

# Exploited and illegal: *Unlawful migrant workers in Australia*

Preliminary findings from the Australian Research Council  
Discovery Early Career Research Award Research Project:  
The exploitation of unlawful migrant labour: regulation,  
exploitation, vulnerability (ARC DE1411279).



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Accessing unlawful migrant workers is an almost insurmountable task for a University-based researcher based in a capital city. This work has happened as a consequence of many important contributors and supporters: though they cannot be named, their trust in the research encouraged reluctant workers to participate.

Migrant labour and the vicissitudes of managing labour, competition, profits, regulation and various other employment and industry-related issues place significant pressures on employers and contractors across various industries. The willingness of many of these stakeholders to talk about their experiences, their concerns, and the challenges they face – at times with frank honesty regarding their own interpretation or manipulation of regulation – was very much appreciated.

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# This Report: An Introduction

*This is an interim report of the findings to date from a three-year ARC DECRA research project into the experience of unlawful migrant workers in Australia. The research has brought to the fore many complex issues that include, but are not limited to:*

- » the limitations of the existing responses to human trafficking (and the importance of independent, impact-based research into the current response),
- » various practices that occur in industries such as agriculture in relation to the cash economy and international trade,
- » the complexity of local laws, state and federal responses to managing migrant labour and accommodation-related regulation,
- » the apparent mismatch between some big corporations' (including supermarkets) public commitments to the transparency of ethical supply chains and the pressure they place on suppliers when items are priced at below production costs, and
- » the challenges in creating achievable transparency and protection mechanisms for all workers.

This interim report seeks to draw attention primarily to the issue of unlawful migrant work in Australia; to debunk some key myths around this population; and to raise a challenge to policy makers and legislators to look towards a future that will enable impact labour reform to be achieved – reform that will reduce the levels of exploitation and modern slavery occurring within Australia.

The report also raises the question: can Australia commit to countering modern slavery and migrant labour exploitation if it continues to sideline unlawful migrant labour experiences based on workers' migration status?

It is important to note that the broader program of research includes extensive interviews with stakeholders, including employers, policy makers, contractors, NGOs and other community support providers. The final report will speak more broadly to the management of labour, the challenges of labour supply, and the concerns surrounding the privileging of migration status as a way to determine the limits of protection for workers.

## Notes regarding terminology and presentation of data

In this report 'unlawful workers', and more often 'workers', is the terminology used to refer to persons who, as per the Migration Act (ss14), are unlawful in that they are "in the migration zone [and]... not a lawful non-citizen" due, in this case, to entering Australia without authorisation and/or have overstayed the expiration date of their visa. This report also includes those who have breached the conditions of their visa as a consequence of working. While in breach of the Migration Act, and commonly referred to as 'illegal' the utilisation of this terminology only occurs when referencing formal assertions and/or direct quotes. Otherwise 'unlawful workers' and 'workers' refers to the participants and the broader cohort from which they are drawn.

All quotes from interview data are direct quotes; however, minor grammatical editing has been undertaken to improve readability. This is indicated through the use of ellipses in the text.

All references to specific places, people, countries and other identifiable information has been removed. The research has been undertaken according to the conditions approved by Monash University Human Ethics Research Committee (reference: CF16/108 - 2016000042).

For brevity, through this report the Department of Immigration and Border Patrol are at times referred to simply as Immigration, unless formality is appropriate.



## Acronyms

ABF	Australian Border Force
AFP	Australian Federal Police
DIBP	Department of Immigration and Border Protection
FWO	Fair Work Ombudsman
ICHTS	Inter-Departmental Committee on Human Trafficking and Slavery
NGO	Non-Government Organisation

# Executive Summary

This report offers preliminary findings from a large study of unlawful migrant labour in Australia. This labour force includes those who entered Australia lawfully with a visitor visa, and therefore have no work rights, and/or those who have overstayed their visa and thus no longer have a right to remain, or work, in Australia. The research privileges this group, as in law and in policy, they have the least protection of all migrant workers in Australia. They are not, however, an insignificant group: in 2011 it was estimated that between 50-100,000 non-citizens are working unlawfully in Australia (Howells 2011).

Many of the situations that have arisen in this research have indicators that existing Commonwealth trafficking offences may have occurred: none have been the subject of referral to the AFP or any investigation by DIBP or other agencies. These are complex situations in which unlawful workers owe money, have passports held, are forced to work (as a result of owing money) and live in abject conditions – none of which they believe they can do anything about, other than leave that location to find alternate work. They are working for very little pay and in some cases are not paid for their work. In at least one situation recounted in this study, a man was forced to work to have his passport returned.

Australia is failing to identify and adequately respond to serious offences for two dominant reasons. One, the unlawful status of workers ensures they are hidden, and very often in an encounter with authorities it is unlawfulness that is identified. Two, because there are expectations as to what ‘serious’ offences look like and the assumption that there is a clear distinction between serious criminal offences and less serious, employment law breaches. This research challenges this assumption.

The findings from this research are presented at a time when Australia is seeking to lead the region in its efforts nationally and regionally to address modern slavery (see Joint Standing Committee on

Foreign Affairs, Defence and Trade 2017, Minister for Foreign Affairs 2017), and where there are significant commitments to recognising that temporary migrant workers are a particularly vulnerable group in need of protection (Minister for Employment 2016). The central argument of this research is that for as long as there remains a refusal to grant any protection or means of access to reparation for unlawful migrant workers who experience exploitation, Australia is in fact enabling unscrupulous operators to continue to operate with impunity.

In order to end migrant worker exploitation, migration status must be a secondary concern. There are some commitments towards this end. The response to potential trafficking or slavery offence victims is not dependent upon migration status. The new FWO-DIBP protocol articulates a commitment to consider each case “on its merits” (FWO 2017: online) if it involves a non-citizen without work rights in Australia. However, as argued in this report and elsewhere:

“A case-by-case commitment to consider whether or not someone will be deported when they report exploitation, if they came to Australia without the right to work as part of their visa conditions and/or if they have overstayed their visa, is as good as no commitment. It provides no certainty, and therefore ensures unlawful workers remain unprotected.” (Segrave 2017)

This report details four specific recommendations. Notably, these link to other recommendations made by the author, and others, in multiple forums as indicated in the recommendations. The intention of this report is to move beyond anecdote and media reports of specific cases, to provide detailed independent data that highlights the impact of putting migration status before exploitation.

Australia has an opportunity to lead the way in ensuring that there is no tolerance of exploitation. The response must begin with ending the focus on unlawfulness.

# Recommendations

*The following recommendations are drawn from the findings in this report, which focuses specifically on unlawful migrant worker experiences.*

## Recommendation 1

### Migration status should be irrelevant in the context of labour exploitation

What is evident in this report is that migration status is the leverage through which labour and other exploitation occurs, with workers having limited capacity (and often limited desire) to take action. If Australia is committed to ending exploitation, migration status must not be the primary focus. This can be achieved in two ways:

- a. Protection in law for undocumented workers: amend or remove s235 of the Migration Act

This would indicate a firm intolerance to exploitation.

Section 235 of the Migration Act must be removed or amended to confirm that undocumented workers have the same minimum employment rights as citizens, as currently the interaction between this offence and protections under the Fair Work Act remains unclear (see Berg 2016). The prospect that this offence may deprive workers of enforceable labour rights leaves a large sector of the workforce vulnerable to exploitation and thus effectively protects unscrupulous employers.

If this section is not repealed, it could be amended to articulate that undocumented workers' common law and statutory employment law rights remain enforceable despite having worked contrary to visa conditions.

This would put beyond doubt that the Fair Work Act applies regardless of migrant workers' visa/migration status, and position exploitation at the forefront of the national response.

Further, this amendment would carry significant symbolic weight in relation to Australia's stance on modern slavery and migrant labour exploitation. It would indicate an intolerance to exploitation in the first instance, regardless of migration status.

- b. Formal, legal separation between FWO and DIBP.

In 2017 the FWO and DIBP established a new protocol that articulates the working relationship between FWO and DIBP, whereby "for temporary visa holders who don't have work entitlements attached to their visa, DIBP will consider the case on its merits" (FWO 2017: online). This fundamentally fails to understand the position of workers working contrary to their visa, or who have overstayed their visa. It provides no certainty (and therefore no incentive) to workers to come forward, and enables exploitative employers to operate with impunity. Even a remote prospect of visa cancellation and removal is sufficient to deter these workers from seeking assistance or lodging a complaint.

A formal firewall should be established and enshrined in legislation or via regulatory amendments, to ensure that reported workplace-related exploitation can be addressed without migration status undermining the recognition of workers' vulnerability and victimisation.

1. In June 2017, the author prepared, with Laurie Berg and Stephen Clibborn, a list of recommendations for the AGD, at the Department's request, for consideration in the final deliberations of the Working Group on Migrant Labour Exploitation, which is a subcommittee of the Commonwealth Roundtable on Human Trafficking and Slavery. These are available via contacting the author of this report, and/or will be available online from 1 August 2017 via <http://artsonline.monash.edu.au/thebordercrossingobservatory/>. A number of the recommendations in that submission overlap with recommendations in this report, as they were based, in part, on this research.



## Recommendation 2

### Recognise exploitation as fluid and part of a continuum

Modern slavery efforts tend to focus on the most serious, criminal offences, which results in the failure to recognise the ‘everyday’ practices of exploitation that are detailed in this study. Workers in this study experienced situations of physical and other abuse, no pay, poor accommodation, debt bondage, the withholding of passports and other identifying documents, and threats of being reported to Immigration in order to instigate removal/deportation. Yet many were able to leave these situations and find more positive work situations. If detected by Immigration during the former period, exploitation may have been identified; in the latter, they would simply be deported/removed. This report provides evidence that the most often these workers are simply removed.

There is an opportunity to work with unlawful migrant workers, beyond an interview prior to departure, to map their experiences and identify what enables exploitation, what forms of exploitation are occurring and where exploitation is occurring (both in relation to geography and industry).

Currently there is a policy and practice demarcation between exploitation as defined under s270 and s271 of the Commonwealth Criminal Code, pertaining to slavery and trafficking offences (matters for the AFP), and employment law breaches that fall within the enforcement jurisdiction primarily of the Fair Work Ombudsman (though in some cases it may be the Fair Work Commission or other bodies).

To suggest that the two are dealing with separate issues and/or that there is a clear demarcation based on the seriousness of exploitation is a concern, not least because it does not take into consideration the many cases that are identified by the AFP as potential slavery or trafficking-related offences (which permit victims access to the Victims of Trafficking support scheme), but do not proceed to prosecution (see Segrave et al 2017). The attrition rate is not simply due to the absence of evidence, nor the absence of identifiable offences. Rather, there are other significant issues concerning the decisions to prosecute that warrant closer attention. Further, there is a failure to recognise that breaches of employment law have occurred in some (possibly many) cases that have not been prosecuted (and those that have) that could potentially be pursued via FWO.

To presume the two are distinct indicates a lack of awareness of the current limits of Commonwealth law to effectively respond to trafficking and slavery offences (see Segrave et al 2017).

## Recommendation 3

### Create regional opportunities for increased temporary, low skilled working visas

Participants in this study who are working unlawfully generally came to Australia with the intention of working, but had limited or no access to a visa that would allow them to work – in skilled or unskilled labour. There is significant opportunity in the region to enable temporary workers to come here legally, which would:

- a. reduce the 'competitive advantage' of illegal workers, which is that they accept low payment and have no grounds to challenge contractors/employers who do not pay them,
- b. disempower the politics of 'Australian jobs being taken' as all workers would be competing on an even playing field – be they Australian or temporary migrant workers – and there would be transparency and accountability regarding wages reducing the likelihood of underpayment, and
- c. actively address the evidence in this report of potential transnational offences related to agents who are paid by migrant workers for travel documentation, accommodation and work in Australia. Many such agents are misleading migrant workers regarding aspects of the package they are paying for, such as whether they will have a visa with work rights, whether there will be work when they arrive and whether accommodation has been paid. These agents currently operate with impunity and garner (potentially) significant profits. Rather than only working to police this practice, its potential as a money-making enterprise could be substantially reduced by creating more temporary work visas.

