142,000 people work in the horticulture industry. Fruit grape and nut farms employ around 104,000 workers and vegetable farms employ 38,000 workers. Over 40% of the workforce are on temporary visas, including Working Holiday and Seasonal Worker Program. The total number of temporary visa holders working in the sector ranged from 65,000 in February 2019 to 44,000 in October 2019. The demand for overseas workers is relatively high, particularly in remote areas.¹

Over the years, we have often heard that migrant workers are vulnerable to exploitation, particularly in the Australian farm sector. The high demands for labour during the harvest season have led to increased use of the temporary workforce. Since the mid-1990's, the Australian government has introduced temporary visa schemes to fulfil the workforce shortage. However, the demands-driven and employer-sponsored designed program inevitably gives employers too much power and puts too many roadblocks in front of workers

trying to report any workplace misconduct. The Senate Standing Committee Inquiry (2016) also raised concerns that migrant workers may fear repercussions when relying on their employer to sign their visa application forms and ensuring they comply with their visa restrictions.²

A significant amount of research³, reports⁴, and a number of parliamentary committees have been explicit about the widespread noncompliance with workplace laws and the poorly regulated labour market in the Australian horticultural sector. The vulnerability of temporary migrant workers arises from a series of overlapping mechanisms that contributes to their precarious status, including dependence on a third party for the right of residence, authority to work and social security network⁵.

During the COVID pandemic in 2020, the Migrant Workers Centre (Victoria) and Unions NSW organised an online backpacker forum where people on temporary visas reported being stranded in Australia when country borders closed. The Australian government provided no social safety net support whatsoever. During the forum, participants raised a range of issues including a lack of COVID safety

“ I was made to work long hours, was only earned \$10 per day when I worked in a small farm picking blueberry around Woolgoolga NSW. - **Chinese Working Holiday Visa Holder**



measures, unsafe work practices and low wages connected with the piece rate system. The National Horticulture Industry Piece Rate Survey was conducted to build solid evidence on the working experience of horticultural workers, focusing on piece rate worker groups across a variety of crops, exploring their rates of pay, other entitlements and common grievances that occur during employment.

More than 1,300 workers completed the survey. 52% of the respondents were female and 44% were male, from 54 countries, across 6 regions. The survey results indicate that piecework pay is commonly applied in the Australian horticultural industry; up to 91% of survey participants had been paid by piece rate. The majority, 84%, of survey participants, were on temporary visas, with 89% being on a Working Holiday or Work and Holiday visa.

The Horticulture Award requires employers and employees to have genuinely agreed to piece rate work. Our survey evidence is that many employers fail to comply with this requirement; 63% of respondents were not given a choice between piece rates or being

paid an hourly rate. 34% said they had never signed a piece rate agreement.

Piece rate workers' daily working hours are unpredictable, and this variability contributes to income instability and employment insecurity. On average, the maximum and minimum daily working hours shown are highly irregular; the maximum daily working hours across all crops was 20 and the minimum was 1.

The National Horticulture Industry Piece Rate Survey results demonstrate that wage theft is widespread within the horticulture industry and experienced under both payment systems, hourly rate and piece rate, although it was more severe amongst those being paid by piece rate. The survey results revealed that 78% of horticulture workers were underpaid.

Lastly, a significant proportion of survey respondents stated that they had experienced work-injuries, discrimination, bullying, sexual assault or harassment at work. Many had also experienced problems with exploitative transport arrangements and the overpriced, unsanitary and overcrowded nature of employer-provided accommodation.

KEY FINDINGS

An overwhelming majority of the survey respondents were victims of wage theft.

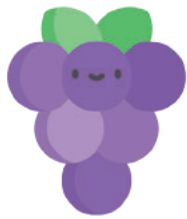


78% of the survey respondents were underpaid at some point when working in the horticulture industry.

80% OF PARTICIPANTS WERE UNDERPAID WHEN PAID A PIECE RATE

61% WERE UNDERPAID WHEN EARNING AN HOURLY RATE

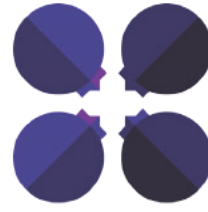
Underpayment levels were severe. Piece rate workers reported, in some instances, earning less than \$1 an hour. 15% of piece rate workers indicated earnings between \$0 to \$7 an hour, 29% earned \$8 to \$11 an hour, 19% between \$12 to \$15 an hour and 16% earned \$16 to \$19 an hour. Only 11% were paid \$20 to \$23 an hour. Contrary to suggestions that the piece rates allow workers to earn above the minimum wage, only 2% reported earning \$26 or more an hour.



\$9 PER DAY



\$9 PER DAY



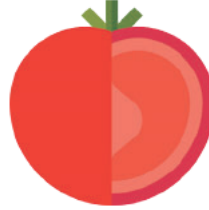
\$10 PER DAY



\$18 PER DAY



\$21 PER DAY



\$23 PER DAY



\$24 PER DAY

The lowest daily wages were reported by piece rate workers employed on grape and zucchini farms, earning an average \$9 per day, followed by blueberry farm workers \$10 per day, melons \$18 per day, watermelons \$21 per day, tomatoes \$23 per day, and strawberries \$24 per day.

A significant number of workers in the horticulture industry have not only experienced wage theft but have been exposed to other insecure and unsafe working conditions that intensify the precariousness of their employment.

- 71% of survey participants were employed as casual employees.
- 63% of respondents were never given a choice between piece rate or hourly rate.
- 34% stated that they never signed a piece rate agreement.



12% OF RESPONDENTS REPORTED HAVING WORKED AS MANY AS 20 HOURS A DAY UNDER PIECE RATE AT LEAST ONCE



25% OF RESPONDENTS REPORTED HAVING HAD SHIFTS AS SHORT AS 1 HOUR A DAY.



Survey participants were given a multiple-choice question to identify the employment law issues they had experienced when working in the horticulture industry, if any. Of those who answered...



49% reported problems related to accommodation and transport



26% reported issues relating to employer breaches in work health and safety laws



35% stated grievances related to discrimination, harassment, and bullying.

RECOMMENDATIONS

Recommendation 1. The Fair Work Commission should amend Clause 15.2(i) of the Horticulture Award 2020 to guarantee that all workers in the horticulture sector are paid at least the applicable minimum wage, including any overtime rates that would be applicable even when engaged on piece-rate agreements.

Recommendation 2. The Fair Work Commission should remove clause 15.2 (e) of the Horticulture Award 2020, which currently removes for piece rate workers entitlements to ordinary hours of work and rostering arrangements, meal allowance, and overtime.

Recommendation 3. Introduce an enforcement program targeting backpackers' accommodation to combat widespread non-compliance with state and local government housing laws.

Recommendation 4. The federal government should provide workplace rights information in regional areas where the horticultural industry has a significant presence, funding trade unions and community legal centres to deliver information sessions on workplace rights regularly in community languages.

Recommendation 5. The federal government should strike out the restrictive and inequitable conditions that apply to various temporary visa schemes, which in practice prevent visa holders from exercising their workplace rights and fighting against discrimination and exploitation.

Recommendation 6. The federal government should introduce a sustainable temporary visa scheme that provides a pathway to permanent residency, to prevent visa holders entering an endless bureaucratic roundabout that is exposing them to visa status vulnerability.

Recommendation 7. The federal government should criminalise wage theft, including where employers have breached, falsified, or failed to apply payslip and record-keeping obligations in order avoid workers' entitlements, superannuation, and taxation obligations. The federal government must ensure all workers are well-protected and can exercise their workplace rights and be free from workplace discrimination.

Recommendation 8. The federal government should introduce a national labour-hire licensing scheme. This scheme should be based on the best practice of the existing models in Queensland and Victoria.

Recommendation 9. The federal government should expand the social safety net to cover all temporary migrant workers. Civil society organisations, including trade unions, migrant community organisations, and community legal centres, should be assisted with adequate funding to extend their services to migrant workers and meet their social, economic, and cultural needs.

Recommendation 10. The federal government should establish a migrant workers hub in regional areas where the horticultural industry has a significant presence, allowing migrant workers to seek assistance or make an enquiry about their workplace exploitation, harassment, or injury, which would enable them to access the national justice system.

1. INTRODUCTION

Horticulture workers are frequently subjected to exploitation. Migrant workers and temporary visa holders are one of the worker cohorts most likely to experience exploitation. We found many complaints where temporary visa holders were paid less than the Award minimum and subject to extremely long working hours. We also identified widespread exploitation in the horticulture industry, significantly within labour-hire and supply chain networks. Furthermore, workers are often reluctant to report employer misconduct for fear of jeopardising their visa status.

Workers earning a piece rate are struggling to earn a living wage. Many workers are forced to pay exorbitant prices for accommodation and transport provided by their employers. Such oppressive conditions are, at times, endured because of the need to meet requirements for a visa extension.

During the COVID-19 pandemic crisis, Australia's border shut, resulting in grower apprehension of workforce shortages during the harvest season. This report shows that with increased demand, improving industrial compliance is key to improving labour supply.

In June 2020, the Migrant Workers Centre (Victoria) and Unions NSW collaborated with several grassroots organisations to host an online backpackers forum.⁶ During the session, backpackers raised concerns over piece rate work. Workers reported a lack of information from the government about their work entitlements, leading them to make uninformed decisions when accepting piece rate work opportunities. They also described the many difficulties commonly experienced when making a complaint to the Fair Work Ombudsman or other organisations about workplace grievances and disputes. As a result, the Migrant Workers Centre (Victoria) and Unions NSW launched the National Horticulture Industry Piece Rate Survey in September 2020.

1.1 Methodology

The survey was conducted online and was open for responses from late September 2020 until late February 2021. The survey was distributed through Migrant Workers Centre and Unions NSW social media channels and to different migrant communities by email, online events, and social media platforms such as Line, Kakao Talk, WhatsApp, and Facebook. Researchers and volunteers from diverse linguistic and cultural backgrounds led the survey distribution to ensure participation from different demographics. The survey was presented in Chinese and English.

