**Fair Work Ombudsman (FWO) Harvest Trail Report – summary**

**Author: Tyson Cattle**

**Background –**

The FWO commenced an inquiry into workplace arrangements on the Harvest Trail in August 2013, in response to employee and community concerns that it had received about non-compliance with Australian workplace law.

Fair Work Inspectors completed 836 investigations, involving 444 growers and 194 labour hire contractors spread across all states and the Northern Territory.

**Findings –**

The Inquiry found that on the Harvest Trail, there is no one single driver of non-compliance. Rather, we found a combination of factors contribute to an environment where breaches of workplace laws are more likely. Five key findings are made in the Report:

* widespread non-compliance;
* misuse of piecework arrangements;
* significant reliance by growers upon overseas workers;
* the impact of labour hire arrangements; and
* low consumer awareness.

**Recommendations -**

The Inquiry’s research and engagement with stakeholders informed four key recommendations:

 **Recommendation 1:** New body within FWO (an internal working group/taskforce;

**Recommendation 2:** Enhancing compliance though information, education, and support;

**Recommendation 3:** Enhancing the framework for Harvest Trail workplace participants;

**Recommendation 4:** Building a culture of compliance on the Harvest Trail.

**Finding 1 – Widespread non-compliance**

The FWO found that more than half of the 836 investigations conducted, Including 444 growers and 194 labour hire contractors (465 or 56%) failed to comply with Australian workplace laws.

236 had monetary breaches, 120 had non-monetary breaches and 109 had both monetary and non-monetary breaches

The average monetary recovery made throughout the inquiry was about $4000.

A total of $1,022,698 was recovered for 2503 employees.

**Finding 2 – Misuse of piecework arrangements**

FWO found some growers and labour hire contractors as applying group rates for pieceworker employees.

The FWO treats these arrangements as inconsistent with the piecework arrangements contemplated under the Horticulture Award because piecework arrangements are between an individual and their employer.

**Finding 3 – Significant reliance by growers on overseas workers**

67% of employers were employing overseas workers.

The report recognised benefits of the working holiday makers (417 subclass), but also highlighted the vulnerableness of those workers –

Cultural and language barriers, suspicion of government, little or no knowledge about Australian workplace rights and obligations, lack of understanding about how to ensure their workplace rights are provided or where to find assistance.

**Finding 4 – Negative impact where labour hire arrangements are used**

Almost two-thirds of growers used labour hire contractors to some extent.

 ***Governance of labour supply chain contracts***

*The FWO’s interest in the use of labour hire as an employment option extends as far as establishing whether a particular arrangement is lawful, and to its impact on compliance with workplace laws in the labour supply chain.*

*The FWO’s experience is that multiple levels of subcontracting increases the risk of non-compliance. As additional subcontractors enter the labour contracting chain, the increasing pressure of multiple players taking their profit can result in the legal employer of workers having insufficient funds to cover their full entitlements.*

*The FWO’s Inquiries into labour supply chain contracts confirm the importance of lead firms having strong contract management and governance systems in place to help ensure that workers receive their lawful entitlements. By improving their visibility of supply chain arrangements, lead firms can also protect themselves from reputational damage that can arise from the potentially unlawful conduct of a labour supply contractor on whom they may rely.*

The report also noted the itinerant nature of many labour hire contracts and that they approach growers at a time when they ‘need to get the crop off’ and that typically smaller growers would accept quotes from labour hire contractors that were ‘too good to be true’.

17 investigations were completed that involved Seasonal Worker Programme (SWP) employees, 11 of these detected that the employer was non-compliant. Despite being approved employers under the SWP.

Accommodation, transport and job service provider issues were also raised including charging job finding/placement bonds, restricting accommodation options to the use of specific labour hire contractors, which at times meant visa holders were without work while accruing accommodation debts, over-crowded, sub-standard accommodation being offered at above market rates, requiring workers to use specific transport providers between accommodation and the work site.

Social media was also mentioned, as a strong deterrent to exploitation with workers setting up specific Facebook sites to target dodgy and scamming employers and operators.

