



Retail Supply Chain Alliance

Submission to Pacific Labour
Mobility Consultation

16 July 2021

The Retail Supply Chain Alliance welcomes the opportunity to contribute to the Department of Foreign Affairs and Trade’s consultation process on the Seasonal Worker Programme and the Pacific Labour Scheme.

The Retail Supply Chain Alliance (the ‘Alliance’) represents and advocates for the rights of workers across the horticulture supply chain in Australia.

The Alliance is a coalition of trade unions that represent workers in each facet of the horticulture supply chain.

The Transport Workers’ Union (TWU), the Australian Workers’ Union (AWU), and the Shop Distributive and Allied Employees Union (SDA) are worker representatives who have formed the Retail Supply Chain Alliance, which together have coverage across the full spectrum of the horticulture industry supply chain.

The Alliance was formed in 2019 in an attempt to advance the cause for workers’ rights and end the systemic exploitation across the horticulture supply chain in Australia.

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Recommendations

RECOMMENDATION 1: The **PLS and SWP, as currently formulated, should form the minimum standard of Australia’s temporary migration program for workers on Australian farms.** Indeed, the most effective way to make more labour available through the schemes would be to expand their reach to more of our Pacific neighbours.

RECOMMENDATION 2: The **Federal Government should abandon its plans for an ASEAN Agriculture Visa,** as it runs a serious risk of eroding conditions for Pacific workers and undermining the domestic and foreign policy benefits of the PLS and SWP. At a minimum, any new visa should have the same protections available under the PLS and SWP.

RECOMMENDATION 3: The Alliance recommends the following measures to address the risk of exploitation of Pacific workers:

- Maintain the current high standards for approved employer status and not outsource this requirement to external programs, such as Fair Farms
- Improve current departmental auditing that includes assessment of non-wage related compensation, including accommodation, transport, and other fees.
- include within the audit process a stakeholder engagement outreach with workers and not just firms.
- provide greater access for unions to conduct audits and checks on site (including in accommodation facilities, which are not currently covered by right of entry laws).
- establish greater enforcement and auditing of PLS and SWP firms, as a condition of maintaining ‘approved employer’ status.
- allow for predeparture information and an induction process for unions and civil society groups.
- formalise the induction process with unions, employers and civil society report backs and departmental oversight.
- ensure that auditing of the scheme is done by the responsible government department and not outsourced to external providers.

RECOMMENDATION 4: Any changes made to increase flexibility in the PLS and SWP must not undermine their core protections: employer approval, access to unions and pastoral care, and provision of information about industrial rights.

RECOMMENDATION 5: Any expansion of approved industries should only cover those with genuine labour shortages verified with labour market testing.

RECOMMENDATION 6: The Federal Government should establish a national labour hire licencing scheme with strict compliance measures. Accommodation providers that serve a labour hire role should also require licencing under this scheme.

RECOMMENDATION 7: The Federal Government should establish a ‘whistleblowing’ service that allows horticulture workers to anonymously report breaches of employment standards. This service should be advertised prominently on the Pacific Labour Mobility website and on the Fair Work Ombudsman website.

RECOMMENDATION 8: Local governments in horticulture regions should be required to set up stakeholder meetings twice a year with unions, growers, pastoral care providers, community groups and relevant State and Federal Government agencies. The Federal Government should engage with local governments in horticulture regions to understand local context and actively investigate early signs of worker exploitation.

RECOMMENDATION 9: The Federal Government should place a strong focus on compliance and enforcement of workers’ rights under the PLS and SWP by:

- a. Increasing the funding of the Fair Work Ombudsman by \$15 million, with new funding dedicated to increased compliance and enforcement activity.
- b. Providing for strong and enforceable audits undertaken by unions or under rigorous third-party schemes that are supported by all industry stakeholders.
- c. Establish criminal offences for wage theft to show that workplace exploitation is taken seriously.