Such a response would benefit the Australian economy, would support our regional partners in terms of knowledge-sharing and economic advancement, and would reduce the costs related to heavily-regulated and not widely adopted schemes such as the Seasonal Worker Program (see also Curtain et al 2016 regarding the specific opportunity to pursue this in the Pacific region).

#### Recommendation 4

##### Make workers and exploitation, not criminalisation and regulation, the priority

What is evident in this research is that unlawful migrant workers accept the risks related to working without the right to work, and accept the consequences related to exploitation. These workers are motivated to work, and accept the risk of detection and removal, as well as exploitation.

Overwhelmingly, as indicated above, migration law is dominating the conversation regarding the limits of Australia's response to migrant labour exploitation.

The dominant emphasis is on punishing breaches of migration law not protecting workers from employment law breaches. The reliance on criminalising and regulating this group results in this labour being easily exploited with impunity for those undertaking the exploitation. Criminalisation and regulation alone are not a solution given the broader, interconnected motivations of many people in this situation.

Additionally, basing our response to unlawful workers on their migration status, rather than as workers (i.e. due to their migration status rendering any contract void/illegal) results in counter-productive efforts to reduce unlawful migrant labour. Much of the activity – across transparency in supply chains, across migrant worker exploitation and across preventing human trafficking and slavery within Australia and the region – fails to recognise the motivation of many workers within the region to come to Australia to work, despite not being able to access a visa with work rights. If the motivations of unlawful workers are not taken into account, efforts to both reduce exploitation and to reduce the employment of unlawful migrant labour are bound to have limited success. At worse, efforts to identify unlawful workers simply increase risk to exploitation.

# Background

*Unlawful or undocumented migrant labour is a significant issue in Australia. It has been estimated that between 50-100,000 non-citizens are working illegally (i.e. in breach of their visa or as a result of overstaying their visa) in Australia (Howells 2011). More recently in the Federal Legal and Constitutional Affairs Legislation Committee: Estimates (held on Tuesday, 23 May 2017) it was stated that of the 64,600 non-citizens who had overstayed their visa, approximately 20,000 were working unlawfully.*

The 2017 estimates, however, regarding over-stayers in paid labour, did not offer an indication of the number of those on valid visa without work rights engaged in paid labour and thus it may be assumed that the Howells estimate from 2011 remains relevant.

In the midst of increasing awareness of the vulnerabilities of migrant workers, in large part due to the public expose of the 7-Eleven franchise and franchisee operations (see for example, Sydney Morning Herald, 2015), and exploitation related to the now-disbanded 457 temporary skilled working visa (see Commonwealth of Australia 2016), little is known about the welfare or work conditions of those who are working unlawfully. This

group is arguably the most vulnerable to exploitation, due to their 'illegal' status.

The national policy framework defines and responds to unlawful migrant labour as a regulatory problem – to be actively pursued via migration, criminal justice and labour regulation. As Berg (2016) has detailed, this group of workers is rendered in law effectively as non-workers, due to the absence of work rights.

While there are efforts to better protect migrant workers, as per the Migrant Workers Taskforce and the introduction of the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 (see APH 2017), the push towards protection appears

to be entrenching the distinction between those who have the right to work and those who do not.

A major challenge in advocating for a reconsideration of this approach, which arguably sustains the vulnerability of a sizeable population to exploitation, is the way in which 'illegal workers' are constructed as a 'significant problem' (Howells 2010: 7).

Unlawful migrant labour has been described as "undermin[ing] the integrity of the Australian labour force" (Bowen in Hansard, 2012: 11175) and a threat to "the integrity of our migration and visa program" (Evans, 2008). Indeed, in May 2017 Senator Griff in the Federal Legal and Constitutional Affairs Legislation Committee: Estimates referred to the number of people who had overstayed their visa and who were working illegally as equating to "20,000 people that are potentially taking jobs of other Australians". (Commonwealth of Australia 2017: 18).

Two critical narratives play out in these statements. The first is that the workers are the problem. The second is that they are taking Australian jobs. Such narratives obfuscate the reality that through failing to protect these workers and recognise their work (and their exploitation), the national response is in fact enabling unscrupulous operators to exploit their vulnerability and to do so with relative impunity.

There is emerging evidence internationally and nationally that unlawful migrant labourers are vulnerable to criminal victimisation and workplace exploitation, including human trafficking, generated by their unlawful migration status (Anderson &

Andrijasevic 2008; Aas 2011, Segrave 2009, Segrave et al 2017).

As a consequence, unlawful migrant labourers occupy a precarious position as both potential victims (of workplace exploitation and/or human trafficking or slavery offences) and potential offenders (of migration and labour law).

While there have been multiple inquiries into unlawful migrant labour (see Howells 2010), there has been no comprehensive investigation into exploitation experienced by non-citizens without work rights.

In Australia, there are essentially two areas for workplace-related exploitation of migrant workers to be pursued: via the administrative process of the Fair Work Ombudsman [FWO], or in cases deemed 'serious' and potentially criminal, via the AFP to investigate whether an offence appears to have taken place under s270 and s271 of the Commonwealth Criminal Code. However, the FWO, which serves as the only body where compensation and remuneration can be sought in relation to employment law breaches, does not operate independently of the Department of Immigration and Border Protection. This means the extent to which unlawful workers can access FWO is limited, due in part to concerns related to forced removal via DIBP.

As noted recently, the protocol established between DIBP and FWO whereby DIBP will review on a case-by-case basis whether to pursue visa cancellation for unlawful non-citizens is "no guarantee at all" (Segrave 2017).

As detailed by the Inter-Departmental Committee on Human Trafficking and Slavery [ICHTS], the number of potential trafficking and slavery cases that come

2. Established in 2016, the Taskforce is charged with "identify[ing] further proposals for improvements in law, law enforcement and investigation, and other practical measures to more quickly identify and rectify any cases of migrant worker exploitation". For more information: <https://www.employment.gov.au/migrant-workers-taskforce>

to the attention of the AFP remains small, and the system fails to recognise victims as workers, as there is no mechanism for remuneration or compensation via the systems established to investigate offences and support those who have experienced potential trafficking or slavery offences (see ICHTS 2016, Segrave et al 2017).

While increasingly immigration and labour regulatory responses are merging to respond to this issue, the impact of these practices upon the level and nature of victimisation and conditions of exploitation requires investigation. Through examining experiences across the agricultural, construction and hospitality industries, this research will identify whether and how regulatory systems may be contributing to, or sustaining, exploitative conditions experienced by unlawful migration labourers, including trafficking, and also identify future policy options.

Since the research was funded, four important developments have occurred.

- 1. Vulnerable migrant workers recognised.** There has been growing recognition of the precariousness of migrant workers, and the establishment of the Migrant Workers Taskforce to address this.
- 2. Push towards the recognition of, and response to, modern slavery within the nation and the region more broadly (see Joint Standing Committee on Foreign Affairs, Defence and Trade, 2017).** What has largely been absent in this area has been a recognition of the impact of immigration status and migration and labour in contributing to vulnerability.
- 3. Commitment to the extending the Seasonal Work Program.** Following the SWP review (see Joint Standing Committee on Migration 2016) it

has been expanded (see Australian Government 2017). This has occurred despite the evidence that this scheme does not meet labour needs, and suggests that there is a focus on tied employer-employee visa approaches, rather than recognising the potential value of creating more opportunities for working-holiday-type visas.

- 4. Regulation of labour hire operations in Victoria and Queensland.** This may offer, at best, a partial solution to the issues that have arisen in this research for unlawful migrant labourers.

Despite these developments, there remains little commitment to, and limited research regarding, the experiences of unlawful temporary migrant workers – that is, those with no work rights in Australia. In this study, this primarily includes those who have overstayed 417 visas and those who have arrived on a visitor visa with the intention of working.

There is a growing body of important research in Australia focused on working holiday visas (417, see Underhill & Rimmer 2016) and international students (see Clibborn 2015), as well as the challenges faced by those on specific skilled working visas, such as the now-disbanded 457s (see Berg 2016), yet limited empirical research has been conducted with unlawful migrant workers who entered Australia without work rights and/or who have overstayed their visa and continue to work.

This program of research has sought to investigate, map and analyse exploitation and regulation as experienced by unlawful migrant labourers. Specifically, the research is examining experiences of criminal victimisation; the relationship between labour exploitation and human trafficking; and the relationship between regulation and criminalisation.



# Aims

The aims of the broad program of research are to:

1. Map the regulatory framework and identify regulatory practice in relation to unlawful migrant labour, including implementation data across criminal justice and immigration records and the legislative and policy frameworks that connect migration, labour and workplace regulation.
2. Identify unlawful migrant labour experiences, including experiences of exploitation and awareness of regulatory practices, the breadth of exploitation experienced by unlawful migrant labourers and the impact of regulatory practices upon conditions of exploitation.
3. Analyse the connection between regulatory practices and exploitative experiences, including identification of regulatory practices that may contribute to/sustain vulnerability of unlawful non-citizens.
4. Develop the empirical and theoretical scholarship on crimmigration through examining the implications of the combined labour, criminal and migration regulatory framework, particularly in relation to the consequences to an individual who is subject to labour-related exploitation when their migration status in Australia is unlawful (i.e. victims who are offenders under migration law).

## Method

This research has been undertaken with the approval of Monash University Human Ethics in Research Committee (MUHREC: CF16/108 – 2016000042). It has relied primarily on semi-structured interviews with individuals and, in some cases, groups.

The research sought to include a broad range of stakeholders: policy elites (at the local, state and federal level), employers, labour hire contractors (and sub-contractors), accommodation providers, NGOs, community service providers, and migrant workers – both lawful and unlawful. It has also involved the collation of stories from people who have supported and/or worked alongside migrant worker.

The research has drawn on pilot research from NSW (undertaken in 2011), and a one interview with workers awaiting removal from Australia in Maribyrnong Detention Centre from a precursor study (the Australian Deportation Project, . However, the focus of this report is the significant body of research undertaken (thus far) in Victoria and the ACT over the course of 2016 and 2017.

The original research design was centred on specific industries and specific locations. This changed during the research process, in part as a result of the finite timeline for the research project and the significant investment of time and resources required to build a network of contacts to access unlawful migrant workers.

This research set out to focus on key industries, but this has proven challenging – both in light of time and travel restrictions, and as a result of simply following the opportunities that have arisen to date to make contact with unlawful workers, as opposed to setting limits or targets with regard to employment experiences.

The majority of participants have worked primarily in the horticultural industry, but have worked at some time in hospitality, massage, cleaning and construction. While these industries

are unlike, all have a high turnover of staff, particularly in the low-skilled range of jobs and/or in relation to the short-term, casual or seasonal nature of some employment requirements.

For the purposes of this report, the specific location of interviews and the nationality of unlawful migrant labourers is not specified, and in direct quotes this information is excluded (via ellipses and/or the use of generic terms such as city, town, country).

The aim of this research is to shed light on aspects of industry practice and worker experiences that remain largely in the shadows – often further hidden as a result of identification and removal priorities imposed via Taskforce Cadena, which is simultaneously tasked with “target[ing] and disrupt[ing] the criminals organising visa fraud, illegal work and the exploitation of foreign workers” (ABF 2017: online).

Specific information that could add to the vulnerability of participants has deliberately been excluded in this report. The intention has been to bring to the fore their experiences as a way of identifying the ways in which this group is at once vulnerable to exploitation, motivated to work and remain unidentified, and subject to border regulation practices.