The survey examines workplace relations in the Australian horticulture industry, particularly piece rate arrangements. We adopted the quantitative survey research method and asked the participants to provide their contact details to follow up with in-depth interviews if they wished to share their personal experience in more detail. The report is structured along the following three main themes.

First, the participants were asked for their age, nationality, gender identity, current visa status, and whether they worked in the horticulture industry and the location of their work.

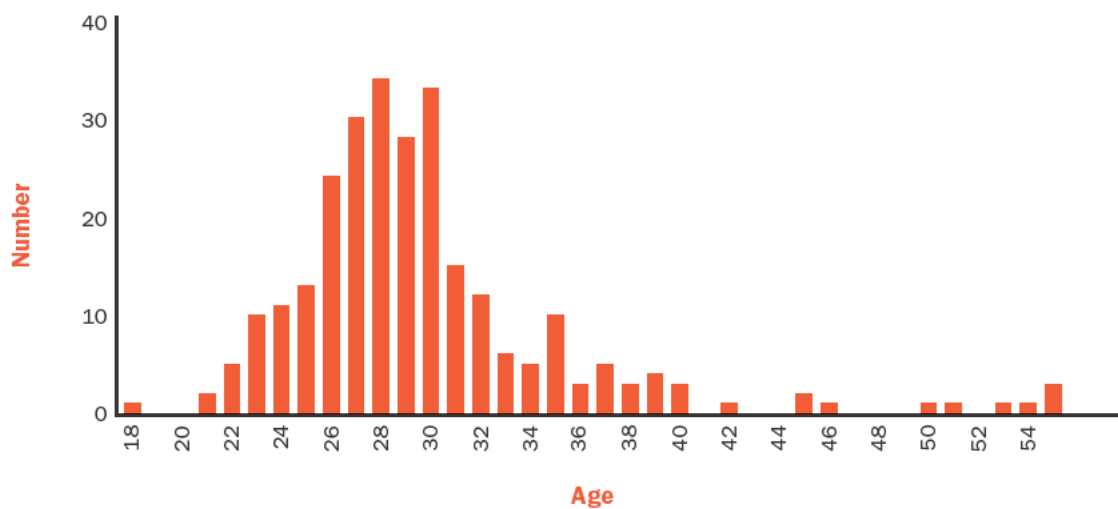
Second, the survey asked participants about piece rate agreements and other employment conditions. Then, we asked participants about their experience working with specific crops. Questions were focused on 34 crops that we identified in previous research as more commonly advertised through social media platforms and websites. Participants were asked what role they performed when working with specific crops, how their employer calculated the piece rate for the specific crop, the farm's name, and location.

Finally, participants were asked about their employment type and their wages more generally. Questions also explored other employer misconducts and grievances that respondents experienced during employment.

1.2 Participants demographic

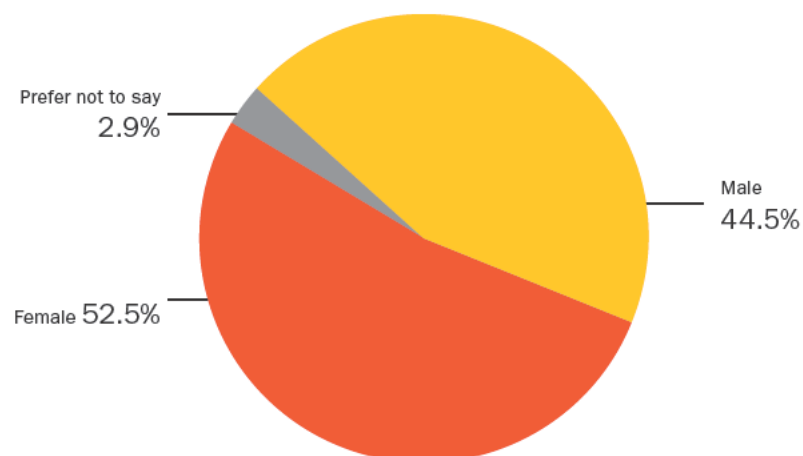
More than 1,300 people participated in the survey. 1,001 responded that they have been working on the Australian farm in the last two years. Our analysis focuses upon the responses of these 1,001 farm workers. Top three ages of respondents were: 28 years old, (12%), 30 years old, (12%) and 29 years old (11%).

Figure 1 : Age group



52% of the respondents were female and 44% male, with the remainder (3%) preferring not to say.

Picture 1: Gender

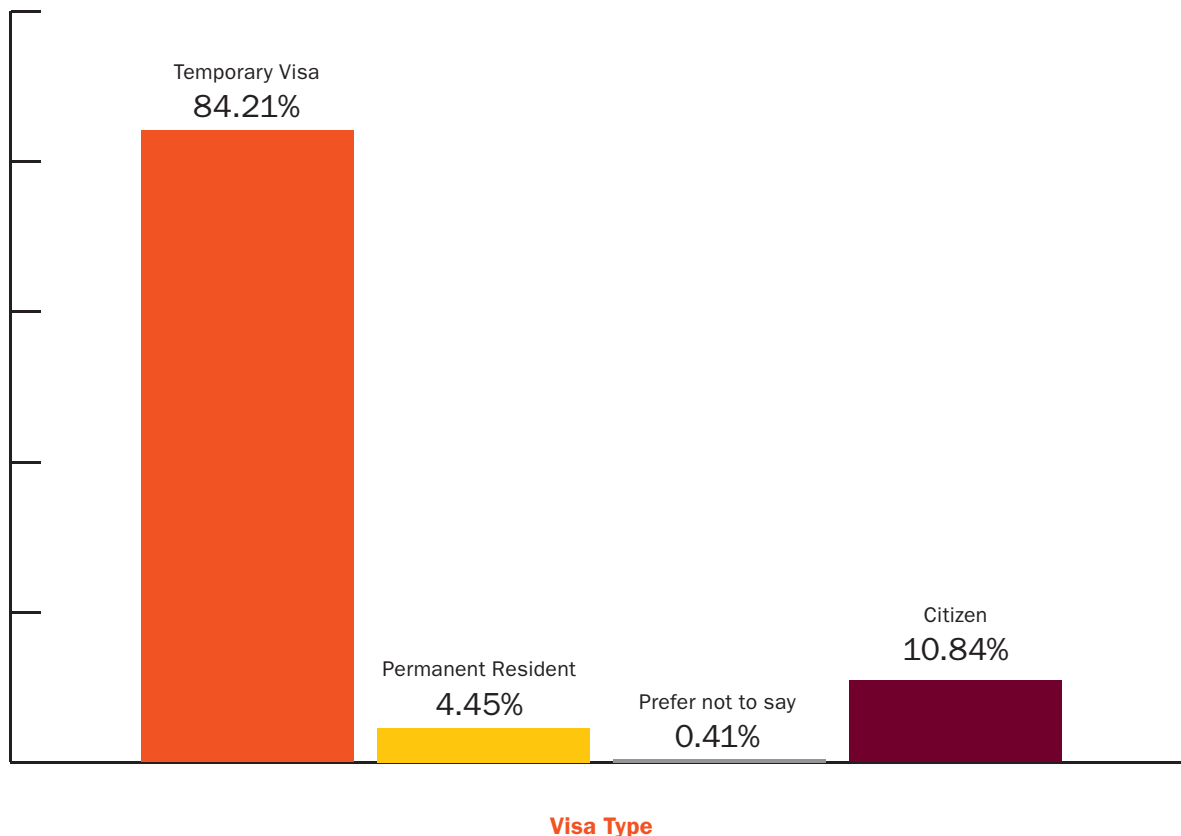


Participants were from 54 countries, across 6 regions. The top 5 most common places of origin were Taiwan (36%), Malaysia (6%), Chile (5%), Hong Kong (5%) and United Kingdom (5%). By the geographical region and Continent, 58% were from Asia, 19% from Europe, 8% from North America, 10% from South America and 3% from Oceania.

1.3 Visa status when working in the horticulture industry

The majority of participants, 84%, were on a temporary visa. 11% were Australian citizens and 5% were permanent residents.

Figure 2: Visa status when working in the horticultural industry



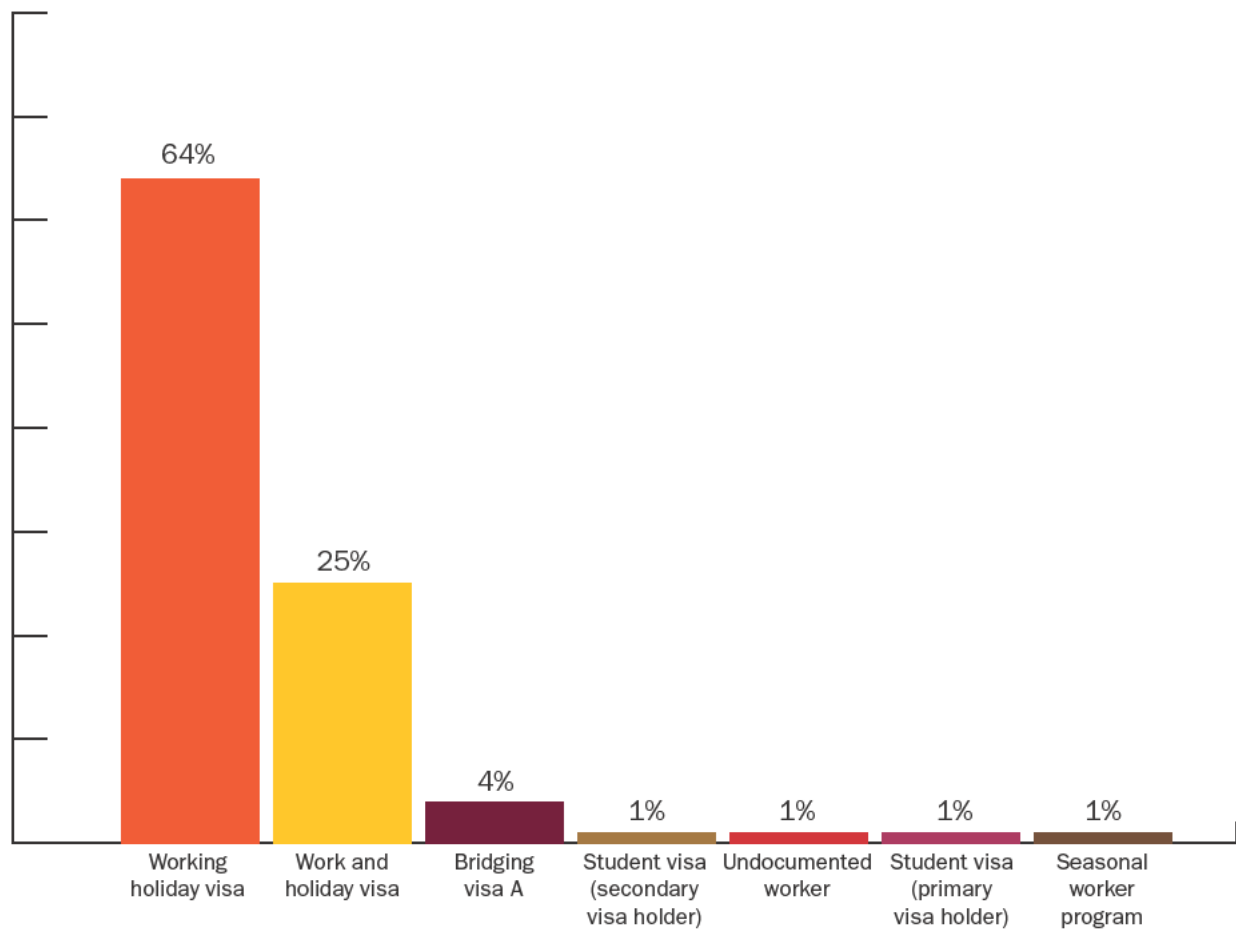
1.4 Temporary visas categories held by horticulture workers