**Finding 5 – Low consumer awareness and unwillingness to pay more for produce contributes to exploitation**

Some of the key findings in their research below –

* *91% of consumers sampled buy some fresh produce at supermarkets, and 75% buy most of their fresh produce at supermarkets*
* *Most consumers (85%) believe prices for fresh produce have increased in the last 5-10 years*
* *A majority of consumers believe the government should ensure farm workers are paid correctly (72%) and many (63%) expect supermarkets to take responsibility for ensuring this too*
* *Most consumers believe that workers do receive fair conditions (72%) and that they are paid the minimum wage (60%)*
* *40% of the 1025 consumers surveyed were concerned that farm workers might not be paid correctly or have fair working conditions. Of these, a large majority (81%) said they would avoid buying produce if they knew workers had not been paid fairly or given fair work conditions. Over a third (36%) of those who were unconcerned, didn’t believe farm workers would be unfairly treated.*
* *Three-quarters of consumers say they would choose produce marked as being produced fairly, including 11% who would even pay more for ‘domestic fair trade’ produce, 25% who’d pay more for produce of the same quality and 49% who would choose the ethically produce product if the price was the same*
* *Many consumers are prepared to pay up to $0.50 per kilo and some would pay up to $1 more for ‘fairly produced’ fruit and vegetables. This was assessed on a sliding scale with 9% stating they were prepared to pay $0.05 per kilo more, through to 12% who would pay $0.90-$1 extra per kilo*
* *Choice modelling reveals the top five drivers to choose ethically sourced produce would be: information and education about conditions for farm workers (22%), advertising messages supporting the need to buy fairly produced products (18%), location of the shop (17%), perceived quality (13%) and locally grown signage (8%)*

The research recommendations for increasing engagement in ethical consumption of fresh produce were to:

* Educate the public through an information campaign about the Harvest Trail and how prices are set, including the role of supermarkets.
* Provide a vocabulary eg. Ethical sourcing, ‘domestic fair trade’
* Present ethical sourcing as a marketing opportunity to producers and vendors
* build trust through a verification system.

**Next Steps –**

1. Establish a Harvest Trail Working Group

2. Enhance compliance though information, education, and support

3. Enhance the regulatory framework

4. Build a culture of compliance on the Harvest Trail

5. Report to government and stakeholders

**Conclusion –**

The findings of the Inquiry undertaken by the FWO uncovered widespread and concerning issues with compliance with workplace laws in the horticulture industry.

The FWO will continue to maintain a key focus on this sector due to:

the high proportion of vulnerable workers employed – including seasonal and young workers

ongoing matters at law regarding the application of provisions within industrial instruments – for example, the application of piece rates

intersecting issues unique to this industry, with, for example, accommodation and transport being integral to undertake the work, and

a reluctance on behalf of customers to pay more for produce.

The Inquiry findings detailed in this report only include instances of non-compliance that could be supported by evidence.

The Inquiry found a combination of factors that contribute to an environment where breaches of workplace laws are more likely.

The Inquiry highlights the need to build a culture of compliance and accountability amongst beneficiaries of labour, in particular, those at the top of the labour supply. The research indicates consumers require confidence in businesses that supply food and the recommendations in this report will build a culture of confidence.

The five key findings of this Inquiry, in part reflect the difficulties the FWO encounters when seeking to enforce workplace laws on the Harvest Trail.

For instance, the FWO acknowledges that the geographical isolation and remoteness of several parts of the Harvest Trail makes it difficult for the FWO to maintain a constant and visible presence for each harvest season, even during an extended Inquiry.

The FWO cannot be present in all locations along the Harvest Trail at all times. However, the passage of the *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* enables the FWO to address the most serious and deliberate cases of non-compliance through targeted interventions and strategic litigations.

Employers who provide Fair Work Inspectors with false and misleading information, or who choose not to keep employment records now face significant penalties and employers will hold responsibility to demonstrate their compliance. These provisions will significantly affect cash-based businesses.

The FWO will work with key stakeholders and workforce participants in implementing the recommendations contained in the Report.