## Table One: Interviews

State	Interviews
VIC	Migrant workers n=43 Stakeholders n=32
ACT	Federal stakeholders n=5
NSW	Stakeholders n=13
Other	Stakeholders n=2 Migrant workers in Immigration Detention, 2011 n=3
Totals	Migrant workers n=46 Stakeholders n=52 (total 98 interviews).

In addition to the interviews, stories from four specific cases as told by support agencies are included, as they detail the situations of workers who have left Australia.

**Thus in total the report draws on 50 specific stories and experiences of migrant workers, all of whom have worked unlawfully at some point, but not all of whom were unlawful at the time of the interview.**

The majority (n=36) of those interviewed came to Australia on a visa that did not include work rights with the intention of working.

# Findings

*The findings presented in this report are preliminary. The study is still in progress, and detailed analysis of the data set remains ongoing.*

What this report does include are the indicative, but consistent, findings from the research to date relating to two aims of the broader research project identified above, specifically:

Aim 2. **Identifying unlawful migrant labour experiences**, including experiences of exploitation and awareness of regulatory practices, the breadth of exploitation experienced by unlawful migrant labourers and the impact of regulatory practices upon conditions of exploitation.

Aim 3. **Analyse the connection between regulatory practices and exploitative experiences**, including identification of regulatory practices that may contribute to/ sustain vulnerability of unlawful non-citizens.

This interim report has a specific focus on migrant worker experiences. It privileges the voices of workers, and relies almost exclusively on the experiences of workers who were interviewed in person (with the exception of four case studies recounted by NGO workers, as noted in the methodology, as they involved individuals who had returned to their country of origin).

While not every migrant worker in this study was unlawful at the time they were interviewed, the majority were, and all had worked unlawfully (i.e. in breach of visa conditions) at some point. Additionally, although the report privileges the worker interviews – approximately a third of the total data set – it also identifies important findings from stakeholders.

The findings are divided into three sections, reflecting in part the linear narrative of the journey to Australia, and then the complex and fluid status of workers while in Australia. They broadly reflect the situation of workers before coming to Australia, whilst in Australia and in relation to leaving Australia, as follows:

1. Before Australia: Irregular and temporary- participants, their situations, their decision to leave and their journey to Australia.
2. In Australia: Working and surviving in Australia: accessing work, positive and negative work and welfare experiences, migration status while in Australia.
3. Leaving Australia: Regulating borders and identifying exploitation.

It must be noted that a number of participants (at least six: the exact number was difficult to ascertain as some participants were less forthcoming about this) had been to Australia on more than one occasion (primarily to work without work rights, but also in at least one case to travel with family). This study focuses on the current or most recent journey to Australia.

## 1. Irregular and temporary: the situation at home and journeys to Australia

The participants in this study have come predominantly from nations where accessing short-term working holiday visas to Australia is either difficult or impossible. The sex of the participants was almost evenly split: 21 women are included in this study and 29 men.

The age range of migrant workers ranged from early 20s to late 50s, although participants referred to friends who were in their 60s who were supporting family back home, for example supporting older children through University (15 February 2017, interview with two female workers). There were retirees among this group, who had little social security at home, and younger men and women in their 20s and 30s working to support families without dependents of their own. However, the majority were men and women with young children at home, who were working to support their families.

### 1.1 Deciding to leave

The circumstances of those who travelled to Australia varied, though many were primarily driven by the desire to come here to work and make money – for the most part for an undefined temporary period, but not necessarily with the intention of seeking to remain permanently (discussed below, see 1.2.3). For the majority of participants, children of varying ages – and family more broadly – were the major drivers for coming to Australia.

For many participants, the opportunity was to work as hard in Australia as they did in their country of origin, but to be better remunerated. This was considered to be worth the cost of living in Australia, which was consistently identified as very expensive:

*I come from a... very poor family, so if someone can advise me how to [stay in my country and] help myself to improve our life [that would be good] because our country, it's very hard to find like extra money for... my children's study... I like staying here, even expenses is highest, but is it my money too, even just a little bit we can get. In [my country], you had to work one month, okay, I work in... cosmetics [shop] 9 in the morning, just one hour break, 9.00 till 9.00 in the night. My salary is [equal to] A\$400 for one month. (15 February 2017, interview with two female workers)*

Another woman echoed the same logic- she viewed coming to Australia to work as a financial opportunity:

*because of the exchange rate... when it's converted back to [our money at home] is three times. Three plus times, more than three times. (20 April 2017, interview with 1 male and 4 female workers and one support worker)*

An older man, in a group of seven people, all from the same country, explained the drive to support his older children in their tertiary studies as a primary motivation for working in Australia unlawfully:

*I came here just I think probably eight months [ago] now... My first born is [studying law] and my second is taking nursing at the... University. So if I stay in [my country] I can't pay for these school fees. So I have to make my way to come here. So I try my way out and I ended here. So I can now hope to send a bit of money but - - - if I stay at home I think I*

*can't pay for the school fees and all this, so I try very best to come here. (14 March 2017, interview with 4 men and 2 female workers)*

Accessing work to enable participants to support their family financially via remittances is recognised globally as a major driver of migration of low and unskilled workers in particular, and as a motivation that outweighs the potential consequences of breaching migration and labour laws in the country of destination.

However, it is important to acknowledge that to simply identify financial motivations to support family as the primary motivator can reduce complex personal situations to a simplistic cause. The specificity of situations varied, and within these drivers various familial circumstances – family violence, being widowed, family breakdown – had contributed to the circumstances that had motivated some participants to make their way to Australia. For example:

*A young 20-year-old [country of origin] man came to Australia on a tourist visa. After his parents died, he and his two sisters grew up in a children's home [i.e. an orphanage] in [country]. In [that country], once a child turns 18 they have to leave the homes, so he took his younger sisters and went to look for work. (NGO case study #1, 2017)*

Another woman had four children, no employment opportunities in her country of origin (she had no work experience and had been a homemaker previously, caring for her family) and was in a situation of family violence. She came to Australia because a family member was working here and encouraged her to come. She left her four children with her sister, who also supported her to pay for the visitor visa, and came to Australia to work. Her situation became complex in Australia when she began a relationship with a man whose former partner was a labour contractor, and who contacted authorities when she discovered the relationship.

Another woman was also the sole carer for her child, in this case following the death of her husband, and she came to Australia in search of work to make money while her child (who was an infant when she left) was cared for by family members (NGO case study #3, 2017).

Another older woman from a different country was also widowed, as she explained:

*I come from Australia because of [our] money [situation]. I have a broken family and you know... my family at home... our living is not good. So now I come here in Australia because I heard that Australia got the farm and need people like me. I'm a widow woman. They also got a job in here [for me]. So that's why I come over here and look [for] some work to help my kids in their school to help them out in their needs. To support my kids. (20 April 2017, interview with 3 female workers)*

There is a wealth of literature that accounts for similar narratives. They matter, however, because they speak to the motivation that underpins the desire and the need to work in Australia. In a situation where these workers are highly motivated to come to Australia, where they are not recognised as temporary workers, but as unlawful migrants, their position becomes tenuous.

As the report details below, for workers who are driven to find work to make money for such basic, instinctive and relatable needs, the willingness (and ability) to give up when experiencing difficult conditions and various exploitative practices is limited, and the drive to do anything about it, other than find alternative work, is largely absent.

*“...for workers who are driven to find work to make money for such basic, instinctive and relatable needs, the willingness (and ability) to give up when experiencing difficult conditions and various exploitative practices is limited, and the drive to do anything about it, other than find alternative work, is largely absent.”*



*“...whilst the regulatory response may be to focus on identifying operators who seek to exploit individuals looking for temporary migration opportunities for work, this fails to recognise the motivations... to seek such opportunities.”*

We cannot address labour exploitation without acknowledging this context. Currently the response to migrant labour exploitation generally refuses to acknowledge workers' motivations and the pressures they experience (see also, for example, Clibborn 2015 regarding the challenges for international students and the challenges related to the limited work hours available).

## 1.2 Journeys to Australia

The majority of participants in this study entered on visitor visas, and planned to work, or came on working holiday visas and overstayed their visa.

The study also included four workers who came on 457 visas and were subject to working conditions that were problematic, and all except one were consequently on bridging visas as a result of leaving their original workplace and not being able to find other work (or as a consequence of the appropriate immigration paperwork not being filed on time, see Section 2.3).

It also included one man who came on an unspecified business visa, which he acknowledged had no work rights attached, but he found it “difficult” to stay in Australia (primarily due to costs), began working, and overstayed the visa.

Some participants had been to Australia previously, most often to work and on tourist visas, however the discussion generally focuses on their most recent journey to Australia (unless specified otherwise).

For the most part, with the exception of the cases that are identified as potential human trafficking or slavery-related cases, there is little discussion of the ways in which irregular migrants decide to come to Australia and how they travel here. As the findings below indicate, this occurs in different ways ranging from highly organised recruiters seeking (and making) significant profits (who in this research appear in many cases to deceive clients), to individuals who make their own way with the support of family and friends to pay for the visa and to support them when they first arrive in Australia.

These journeys matter not least because what this study identifies is that there are potential practices of exploitation occurring in the journey to Australia, which (as discussed in 3.1) are not being identified when unlawful migrant workers come into contact with authorities and are removed from Australia.

More importantly, whilst the regulatory response may be to focus on identifying operators who seek to exploit individuals looking for temporary migration opportunities for work, this fails to recognise the motivations as detailed above to seek such opportunities. The discussion focuses first on those who pay someone to travel (recruiters) and those who travel independently.

### 1.2.1 Recruitment to Australia: the role of agents

There were many participants who talked about the various ways in which agents and recruiters had, in print advertisements or in person, planted the idea that coming to work in Australia was an opportunity to make good money, with ready work opportunities, or alternatively, the way in which they had actively sought out an agent to assist them. For example:

*...contractors, they call [our nationality] people to work here..... Yeah, and here in Australia, that's why so many.... people [from my country] come here. (15 February 2017, interview with 2 female workers)*

A woman in her 50s recounted her experience of reading an advertisement in an English newspaper and acting on it:

*The agent is putting advertising in newspaper, right?... [An] English paper..... In [my country]. So, they advertise and then when we read the first time, honestly, I read the paper, I said it's good. It's very big money..... I said oh, this is my - my chance of going to Australia.... And I called out the agent and - - [it had a number on the advertisement to call]- - -And then I got to the agent and... we arranged [everything], we [my husband and me] pay \$8500 [for me] to come here in the first place. (18 February 2017, interview with 6 female workers)*

In the group of six women interviewed together, she was not alone in reading about an opportunity and acting on it. A number of the women in the group borrowed money to pay a recruiter, under the impression that they would arrive in Australia and quickly earn the money to repay the loan:

*- but we don't care about the fee. We don't think about the money, even we borrow from the bank and then... I [also] sell my land to come here. See, I never thinking [I wouldn't be able to pay it back] that's because I said okay, maybe one month, we can pay back the money. Because the money [promised by the recruiter] there is very good... So, it'd be easy for me for two weeks, one week, [in] my money, maybe \$1000 easy. So, \$1000 money here is already \$3000 in [my country], so that means it's not more than one month [and] you can pay back your loan from them... So, that's when I said oh, it's good. A good challenge for me to come there for there... But it's not all - but what my group is all thinking the same. Yeah, because they think it's easy. But it's not easy.... (18 February 2017, interview with 6 female workers)*

Others were less clear with regard to how they came to know about agents, but similarly recounted paying agents to get them to Australia. For example:

*[Our country] is a bit smaller money than here. Here is the big money. We thought that here is big money, easy money, right, and then the first time, I come here, I pay agent. You know much I pay? 8,000 [our] money, nearly 3,000 Australian [to an agent]... The agent was [from another country].... but when, okay, the time is, we ask person to come here, just because we hear someone said, Australia is the best to spend money, right. And then... even we pay 8,000, right, and then between people telling us that here, you can get 18 dollar an hour, even we think expensive [to live in Australia but] easy for us to find*

*the money here to take back our money. So, okay [we paid the money to get here]. (15 February 2017, interview with 2 female workers)*

Importantly, in some instances, migrant workers in this study came to Australia on tourist visas but were informed by recruiters and agents who arranged their visa applications that they were travelling on visas that would allow them to work.