1 Exploitation is the norm in the horticulture sector

Over the last decade Australia's horticulture industry has arguably become the most exploitative in the country. At the same time, it has become the most reliant sector on overseas migrant workers, and incidentally an international chronicle for obscene and inhumane workplace abuse and acts of modern slavery.

The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) found that the average horticulture farm employs 40-50 per cent of its workforce from the local permanent resident market. This means that a worker in the horticulture industry is most likely to be on an overseas visa, or their work status is unknown. As a comparison to other regional industries, wheat or dairy farms typically comprise 90 per cent of permanent residents. This leaves horticulture uniquely dependent on migrant workers, which the FWO identify as causative of worker exploitation.

The extent of exploitation in the horticulture industry is undeniable, uncovered empirically by countless parliamentary inquiries, government taskforce reports, and media reporting.

- Unions NSW research released in 2021 found that almost all growers who use piece rates pay below the national minimum wage of \$19.84, and substantially below the minimum hourly rate specified in the Award of \$24.80.¹
- In its Harvest Trail Inquiry, the FWO found that 67% of all growers surveyed were employing overseas workers. Further, it reported that temporary visa holders are more vulnerable to exploitation due to a higher incidence of cultural and language barriers, low awareness of workplace rights and barriers to accessing assistance. It also recognises that the anchoring of visa status to employment means that workers can be made to feel 'captive' to their employer.

¹ Most recently, Unions NSW, "Wage Theft, The Shadow Market. Part Two: The Horticultural Industry," March 2021, <https://www.unionsnsw.org.au/wp-content/uploads/2021/03/Wage-Theives-Horticulture-Report-online.pdf>; Fair Work Ombudsman, "Harvest Trail Inquiry," 2018.

- The final report of the Federal Government’s Migrant Worker Taskforce also noted the inextricable link between the increasing number of temporary visa holders and the systemic spread of underpayment and risk of exploitation.

Despite research and reporting that cannot be ignored, exploitation in the sector continues to go unanswered, with the obvious policy responses being ignored and side-lined year-on-year as more evidence is revealed and exploitation worsens. In fact, governments appear to have moved in the opposite direction, seeking further opportunities to increase precarious migrant labour supply in the sector.

Several factors beyond reliance on overseas workers contribute to exploitation in the sector:

- Australia’s horticulture industry sources 37-56% of its labour from labour hire firms, depending on the specific type of produce. This compares to 3 to 12% in other agriculture industries such as in cotton, broadacre and dairy. Whilst the use of labour hire contracting is not itself a means for exploitation, a significant dependency on it can obfuscate the recruitment process, disaggregate the employee-employer relationship and increase the risk for exploitation. In addition, when several contract labour firms are used to service a single farm or operating entity, supply-chain complexity can nurture a culture of non-compliance.
- Failure to comply with legal obligations in relation to pay and conditions are common in the sector. In its Harvest Trail Inquiry, the FWO investigated 638 employers, equating to 4 per cent of all employers in the horticulture industry. It was found that more than 55% of employers investigated had failed to comply with Australian workplace laws (including both monetary and non-monetary breaches).

Unlike other industries, the horticulture industry demands high-volumes of work in acute time frames, compensates on piecework, is regionally located and has a high-degree of non-monetary compensation associated with employment.

Over time, bad policy planning has meant that the industry has become structurally dependent on a migrant labour workforce, controlled by systemic and complex labour hire contract arrangements, and undetectable by workplace standard compliance and enforcement agencies.

Nefarious employment practices have become so commonplace that any employer attempting to be compliant becomes uncompetitive in the marketplace. Exploitation and illegality are now a focal cost-setting function of the horticulture industry.

2 The PLS and SWP, and their core protections, play an important role in Australia's foreign policy

The Pacific Labour Scheme (PLS), administered by DFAT, and the Seasonal Worker Programme (SWP), administered by the Department of Education, Skills, and Employment, seek to assist employers in the agriculture and accommodation sectors to fill employment gaps unable to be met by the Australian workforce. In particular, they provide workers in Pacific Island countries and Timor-Leste with the opportunity to come to Australia to upskill and earn money, operating as an economic development initiative and aid to neighbouring countries.

