

Chapter 4

Practicalities of a seasonal contract labour scheme

We have observed that, when things change, they tend to change very rapidly and, if you do not have a second option or an emergency plan, you can be left flat-footed.¹

4.1 It was not apparent to the committee that proponents of a seasonal labour scheme using foreign workers had done much hard thinking on the practicalities of such a scheme. There were casual references to using labour hire contractors to undertake all the necessary arrangements, and an assumption that they would put in an order for labour which would arrive just when the harvest was ready.

4.2 Such casual assumptions can be juxtaposed with commentary from the Department of Immigration and Multicultural Affairs (DIMA) and the Department of Employment and Workplace Relations (DEWR) which stressed, though in no particular detail, the administrative and compliance problems that such a scheme would present. The committee is confident that if these agencies were required to run such a scheme they would quickly address these problems and overcome them. Growers indicated enthusiasm for a trial program, and a number nominated their own districts as 'ideal' locations for such a trial. But there was little in the way of advice or suggestion on how an institutionalised foreign labour contact scheme would work. Government departments were understandably reluctant to give hypothetical consideration to practical details on the record. The committee is of the view that if such a scheme were to be organised it would place more demanding conditions on growers than they might now anticipate, and require of government agencies a more direct regulatory function than now exists for any of their employment programs.

4.3 In this chapter the committee states some principles which should underpin a seasonal contract labour scheme, and reports on some administrative and practical matters which were raised during the inquiry.

4.4 A number of issues arise:

- the level of formal agreement that would be required with Pacific nation governments;
- the level and extent of government regulation that would need to be imposed, from where this authority should emanate, and how regulations and guidelines in relation to the labour scheme would be agreed on;

1 Mr James O'Connor, CEO Worktrainers Ltd, *Committee Hansard*, Shepparton, 24 March, 2006, p.15

- how the processes of recruitment, contracting and applications for labour and related matters would be managed;
- how pay and working conditions would be determined;
- how transport and accommodation would be arranged, and who will pay for this; and
- how responsibility for the welfare of workers, including their social needs and their links with local communities, would be shared.

Serving national and regional interests

4.5 The committee's view on the management of a Pacific island contract labour scheme rests on the premise that the national interest, in regard to labour supply security, and the social and economic interests of south Pacific nations are complementary. At stake is the protection of investment in the horticultural industry and the assurance of its capacity to service its markets. Also at stake is the economic future and social stability of Pacific island states. As stated in the previous chapter, harvest labour sourced from the Pacific would be as much a matter of foreign policy as labour market policy. For Pacific states it is likely that the management of a labour contract program would require a higher level of formality than a normal commercial labour contract arrangement. Although the committee was not able to explore such matters with Pacific island governments, it is more than likely that they would want to be consulted on the management plan for the scheme.

4.6 It would appear desirable to follow the Canadian model for seasonal labour contracting which is done on the basis of agreements between governments. As stakeholders, Pacific nations would be concerned for the welfare of their citizens and the return to their countries of remittance revenue. They would have close involvement in the movement of their citizens to Australia and in ensuring their return home.

4.7 It is likely that any contract labour scheme would require regulations and guidelines agreed to following consultation between governments and other interested parties. The committee would not envisage any one labour hire organisation being given a monopoly on administering recruitment and supply of labour. It may be more appropriate that management would be tendered for on the basis of appointing agencies which would specialise in providing for a particular industry niche or for a particular region. Individual agencies would need to liaise closely with local growers on such matters as training and continuity of engagement so as to achieve efficiencies. Nonetheless, the tasks of recruitment and allocation of labour would need to be carried out according to agreed guidelines and be subject to supervision by an agency within DEWR.