In the following case, the individual never accessed work and thus there was no follow up in relation to the payment he made to travel to Australia, but there are significant concerns regarding the vulnerability of this man once he has returned to his country of origin with a significant debt owing:

*A 62-year-old [nationality] man travelled to Australia on a tourist visa to work on farms after he lost his job in [his country of origin]. He paid \$5000 to an agent for a visa under the impression he could work in Australia. When he arrived, he had no work or study rights despite being told by the agent that he could. He arrived on a multiple entry tourist visa (12 month). On arrival in Australia, he was given instructions on where to go and get work. The agent told him to catch the bus to [X train station], then a [train] to [town]. Then, on arrival just ask for work. However, when he arrived he was told by others in the community that there was no work available, and no one would give him work. The housing agency in [town] referred him to support services, where he was seeking assistance to go home. He left his luggage in temporary accommodation and returned home to [country of origin] where he had no family, work or any other support services. The service provider assisted him in returning home with some reintegration funding when he arrived; he literally had no money to get food as he sold all his belongings to come to Australia. Further, he hasn't paid off this visa, so he returned to a debt. (NGO Case study 3, 2017)*

Others recounted their misplaced belief that they had a visa with work rights attached (indicative of being told they could work) and were similarly promised work which did not eventuate:

*I loan from the bank, I loan from the bank to come here, but I don't have a choice, I work until now - until even now, I can't save money, even one cent in bank. Sometimes I go work in farm but now I'm eligible to work here, yes, I'm eligible to work here. I have work permit here, but it is very hard too, even [to get a] work permit, it's not easy, what they told us... it's not true. (15 February 2017, interview with 2 female workers)*

The evidence of potential offences relating to trafficking and slavery, such as deceptive recruiting, was clear, not only in the detailed mismatch between the promise of (and essentially payment for) work, but also in the 'strategies' used to get into the country:

*Different, different plane, we go by three times, it's separate plane because the agent say, if you go one, and then maybe, the immigration, will get it's not going for a holiday, but because the time they just put our writing to confirm we just come here for a holiday. And then, it's not easy passing the immigration. You understand that? (18 February 2017, interview with 6 female workers)*

As this group of older women recounted, generally 'getting through' Immigration/customs was relatively straightforward due to their age and gender, and they felt they were not suspicious:

*I did not face any difficult questions at all. All I was asked was what do you come here for? I said I like to travel. I just come here to look around. How it is here. So, he just let me pass. With whom are you coming? With my friend. So, she just follow me through, that's all. All good. But before that, I had a lot of comments from friends, because I have classmates who are residing in Melbourne and migrated from [my town]. And they're residing in Melbourne for quite a number of years, over 10, 20 years. Some of them are holding quite good positions in government. They were telling me a lot of things about the Immigration. So, when we come through Immigration easily... that is different from what I've heard [I was expecting it to be hard]. (18 February 2017, interview with 6 female workers)*

In the same group of six women, similar experiences were recounted:

*I was not asked anything. (18 February 2017, interview with 6 female workers)*

*I didn't have any problem with it [Immigration]. (18 February 2017, interview with 6 female workers)*

*P1: Because in her passport, there are rubber stamps to different countries, so they're taking us for granted. We appear that we are tourists.*

*P3: Genuine tourists. At first, he look at my passport. Several pages with [stamps] from different countries. Oh, these are tourists, "Come in".*

*P1: Very clever, right? (18 February 2017, interview with 6 female workers)*

In many ways the experiences recounted by workers affirms their suspicions, as detailed in Pickering's research (see Pickering & Ham 2014), with Australian customs officials: that older men or women, with contacts (family, friends) who they can identify in Australia who they are claiming to come to visit are not suspicious or suspect travellers .

For this group of women, they were aware that they were not able to work, but also some were reflecting on the fact that they had no problems with entering the country, but were not aware at the time that the visa they were entering on would not allow them to work. There were mixed reports around this, but it was clear than not everyone was asked about what they would be doing in Australia, and some had very limited English skills, so while some participants were aware that they were entering Australia to work without work rights, others were unclear about this but were never questioned specifically on this topic.

Importantly, for many who had paid recruiters and agents to assist their travel to Australia and to find work, their situation upon arrival in Australia did not fulfil the agent's obligations in this regard i.e. there was no work, or the remuneration was far less than promised) and the consequence in some cases was debt and destitution.

These three accounts offer varying, yet similar, experiences regarding to being promised (and paying for) work in Australia, which was not then forthcoming:

*Yeah... I learned a lot. I come here, you already know that we sell [land] and my husband pay a loan in bank. [We] cannot afford to pay back and [I] worry [I can't] come back to [my country], because we owe [money]... Many... people come from [my country] and worry [they cannot] come back [home]. It may be a retired person, because [in my country we don't have]... pension, no.... My sister is very poor. Me and my sister poor, no money. (18 February 2017, interview with 6 female workers)*

4. This is compared to the assumptions regarding younger women travelling from specific South East Asian countries and the decision to detain them at the airport and ask further questions, review their luggage and question their intentions based on 'evidence' such as 'sexy underwear', which is perceived to indicate an intention to work as a sex worker (Pickering & Ham 2014). In those cases, gendered assumptions can result in women not being allowed into the country, while for women in this study other gendered expectations and assumptions actually work in favour of their entry, as they are not suspected to have the intention of breaching their visa.

Some workers come on tourist visas to work, and leave and return to their countries within the designated time to enable them to make return visits. It was not always clear how many people had done this – for some workers this was impossible, due to the lack of funds available to support the extra travel and reapplying for a visa.

However, it is important to recognise the circularity of migration. This worker did not want to be recorded during the interview, so the summary of his story is recounted here. Importantly, it was on his return visit that he found there was no work as promised by his agent, and he was forced to pay for accommodation that he had anticipated he would be able to pay for once he started working:

*[Name] is 47 years old, and comes from [country]. He has four children, ranging from 17 to 12 years old, all living in [country] with his wife. When he was in [country], a man came to the village and asked him if he wanted to earn money in Australia. He said yes, and paid [the equivalent of two months wages, for average wage in his country]. He thought this included the flights to Australia, his visa, accommodation and help to find work. The man also told him that he had arranged someone to come and pick him up from his village and take him to the airport. The transport never showed up, so he just followed some other people that were leaving the village and came to Australia. This was the first time that he came to Australia, and it was at the end of 2014. He first came to Australia and went to [city]. He entered Australia on a tourist visa, which the contractor had arranged. He had two sisters, and a sister in law that was living in Australia and were all in [city] with him. When he arrived in [city], it was very hot and he asked the contractor to go somewhere else. The contractor took him to down to [regional town], where he and his sister worked on a strawberry farm. He explained that the contractor and the farmer were nice, and he was treated well. He lived at a caravan park, that he paid \$100 a week for. When his visa ran out, he returned to [his country of origin] for three months. The same man/agent that organised his visa the first time organised him another one, and he returned to Australia (3 months after returning to his country of origin). This time, he flew into [city] and was told to go to [regional town]. He said the he was just following instructions about where to go. When he arrived, he was under the impression that he would have work arranged, as that is what the agent in [country] told him. He asked around the community to find out more and was sent to a contractor (well-known contractor among workers from his country), who told him where to stay, and that she would get him work. The contractor did not get him work for two weeks, but he had to keep paying the rent for the caravan he stayed in. (19th February 2017, interview with one male worker, notes as recorded interview denied)*

Similarly, in another situation, it was on a young man's second journey (although his first to Australia) that he found the promise of work was unfulfilled:

*He was offered a job by an employment agent from [country]. On arriving in [that country], he was working long hours in an effort to save money and support his sisters. While he was in [that country], another agent offered him work in Australia. He agreed, and was given instructions about what to do when he arrived. He was told to go to [a train station] and make his way to [a town] where he will be able to find work. When he arrived, he spent one night in a hotel and realised that he could not afford it. So he spoke to others in the community who indicated that there were no employment options, so he returned to [the city] and had been living [on the street] for the last 6 months. While here, he was approved by someone who offered to help him apply for a protection visa, so he paid someone \$1000 to help him. He applied under the impression that this would provide him with housing options and access to other services, including work rights. (NGO case study #1)*

The young man's visa application failed and he sought support to return to his country of origin.



What is clear in the situations involving agents and recruiters organising travel and making promises of (and accepting money for) work in Australia is that there are degrees of deception and other practices occurring.

Notably, in this study few participants were ever in situations akin to aggravated trafficking offences (as defined by 271.3(1) of the Criminal Code (Cth)), compared with situations of exploitation more generally experienced in Australia (see Segrave et al 2017). They more typically involved deception related to work, accommodation and visa/migration status (as per section 271.1 of the Criminal Code (Cth)) - whereby deception involves misleading as to fact or as to law, by words or other conduct. The cases in this study also often involved recklessness with regard to the exploitation of the victim (i.e. in relation to cost of accommodation and actual remuneration for work in Australia that result in situations akin to forced labour or debt bondage, as per 271.1A of the Criminal Code (Cth)).

As discussed later in Section 3, the consequence of this aspect of individual experiences not being recognised - and subsequently rarely being pursued in relation to potential Commonwealth offences - is that our definition and understanding of the breadth of exploitative practices are poorly understood, and there are significant profits being made both within and outside of Australia via migration and employment services that are, at best, unscrupulous, and potentially criminal.

### 1.2.2 Following the opportunity and success trail

While stories of recruiters were relevant to just over half (n=23) the participants, for the other half the decision to come to Australia was primarily fuelled by the success of friends and family who were already in Australia, or who had returned to Australia - as these excerpts indicate:

*Just followed the friends.... You hear story from here, go back home, because we look at some people doing something, that send money back home, they do something like build a house, then they pay their school fee for their children and making good like this.... when me come here me find it easier [to make money] than at home, very easy.... That's why we're still here now. (14 March 2017, interview with 4 men and 2 female workers)*

*They came with the intention to work because there are some friends who have already were here, so told them about the work here so they were interested to come. [translated] (20 April 2017, interview with 1 man, four women and 1 support worker)*

*I'm retired [in my home country and]... I was told that they - there's work and then partly for visiting and that's it. (18 February 2017, interview with 6 female workers)*

A group of women ranging from 47 to 63 years of age, all from the same country, were interviewed as a group. Three of the women were retired teachers, and spoke strong English. The others had high school education, but did not discuss what they did in their country of origin. One of the older women in the group explained she had followed a friend, while another explained she followed her sister:

*Oh, I come to Australia, because she's [point to another woman in the interview] my friend. So, last year... when I looked for her, she wasn't around. Then I called the daughter. The daughter told me that she went to Australia, so I found out that she came here to pick grapes. So when she came back later on to us, end of the year, I think - I met her towards the ends of the year - of last year, then I asked her and she told me that she came here to pick grapes. So, I asked her were they interesting or not? Whether I can go or not, you know? Seeing as I have nothing to do. I'm also a retiree, yeah. So, retiree back home. We couldn't do anything once we have reached 60.... So, I was interested to find how it is, how life here is and how life as a picker is. So, I told her I'm interested to follow. So, that's how I came here in January this year. (18 February 2017, interview with 6 female workers)*

*My sister said I [should] come here because our country is – between here – we’re thinking that here is very easy to find money..... – just because thinking here is very high money, so equal to [money at home] is very small. So, one week’s – what people thinking is one week here and then we can get \$1000, \$2000, something like that. But it’s not true, so it’s just people talking to – maybe because of the agent also want to make money, right? So, they big – big – make their story big and nice to hear and yeah.....They trick you – they trick the people, so more people are coming and then more probably, they come to the agent....You imagine a hundred people and pay \$8000 and then how many – just like this?...8000 [our] money, maybe you know, \$3000 Australian money. So, yeah, the money’s too greedy, right? So, of course, they just snap her finger like this, it’s one week they become a millionaire, I tell you. (18 February 2017, interview with 6 female workers)*

In another group interview, a couple were working in were working in another country (not their country of origin), and then decided to come to Australia to work:

*Because the time and working in Singapore, I have some, one friend working and before they work in Australia and hear this story about Australia they working here before and Australia is good. Good, about the job. Not difficult to find a job. And people were working. This is true. If you want to reside over here, you go there, and get the job very easy. Easier to find a job. (14 March 2017, interview with 4 men and 2 female workers)*

In one case, a man was contacted by a man he knew to come for a specific work opportunity, knowingly on a visitor visa:

*One of my boss he came over [from my country] and... he told me to come over and work for him in his farm. So I came on a tourist visa. When I came I stayed with him. He paid me good; give me good money, so I used that to have interest to stay in Australia. (20 April 2017, interview with 8 male workers)*

In these cases, especially from one regional group, the process of applying for a visa and coming to Australia appeared to be a relatively independent exercise. There were no agents involved, and all of these individuals had someone they could contact upon arrival in Australia.