There are seven major visa categories listed under immigration guidelines. From previous temporary migrant worker reports, FWO's annual report and our experience assisting workers in the industry, we have identified the following eleven temporary visa holder categories most likely to undertake farm work when in Australia.

64% of participants were on a Working Holiday visa, 25% were on a Work and Holiday visa, 4% were on a Bridging A visa, 1% were on a student visa, 1.4% were on a student dependent visa, and 1% were seasonal workers, with another 1% being undocumented workers.

“ I once picking grapes in Mildura, the payment was as low as \$35 per day. The farmer retained my passport, forced me to stay in the low quality farm house. – **Dutch Working Holiday Maker** ”

Figure 3: Visa holder category working in the horticulture industry



1.5 Temporary visa category while working in the horticultural industry and current visa category

731 survey participants held a temporary visa when working in the horticulture industry of which 723 were still in Australia at the time of responding to the survey. The survey results indicate most temporary visa holders remained in the country.

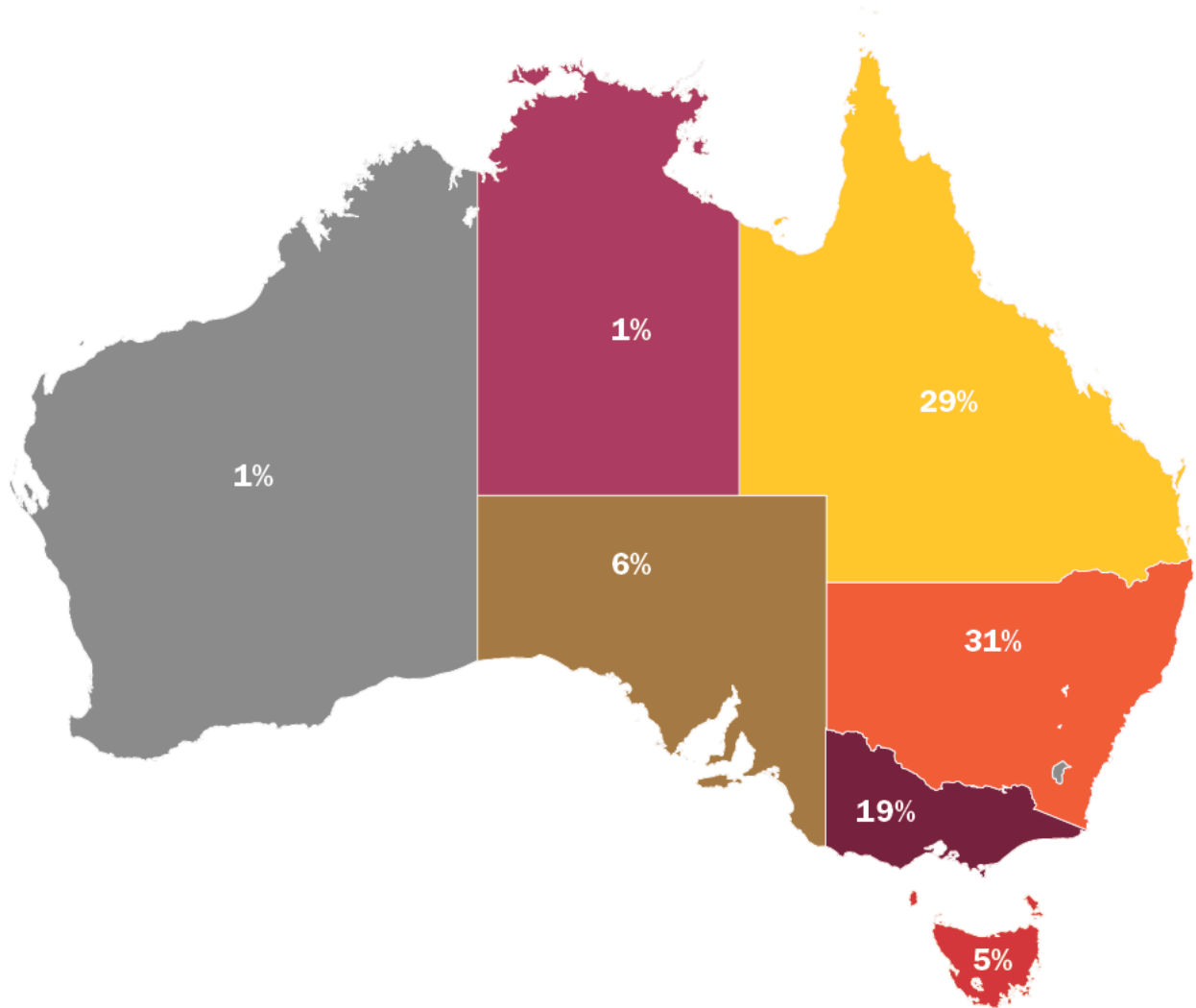
711 (97%) participants indicated that they remain on some form of temporary visa. 609 (84%) continued to hold visas of the same visa category. 89 (12%) participants transferred to another temporary visa category. 12 (1.6%) participants had upgraded their temporary visa to permanent residency visas or the Provisional Partner visa.

“ When I picked apples in Victoria Shepparton, I only earned \$59 per day, can't cover my living cost. When I picking grapes in Mildura, I was only getting \$80 per day. - **Working Holiday Maker from Hong Kong** ”

1.6 Location when working in the horticulture industry

429 participants identified their location when working in the horticulture industry. 31% of participants were in NSW, 29% of participants were in QLD, 19% were in VIC, and 6% were in SA. TAS had 5% of survey participants. 1% of participants were in NT and WA.

Figure 4: Location when working in the horticulture industry



“ I was made to work long hours, my daily earning was low as \$21 per day.
-Australian citizen

2. PIECE RATE EMPLOYMENT ARRANGEMENTS IN THE HORTICULTURE INDUSTRY

The following section examines piece rate work undertaken on farms. We asked about employment arrangements including the employment type, locations, and whether the farmers provided a choice between hourly rate and piece rate. We also asked if workers signed an agreement if they undertook piece rate work.

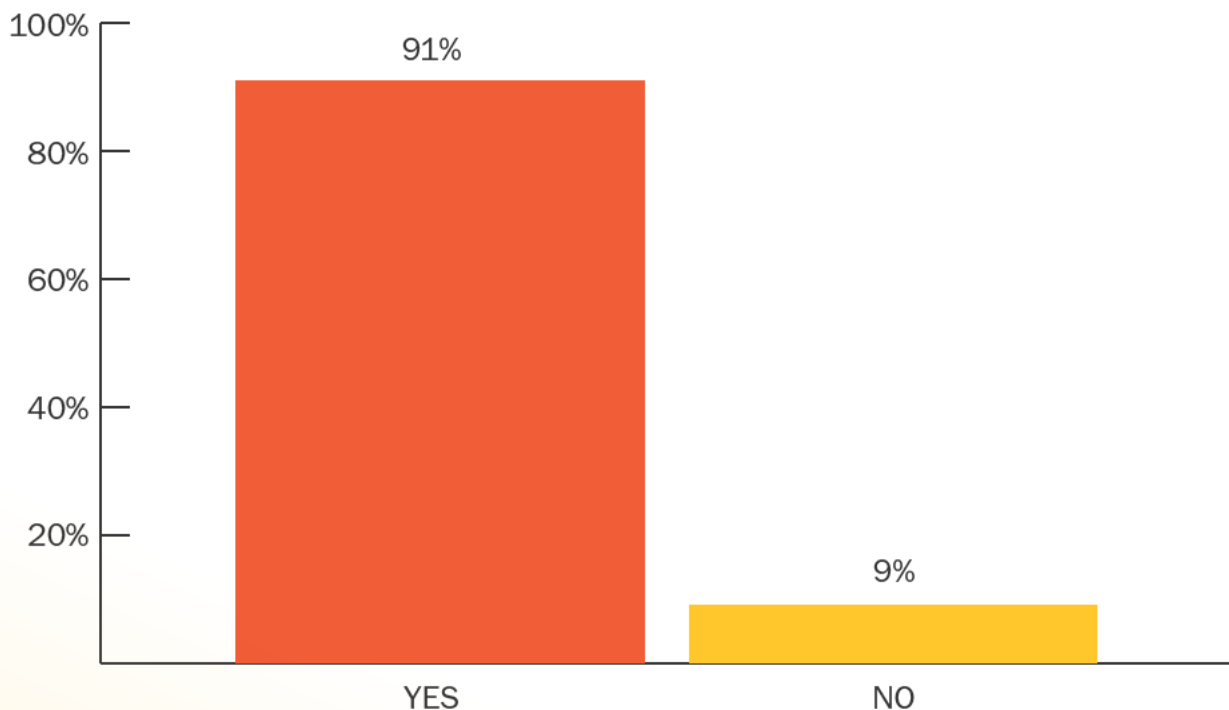
After reviewing and searching the most common social media platforms and websites that temporary migrant workers use for job matches, we identified the 34 most common crops in the industry. We asked the survey participants about the type of harvest roles they performed, how the farmers calculated the rate for these crops, the workers' daily working hours, and the amount they picked, packed, and harvested. We also converted their daily earnings to the hourly rate to compare their earnings with the legal hourly minimum.