4.8 While the numbers of workers required initially may not be large, it would be expedient to ensure that all South Pacific Forum nations were involved in an agreement if that was their wish, and that they should have the opportunity to

participate in proportion to their population, subject to negotiation over 'special case' considerations. It has been suggested that demand for jobs would be likely to exceed the capability of growers to manage them, and so an agreement would need to be negotiated about quotas of workers from each country.²

Regulation of a seasonal labour scheme

4.9 The committee takes the view that the social, economic and foreign relations dimensions to a Pacific Island seasonal labour scheme necessitate a higher level of regulation and supervision than that imposed, for instance, on the Job Network agencies. There will be community expectations for such arrangements in view of continuing concerns about employment prospects for unskilled Australian workers in the horticulture industry. There will be continued concerns that current assurances by employers that Pacific Island labour is not to be seen as a cheap source of labour may be disproved over time. This would be more likely to occur if the success of the scheme resulted in further investment and increased demand for labour.

Recruitment and labour management

4.10 The committee believes that the success of any Pacific contract labour scheme will depend as much on the capability of labour management firms as on the quality and capability of the workforce.

4.11 This is a matter of crucial importance, given recent experiences of holders of 457 visas and their relationships with their employers. In any trial of this scheme there would be advantage in seeing its application to large-scale producers, mainly because of their more demanding and longer term labour requirements, and their capacity to meet training and accommodation requirements. Such large scale horticultural operations would be able to guarantee an extended period of work, and would have the management resources and work variety to make training efforts worthwhile. It is likely that foreign workers, operating as fairly large workgroups, would be less flexible in their mobility and their capacity to be split into smaller groups, than would local and backpacker workers who are usually hired and contracted independently. The committee suggests that any trial program would most usefully begin with large producers because the benefits are more likely to be realised by both growers and workers. This view is representative of the advice given by horticultural specialist in labour supply in the Goulburn Valley, who told the committee:

We have found the best people to do business with are those who have invested the most money, because they take a business approach to their labour requirements. They realise that labour is a valuable part of it and needs to be nourished and looked after, as distinct from some of the older style orchardists, who think labour is just something that turns up magically

² Dr Satis Chand, *Labour mobility for sustainable livelihood in Pacific island states*, November 2004, p.15

in the harvest season and you do not have to worry too much because there is plenty more where they came from.³

4.12 An important concern will be to ensure that recruitment is based on work fitness and aptitude, rather than 'irregular' and 'extraneous' influences that in so many cases bear on recruitment processes, and which will quickly lead to an acceptance of corrupt practices. During its inquiry, the committee has heard casual references to ready sources of available labour in Asian countries which would be 'ideal' for working in particular areas of cultivation. The committee is concerned that regulations need to be instituted which would eliminate the possibility of third and fourth parties to recruitment siphoning off fees or commissions which would add to costs and impose financial obligations on work applicants.

4.13 Recruitment and contracting must be transparent processes, even though they may be guided by the legitimate policy considerations of Pacific island governments. This would allow the targeting of particular categories of people to meet social and economic needs of the source nation, provided that the criteria of fitness and aptitude are met. The committee is concerned that under current *ad hoc* arrangements which operate for 457 visa holders working in so-called semi-skilled jobs in abattoirs, working and living conditions are unregulated. A consequence is that contractor margins may result in the exploitation of workers, and there is little or no social benefit flowing from such arrangements.

4.14 In a harvest labour scheme, contract arrangements would need to be subject to regulatory guidelines, while maintaining the flexibility that is required to suit the diversity of the horticulture labour market. Growers have greatly differing needs. For instance, designated job agencies might recruit workers to the specifications of large operators with dedicated human resource management structures, and hand the responsibility of employment over to those firms which believe they can offer their workers better deals under direct employment. Alternatively, a job agency may take full responsibility for employment formalities, including pay, and charge growers accordingly. Regardless of the contractual arrangements, the wages and conditions of workers would need to be closely supervised by the regulatory agency within DEWR.

Pay and working conditions

4.15 All the evidence presented to the committee from proponents of a contract labour scheme suggests that assurance of a timely labour supply was of paramount importance. Growers repeatedly assured the committee that they were prepared to pay current award rates to anyone who turns up for work and they pay higher wages by way of piece rates. The question of pay increases to attract pickers was regarded as problematic. Doubt was expressed that more pay would attract more pickers. Some growers said that they could not afford it.