As detailed in the following section, the benefit of this was arriving in Australia with networks (of varying sizes) of support to assist with accommodation and finding work. Their experiences were starkly different from the stories recounted earlier relating to participants who arrived in Australia in debt and without work, and still with accommodation and living costs to cover.

### 1.2.3 The Australian dream: worker intentions in Australia

As identified at the outset, a number of interviews were focus group interviews with a range of participants. In one group interview I sat with eight men, all from the one country, and asked them about their lives, their work and experiences in Australia. All of these men had families they were directly responsible for. Of the eight, only one was unmarried, the other seven were all married and had children (one man’s child had in fact been born while he was in Australia). When asked about their plans from the outset, in terms of whether they had a timeframe for their stay in Australia, all indicated that they intended to return home and that this was less an issue of time and more an issue of feeling they had achieved something substantial financially at home. This was clearly illustrated in this participant’s response:

*For me, maybe actually for most [of us working here on tourist visas], we are closely attached to our land, our place, our home; so even though we are here, but our souls and spirit, so mind is still back [home we]... will go back home. We don’t want to spend the rest of our lives here. We just come here for money to assist our people back [home].... So, maybe most of us here we will eventually go back. But what we are coming here for is, basically for money. (20 April 2017, interview with 8 male workers)*

Responses varied regarding how long people would remain in Australia. For example:

*I think I'll stay for the end of the year and then I'll go back. Because my family is back at home, so even though the work is good, as long as I get the money that I'm aiming for then I can go back. (14 March 2017, interview with 4 men and 2 female workers).*

This older man recognised that his situation was dependent on how quickly he could earn the money he needed. When asked how long he planned to stay here, he replied:

*It depends....If I pay on school fee and my house which I built back home. If it's finished then I go back by end of the year or next. I don't know. (14 March 2017, interview with 4 men and 2 female workers).*

From another man, a much younger man with a new baby (his wife had been in Australia but went home to have the baby), his sense of coming to Australia and how long he would remain was also loose, but tied to his family:

*I come [to Australia] since friends started working [so I came and] just didn't go back because here is a little bit good for work and have some money to send back for my family and dad, sisters, and because only I'm young to some of them, just stay... and I'll work and then at the moment have a kid, one baby, and then I'll just think I need to go back if I want to see my baby's face big, then I go back. (14 March 2017, interview with 4 men and 2 female workers).*

*What is good about us here is some of us we stay here, but behind of us we have to complete all our goal and our aim, then we'll return back home, not live in Australia. But if I'm getting money here I'll stay in Australia. I'm looking for one more. (14 March 2017, interview with 4 men and 2 female workers).*

A consistent finding was that participants accepted that coming to Australia to work in this way would most likely mean they will never return once they leave, and they accepted this:

*One of my colleagues, he was returning two weeks ago and I've given him a phone call and we've talked together. He'd been living here, overstayed for almost 10 years now, and now he's going back home. All his things were shipped into the ship and send them back into the country and then after all his briefcase and all his things to go back there, and when he was at the airport in Brisbane Immigration asked him, "Did you know you have been overstayed here 10 years? Do you know you will not be coming back after three years before you come back?" and then my friend turned to him and said, "I think this is my last time. I am returning home. That's enough for me to stay here." So, yes, my friend is going back, packing up, home and then go back home. (14 March 2017, interview with 4 men and 2 female workers).*

*“...there are many unlawful workers in Australia who have been here for many years and ostensibly live in and contribute to the community: they purchase groceries, they may have families, they may attend a church, they access medical care, they drive, they work. Yet very little is known about this group and how they manage on a daily basis, with little to no safety net.”*

## 2. Working and surviving in Australia

In this study, irregular migrant workers had been in Australia working for varying periods of time: from over 20 years to weeks. The majority had been in Australia for at least a year.

It is important to note that there are many unlawful workers in Australia who have been here for many years and ostensibly live in and contribute to the community: they purchase groceries, they may have families, they may attend a church, they access medical care, they drive, they work. Yet very little is known about this group and how they manage on a daily basis, with little to no safety net.

The following section of the report addresses key aspects of their livelihood: work and welfare.

### 2.1 Working in Australia

#### 2.1.1 Access to work

The majority of those interviewed came to Australia with specific information about where to find work – as described above – however this varied, for the most part, on where participants came from.

Nearly every participant came to a specific town/city in Australia, with a point of contact with regard to work. They tended not to come with just the hope of finding work. However, those from some nations were more likely to have had an agent organise their travel based upon the promise of work and accommodation, which they found on arrival to be baseless. Others from a different group of nations tended to come to Australia on a tourist visa, and went directly to a place where work and accommodation was accessed reasonably quickly.

A key question is how is work accessed – particularly as state and federal governments and agencies such as FWO and DIBP grapple with employers' responsibilities in relation to ensuring their workforce has the right to work.

In the early study, one of the workers explained how mutual acquaintances introduce new arrivals to potential employers, and that in many cases, as in his case, employers simply do not ask questions about migration status (and in this case the employer was very shocked when this man was detained by Immigration after working for him for four years as a panel beater):

*Yeah, we all the time we tell each other [about work opportunities], just people here they introduce [us] but they do not know we are illegal's.... Like with me, when I got busted my boss got shocked.....I'm driving a company car too - I'm driving my company car.... Then I asked the police help me ring my boss... come to the police station... to return the keys for the cars to him, and then he gets shocked with the police coming. Boss gets shocked and says he's fucked. (11 December 2011, Immigration Detention, 3 male workers)*

This couple had come with a friend, and knew where to go because of a friend already based in Australia:

*We were picked up on a bus [when we arrived here- meaning they caught a bus to a specific town].... There were three of [us]... we arrange [our travel]... but we have a friend staying in here in Australia [who] invited [us] to come over and work [and gave us] directions how to come. (20 April 2017, interview with 1 male, 5 female workers and one support worker)*

Predominantly, work is found via word of mouth – often using social media platforms – where friends and acquaintances who are in different places across Australia share information quickly for work that is short-term, low skilled and often immediate in terms of the need for workers to be onsite as quickly as possible:

*Q: How did the contractor find you?*

*A: ... through our friend. Our friend worked with them and then our friend tell us that the contractor need workers, and that is why we joined that farm. (15 February 2017, interview with two female workers)*

Similar experiences were recounted by workers of different nationalities:

*It depends on our friends, sometimes some of them move to another farm and they can – sometimes they ask us – here is a good work here and so forth and that is how we communicate it, we know where it is the next place to move. [Sometimes on Facebook]... [but] maybe mostly we use phones – not in Facebook, we using our phones, because they are the people already been to this place, is [from the same country], and then when we see that job... [if] it's not very good, we start to contact with them. Or if there is any job here, can we come over? (20 April 2017, interview with 8 male workers).*

Some contractors also become key contacts:

*...different contractors. You get their numbers when we work for them because we move and move and move but we get their numbers in our phones. We try and work here but it's not better we'll go and get a new job there. If they say there's job we can go. (14 March 2017, interview with 4 male and 2 female workers)*

There are also social media platforms where employers or contractors advertise work:

*...today I saw my boss – I'll go back to him, but his fair, very fair – he was advertising – posting on Facebook that the oranges are coming up now and picking ready to start. He was telling what is dollars and posting it on Facebook. (20 April 2017, interview with 8 male workers).*

Importantly, in this word-of-mouth information sharing regarding work opportunities information is also shared about problematic contractors and/or accommodation (20 April 2017, interview with 1 male and 5 female workers, one NGO support worker).

But this is not always the case, as this worker reflected, sometimes they will follow a work opportunity without knowing anything about the contractor or employer, and that is recognised as a risk:

*...some of our friends told the other farm there or the other contractor there needs three or four people there. We don't know about the background of the contractor, we do not know about the background of the farmer; we end up down there. And that's why we actually just take risks in everything, whether it's good or bad we have to be down there. (14 March 2017, interview with 4 male and 2 female workers).*

This does not translate into work being easy to find and/or for work conditions to be easily negotiated. As one participant explained, accessing work poses greater difficulty when English speaking skills are very limited:



*... but it's true, once you not speak English in Australia, you live here, you can't do anything, only you can do, even you, they said you have to wait, maybe next week you have a job, just down there waiting until you they give you job. But if you can speak and they ask you to go outside, even the last time I don't know but I find out myself how to be not legal to stay here. (15 February 2017, interview with 2 female workers)*

What was clear was that participants in this study had periods without work. The majority travelled for work, but many had been able to eventually find work that would enable them to get by and send some money home (though for the most part not as much as they had hoped or imagined).

Much of the dominant rhetoric around unlawful migrant workers, when they are identified by authorities and removed from Australia, accuses this group of “taking Australian jobs”, but the evidence on the ground is not so straightforward. Many employers and contractors who rely on short term or seasonal workers would begin an interview by saying two things: essentially, they did not want Australians to work for them (because they were rarely motivated to work), and that they would like to see more flexible options to enable good workers to keep coming back to Australia to work for them. This will be addressed in more detail in the final report. For now, work-related experiences of unlawful workers are detailed below, based generally on positive and negative experiences. In some cases, negative experiences equate to exploitation.

### 2.1.2 Positive experiences: work

It is notable that nearly every participant in the study to date has had positive work experiences. While migration status and employment law create structural inequalities for this group of people, who are not formally recognised or protected as workers, they nonetheless had experienced working conditions they found acceptable.