By most measures, the SWP and PLS have been successful. Since July 2012, over 28,000 visas have been granted to seasonal workers under the Pacific programs, including more than 12,000 workers in 2018-19 prior to the pandemic. Although the pandemic reduced the intake of Pacific workers, visa changes combined with impacts of border closures on other sources of labour have meant that the overall number of Pacific workers has held up relatively well in 2020 – with around 8,000 workers remaining in the country.

Drawing on Pacific workers during labour shortages has worked well for both workers and farmers. Workers under the SWP and PLS stay up to six times longer at a farm than backpackers, and are around 20 per cent more productive.²

² *What difference does labour choice make to farm productivity and profitability in the Australian horticulture industry?* (2018) ABARES.

The SWP and PLS are an important part of Australia’s foreign policy settings and acknowledge the deep relationship between Australia and its Pacific neighbours. And the schemes play a crucial development role in the region: When Australia invites just an additional 1 per cent of the Pacific population to our shores to work, these countries gain as much as \$2 billion USD in collective GDP – well in excess of Australia’s aid commitments in the region.³ But beyond mere economic benefits, these programs facilitate person-to-person links when workers are able to get actively involved in their community.⁴

Given the multifaceted importance of this scheme, it is critical that workers under this scheme are protected from exploitation and that the scheme operates with total integrity.

In acknowledgement of this, the SWP was developed with greater safeguards than other sources of temporary migrant labour:

- Employers have to be approved in advance.
- Employers are subject to site visits and audits.
- Employers have to provide an induction for workers and invite the FWO and unions.
- Employers can be suspended from the SWP for non-compliance.
- Employers are responsible for arranging pastoral care and accommodation.
- Employers are subject to monitoring by the FWO.⁵

The Alliance believes that these protections should form the basic standard of Australia’s temporary migration program. If concerns are raised about a continuing shortage of labour, then the first port of call should be expanding these programs.

³ *The development benefits of expanding Pacific access to Australia’s labour market* (2016) Lowy Institute. <https://www.lowyinstitute.org/publications/development-benefits-expanding-pacific-access-australias-labour-market>

⁴ *The Seasonal Worker Programme: a personal story* (2017) Lowy Institute. <https://devpolicy.org/the-seasonal-worker-programme-a-personal-story-20171201/>

⁵ <https://www.sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>

RECOMMENDATION 1: The **PLS and SWP, as currently formulated, should form the minimum standard of Australia’s temporary migration program for workers on Australian farms.** Indeed, the most effective way to make more labour available through the schemes would be to expand their reach to more of our Pacific neighbours.

2.1 The new ASEAN agriculture visa risks undermining our Pacific relationships

Regrettably, a new ASEAN agriculture visa was recently announced that seeks to undermine these protections. The new visa appears to be the result of changes to the UK-Australia Free Trade Agreement which remove the requirement for 88 days of regional work from Working Holiday Maker visas. While the RSCA welcomes the removal of this requirement, growers have lobbied for a ‘substitute’ form of cheap, exploitable labour – the role that the ASEAN visa appears to be taking. Indeed, the Agriculture Minister stated in an appearance on ABC Radio National on June 16 that the new ASEAN visa was explicitly designed to have fewer conditions and protections than these existing programs. The Alliance is deeply concerned that ASEAN workers coming into the country under the Government’s new arrangement will erode the conditions offered to workers from our Pacific neighbours, with consequences for our strategic relationships – even though the Government claims that Pacific labour mobility is the ‘centrepiece’ of Australia’s ‘Pacific step-up’. Maintaining the integrity of the Pacific labour mobility program requires that no new visas are introduced which undercut the core protections for PLS and SWP workers.

RECOMMENDATION 2: The Federal Government should abandon its plans for an ASEAN Agriculture Visa, as it runs a serious risk of eroding conditions for Pacific workers and undermining the benefits of the PLS and SWP. At a minimum, any new visa should have the same protections available under the PLS and SWP.