³ Mr James O'Connor, *Committee Hansard*, Shepparton, 24 March 2006, p.17

4.16 The committee accepts these assurances are representative of grower attitudes. It notes, however, that a small proportion of growers, presumably those in marginal operations, exploit illegal labour. Such exploitation probably occurs in horticulture to a lesser extent than in abattoirs and in hotels, cafes and restaurants.

4.17 However, the committee notes that the relevant award rate of pay is very low. As discussed in chapter 2, only a relatively small number of highly experienced picker in the current workforce are able to make \$1000 a week or more for a ten hour day, six day week, from horticultural work. Pay rates ought to be commensurate with wages paid in comparable industries. There should be an unequivocal agreement that a Pacific contract labour arrangement will never become a 'cheap labour' option for growers, and that it will be regulated to ensure that whatever local labour is available will be soaked up by the industry.

4.18 The committee notes that recent cases involving foreign workers admitted under 457 visas have highlighted the need for regulatory vigilance in the matter of wages. Deals done by some employers with some labour hire contractors are always likely to contain provisions which deprive workers of their full entitlements. It is for this reason that the committee sees the need for much more stringent supervision of contractors and employers.

4.19 The committee notes that on the basis of informal conversations with growers and proprietors that some proponents of a foreign harvest worker scheme anticipate being able to pay much lower than current wage rates. In the Sunraysia district a number of members held informal discussions with grower organisations associated with large investment companies having links with labour contractors in China. There is strong advocacy of the use of Chinese labour in some areas, and the committee is aware of the potential for labour hire companies in that country to introduce workers who are paid far below minimum rates, and who in other respects as well, would be the victims of exploitation. These potential problems would be well understood by DIMA. It is for this reason that the committee believes that should a harvest labour scheme be seriously considered it should be restricted to South Pacific Forum nations and be conducted with high levels of formality and regulation.

Visa compliance

4.20 The committee notes the information provided by DIMA on the high overstay rate for Pacific nation passport holders. The committee presumes that this information is intended to indicate the likelihood that Pacific workers on any future seasonal work scheme would be at risk of absconding when their contracts had finished. That takes no account of any new visa entry formalities that DIMA has the power to enforce, and work supervision arrangements which would be included in the contracts to be administered. Violations of visa conditions are far less likely to occur if the sanction exists of a forfeiture of future work entitlements.

4.21 To begin with, workers from Pacific states could be contracted for specific work in a particular district by a responsible agency. The recruitment process should

ensure a large measure of compliance with the work visa – through preference given to those with dependent families at home, for instance – and through group supervision processes on the job. Pacific island workers should preferably arrive in teams or distinct work groups. It would always be possible for a determined contract worker to abscond at any time during the contract period, but the desertion rate would, in the committee's view, be minimal.

4.22 As discussed previously, however, the strongest reason for visa compliance is economic. A small proportion of wages should be held in trust and available only on return home. A major advantage of such a scheme would be to encourage regular return of workers to farms and the accumulation of experience in a range of horticultural skills. It would be in the financial interest of Pacific workers to return regularly. The practicality of such an arrangement, and the anticipated high compliance with visa conditions, has been borne out by experience in Canada. No reason has been advanced as to why this should not also apply in Australia.

Accommodation

4.23 The committee was particularly interested in the standard of accommodation for current harvest workers, mainly as a pointer to what would be needed for a harvest labour scheme. It noted that in the more remote areas in the Northern Territory some growers and producers provided accommodation on site. The standard of accommodation is probably adequate, in most cases, for the young backpackers on the harvest trail whose expectations of comfort are likely to be lower than workers who are not on a holiday adventure. It is to be noted that on-site accommodation is usually offered at either very nominal cost, or no cost. Hotels with cheap accommodation annexes and backpacker hostels may offer slightly higher standards, but at a price.