2.1 Piece rate and employment arrangement

When working in the horticulture industry, have you ever been paid by piece rate?

91% of participants stated they had been paid under piece rate work arrangements when working in the horticulture industry. 9% had never undertaken piece rate work. The following survey questions involved a series of details about piece rate arrangements.

Figure 5: When working in the horticulture industry, have you ever been paid by piece rate?

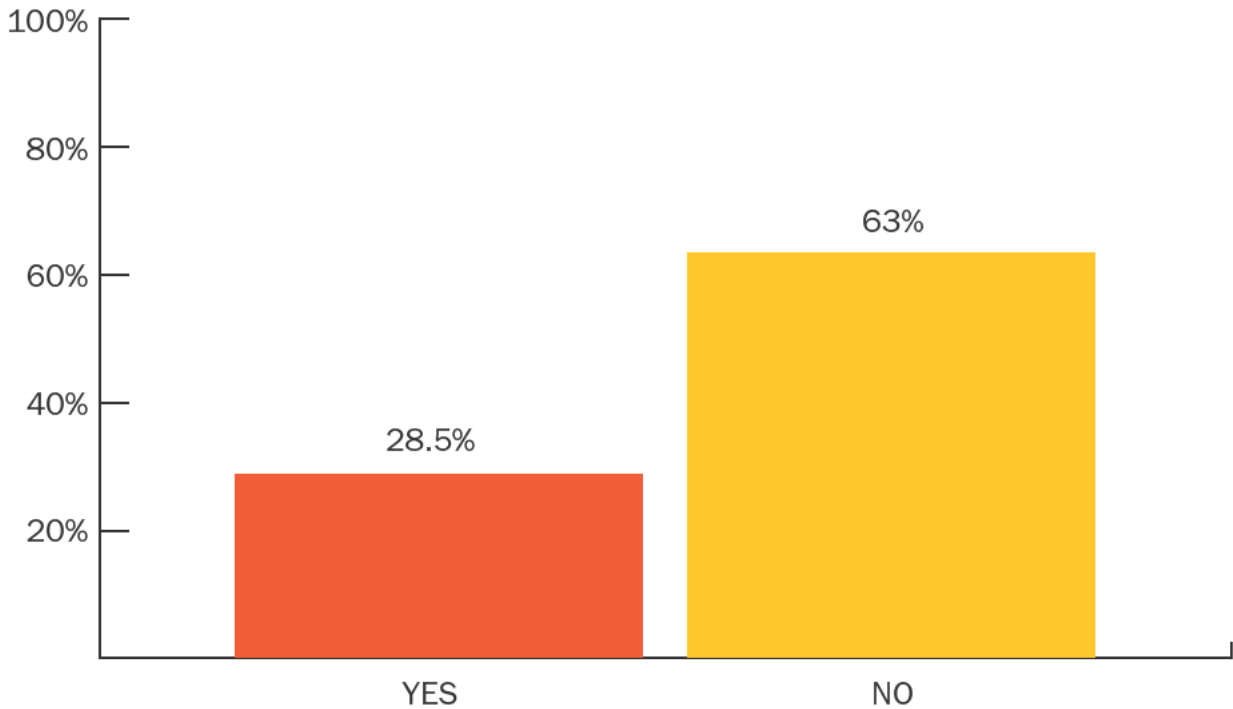


“ When I worked in a NSW melon farm, my wages was low as \$18 per day with more than 12 hours work.
- **Taiwanese International Student**

Were participants offered a choice between piece rates and hourly rates?

63% of respondents were not given a choice between piece rate or hourly rate, and 29% of respondents considered it positive.

Figure 6: Given a choice between piece rate or hourly rates



Did you sign the piece rate agreement with your employer?

A total of 66% of survey participants responded “yes”, and around one-third of respondents, 34%, said they had never signed any agreement with their employers.

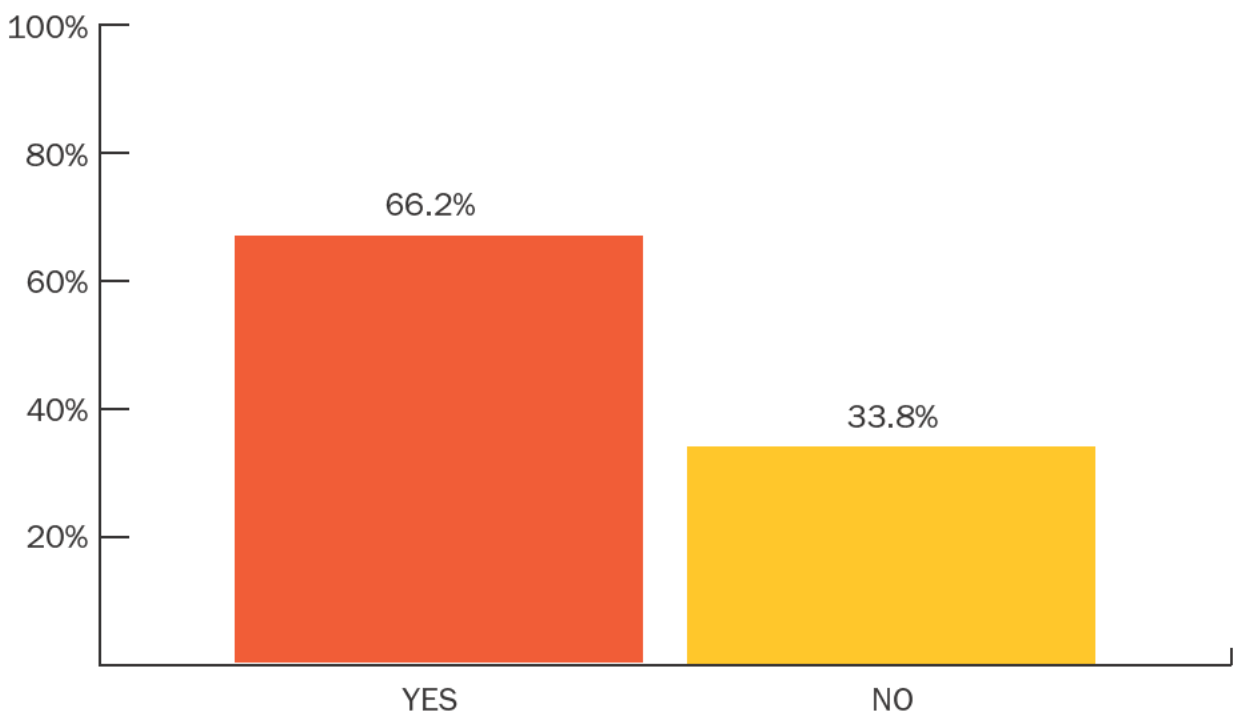
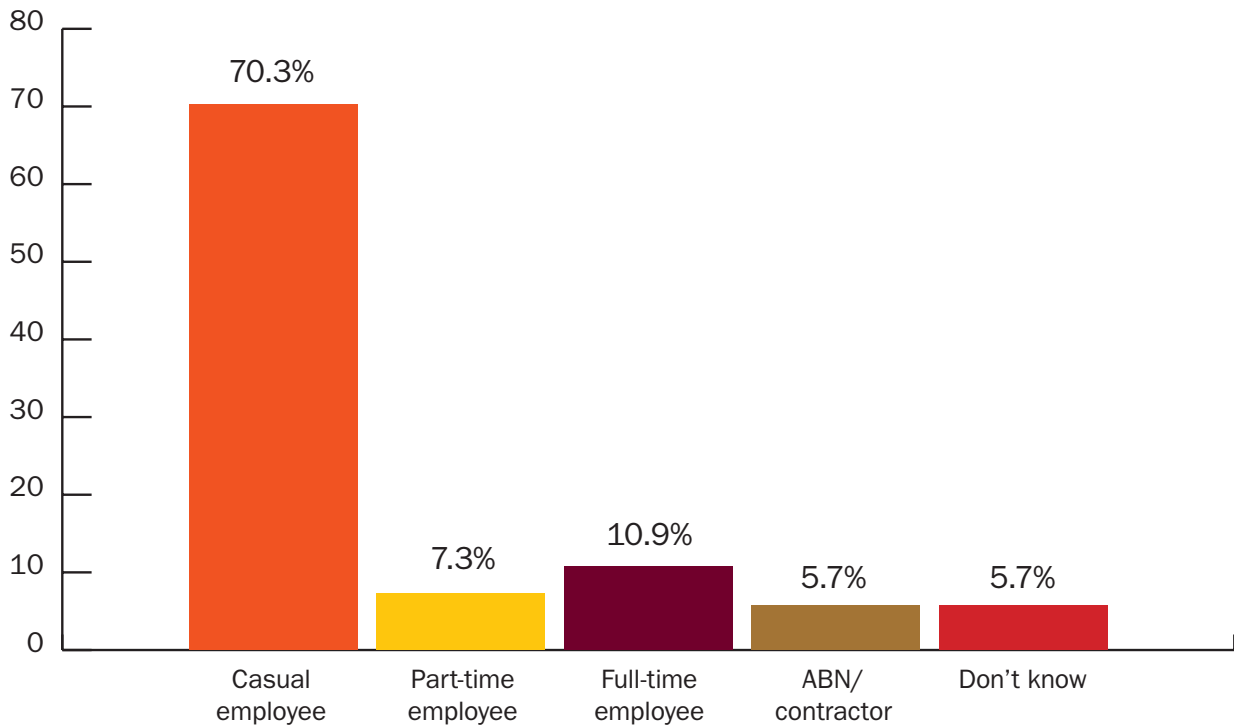


Figure 7: Did you sign a piece rate agreement with your employer?