3 Exploitation remains a problem for PLS and SWP workers

Claims have arisen by employers, indicated during this consultation process, that the program is under-utilised because the process is too cumbersome and potentially costly. A less generous interpretation might be that employers prefer to use schemes with less oversight of unscrupulous behaviour. Comparatively, when employing WHM visa holders, employers can deploy their own accommodation arrangements, avoid potential administration costs and generally comply with a lower level of workplace compliance and stakeholder management.

Still, the SWP contains inherent shortcomings that expose workers to exploitation just the same as if they were employed by another scheme.

Firstly, there have been many cases of exploitation found by workers under the SWP. The FWO found that of the 420 growers not complying with workplace laws, 29 had employed workers under the SWP. This suggests that despite the involvement of the employment arrangement at conception, there is limited continual oversight and enforcement of labour standards and program requirements.

Secondly, SWP workers are vulnerable to inflated deductions from pay for accommodation and ‘social levies’, which are obfuscated amongst complicated employment arrangements. In one instance, a quarter of workers’ pay was cut to live in a four-bedroom home housing 8 adults.⁶ This was also the case when the Australian Federal Police and the Australian Border Force commenced an investigation into labour exploitation in Victorian farms after further wage theft of Fijian workers was uncovered.⁷ Earlier this year under the Seasonal Worker Program, it was also found that 70 workers were living in one house in Tasmania and paying up to \$130 a week in rent.⁸ Over the last two years the Fair Work

⁶ <https://www.abc.net.au/news/2020-06-11/pacific-island-scheme-wages-deducted-high-rent-inverell/12336278>

⁷ <https://www.abc.net.au/news/2019-11-16/police-probe-alleged-exploitation-of-fijian-workers-in-victoria/11626930>

⁸ <https://www.abc.net.au/news/2020-02-14/seasonal-worker-program-under-scrutiny-after-70-people-in-house/11960818>

Ombudsman (FWO) have ruled on many enforceable undertakings in the horticulture sector, such as for labour hire firm Agri-Labour which underpaid 19 nationals of Vanuatu it employed under the SWP programme in Shepparton, Victoria.⁹

Thirdly, just like across other visa programs, workers are unlikely to submit complaints to the FWO because of their desire to remain in Australia for the duration of the season and to return for subsequent seasons. In one investigation it was found that SWP workers in Griffith reported a fear of retributions (including beatings) and of their passports being held by the sponsoring employer.¹⁰ The fundamental power imbalance between employer and employee is worsened due to the seasonal nature of the work.

Approved employers are under a greater degree of scrutiny than most growers. The difficulty in obtaining and maintaining of an approved employer status is the single biggest deterrent of worker exploitation in the SWP and PLS. Any undermining of the integrity of this protection will place both programs at risk. The Alliance recommends a range of measures to provide greater oversight of approved employers' activities to stamp out exploitation.

⁹ <https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/april-2019/20190423-agri-labour-eu-media-release>

¹⁰ <https://www.sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>, page 13

RECOMMENDATION 3: The Alliance recommends the following measures to address the risk of exploitation of Pacific workers:

- Maintain the current high standards for approved employer status and not outsource this requirement to external programs, such as Fair Farms
- Improve current departmental auditing that includes assessment of non-wage related compensation, including accommodation, transport, and other fees.
- include within the audit process a stakeholder engagement outreach with workers and not just firms.
- provide greater access for unions to conduct audits and checks on site (including in accommodation facilities, which are not currently covered by right of entry laws).
- establish greater enforcement and auditing of PLS and SWP firms, as a condition of maintaining ‘approved employer’ status.
- allow for predeparture information and an induction process for unions and civil society groups.
- formalise the induction process with unions, employers and civil society report backs and departmental oversight.
- ensure that auditing of the scheme is done by the responsible government department and not outsourced to external providers.