4.24 Growers in south eastern Australia do not generally assist with accommodation, except perhaps with advice. There has been no need for them to do so as long as they rely on the current mix of labour which sees a high preponderance of young backpackers living in cheap local accommodation. The committee observed that some larger growers in the Goulburn Valley and in some other areas provide caravan sites for 'grey nomads'. The advent of a dedicated seasonal workforce from the Pacific islands will require an investment in worker accommodation hitherto considered unnecessary, which large-scale producers would be best able to afford.

4.25 The committee found general acceptance from witnesses before them of the need to provide worker accommodation even though it appeared in many cases that this had not previously occurred to them. Some indicated that labour costs were already very high and were unprepared to concede that assured labour would come at a cost over and above that of wages which are currently paid. As indicated already, the committee believes that a Pacific contract labour scheme is more suited to the needs and capacities of large enterprises rather than small growers. It agrees with the view expressed by a labour hire contractor in Shepparton who told the committee:

...it [is] essential in the early stages of the pilot to work with a smaller number of larger growers so it is better controlled and then being able to

move from there. Our records show that probably better than 80 per cent of the people we place are with about 20 per cent of the growers—in volume, I mean, the number of growers. It would not be very difficult to put a reasonable number of people in there and have it well managed, well controlled and the welfare and all those sorts of things looked after. Basically that takes the pressure off the rest because the numbers are available for them. It would work very well.⁴

4.26 The committee agrees that the advantage of the scheme for small growers is the overall growth of the labour supply, and easier access to current labour sources.

4.27 The committee does not have in mind any particular specifications for appropriate accommodation. There are, presumably, standards which already apply for workers living away from home at mining and construction sites in remote locations. Such standards should also apply to accommodation for foreign workers. The standards for accommodation should be specified in the Pacific labour scheme guidelines, and they should be applicable in all areas. Growers and producers employing workers under the scheme should be obliged to contribute to establishment and maintenance cost of accommodation where this is subject to shared cost arrangements. The committee notes that housing is currently a state responsibility. States may see it as in their interest to contribute to investment in worker accommodation through their regional assistance programs. Local governments may also see themselves as stakeholders. The management of accommodation by local community organisations is another possibility.

4.28 The committee notes that the proposal to upgrade the standards of accommodation for foreign workers may raise the question of why such facilities should not also be an entitlement for local itinerant harvest workers. This is a fair question. It raises the issue of whether by improving the working conditions for local and itinerant workers the labour shortage problem may be at least partly relieved. The provision of decent accommodation for foreign workers would soon test the demand by domestic harvest labour for more jobs in the industry.

Transport, insurance and other matters

4.29 The airfare costs for workers from Pacific islands to Australia may initially be paid by contracting organisations, but they may be recouped in part by the contractors, as could the land component of transport from the port of entry to the work centre.

4.30 The committee also raises the possibility of improving mobility through the use of charter flights direct to regions where this is technically feasible and cost effective. Bundaberg and Mildura would appear to be two places where these arrangements might be possible. However, the committee is aware of the additional costs that would result from the need to provide immigration and quarantine services at these airports, and the advantages of this would need to be assessed.

⁴ Mr Anthony Peardon, *Committee Hansard*, Shepparton, 24 March 2006, p.7

4.31 Quarantine deserved particular consideration in view of the work involved. The committee expects that the carriage of work clothing and tools in and out of the country by regularly returning harvest workers would be prohibited. It would be necessary for growers to supply and store these items, either on their own properties or through some co-operative arrangements.

4.32 There appears to be an efficient local minibus service operating in several horticultural districts visited by the committee, usually operated by backpacker hostels. The committee has no particular view on how local transport should operate, except to note that private vehicle access for contract workers should not be encouraged, and that growers may need to organise a cooperative transport system on a shared cost basis.