Employment type when working in the horticulture industry

70% of the survey participants were employed as casual employees. 11% were full-time employees, 7% were part-time employees, while 5.7% claimed they were ABN workers. 5.7% of participants were unsure what type of employment they had.

Figure 8: The employment type when working in the horticulture industry



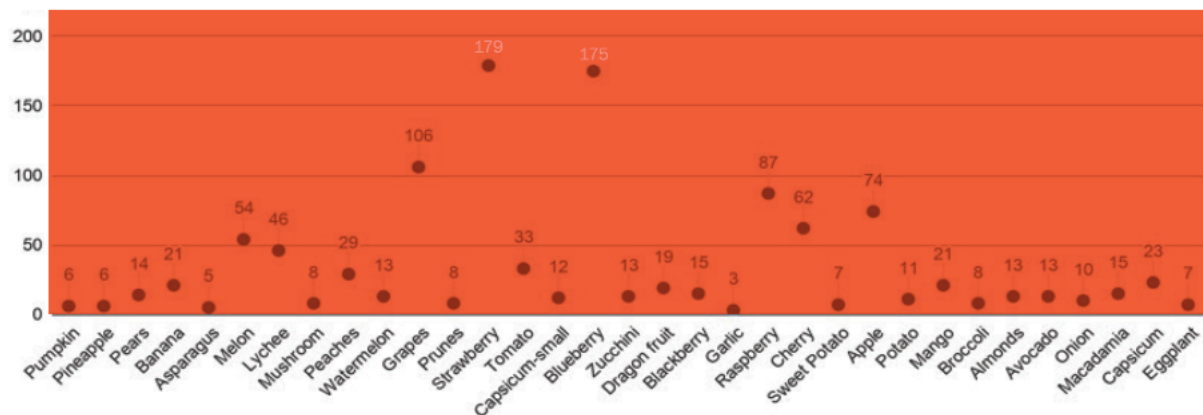
2.2 Piece rate arrangement within different crops and the harvest roles undertaken

The following section explores the piece rate arrangements in the Australian horticulture industry. Before we conducted the survey, we reviewed more than 1,000 job advertisements on top job-matching websites and social media platforms. The survey participants were asked to provide information on what type of crops they worked on, the job roles they undertook, whether it was a piece rate or hourly rate employment arrangement, the rate that farmers applied for each crop, and furthermore, information on working hours and farm locations.

Which type of crops workers performed work on under piece rate arrangements

1,140 responded (multiplied) to the crops on which they performed work in harvest roles under piece rate arrangements. From most common to least: strawberry (179), blueberry (175), grapes (106), raspberry (87), and apple (74), cherry (62), melon (54), lychee (46), tomato (33), peaches (29), capsicum (23), banana & mango (21), dragon fruit (19), blackberry (15), pears (14), almonds, zucchini & avocado (13), small-capsicum (12), potato (11), onion (10), mushroom, broccoli & prune (8), eggplant & sweet potato (7), pumpkin & pineapple (6), asparagus and garlic (3).

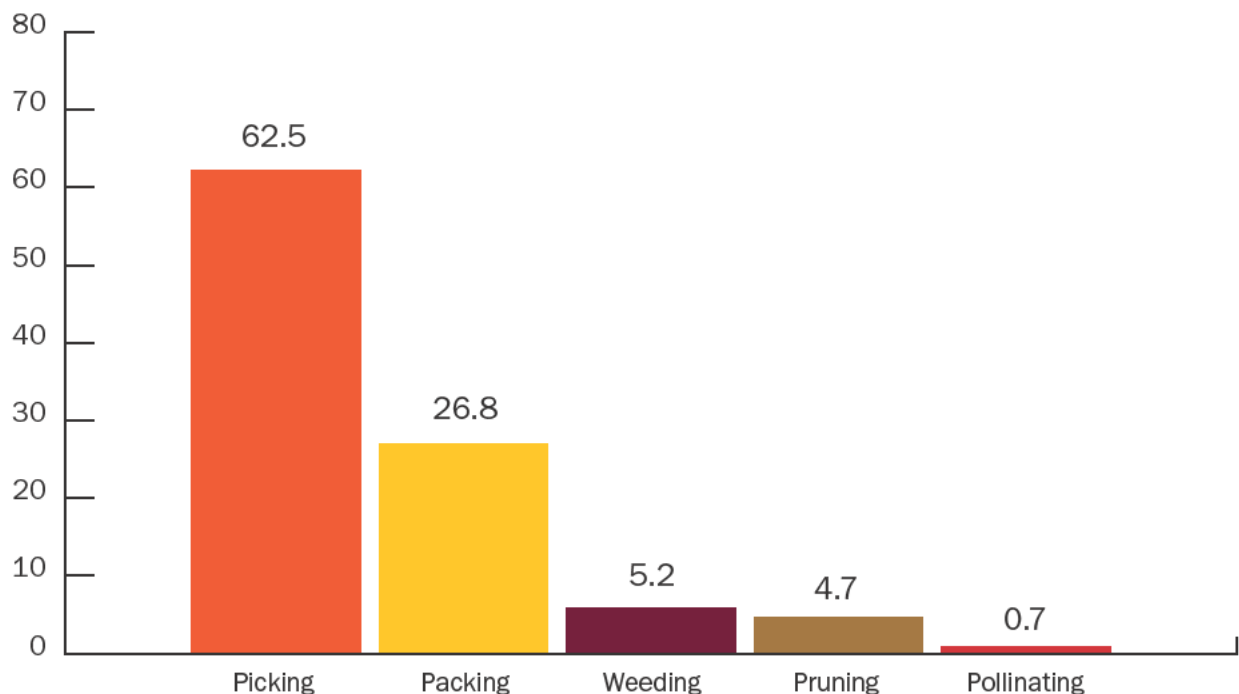
Figure 9: Which type of crops workers performed work on under piece rate arrangements



Type of harvest roles workers performed

Information was sought on the type of harvesting roles workers undertook when working in the horticulture industry. There were 1,397 respondents (multiplied) who responded to the survey question. The most common harvest role they undertook was picking crops with 63% of respondents, followed by packing at 27%. 5% responded they had performed weeding. 5% performed pruning. 1% of respondents performed a pollinating role.

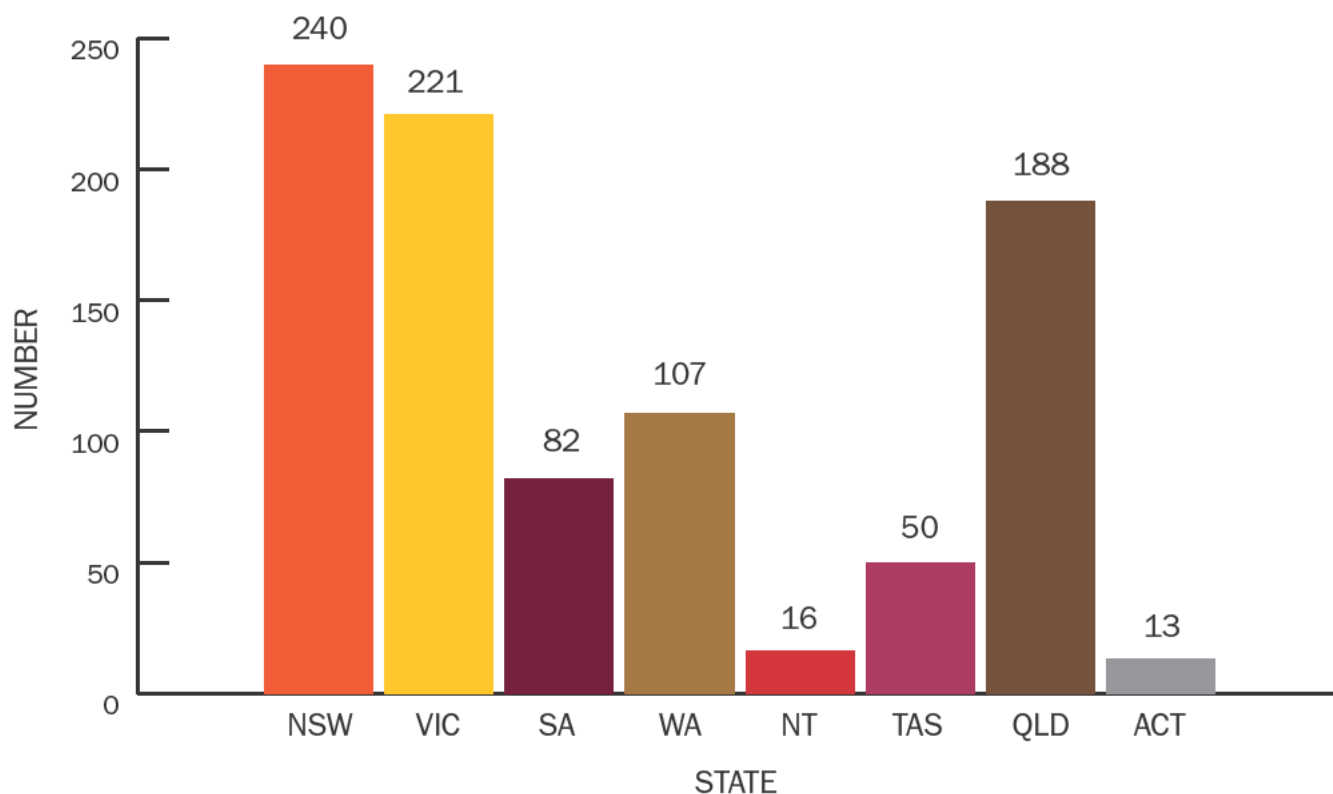
Figure 10: Type of harvest roles workers performed



In which State or Territory were you working on a piece rate?