4 Changes to the PLS and SWP should not undermine protections

Noting that exploitation continues to take place under the Pacific labour programs, Any calls for ‘streamlining’ compliance requirements should not erode the fundamental rights of Pacific workers. On the contrary, claims that the PLS and SWP have excessive ‘red tape’ should not be used to justify the removal of protections for those workers, or to support uses of less-restrictive temporary migration programs. The following section outlines the core conditions of the PLS and SWP, and the ways that any changes run the risk of increasing exploitation.

4.1 Access to unions and pastoral care

Unions currently undertake an induction each season on farms. Providing relevant and up-to-date information on a regular basis ensures that each and every worker understands their rights, particularly to go to the FWO about breaches of minimum conditions. Relaxing this obligation so that an induction is provided only once will inevitably mean that workers slip through the cracks and become more vulnerable to exploitation.

Providing ongoing access to pastoral care services helps to facilitate a sense of community among recent migrants, particularly those who come from a background of faith, and should be seen as a core requirement of the PLS and SWP. The RSCA sees the opportunity to expand this pastoral care role to include broader community activity, such as sport, noting that this can provide opportunities to engage with the broader communities in which Pacific workers live.

4.2 Approved employers and industries

Presently, only approved employers in a select range of industries where either seasonal work is the norm, or labour shortages have been established, can access Pacific workers through the PLS and SWP.

The Alliance is not opposed to employer portability within the scheme, which can be of benefit to both worker and employer in facilitating the efficient use of temporary labour. However, this portability must be among approved employers only. There is already a significant risk that workers, once arrived in Australia, are asked to take up opportunities with non-approved employers.

One proposal raised during the consultation process was the ‘lending’ of workers from an approved employer to an unapproved employer. In theory, accountability for wages, safety and conditions would stay with the approved employer. But in practice, this would see approved employers effectively acting as labour hire firms. As detailed below, labour hire firms obscure the true relationship between employer and employee, ultimately making it harder for workers to enforce their rights. It is quite likely that a worker forced to work for a non-approved employer would face

even more difficulty in enforcing their rights. Given the existing one-sided relationship between worker and employer in this industry, Pacific workers would not be able to refuse to take up readily-available work. Unless the 'lending' approved employers were licenced as labour hire firms under a national scheme, it would be difficult to rely on employment law alone to protect the rights of workers forced to take up work for unapproved employers.

RECOMMENDATION 4: Any changes made to increase flexibility in the PLS and SWP must not undermine their core protections: employer approval, access to unions and pastoral care, and provision of information about industrial rights.

Likewise, any expansion of approved industries should not run contrary to the specified aims of the programs: namely, to meet genuine labour shortages, verified with genuine labour market testing. Expanding the programs to meet industries without a shortage will only serve to suppress wages and conditions in those sectors. Given the high degree of exploitation observed in the horticulture sector, there is a significant risk that expansion of the program beyond this sector will expand the scope of exploitation.

RECOMMENDATION 5: Any expansion of approved industries should only cover those with genuine labour shortages verified with labour market testing.

5 Reinforcing existing protections

Beyond the framework established by the PLS and SWP, the Alliance believes a number of changes that would provide further protections against worker exploitation.

5.1 A national labour hire licensing scheme

Labour hire contractors are currently at the core of compliance problems in the horticulture industry. It is widely acknowledged that the prevalence of labour hire firms in the horticulture industry aides and abets the widespread use of undocumented workers, regularly results in non-compliance with conditions in the

Horticulture **Award** and allows some growers to generate a perceived legal and moral distance between their business and compliance issues.

The Federal Government's Migrant Workers' Taskforce argued in their March 2019 report that the lack of a regulatory framework for labour hire firms nationally was a key motivator of non-compliance of Australian workplace laws.