I interviewed with a man who had lived in Australia unlawfully for ten years. For most of that time he had worked in one location, as he had come to Australia following an invitation from an acquaintance to come and work with him on a farm he was managing:

*So I came on a tourist visa. When I came I stayed with him. He paid me good; give me good money, so I used that to have interest to stay in Australia. (20 April 2017, interview with 8 male workers)*

The participant was indicating that while he came to Australia with no clear plan, the good pay and good working conditions led him to decide to stay here. He worked for his friend for eight years, living on the property, and left due to an ownership and management shift and his friend's retirement. This first employment experience was the best experience for him, as he had stability and earned good money (from his account, he was paid the award wage):

*He pays us \$21.80 for hour.... So very good money. Yeah. Almost two to three thousand a week we can take, because when we pick that ginger from 6 o'clock to 5 o'clock sometimes, afternoon. So if you try to imagine if you pick 100 boxes that's \$700 for one day. So that's my experience there. (20 April 2017, interview with 8 male workers)*

Since his experience there, he had travelled across Australia, finding various employment opportunities along the way, which he described – reflecting on what was good and not so good in different jobs:

*Then I stay there for maybe six to seven months, then after that I came over to [state]. I stay in here. I intend to work in one of the [farming properties] also.... Yeah. I work with him. It's a good way, but the thing just a little bit is when we have a smoke time, instead for 15 minutes as usual I have been [used] to [in my other job in another State], he gives us only five minutes. Then when we have lunch he gives us 10 minutes. So that is not fair enough for me, so I start to make my mind that I must leave this man, but otherwise he pay me in our job with \$17, for me it's okay. So, yes, I work with him until end of 2016, [then] I came over here. Then best place I work for was... [near] here in [this town]. After that I came over here to some contractors and I do picking of grapes, which is okay because [it's] the contract job [so]... if you doing picking fast you can have good money. (20 April 2017, interview with 8 male workers)*



For most participants 'good work' and 'good pay' did not necessarily equate to an Australian award rate. As this man reflected, \$17 hour was considered good. This is a consistent issue in this area: participants know that there is a potential award rate, but for them a good wage where they can pay living expenses and send a decent amount of money home equates to 'good'.

This is important, not least because there is nothing to motivate workers to leave or complain or report underpayment. As this participant reflected, her current boss was very good. She worked hard and was well remunerated:

*Here - we work contract and then \$3 per box [picking fruit]. So, yes, we take six to 700 [dollars] sometimes, one grand in a week, if we do our picking very fast. So I'm happy with my boss. (20 April 2017, interview with 8 male workers)*

Importantly, as discussed in the following section, many workers also had negative experiences. In this study, they had all primarily moved on (i.e. had left the workplace and/or town; had stopped working with that contractor) and used their experience as the touchstone with which to compare subsequent experiences.

A number of participants also expressed, essentially, a sense of randomness, or luck, with regard to finding good work opportunities, as reflected in this comment:

*Some places they have good contracts, but just for a duration of time and then after all you have to go to - we are not saying that all people are bad, just some people they are very good. And that's why we end up sending good money back home and we are building at home. (14 March 2017, interview with 4 male and 2 female workers)*

In some instances, contractors and employers were trusted without any knowledge of them, however there were also various efforts for groups to share information about work, particularly about alerting others to unscrupulous contractors; employers appearing to offer good wages but had terrible accommodation; and other issues.

Thus there was indeed some randomness to how well opportunities would turn out for workers, but also some effort to control this. Yet the quote above highlights the acceptance that both good and bad situations will arise in this context, and that the good opportunities tend to balance out the negative experiences.

A final point regarding positive experiences in relation to work is the skill level developed by workers and the recognition that workers (as well as employers) in many cases took pride in their work and their ability to be efficient workers.

Indeed, a support worker who had contact with many unlawful workers commented on the positive impact many workers had in their place of employment and more broadly:

*I've listened to these guys talk about their [work] - when they talk about their work I think what is not communicated through these kinds of research papers is that these guys actually take pride in their work. They do a really good job. They had a dinner for someone who was leaving one time and I was listening to them talk about, oh, you know, "Have you done this patch, what was it like?" When people - in that discussion [about 'illegal workers'] when it gets out into the media people don't realise that these guys actually care about what they're doing on the farm. Not like the backpackers who just come in to earn the quick dollar to go... [S]o you've got the perfect recipe of people actually car[ing] about their work and they're sending money back home to look after their families and that's perfect, you can't get any better than that. The value that - and I think your farmer, like [name] and all the other guys, they really value them, even to the point where they invite them to their churches. So they're not just people who are here. (14 March 2017, interview with 4 male workers, 2 female workers and NGO worker).*

Workers in this study echoed this sentiment:

*We've been working in one of the farms somewhere around here in [town] and we [have] been planting [fruit trees, last year]. For the whole paddock not even a single one died -... [so] now they are harvesting this season and they're starting [to grow].... In that farm... they will not pick anybody else but us [to work] because we do it perfectly and they see*

*the good result.*

*And now we end up working [for them] couple of weeks ago and both [employers] down there said, oh, "You boys done very well," because we work on the [farm] down there and... we are the people... he can see. [As] my other colleagues said [we are]... very strong, lifting, packing everything up, getting down. We were done in a minute. Do cleaning up everything up down there. We check out and we go home.*

*There are some times [where] there is not much work as well, but the work was done [was good and]... we will be back. Both of those farmers, they usually find a job for us. They maintain us so we can stay there and do the [work] for them. (14 March 2017, interview with 4 male workers, 2 female workers and NGO worker).*

In addition to positive experiences related to work, there were also broader living experiences that made aspects of living and working in Australia a broadly positive experience, in spite of concerns related to migration status and working without work rights. These are touched on briefly below.

### 2.1.3 Positive experiences: living in Australia

The positive experiences related to living and working in Australia can be divided into two broad areas: first the positive experiences for the individual in terms of their day-to-day lives, and second the positive impact their remittances were having for their family in their country of origin.

Clearly it is the latter which acts as a primary driver to remain in Australia, regardless of working conditions and concerns related to migration status, although in some instances there was a desire to remain in Australia (as discussed in Section 6 with regards to pathways to regularisation and/or protection).

Each of these broadly positive experiences will be discussed in turn.

For most participants in this study, they were interviewed alongside friends and acquaintances (in some instances family members) from the same country, and many of those in group interviews lived together at the time of the interview. Thus, for many participants there was a safety network they were closely connected to when they were interviewed, and this not only enabled participants to feel confident to be a part of the research, but also impacted on their experiences of living and surviving in Australia.

One participant, a woman in a group interview with three other women from the same region, commented that her current experience where she was working and living with people from her own cultural background made her feel safe, especially as she had experienced racist comments when shopping in town:

*I'm feeling like, yeah, I stay home, my place, because the place I live, I just only take my people to work in the farm. It's not different people. So, I feel at home every time that I'm not feeling any bad things or anything between me and people and yeah. (20 April 2017, 3 female workers).*

It is often out of necessity that people live together with people from their country of origin who are acquaintances, not least because of the expense of housing and the inability to access any private rental accommodation or other accommodation easily (and inexpensively) individually. However, this was often (although not always) a safety net.

In one interview a participant, interviewed in the precursor study while in Immigration Detention, who had been in Australia for seven years explained how he was able to support his family to come annually to Australia for a holiday:

*...my kids, my family comes every year.... I bring them out for Christmas every year... Even for this year, I've already bought them a ticket but - for this year. (11 December 2011, Immigration Detention, 3 male workers)*

While this was unusual, it is highlighted here because the general view of unlawful migrant workers is not one of tourists, spending money as a family and enjoying the Australia

summer. This participant had held a skilled and well paid job (compared with the other participants in this study), which allowed him to do this, but it also enabled him to stay on longer in Australia, as he was able to spend time with his family annually – something that the majority of the participants could not afford, and which for many weighed heavily.

Yet it was the impact of remittances that was overwhelmingly the positive aspect of participants' stories regarding why working in Australia was worth enduring the risks and negative experiences – as this participant reflected, while awaiting removal in Immigration Detention:

*...but when we stay here [in Australia]... well we're working for only 750 bucks a week, all right, but after the living expenses we take off, we still have – we still afford to send some money back, so they won't have stress [at home]. When we go back [home] well we won't be earning that much money.... [M]any people working in [my country], can't get the money we get working on the farm [here]. (11 December 2011, Immigration Detention, 3 male workers)*

Another participant, a woman from a different country to the previous participant, also reflected on being in Australia as an opportunity to make some money, which was significant for her as a single mother trying to provide for her children:

*...[from my] work in the farm. [I] help them in school fee. In our clothes and yes whatever need they need in transport [I can provide].... If I stay at my country, I can't do nothing for myself and for my kids. 'Cause you understand that I'm a widow woman. [And I] come from a grass root family. We are grass root people. [No] opportunity to work job and that. (20 April 2017, 3 female workers)*

This same participant later expanded on what she had achieved through the money she had sent home:

*I want to let you know that this moment I got my house to build. I got my place. I got two storey building because of I work here. I get some money, that's why I make my house... After I make my home [I will go home]. (20 April 2017, 3 female workers)*

Such an outcome is significant – and it is not an isolated story. Another female participant in this group was married and in Australia with her husband. They had no children. They were saving money and sending that home to their extended family, as well as saving money to build a home for the family they were hoping to have. Another participant, a middle-aged man, explained the benefits to his family back home, and recognised these were achieved through hard work and challenging living conditions:

*Somehow there are benefits [to living and working like this]... we've... sent some small money back to our country and we're starting to pay our school fee of our children, we build houses. For myself I built a four, big bedroom house back at home where some of my people know about it; that is what's the contribute that Australian people [employers] have been helping [me achieve].... I'm building my home back up there [in my community]. Even my kids go to school, so that's the benefits that we are experiencing.... [W]hatever things these contractors or farmers, they are just giving to us... we have to keep bearing. Whether it's small [money, i.e. poorly paid], we're limiting our budget so that we can send something back at home. But it's very tough. It's really very tough for us that to experience a kind of lifestyle that we have been going through here it needs boldness and it needs madness for you to live and survive in a nation like Australia. (14 March 2017, 4 male workers, 2 female workers, one NGO support worker)*

In the same interview, another participant echoed this perspective, that the positive impact

*I want to let you know that this moment I got my house to build.... After I make my home [I will go home]. (20 April 2017)*

at home outweighed the negatives relating to overstaying a visa, working without work rights and the treatment experienced in some employment situations:

*I came here on a tourist visa as well, but then after my three months was up I didn't go back because when I worked in the farm, when I get money from the farm it's, sort of, like, I earn a lot of money, [the equivalent of] big money... back at home, so it's, sort of, like her [another participant who had said the impact at home was significant]. When I send money back home to my kids it's like I send a little money here, but... at home it's a big money so I can offer to pay my kids' school fees and then plus building my little house. So when I work here I earn lot of money [more] than when I stay back at home because back at home it's, like, work is very hard. It's, like, we earn money fortnightly but it didn't cater for the family level, it's, sort of, like, we earn just \$800. Compared with the living it's very expensive because if you earn \$800 or something for a fortnight you can't benefit for that for the whole week, even if the end of the week, only one week then the money's going to finish, but when we work here and we send money back at home it's like we send big money back at home. So that's why it drives us to stay and then overstay, for sure. (14 March 2017, 4 male workers, 2 female workers, one NGO support worker)*

And finally, two other participants in the same group agreed with the sentiment of the other participants, that the impact at home was worth the challenges of poor work conditions and other issues that arose working and living in Australia unlawfully:

*we come here, we change our living back in a small village and we build the houses and we sometimes pay the school fee for the kids, for buildings, helping the people, you see, like that's why we stay here, we support the people in our country... So we overstay like this... Some places we go, some contract not pay as good then we move to another contract, "Oh, come here." We save a lot of money and then we save it for a house, us here too, for Australia. (14 March 2017, 4 male workers, 2 female workers, one NGO support worker)*

*But you'll find in Australia, as [my] other colleagues have been saying, it's good... what we've been doing at home because of [what we've earned in Australia], [we]ve been helping towards - ... school fees, in terms of accommodation, paying our homes, building our homes back at home; a lot of things that have been benefiting us. (14 March 2017, 4 male workers, 2 female workers, one NGO support worker)*

Australia clearly has an opportunity to support people to achieve such positive outcomes. For these participants, being detected and removed are secondary concerns, compared with trying to send a good amount of money home – despite the fact that none of these workers is likely to have ever been paid the wages they were entitled to for the work they had undertaken in Australia.