When survey participants were asked about the locations they worked under a piece rate, 917 respondents completed the survey question. 26% were in New South Wales when they undertook piece rate work, Victoria 24%, Queensland 21%, Western Australia 12%, South Australia 9%, Tasmania 6%, Northern Territory 2%, and a few respondents, 1%, worked under piece rate arrangements in the ACT.

Figure 11: Location when working under piece rate



2.3 Average working hours and daily earnings under piece rate arrangements in the Australian horticulture industry

How many hours did you work per day under piece work arrangements when working with this crop?

In total, 941 survey participants completed the survey questions about daily working hours. The average working hours for piece rate workers was 8.47 per day. However, the maximum and minimum daily working hours varied significantly. The number of working hours was unpredictable, contributing to income instability, which had numerous effects on workers' mental and physical health.

In terms of the longest working hours per day, 115 (12%) responded that they worked a maximum of 20 hours per day when working at blueberry farms. 49 workers at melon farms worked a maximum of 19 hours per day. 8 eggplant farm workers and 12 almond farm workers worked up to 17 hours per day. 15 raspberry farm workers reported maximum working hours of 15 hours per day. A number of crop types had workers reporting a maximum of 14 hours worked per day, including dragon fruit with 18 workers, 55 for apples, and 45 for lychees. 13 workers working with watermelons, 12 with pears, 88 with grapes, 29 with tomatoes, 57 with cherries, and 6 at onion farms reported up to 13 hours per day worked. For the following 8 crops, workers performed up to 12 hours' work, including zucchinis (12 workers), small capsicums (11), capsicums (19), bananas (19), peaches and mangoes (22), mushrooms (5) and pumpkins (4). Those working with asparagus (4), pineapple (6), broccoli (8), macadamia (12) and avocado (11) worked up to 11 hours' work per day. Sweet potatoes had 7 workers working up to 10 hours per day. Garlic (4) and potatoes (7) had workers working up to 9 hours per day.

As for minimum working hours, 247 workers (26%) responded that they at least once worked only 1 hour per day with the following crops: macadamia, zucchini, small capsicum, watermelon, pear and blueberry. 88 grape workers at least once worked only 2 hours per day. The following 7 crops

had workers who worked only 3 hours per day at least once: capsicum (19), tomato (29), lychee (45), blackberry (12), almonds (12), melon (49), cherry (47). 121 strawberry workers, 6 raspberry workers, and 55 apple workers worked only 4 hours per day at least once. The following 8 crops had workers who on at least once occasion worked only 5 hours that day: garlic (4), sweet potato (7), asparagus (4), broccoli (8), pumpkin (4), banana (19), eggplant (8), potato (7). A number of crops had workers working at least 6 hours per day: prunes (6), avocado (11), peach (22), dragon fruit (18), and mango (22). 6 workers at the pineapple farms counted minimum working hours at 7 hours per day. Lastly, onion (6) workers and mushroom (5) workers counted a minimum of eight hours of work per day.

	N	Mean	Minimum	Maximum
Other crop	74	8.12	0	13
Macadamia	12	7.67	1	11
Zucchini	12	7.00	1	12
Capsicum small	11	7.45	1	12
Watermelon	11	7.82	1	13
Pear	12	8.25	1	13
Blueberry	115	8.13	1	20
Grapes	88	8.66	2	13
Capsicum	19	7.95	3	12
Tomato	29	7.79	3	13
Cherry	47	8.13	3	13
Lychee	45	8.22	3	14
Blackberry	12	9.67	3	15
Almonds	12	8.92	3	17
Melon	49	9.02	3	19
Apple	55	8.82	4	14
Raspberry	60	8.93	4	15
Strawberry	121	9.45	4	18
Potato	7	7.43	5	9
Garlic	4	7.50	5	9
Sweet potato	7	8.43	5	10
Broccoli	8	8.38	5	11
Asparagus	4	8.50	5	11
Pumpkin	4	9.00	5	12
Banana	19	9.16	5	12
Eggplant	8	9.25	5	17
Prunes	6	7.33	6	8
Avocado	11	9.36	6	11
Peach	22	8.14	6	12
Mango	22	8.50	6	12
Dragon	18	9.28	6	14
Pineapple	6	8.67	7	11
Mushroom	5	9.80	8	12
Onion	6	9.33	8	13
Total	941			

2.4 Rate scale range across all types of crops

Participants were asked what they earned daily when working with each crop under the piece rate system and the average number of hours worked daily. The analysis reveals that underpayment levels were severe, and in some instances, piece rate workers earned less than \$1 an hour.

15% of piece rate workers indicated earnings between \$0 to \$7 an hour, 29% earned \$8 to \$11 an hour, 19% earned \$12 to \$15 an hour and 16% earned \$16 to \$19 an hour.

Only 11% of the survey participants were paid \$20 to \$23 an hour in their lowest paid job and 8% earned \$24 to \$25 an hour. Contrary to suggestions that the piece rates allow workers to earn above the minimum wage, only 2% reported earning \$26 or more an hour.

Table 2: Rate scale range across all types of crops

	Frequency	Valid Percent
\$0 to \$7	92	15%
\$8 to \$11	181	29%
\$12 to \$15	115	19%
\$16 to \$19	96	16%
\$20 to \$23	69	11%
\$24 to 25	52	8%
\$26 plus	11	2%
total	616	

Average daily income under piece rate across all crops

In this section, the survey participants informed us of their daily income when working under a piece rate arrangement. In total, 939 respondents provided figures across all crops; average daily earnings were \$139.52. That indicates significant wage exploitation under piece rate arrangements. 47 survey participants responded that they went unpaid at least once when working on cherry farms. 602 (64%) responded that they have at least once experienced daily income of as low as \$30. 139 respondents (14%) at least once only earned \$30 to \$50 per day, while 162 survey participants (17%) only earned \$50 to \$80 per day under piece rate arrangements.

The lowest daily wages under selected crops were (from low to high): cherry \$0, grapes and zucchini \$9, blueberry \$10, melon \$18, other crops \$19, watermelon \$21, tomato \$23, strawberry \$24, lychee \$26, pears \$29, macadamia \$30, peaches \$33, broccoli \$34, raspberry and pumpkin \$37, blackberry \$41, capsicum-small \$43, sweet potato \$45, prunes \$49, mushroom and asparagus \$50, apple \$57, avocado and garlic \$60, capsicum \$61, almonds and dragon fruit \$62, mango \$72, eggplant \$76, potato and pineapple \$80, banana \$83, and onion \$122.

Table 3: The average daily income across all crops under piece rate

	N	Mean	Minimum
Cherry	47	143.57	0
Grapes	88	116.38	9
Zucchini	12	125.67	9
Blueberry	115	122.67	10
Melon	48	123.04	18
Othercrop	73	127.10	19
Watermelon	11	115.45	21
Tomato	29	137.00	23
Strawberry	121	130.64	24
Lychee	45	101.40	26
Pear	12	121.50	29
Macadamia	12	150.83	30
Peach	22	131.18	33
Broccoli	8	159.75	34
Pumpkin	4	126.75	37
Raspberry	60	143.75	37
Blackberry	12	144.33	41
Capsicum small	11	135.73	43
Sweet potato	7	153.57	45
Prunes	6	114.00	49
Asparagus	4	109.00	50
Mushroom	5	147.20	50
Apple	55	157.00	57
Garlic	4	146.75	60
Avocado	11	155.00	60
Capsicum	19	154.74	61
Dragon	18	124.67	62
Almonds	12	162.42	62
Mango	22	170.59	72
Eggplant	8	182.25	76
Pineapple	6	116.00	80
Potato	7	159.29	80
Banana	19	162.11	83
Onion	6	172.50	122
Total	939		

“ I was earning as low as \$30 per day when I was picking blueberries in Coffs Harbour. **-British backpacker**

Average daily income converted with hourly rate.

We cross-tabulated piece rate workers' working hours and their daily earnings for all crops and calculated their average hourly pay rate. With 937 respondents, the average hourly rate was \$17.33. For up to 89% of workers across 26 different crops, their hourly pay rate was below the legal minimum for a full-time level 1 Horticulture Award employee. In fact, across all crops, the average hourly rate was below legal minimum hourly rates for casuals.

The top 5 lowest average rates for crops were (from low to high): lychee (\$12.10) asparagus (\$13.15), pineapple (\$13.85), grapes (\$13.90), and melon (\$14). Notably, some workers experienced extreme wage theft. Some who worked with potatoes had at least once received zero payment, with grapes and zucchini (\$1 per hour at least once), blueberry (\$1.25), melon (\$1.50), and watermelon (\$2.10) being almost as serious.

Table 4: Average daily income converted with hourly rate

	N	Mean	Minimum
Potato	7	22.9940	0.00
Grapes	88	13.9012	1.00
Zucchini	12	20.4605	1.00
Blueberry	115	15.8580	1.25
Melon	48	13.8966	1.50
Watermelon	11	18.4619	2.10
Strawberry	121	14.2224	2.40
Other crop	72	16.1864	2.71
Peach	22	16.9119	4.13
Broccoli	8	19.9972	4.25
Pumpkin	4	14.1866	4.63
Raspberry	60	16.5831	5.00
Sweet potato	7	18.6127	5.00
Dragon	18	14.6470	5.64
Tomato	29	17.5081	5.75
Avocado	11	17.4522	6.00
Apple	55	18.2181	6.00
Mushroom	5	15.1278	6.25
Cherry	46	18.4461	6.25
Prunes	6	15.5208	7.00
Asparagus	4	13.1523	7.70
Blackberry	12	15.2580	7.82
Capsicum	19	20.0152	8.00
Capsicum small	11	22.8030	8.00
Banana	19	17.9770	8.33
Lychee	45	12.0891	8.67
Pear	12	17.2646	9.00
Pineapple	6	13.8442	10.00
Almonds	12	19.0758	10.00
Macadamia	12	20.1689	11.33
Garlic	4	18.9792	12.00
Mango	22	20.7297	12.00
Onion	6	18.5444	12.20
Eggplant	8	20.0972	13.11
Total	937		

Wage theft and type of rate: cross-tabulation

We observed that severe wage exploitation in the horticulture sector occurred regardless of whether the workers were paid by piece rate or by hourly pay rate. A total of 616 workers completed the survey question on the lowest-paid job they ever performed in the Australian horticulture industry. When compared to the Horticulture Award legal minimum, 31 workers at 60.8% who received an hourly rate were the victims of wage theft, and 450 survey participants at 79.6% were underpaid as pieceworkers.