Several other key investigations have similarly concluded the need for a national labour hire licensing scheme, including the Towards a Durable Future report, which identified several key insights relating to labour hire in the horticulture industry.¹¹ This included recognising that there is a legitimate role that labour hire contractors can play in the horticulture industry. However, whilst compliant labour hire contractors can help address acute labour supply challenges, reduce employment difficulties and even reduce worker exploitation by centralising HR practices, the non-compliant cohort overwhelmingly undermine the industry's track record for exploitation and create an incentivised race to the bottom where firms compete on exploitative business models.

No serious progress will be made in terms of addressing compliance levels in the horticulture industry unless a national approach to the regulation of labour hire contractors is established.

For instance, the regulation of labour hire contractors that partake in the SWP (that is, that they must also be approved employers under the scheme) significantly reduced scope for non-compliant contractors.

The introduction of state-based labour hire licensing schemes in Victoria and Queensland have also successfully reduced incidences of non-compliance by labour hire contractors, and created a level playing field amongst businesses in the industry. In both Queensland and Victoria, labour hire operators are required to

¹¹ Howe, Cibborn, Reilly, van den Broek and Wright, *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry* (2016) page 25.

pass a fit and proper person test which is made of both the business and each executive officer. The test involves assessing against various criteria such as the applicant's criminal history, history of insolvency, and the financial viability of the business. Applicants must also report the number of visa workers they supply, pay a licence fee, and comply with other state and federal workplace laws.¹² Licenses are valid for one year from the date they are granted. However, these schemes seek to achieve this objective with different regulatory approaches, and there remains inherent political risk with regard to a committed long-term model in any state.

For this reason, almost any review that addresses non-compliance of workplace laws in the Australian horticulture industry recommends the introduction of a national labour hire licensing scheme. *Towards a Durable Future* notes that the introduction of labour hire licensing in a number of international jurisdictions has reduced non-compliance with labour standards by contractors involved in the horticulture industry.

In short, a national scheme would require all labour hire contractors to routinely apply for a license to ensure they are complying with Australian workplace laws.

At a minimum, a national labour hire licensing for the horticulture industry must include:

- a national scope. The movement of labour across State and Territory boundaries and the extent of current compliance problems necessitates a scheme that operates on a National level;
- strict legal obligations on all labour hire contractors to be licensed and for all growers to ensure they only engaged licensed providers;
- a one-year limit on licence operating periods to ensure that labour hire contractors are subjected to regular scrutiny. This period is warranted given the extent of current compliance problems. A longer period may be considered in the future once a compliance culture is established;

¹² *Labour Hire Licensing Act 2017* (Qld) ss 31, 32.

- a fit and proper person test which ensures licenses are only issued to businesses that can establish they comply with all applicable industrial, immigration and safety laws and not to persons with a criminal history;
- a well-resourced National Compliance Unit. The Unit must be given extensive inspection and audit requirements and allow for anonymous complaints. It is critical that applications are properly scrutinised, and that strong action is taken against any unlicensed labour hire contractors and any growers that engage unlicensed contractors;
- a strong civil and criminal penalty regime needs to be available as a deterrent to unlawful and illegal behaviour. However, the deterrent effect will only be achieved if a well-resourced regulator is known to be closely monitoring the industry and taking enforcement action;
- a requirement that only licensed labour hire contractors can employ visa workers and that the details of all visa workers contracted for employment are registered with the National Compliance Unit.
- a public list must be maintained of licensed labour hire contractors including any contractors who have had their licence suspended or cancelled.

5.2 Accommodation providers

In addition to labour hire contractors, hostels and boarding house providers play a critical role in the provision of labour to the Australian horticulture industry.

Growers are heavily reliant on accommodation providers to facilitate the procurement of temporary migrant workers, but also to recruit workers. A national survey of vegetable growers revealed that 40% of growers surveyed had used labour hire firms to access workers and 29% had recruited through hostels. Growers that sourced labour from hostels were more likely to employ temporary migrants, and 15% of growers surveyed had a formal business relationship with a hostel that provided accommodation to their workers.¹³

¹³ Howe, Cibborn, Reilly, van den Broek and Wright, *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry* (2016) page 86.