The fact that they will not be allowed to re-enter Australia for at least three years – due to leaving after overstaying and/or being removed as a result of overstaying, or being detected working without work rights – was not a concern for participants. The reward of achieving something that was impossible to achieve in their home countries was incomparable.

There is no incentive for workers in such a position to pursue unscrupulous operators for under payment or non-payment. In addition, the incentive to work and achieve material, long-term outcomes for themselves and their families was a common thread through

*“... There remains a significant incentive to come to Australia and work, and to make one’s way to create opportunity at home. If Australian policy cannot begin to recognise this and create...opportunities... for Australia (employers and, arguably, the government and community) and for citizens of nations within our region – the current situation is likely to remain the status quo despite efforts to regulate contracting.”*

the study. There remains a significant incentive to come to Australia and work, and to make one’s way to create opportunity at home.

If Australian policy cannot begin to recognise this and create dual opportunities – that is, opportunities for Australia (employers and, arguably, the government and community) and for citizens of nations within our region – the current situation is likely to remain the status quo despite efforts to regulate contracting.

The focus now turns to the issues touched upon in some of the quotes above: the negative experiences in relation to living and working in Australia.

#### 2.1.4 Negative experiences: abuse, mistreatment and the inability to act

The majority of the negative experiences, which occurred on a spectrum ranging from employment breaches to potential criminal exploitation, were related to work and payment. This is discussed first, followed by an examination of issues pertaining broadly to welfare, with a focus on accommodation and health issues/care.

A group of six women from the same country were interviewed together (18 February 2017, 6 female workers): they were all women in the 40s-60s. Their views on work epitomised the concerns and experiences raised by many participants in this study. They said that the money and the work conditions were the worst aspects of working and living in Australia. They never had much money, but they still had to pay rent and get food. They worked all day, and their bodies hurt.

One of the retired teachers said that the supervisor (a woman who also helped with the picking) and the contractors would often yell at them – she said it was just outright verbal abuse. She said they would yell ‘fuck you, fuck you all, you all can’t do anything’ if any error was made. The remainder of the group affirmed these experiences of verbal abuse and poor treatment, but were well aware that the only option was to keep their heads down and keep working:

*It’s – they treat us like it’s not like a human. They treat us like very low, low, low person. It’s not come from planet. Maybe some other planet that treat us like – it’s saying animals, but they don’t treat you like animal, more than like – it’s not good.... [but] you don’t complain, in case you don’t get your job.... Once you complain, you’re gone anyway. (18 February 2017, 6 female workers)*

Importantly, knowing not to complain (and having no one to complain to) was not something that needed to be explicitly stated. As the interview progressed, the participants in this group were asked whether they complained about such treatment. They replied:

*P1: It’s just instinct in us. We shouldn’t be complaining.*

*P4: [We] Just ignore [it].*

*P5: Just in case we get thrown out. (18 February 2017, 6 female workers)*

This response pointed to the common issue in relation to vulnerability for workers: their inability to take any action because of their migration/work rights status. As this exchange



highlighted:

*Q: So there they thought that illegal workers were good because they couldn't complain?*

*A: Exactly. So that's what they've been saying to us, because we argue with them they can say we can go to the people [in the Immigration] department. (20 April 2017, 8 male workers)*

There was a view expressed that it was contractors more often than employers who used immigration status as an explicit threat:

*P1: specifically, if you're involved with a contractor. If we say something more harmful for them ... they will touch that point... [that] we can't say anything [because Immigration will be called].*

*P2: Mostly the contractors they always using us like that. Direct to the farmer is very good [work] - is very good.[They] care for us, keep us good, yeah. On the contractors always same, because you can't speak that way when you do the jobs and we do not pass to do that job. And okay, if you want to you do it, your job, then see he's starting to threaten us. Yeah. That is that. (20 April 2017, 8 male workers)*

The issue of migration and work rights status as a specific form of vulnerability is discussed in more detail below. For now, it is worth noting simply that it results in workers having no leverage in the workplace. This played out in relation to abuse experience in the workplace, but also in subtler ways.

Another example of control exercised over workers was the experience of many participants that they had little to no information about where they were working (i.e. the specific address) and rules such as banning phones or photos at the workplace. In the following conversation, a community support person who was a part of the group interview prompted the workers to explain this, as she was particularly concerned about the potential consequences in the case of an emergency:

*Support worker: So you've got some rules about that... you can't have your phones on the job?*

*P1: No.*

*Support worker: Let's say about the addresses. Nobody ever knows the addresses where they work or what the name of their farm is, that's true?*

*P1: Oh, yeah, I do not know the name, they never tell, they never introduce when we go into certain farms they never introduce that this farm is owned by so and so - we're just going right there and starting work straight away we don't know anything, and the present farm that we're working now I don't even know their name. It's very big though.*

*Support worker: So if there's an emergency, an accident [no one knows where they are]. (20 April 2017, 1 male worker, 5 female workers, 1 NGO support worker)*

While this issue was a concern to the support worker in particular, it was payment that dominated interviews in terms of negative experiences related to work.

### *2.1.5 Negative experiences: non-payment and deductions*

Every participant in this study had experienced non- or low-payment for work. In addition, as discussed below, there were situations that arose in relation to debt bondage and wage 'theft', where money was deducted from wages for various reasons.

Some NGO participants have suggested that if workers knew that they were not being paid the award rate they would want to do something about this, but given the motivations noted earlier in the report (see Section 2) the motivation to work and the potential benefits tend to outweigh concerns about being paid correctly or evenly fairly. Indeed, it is



important to note workers were not unaware that they were not been paid very much, and/or that others were paid more, but generally it was articulated by participants that they accepted their position as one of powerlessness.

As this man explained about his first job, working alongside his wife upon his arrival in Australia [via an interpreter]:

*[We] just accept, because this, the intention to come here was to work, okay so [we] just accept whatever wages paid. Of course [we] feel that it's a bit low but [we] have no choice, [we've] already made [the] decision to come to look for job here [without work rights]. (20 April 2017, 1 male worker, 5 female workers, 1 NGO support worker)*

This couple worked in many jobs in their six months in Australia, and they reflected on some of their negative experiences. In some cases, they were not paid, in other cases they heard about other work opportunities and wanted to leave one job because they had a better offer (i.e. easier work, especially for the wife in terms of the physicality of different jobs, or better remunerated work), but this would mean they would not be paid for work already done.

*P1: Some... contractors, the last minute, they not pay our salary. If we want to move [to] another place.*

*P2: They don't want to pay.*

*P1: If I come for one week you want to go, but the money no good. (20 April 2017, 1 male worker, 5 female workers, 1 NGO support worker)*

This story of unpaid wages was common. In this interview, a community support member, three workers and another worker who was also interpreting were present. When asked about the extent to which contractors may underpay/not pay, the conversation reflected shared experiences of these practices:

*P1: It [happens]...quite a bit [that people are not paid]*

*P3: I've seen the other ladies jumping up and down because they haven't been paid.*

*P1: And chasing them, calling them.*

*P5: I've seen the contractors come with excuses. The fact that I've seen it [as an Australian] means it's happening more than it should be. (20 April 2017, 1 male worker, 5 female workers, 1 NGO support worker)*

In this group one of the workers, an older woman (who was retired at home), who had been in Australia for four months, and who had come with two others (one was working elsewhere, one had returned to their country of origin), had decided to leave Australia and had booked tickets to go home simply because, she said, "Just going home. No money." (20 April 2017, 1 male worker, 5 female workers, 1 NGO support worker).

This participant had come on a tourist visa, and her son (a University student) and husband were at home. She had experienced non-payment in some jobs, as her friend explained: "She was also not paid for one week.... she was doing the blueberries, it was about 500 plus [she was] not paid" (20 April 2017, 1 male worker, 5 female workers, 1 NGO support worker).

Yet another worker reflected on the injustice of being a good worker but not being paid and not being able to do anything about it because of their migration status:

*Take for example the last few years I was down in [a town], yeah, we've been working for one of the contractors down there and we were picking fruit... and then after that he said to us, "Oh, your money, the farmer didn't pay me yet. You'll be wait," and then we said, "Hey, mate, what time will you pay us?" "Oh, he's not paying us yet." So almost that experience, after three months he never paid us and that's why we left from that place, we*

*never get it. So that's how serious – how the contractors, they have been mistreating us.... I was in Western Australia [a] couple of years ago, I was there six months, and living there it's very different as well. I mean, compared to different states, different payment and different people and it's all dependent on who is the pusher towards us workers there, but as long as they know that you are not a legal worker down there then they have – they reminded [us] that whatever thing handed to [us]... there will be no complaint coming up. Because we are becoming illegal workers, we're also afraid to end up [in Immigration or] to report these people.... But [Australian people] don't know we are doing all of [the] effort ... You've seen those farms there? There is not any other more people [doing the hard labour] but just only.. Asian people, black people and everything like that. Those are the people that are doing their business. (14 March 2017, 2 female workers, 4 male workers, one NGO support worker)*

*“It [is] very tough to live in a country like in Australia compared to where we come from... [but] we can't afford to do anything else so we have to just stay... as long as we get something [i.e. some money]. But actually, we are really being underpaid by those people, those contractors or those people that take us to work up... there. (14 March 2017)*

Another worker stated simply, “Maybe he [your boss] will call up Immigration as well... [So Immigration can] get you [and he doesn't have to pay the worker]” (11 December 2011, Immigration Detention, 3 male workers). In one group, it was argued that workers became savvy to these practices (for example, they may refuse to wait so long for payment), and that the most at risk group were new arrivals as they were not aware of unscrupulous operators (and had been told they would earn good money in Australia):

*the new staff, they don't understand, they come here poor, they just work, or they ask to work, even one week, sometimes they get 70 dollars, 50 dollars, yeah. (15 February 2017, 2 female workers)*

Indeed, as this participant went on to explain when asked whether there was much physical abuse in these settings, the main way to harm people was via deductions from wages, knowing that these workers are powerless to do anything:

*No, they not hurt anyone but they're very soft, they not telling you, you imagine, okay, let's say the contractor, the subcontractor, the farmer give \$1.00 each tree and then the subcontract, give to the staff 50 cents, they already get 20 cents from that, the profit they get, and if they have 20 people, 20 people work on farm and one tree equal how much?....*

*It's many, so staff only get 40 cents, after that, maybe several hundred tree they make a day is \$40, right, and they cut the petrol to bring them over there, \$15.00 is how much they get. Sometimes they working the whole day is \$20, \$20, but they don't have a choice because the agent trick them, because the agent also needs money, right, they want a profit [to take home to the country of origin], they must lie with the people so they can come, they can bring more and more and more here, but then they don't know what is the risks of coming here, because they only know that it's good, but the people worker don't understand, they just come because they hear it's very nice. It isn't. (15 February 2017, 2 female workers)*

The challenges of working to survive and having no option but to accept the conditions or leave were summed up by this participant, who had been in Australia for three years:

*It [is] very tough to live in a country like in Australia compared to where we come from but somehow when you're here how we adjusting ourselves with this labour work I've done here, it's a tough time for us as well. But just because of that Australia is quite different from where we come from, but we experience that place that I end up working with some*

*other people down here, especially in the farms, sometimes those people that took us to work in the farms, they are not even paying us according to the rate... in Australia. But just because we know that we have become nobody... in Australia [and there is nobody who will] recognis[e]... us we can't afford to do anything else so we have to just stay ...there, as long as we get something [i.e. some money]. But actually, we are really being underpaid by those people, those contractors or those people that take us to work up... there. Even we work directly for the farmers, those people on the farm themselves, even during my time here we've been working, we do some pick fruiting somewhere round here and some people, the contractors or those people, they say they will pay us later. They even not pay us for almost three months. So we find it very hard but what can we do, what can you do? So sometimes they say, "We will pay you. Come back next week," but if these contractors or if these farmer people they will already spend that money for the last three months. How do you know that they are going to pay you for the next time? So all we have to do is to pack all our luggage and then move up to another new place, finding a place to survive. (14 March 2017, 2 female workers, 4 male workers, one NGO support worker)*

While there are often assumptions that workers coming to Australia have experienced difficult living conditions in their country of origin, it is notable that this worker, and other participants, emphasised the struggle experienced in living in Australia - in part an outcome of the challenges in being paid consistently and seeking to survive in conditions where there is no support infrastructure. These workers are struggling to survive, while others exploit their vulnerability and make significant profits.