Table 5: Wage theft and the type of rate: cross-tabulations

			lowest type		total
			hour rate	piece rate	
underpaid	0	Count	20	115	135
		% within lowest type	39.2%	20.4	21.9%
	1	Count	31	450	481
		% within lowest type	60.8%	79.6%	78.1%
total		Count	51	565	616
		% within lowest type	100%	100%	100%

Comparing visa type to likelihood of underpayment when working in the horticulture industry

The cross tabulation below indicates temporary migrant workers are more likely to be underpaid when working in Australian horticulture sector. Out of 608 respondents 80.1% temporary visa holders were alleged underpaid, followed by 71.2% Australian citizens, and 63% of permanent visa holders are likely to be underpaid.

Table 6: Comparing visa type to likelihood of underpayment when working in the horticulture industry.

			Visa type when working in the horticulture industry				total
			Australian Citizen	other	permanent resident	temporary visa holder	
underpaid	0	Count	21	0	10	101	132
		% within Visa type when working in the horticulture industry	28.8%	0%	37%	19.9%	21.7%
	1	Count	52	1	17	406	476
		% within Visa type when working in the horticulture industry	71.2%	100%	63%	80.1%	78.3%
total		Count	73	1	27	507	608
		% within Visa type when working in the horticulture industry	100%	100%	100%	100%	100%

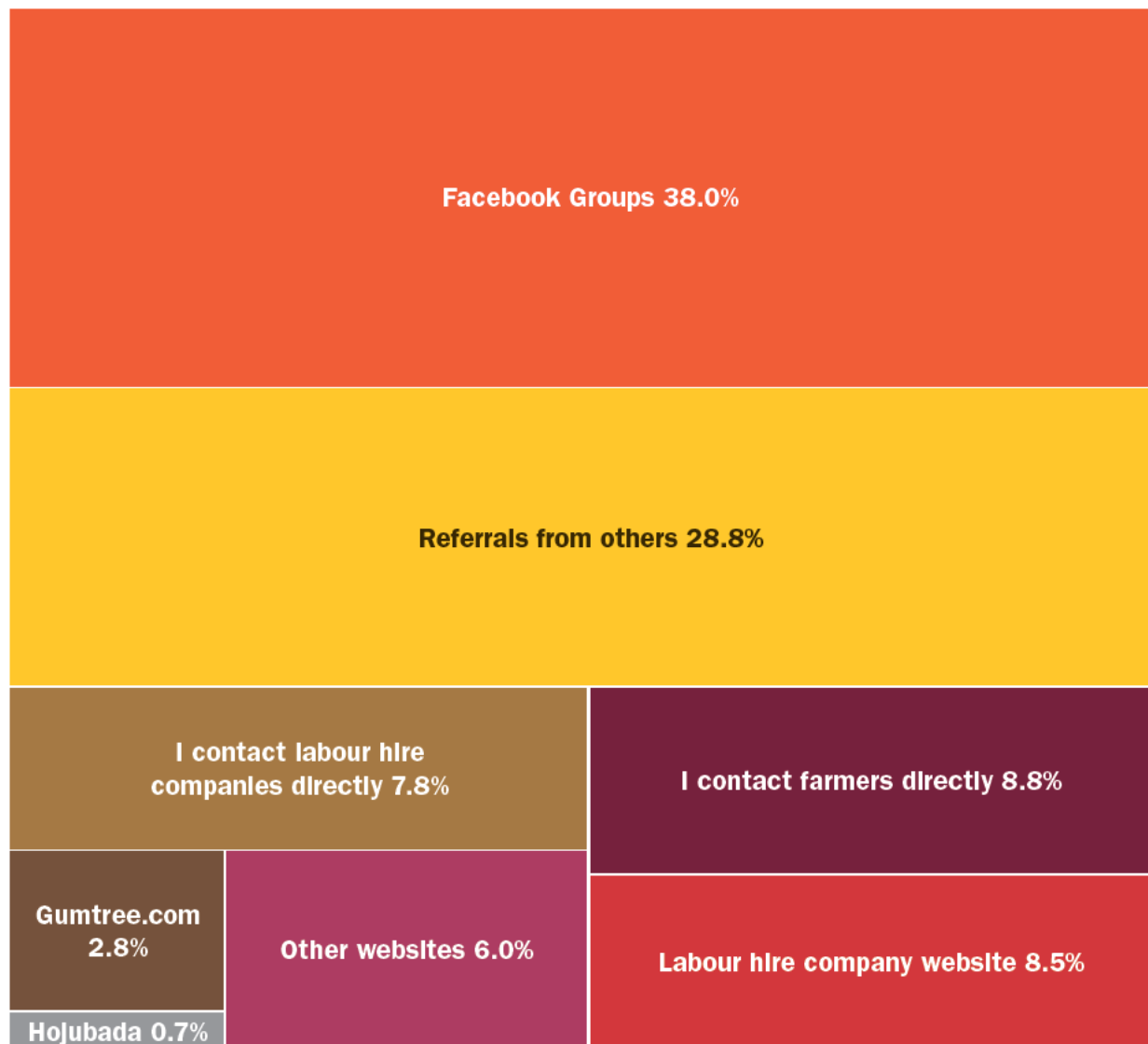
3. JOB SEARCHING AND WORKPLACE ISSUES IN THE HORTICULTURE INDUSTRY

The following section explores workplace relations in the horticulture sector. The participants provided details on how they found work, the state of workplace relations at their job, and the grievances arising from their work.

3.1 Which sources do you usually use to find jobs in the horticulture industry? (Multiple choices)

In this section, the survey participants were asked to provide information on the way they found jobs. In total, 719 respondents completed the survey questions. Up to 38% were using Facebook as their primary source to find work, 28.8% of job seekers found jobs through friends, 8.8% contacted farmers for jobs, 8.5% sought work through labour hire websites, 7.8% of job seekers contacted labour hire companies directly, and 6% used other websites to locate jobs. 2.8% of survey participants used Gumtree and 0.7% of users used Hojubada.

Chart 1: Which sources do you usually use to find jobs in the horticulture industry?



3.2 Other grievances

Grievances related to employment in the horticulture sector

The second part of the survey categorised grievances that occur at work. It asked participants to identify issues they had experienced, if any, when working in the horticulture industry. Grievances were divided into five groups.

The initial group of questions asked participants to identify whether they had experienced issues related to their wages and minimum entitlements, including having been paid less than they were owed, not being paid at all for a period of time, force to work very long hours, being paid in cash or not receiving payslips, not being paid penalty rates or casual loading, not being paid superannuation and the employer making illegal deductions from their payroll or asking them to provide an ABN. They were also asked if the employer borrowed their TFN for illegal purposes.

The second group of questions asked participants about employer breaches of work health and safety laws, including if the worker suffered an accident or injury at work and was forced to see the employer's own doctor, the employer failed to pay workers compensation cover, or the worker lost their job as a result of being injured.

The third set of questions explored issues regarding accommodation and transport, including if they worked only for accommodation and/or food, were forced to take accommodation provided by the employer, forced to pay for overcrowded accommodation provided by the employer or forced to pay transportation fees.

The fourth set of questions aimed to identify whether participants had been victims of discrimination, harassment, or bullying. Additionally, participants were asked whether they were threatened with not being given payslips or signatures for second or third-year visa applications, to be reported to immigration or deported or not have their passport returned.

The final group of questions inquired as to other common issues experienced by horticulture workers, such as, whether they had paid fees to a tourist company, hostel or similar to find a job or had lost their job because of reporting employer breaches of law.

Overall, of those participants who answered the questions, 49% reported problems related to accommodation and transport, 26% reported employer breaches related to work health and safety laws and 35% stated grievances related to discrimination and bullying.

450 participants responded to the question. 84 workers indicated they had been underpaid, 67 participants were not paid for some time, and 120 workers were forced to do overtime. 80 workers were paid in cash or never received payslips. Furthermore, 117 survey participants were not paid penalty rates or casual loading. 98 workers alleged the employers failed to pay superannuation. 30 workers stated that their employers made an unlawful deduction from their pay. 17 workers expressed concerns over the employers asking them to provide an ABN, and 8 workers alleged a tax scam where employers borrowed their TFN.