Towards a Durable Future identified that accommodation providers can play a positive role in promoting compliant growers but can also be a source of exploitation, particularly for vulnerable migrant workers:

Working hostels and other accommodation providers play a central role in managing labour supply challenges in many regions by supplying farm workers to growers. Some of these also play a role in fostering greater compliance with labour standards by selectively choosing growers and only sending workers to farms with a reputation for compliant labour relations. There is considerable variation in the costs of privately-operated accommodation and transportation services both between and within different groups of workers. The more vulnerable the worker, the more likely they are to be exposed to exploitation through being forced into poor quality, high cost accommodation close to farm locations. The variation in accommodation and transport arrangements, and the degree of vulnerability of different workers, means regulation of accommodation and transport needs to be sensitive to local circumstances, and the most effective response to problems with exploitation of workers is through collaboration of the various stakeholders.¹⁴

Given accommodation providers are another embedded source of labour for the horticulture industry and a current source of exploitation, it is appropriate for them to subject to a licensing regime which should be regulated by the same national body that has carriage of the national labour hire licensing scheme. Further, unions are currently prevented from exercising their right of entry to premises usually used as residences – this discrepancy should be removed to facilitate safety inspections.

RECOMMENDATION 6: The Federal Government should establish a national labour hire licencing scheme with strict compliance measures. Accommodation providers that serve a labour hire role should also require licencing under this scheme.

¹⁴ Ibid at page 85.

5.3 Avenues for whistleblowing

For many Pacific workers, reporting non-compliance to their employer or the Fair Work Ombudsman is simply not an option – it will lead to them losing their job. For this reason, it is crucial that workers have an option to report non-compliance anonymously. The Pacific Labour Mobility website, nor the Fair Work Ombudsman’s guide for workers on the harvest trail, **do not provide any information on how workers can seek enforcement of their rights**. Although there is an ‘anonymous report’ form on the Fair Work Ombudsman website, the extent of exploitation in the horticulture sector suggests a purpose-built form and service (potentially including a phone hotline) should be provided.

RECOMMENDATION 7: The Federal Government should establish a ‘whistleblowing’ service that allows horticulture workers to anonymously report breaches of employment standards. This service should be advertised prominently on the Pacific Labour Mobility website and on the Fair Work Ombudsman website.

Further, local governments understand their local areas and are in a position to know earlier than authorities when their local community sees accommodation overcrowding or other signs of exploitation. However, this knowledge is not currently shared with key stakeholders. The Alliance believes that local governments can therefore play a greater role in facilitating dialogue between industry, unions, and other stakeholders in the community, and in providing information to the administrators of the PLS/SWP, the Fair Work Ombudsman and Home Affairs.

RECOMMENDATION 8: Local governments in horticulture regions should be required to set up stakeholder meetings twice a year with unions, growers, pastoral care providers, community groups and relevant State and Federal Government agencies. The Federal Government should engage with local governments in horticulture regions to understand local context and actively investigate early signs of worker exploitation.

6 Enforcement and compliance

Non-compliance of Australian workplace laws in the horticulture industry is rampant. This has been uncovered not because of a material increase in regular prosecution activity, but because of concerted activities, underpinned by media interest and parliamentary and union scrutiny, that have sampled the sector and uncovered horrifying instances of exploitation.

The fact that for well over a decade exploitation cases in the horticulture industry have increased considerably without any adjustments to the modus operandi of government agencies is unacceptable. Whilst reform to the visa system and the introduction of a national labour hire licencing regime are critical, further consideration to the existing efficacy of government enforcement activities are required.

Improvements to the enforcement and compliance measures for horticulture workers could be ameliorated by the following solutions.

6.1 An increase of funding to the FWO

The Fair Work Ombudsman (FWO), as the key government agency for ensuring compliance, is significantly under-resourced. In the 2019-20 Federal budget the FWO was allocated approximately \$110 million which, when compared to 2009-10, is a funding reduction in real terms. While the FWO was allocated around \$40 million extra in 2020, this was necessary to service the significant increase in industrial enquiries related to the pandemic, and has not led to increased compliance measures in the horticulture sector.