4.33 Another issue which needs to be addressed concerns health care and medical insurance. The committee asked about the quality of health care and medical facilities in some of the regions it visited. There was no informed view of their adequacy. However, the committee presumes that recruitment of suitable harvest labour would largely take care of concerns about the physical condition of workers: their degree of fitness and general health. The vetting of job applicants should exclude those with pre-existing medical conditions that would require treatment in Australia. For those who are selected to work, medical insurance should be required, and included as an administrative cost. The issue of appropriate workers' compensation arrangements would need to be clarified, in consultation with state authorities.

Community relations

4.34 The committee was aware when framing its terms of reference of the importance of maintaining harmony and acceptance of Pacific workers in local communities. The community must regard such a scheme as a benefit rather than a threat. As discussed in an earlier chapter there are sensitivities about the use of foreign labour as part of the Australian workforce. Such matters are difficult to regulate, and, as one witness told the committee:

... [they] are a bit hard to put down as part of the commercial package. They really revolve around doing the right thing. I believe that, if it were to be done properly, the only people to have access to the labour would be people who were exemplars of best practice in all their facilities—accommodation, working conditions and those sorts of the things. I think it is politically of concern that we would bring in people from overseas and the worst thing would be to see them being exploited. It would be a tragedy to try to get something like this off the ground and then to see them just abandoned to some shabby accommodation and not brought into the community for the brief time they are here.⁵

⁵ Mr James O'Connor, *Committee Hansard*, Shepparton, 24 March 2006, p. 20

4.35 The committee had heard of incidences of community conflict in Robinvale, between Tongans and others, over housing shortages. There are close to 1000 Tongans living in the district and this number greatly increases at harvest times when relatives of locally settled Tongans move in assist with the additional work. An important social issue considered by the committee was the likely effect of an influx of Pacific islander workers into an area where resentment of outsiders might result, as a consequence of the depressed state of that community and the absence of adequate physical and social infrastructure.

4.36 In Robinvale, the committee was told that while racial groups were not the cause of social problems, it was reflected in the competition for space and the tensions over missing out on opportunities. These tensions arise from 'a sense that "they" are taking our jobs and our space and that we cannot get room or accommodation and have waited forever for housing'.⁶ Friction between the Koori and islander communities was also reported. The committee is concerned about perceptions of favoured treatment to foreign contracted labour at the expense of the unemployed, even though it readily acknowledges that fruit picking and related horticultural work is unattractive to the vast majority of the unemployed, for various reasons, and to most indigenous people. The committee was not able to find evidence of any success in attracting able-bodied unemployed people to the work of harvest labour, apart from those who worked odd days to comply with the conditions of job-seeking.

4.37 The committee considers that the influx of foreign workers is much more likely to have unfortunate social consequences in small and vulnerable communities rather than in larger towns and provincial centres. Such problems are unlikely to be encountered in and around centres like Shepparton, Mildura, Bundaberg or Griffith. The committee found no evidence in horticultural districts of perceptions of favoured treatment given to foreign workers, and local government authorities regarded them favourably. The committee notes authoritative evidence taken from the experience of rural communities in Ontario of harmony and prosperity prevailing in rural areas of Canada as a consequence of the success of its Caribbean and Mexican agricultural workforce arrangements.

Conclusion

4.38 Recent experience of importing labour for work in abattoirs and construction sites by way of 457 visas provides a salutary lesson in the pitfalls of organising a seasonal harvest labour scheme using labour from the Pacific. While there is no Hansard record of any grower advocating such a scheme on the basis of reducing labour costs, the committee gained a general impression that this was in many cases the unspoken assumption. Such growers are deluded. Good outcomes for both the industry and the workers will not come cheaply because regulatory compliance measures, transport and accommodation costs and administrative costs will be considerable. Some of these costs can be recouped, but the committee considers it

⁶ Rev Evan Harris, *Committee Hansard*, Robinvale, 23 March 2006, p. 42

unlikely that growers have given the costs of overcoming labour shortages much detailed consideration. If, on the other hand, growers truly value a skilled, reliable and available labour force for its potential to increase the value of production, as they claim to do, these additional costs may be easily borne.