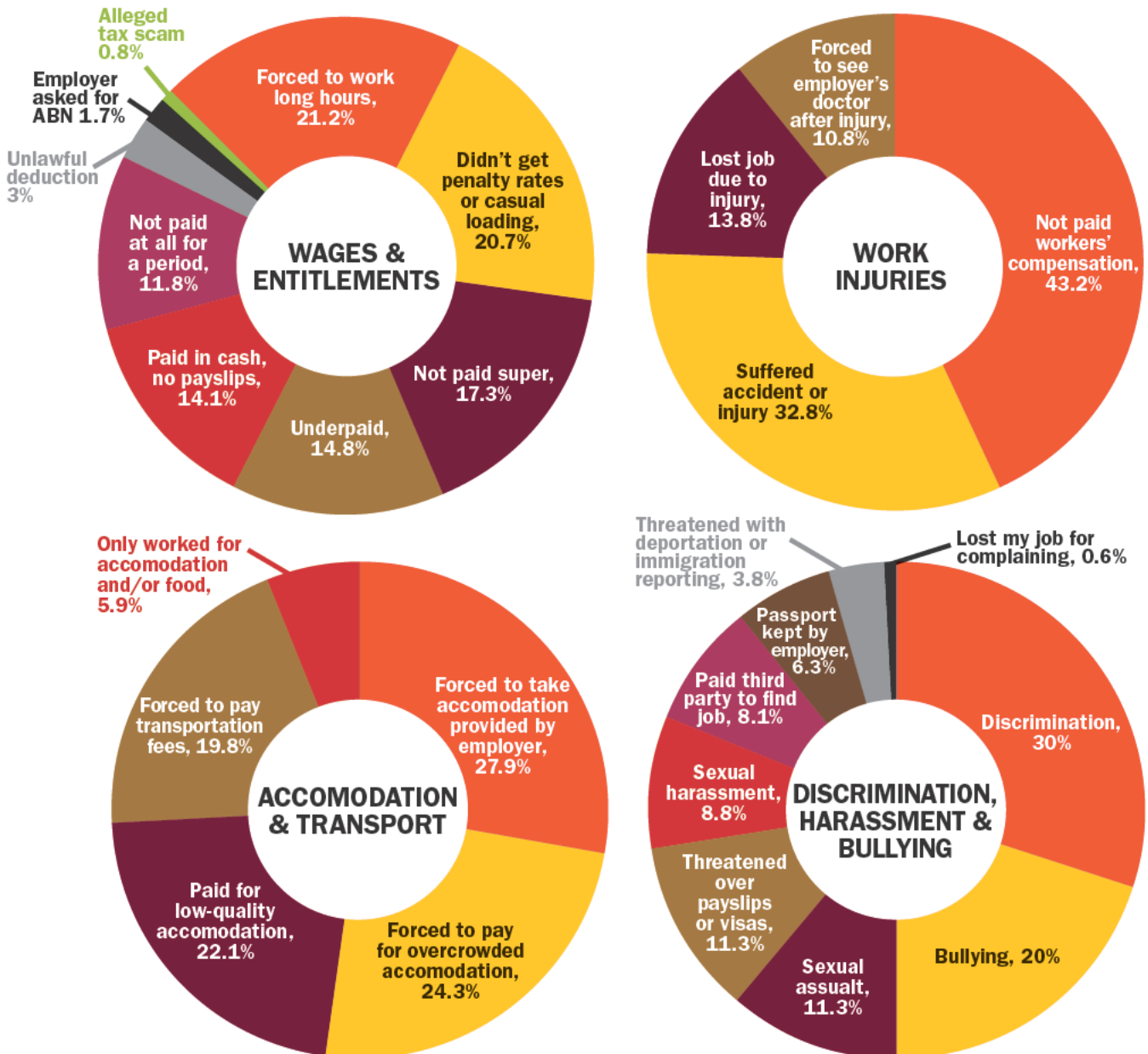
In total, 116 workers reported work injury-related grievances. 24 workers reported suffering a work-related injury. 5 workers acknowledged that once they suffered an injury, their employer forced them to see an employer-nominated doctor. 11 survey participants reported that employers failed to pay workers' compensation. 10 lost jobs because they were injured.

222 survey participants reported issues with accommodation and transport. 13 responded that

they had worked in return for only accommodation and food and no remuneration. 62 workers were forced to accept accommodation provided by their employers. Of these, 54 participants reported that the accommodation provided by their employers was overcrowded. 49 workers paid for reportedly low quality accommodation provided by their employers and 44 workers were made to pay transport fees.

160 survey respondents reported grievances related to discrimination, harassment and bullying. 48 workers experienced discrimination and 32 had been bullied in their workplace. 14 reported sexual harassment, and 18 respondents reported experiencing sexual assault at work. 18 respondents had employers who threatened a refusal to give payslips or sign off on documents supporting an extension to their visa. 6 workers' employers threatened to report them to immigration authorities for deportation. 10 workers alleged their employers had retained their passport. Furthermore, 13 respondents paid fees to a tourist company or hostel to find a job. One worker claimed they lost their job because they complained about discrimination at the workplace.

Chart 2: Grievances related to employment



CONCLUSION

This report confirms widespread exploitative wage conditions in the Australian horticulture industry. Piece rate arrangements are common in the sector. However, the current Horticulture Award provisions fail to provide proper protection against wage theft and abuse of piece rate arrangements. According to the survey, 78% of respondents were underpaid at some point when working in the horticulture industry. Survey respondents were more likely to experience wage theft when being paid a piece rate. 80% of participants were underpaid when getting paid a piece rate, while 61% were underpaid when earning an hourly rate.

Piece rate workers reported severe underpayment, in some instances earning less than \$1 an hour. 15% of piece rate workers indicated earnings of between \$0 to \$7 an hour, 29% earned \$8 to \$11 an hour, 19% earned \$12 to \$15 an hour and 16% earned \$16 to \$19 an hour. Only 11% were paid \$20 to \$23 an hour. Contrary to suggestions that the piece rates allow workers to earn above the minimum wage, only 2% reported earning \$26 or more an hour.

A significant number of workers in the horticulture industry have not only experienced wage theft but have been exposed to other insecure and unsafe working conditions that intensify the precariousness of their employment. 71% of survey participants were employed as casual employees. 63% of respondents were never given a choice between piece rate or hourly rate. 34% stated that they never signed a piece rate agreement. In addition, workers' daily working hours under piece rates is unpredictable, and this variability of work hours contributes to income instability. 12% of respondents worked 20 hours a day at least once, and 25% of respondents at least once only worked an hour a day. The daily rate converted to an hourly rate shows significant wage exploitation. 89% of workers across 26 different crops had hourly pay rates below the legal minimum under the Horticulture Award. The lowest daily wages were reported by piece rate workers employed on grape and zucchini farms, earning an average \$9 per day, followed by blueberry farm workers \$10 per day, melons \$18 per day, watermelons \$21 per day, tomatoes \$23 per day, and strawberries \$24 per day.

Due to widespread abuse of piece rate arrangements, the Fair Work Commission should amend Clause 15.2(i) of the Horticulture Award 2020 to guarantee that all workers in the horticulture sector are paid at least the applicable minimum wage. The Commission should also remove Clause 15.2 (e) so workers retain entitlements to minimum hours of work, meal allowance and overtime. The federal government should criminalise wage theft to ensure all workers are well-protected, can exercise their workplace rights, and are free from workplace discrimination. This will prevent gaming of piece rates arrangements where employers attempt to circumvent minimum worker entitlements.

This report also confirms the widespread exploitative working conditions among the temporary migrants in the Australian horticulture industry. However, the layers of dependence on sponsoring employers are the main factor contributing to the vulnerability of the temporary visa workers to breaches of their workplace rights. Of those who answered, 22% reported problems related to accommodation and transport, 16% had grievances related to discrimination and bullying, 13% indicated that their employer failed to provide access to worker's compensation and 8% reported having suffered a workplace injury.

The Australian government ought to reframe the current temporary visa scheme model under which visa holders are significantly dependent on other parties. This would allow visa holders to exercise their workplace rights and fight against discrimination and exploitation. A sustainable temporary visa scheme should be introduced which provides a permanent residency pathway and prevents visa-holders from being exposed to visa status vulnerability.

Finally, the Australian government should fund trade unions and community legal centres to deliver workplace rights information sessions in regional areas. Migrant workers hubs should be established, allowing migrant workers to seek assistance or enquire about any workplace exploitation they experience, and enabling them to access the national justice system. Furthermore, an enforcement program should be introduced for backpackers' accommodation to combat non-compliance with state and local government laws.

ENDNOTES

- 1 <https://www.agriculture.gov.au/abares/research-topics/labour>
- 2 Australia. Parliament. Senate. Education and Employment References Committee. (2016). A national disgrace: the exploitation of temporary work visa holders. Senate Education and Employment References Committee. https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report
- 3 Howe, J. M., Reilly, A., Wright, C. F., van den Broek, D., & Clibborn, S. (2019). A Critical Examination of the Relationship between Labour Hire Intermediaries and Growers in the Australian Horticulture Industry. *Australian Journal of Labour Law*, 32, 83-102; Reilly, A. P., & Howe, J. (2019). Australia's Future Horticultural Workforce: Assessing the Agricultural Visa Concept. *Journal of Political Economy*, 84, 89-115; Underhill, E., Groutsis, D., van den Broek, D., & Rimmer, M. (2018). Migration intermediaries and codes of conduct: Temporary migrant workers in Australian horticulture. *Journal of Business Ethics*, 153(3), 675-689; Underhill, E., Huang, S., Yi, S., & Rimmer, M. (2019). Using social media to improve temporary migrant workers' access to information about their employment rights. *The Journal of Australian Political Economy*, (84), 147-174; Tham, J. C., Campbell, I., & Boese, M. (2016). Why is Labour Protection for Temporary Migrant Workers So Fraught? A Perspective from Australia. *A Perspective from Australia* (December 26, 2016); Joanna Howe and Rosemary Owens (ed), *Temporary Labour Migration in the Global Era: Regulatory Challenges* (Hart Publishing, 2016).
- 4 Howe, J., Clibborn, S., Reilly, A., Van Den Broek, D., Wright, C. (2019). Towards a durable future: Tackling labour challenges in the Australian horticulture industry, (pp. 1 - 133). Adelaide, Australia: University of Adelaide
- 5 Joo-Cheong Tham (2016) Australia. Parliament. Senate. Education and Employment References Committee. A national disgrace: the exploitation of temporary work visa holders. Senate Education and Employment References Committee.
- 6 Tom and Mia's legacy (88 days and counting), <https://www.88daysandcounting.com/>
 HK-WHY <https://www.facebook.com/hkwhy>
 KO-WHY <https://www.facebook.com/koreanwhy>
 T-WHY <https://www.facebook.com/taiwanesewhy>
<https://www.ag.gov.au/industrial-relations/publications/report-migrant-workers-taskforce>
<https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/annual-reports>



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