An increase in funding to the FWO of \$15 million each year for 5 years would provide the ombudsman a requisite coverage of exploitation across an industry that is geographically challenging to access and regulate. The funding must be quarantined towards a dedicated agriculture and horticulture compliance team of 90 FWO inspectors who are based in regional agricultural and horticultural centres.

The investigative and enforcement powers of all FWO inspectors should be amended to allow all FWO inspectors to investigate and act on modern slavery in all industries including the agriculture and horticulture industries.

As industry compliance is proven to return to normal levels this team and funding can be reduced, however an ongoing dedicated regionally based agriculture and horticulture compliance team of FWO inspectors must be retained as a deterrent for the foreseeable future.

6.2 Stronger and enforceable audits and union inspection rights

Growers are the critical link in the supply chain. It is on the farms and in the packing sheds where the exploitation of vulnerable workers is most likely to occur.

Industry developed self-compliance audits and programs like Fair Farms are perhaps well intentioned but lack reliability, enforcement and are often toothless or 'paper audit' processes with little credibility. To provide workers and the community with any assurance of compliance to the law, they need a worker's engagement and actual on-the-ground checks. On-farm compliance audits would require that growers are ensuring workers on their farms are being paid correctly and not exploited.

For industry compliance audits to be truly effective they need to have unannounced on-farm audits conducted by independent auditors with actual industry compliance knowledge. Industry compliance audits should be required to have the following minimum requirements.

- Have endorsement from the relevant worker representatives to ensure they properly address worker exploitation.
- Have the requirement for growers to cooperate with unannounced independent on-farm audits.
- Have agreed independent auditors who are appointed through a tripartite process between the major retailers, Unions and industry.

6.3 Government funding for unions to assist in properly regulating the sector

The federal government should make grants available to unions under the PLS and SWP that are capable and willing to audit and report on workplace compliance in the horticulture industry. This could reduce the total cost imposed on the FWO which would have to station regional operators, and instead solicit the services of unions that are already regionally located or visit sites.

By way of example, unions employ trained organisers with significant industry experience who understand the unique challenges faced by employers and workers in these industries. These officials are familiar with workplace law and frequently visit regional sites on account of their general workplace organising responsibilities. The benefits to the industry and enforcement of the law would be several-fold.

- Provide government, workers and industry with certainty around the independence of compliance checks.
- Ensure integrity of compliance with industry-based programs like the Fair Farms initiative to ensure any employers purporting to adhere to higher standards are in fact compliant.
- Provide a model for industry compliance enforcement at half the cost of the minimum funding needed for the FWO.
- Conduct intelligence-based award education and compliance checks through the current and enhanced ROE provisions.

6.4 Stronger penalties for breaches

The degree of exploitation in the horticulture industry is evidence that civil penalties imposed on unlawful operators is not enough to deter non-compliance.

In addition, there are many instances where unscrupulous employers evade their penalties by declaring bankruptcy and general phoenixing activity.

To combat these challenges, the Victorian government has recently enacted wage theft legislation which seeks to address serious wage theft and workers exploitation as criminal matters.

In effort to deter the structural exploitation in the horticulture industry the federal government should give serious consideration to developing and enacting legalisation that makes serious and intentional wage theft and worker exploitation a criminal offence punishable by imprisonment.

RECOMMENDATION 9: The Federal Government should place a strong focus on compliance and enforcement of workers' rights under the PLS and SWP by:

- a. Increasing the funding of the Fair Work Ombudsman by \$15 million, with new funding dedicated to increased compliance and enforcement activity.
- b. Providing for strong and enforceable audits undertaken by unions or under rigorous third-party schemes that are supported by all industry stakeholders.
- c. Establish criminal offences for wage theft to show that workplace exploitation is taken seriously.