Two participants highlighted that the one of the challenges around contracting arrangements (which can involve myriad subcontractors) is that while employers may ostensibly pay one contractor appropriate payments for workers, the payment becomes entirely inappropriate as contractors and subcontractors take their cut of the wage:

*We go farm and sometime the farmers are good but the subcontract is no good. You know, some Vietnamese, many Afghanistan, you know, they said, okay, today we pay salary, and then until next day and next day and next day and months, they not pay, until we broke, sometimes it's good, we have friends, sometimes they pay first the, the rent house, sometimes the owner is good, okay, you wait until you have job, and then you pay me, finish. But if you're not lucky, you're out from the house, sometimes, I tell you, some people starving and sleep outside. Because they're rather going back to [their country of origin] but they can't going back... because not enough money, no money to going by plane. (15 February 2017, 2 female workers)*

*the farm will give to the [nationality] or they give to the [nationality], so the [nationality] run the staff... and then once it come to the payments, let's say, the farmer actually, they already pay full, but the subcontract they didn't pay full, they take advantage of the people, because they don't have a visa working properly, they take some of the money. Let's say they give us for tree to pick the leaves, 170, they only give us 50 cents. It's true. (15 February 2017, 2 female workers)*

Indeed, many workers emphasised that working directly for one person, the farmer or business owner, tended to result in better conditions and better pay. Deductions from wages were also a significant concern and a common experience, and in some cases, there was no clarity regarding why money was being taken from wages:

*I think it's about you see, if you are paid a certain amount and then what's being given to you is not exactly - yeah.... We are never told [why or how much]. Nobody's ever been told. (18 February 2017, 6 female workers)*

*P1: contractors then sub-contractors all along the way... There are cuts all along the way so until they reach the pickers like us, or we have to accept that.*

*P2: Yeah, because [we] must [be] working. (20 April 2017, 4 female workers, 1 male worker, 1 NGO support worker)*

A significant challenge is that workers have to accept this, or face not having a job:

*that's what they've been saying to us, because we argue with them they can say we can go to the people... [immigration] department.... Because of that everyone will put the - clapping on their mouth.... So that's actually what's happening to all of us here, so sometimes this contractor... we'd argue with them with our problems [but].... You cannot argue beyond their strength because we argue to the limit and then if they say no then we fold our hand and come back and bow down to them again, do the job again. (14 March 2017, 4 male workers, 2 female workers, 1 NGO support worker)*

In addition to not being paid, deductions from wages (not always best described as wage-theft) related to accommodation (discussed in more detail below) and travel were common, for example:

*They charge transport, you know, from our, from [house] to [local farm] we pay \$15.00... to go and back [i.e. return trip]. (15 February 2017, 2 female workers)*

*Like the other [places we worked], we pay for transport. [And] we have no choice because we don't have any vehicle of our own, so any transport so we just pay. (20 April 2017, 4 female workers, 1 male worker, 1 NGO support worker)*

Multiplied by six to ten or more workers, a \$15 return cost per person for a journey of potentially 40-60 kilometres (in some cases more, most often less) is an additional and significant profit being made from workers who are earning little as a result and who have no way to negotiate this cost, or to seek alternative ways to travel to work.

What the findings also highlighted is that there may not be clear agreements regarding work expectations and conditions (such as hours, rates of pay, the costs of various deductions) and/or that these agreements may be easily changed and workers cannot do anything about this. For example:

*One of the worst things is that when you're working for a farmer and then when you start work then he [does not] tell you that his work is a contract, hourly, so after you put all the effort in it, imagine the decent hourly job, at the end of the day he or she comes and says this is a contract.... We said, oh, this must be a contract job so there might be \$15 for us, an hourly rate of things, this will be fine, so we will do it, but then after [a day of seven or eight hours working, believing they will have earned \$105-120 for the day]... he says, no, no, this is a contract... [F]or the whole day, you're working for only \$35 before tax. That's the thing with labour. (14 March 2017, 4 male workers, 2 female workers, one NGO support worker)*

Another issue raised in this response was the common deduction of tax from workers who had no work rights and were not registered in any way to pay tax. Participants in this

study were aware of the fallacy that they are being taxed, and realise that this money is undoubtedly lining the pockets of sub/contractors. As the following participant's comment indicates, they also understand that their very real contribution to the Australian economy is largely unrecognised and unacknowledged:

*“Contracting and subcontracting, in particular, is a monolith. While it may seem that we can identify contractors, on the ground there can be very complex arrangements and workers are uncertain themselves about who is paying them or employing them.”*

*I really believe from the bottom of my heart that from the past years [to] now... we have been contributing a bit to the economy of Australia... One of the things... is that those people that paid us, they're always deducting tax from us and... we [do not] receive any tax return for that... What can you do?... Maybe some people [we work for], they are not paying their tax, so we might be one of [the] option[s].. so that we can help them to pay their tax, but [no one]... appreciating what we are [doing in relation to contributing tax to the economy]... [W]e just be nothing.... But still we survive.... So that is [one]... thing.. that when we come in Australia we do a little bit of that. We never receive any tax return but we always pay our tax. We always see that the people pay and they say, oh, you pay 13% tax. We never say anything, but these people are taking from us. So I think... the Government of Australia they know that... They must...recognise us who... are here that [for] how[ever] many years... we been staying here, we are contributing to the economy of Australia. We do. (14 March 2017, 4 male workers, 2 female workers, one NGO support worker)*

Another participant in the same focus group affirmed this view, stating:

*Because when you become overstayed and you work and then pay stuff, we don't know whether those contractors they deduct the truth on the tax or they didn't deduct for us. We say whatever's in your hand, that's better.... They took 16% (tax) from us.... [From] some we [got a payslip], but some they just pay us on a casual basis as well...No record. No proper record on those tasks.... No contract as well. (14 March 2017, 4 male workers, 2 female workers, one NGO support worker)*

The complexity of contracting and subcontracting, and the absence of formalised work agreements (or the shaky foundations of any 'formalised' work agreements that do exist) were consistent across the experiences of participants.

Contracting and subcontracting, in particular, is a monolith. While it may seem that we can identify contractors, on the ground there can be very complex arrangements and workers are uncertain themselves about who is paying them or employing them. This conversation in a focus group of female workers demonstrated an example of not being paid and having no clarity regarding who they are relying on to pay them. They were in the midst of this dispute (they were on the phone to a supervisor) at the beginning of this interview, and started to explain their situation:

*P1: She promise us to pay us two weeks in one go.... Yeah, but then for the first week, we ask for and she said she would pay the following week. That means two weeks. But then we have been working there for two weeks and then we get paid today and she only give us one week....*



*P2: She promised us that she would pay us for these two weeks – the first two weeks that we’ve been there. But then today, we got our pay, she only paid us for the first week. And this is the second week.*

*P1: And this week, we were not paid at all. She said we would carry it for the following week.*

*P2: For the following week.*

*P3: That meant another two weeks [without pay]....*

*P1: But we don’t know whether she’s a contractor or not.*

*P2: She’s not, I think she’s....*

*P3: She’s a subcontract – she’s a subcontract.*

*P2: No, she’s not. She’s a picker.*

*P1: We don’t know whether she’s a contract[or]....*

*P2: Every day, see her in the farm picking.*

*P1: But the thing that I come to know listening from here and there is [that] some of these people, okay, they – we don’t call them subcon[tractor]. They are pickers, but because they’re introduced to the contractor, sure to get a bit out of your wage. (18 February 2017, 6 female workers)*

What was gleaned from this conversation was that the person they were referring to was owed money because she had found these workers to assist in filling a labour deficit and would earn a commission for that, but she also, for reasons that were unclear, was in charge of paying this group of women and was withholding wages. As one of the participants emphasised:

*“we don’t know who the actual boss is, who the actual contractor, the main contractor is.”  
(18 February 2017, 6 female workers)*

In this case, the participants were better off than other participants: they had good accommodation (two women shared one room, three shared another) and it was at the lower end of scale of rent (\$70 each per week, compared with their previous accommodation, where they paid \$95 each per week). Nonetheless, no income for two weeks is a significant burden. And in some cases, they were left to try and chase up someone to pay them:

*Like, these two weeks, I have not received my salary. Last week, when I call her, my wages – last week, when I call her, she said, “I’ll be paying you next Saturday,” which means it’s supposed to be today....But I don’t know whether she’s coming to pay in the evening, but I’ve not received any news there....I mean, if she is the boss and a good boss, you know, I would think that she will call me and say, “Oh, I’m coming to pay today,” right? Yeah. It can’t be that – I call her all the time to chase after my wage. (18 February 2017, 6 female workers)*

*“we don’t know who the actual boss is, who the actual contractor, the main contractor is.”  
(18 February 2017)*



For some participants, the consequence of not being paid, or not being well paid, was that they are trapped in Australia. As this participant explained, drawing on her experience and the other workers in the interview, not being paid well, and not being able to realise the promise of steady work and a decent income promised by the agent who assisted in organising their travel to Australia, means that their options are to stay in the situation or leave and seek some form of support. In this case, they opted for the latter. There is no way of knowing how many people opted to remain:

*So, yeah, until now we working here, that's why we coming to [person to] ask for help, because we cannot afford to going back [to our country of origin]. Even going back [home], maybe cost \$500 Australian money. We cannot give because even we work, once we, maybe seven days or six days we work in farm, maybe only \$270 [week], is highest [amount we earn], because we don't have [to pay] tax [but]...maybe sometimes... \$120 or \$170 [a week]....Sometimes three times, four times a week they working in farm. Honestly, one time my sister, five days working, only \$120 [for the whole five days]....I think they actually they not pay small [the employer/grower] but maybe the sub-contract, they take the money, maybe they rip off the staff. (15 February 2017, 2 female workers)*

Workers identified that their migration status was the reason for this:

*I think they rip off because they think it's no point even we report to the Government or we report to the awards, rights, they cannot do anything because we don't have legal here, we don't have power to fight with them. (15 February 2017, 2 female workers)*

*So [with]... work sometimes we experience different persons, sometimes work quite hard and we expect a big amount of money. Like some places I work and they just pay less and sometimes we feel a bit - how can we complain because we don't have work rights? We just patient and work, and save each of us. (20 April 2017, 8 male workers)*

What is clear is that contractors wield significant power over those without legal rights: "All their experience that the contractor has the power where he always will cheat people." (20 April 2017, 4 female workers, 1 male worker, one NGO worker).

The extent to which efforts to regulate contractors will overcome this is unknown (such as Victoria's move to regulate the labour hire industry, see Minister for Industrial Relations 2017), and the call from DIBP to identify vulnerable workers is also seriously questionable (see DIBP 2017). These workers (and their exploitation) are unseen; those making profits are difficult to identify; and there are consequences for workers in coming forward.

This is discussed further in the conclusion. The focus now turns to look at other negative aspects of work, broadly related to accommodation, safety and health.

### *2.1.6 Negative experiences: welfare of workers, accommodation, safety and health*

Accommodation is a significant challenge for migrant workers, both those on working holiday visas and those without work rights, as has been acknowledged in recent reviews related to working holiday visas (Commonwealth of Australia 2017). Indeed, it is one of the critical areas of exploitation that is largely unrecognised, because it sits outside the purview of employment law.

The key issues in this study were related to accommodation standards and the costs of accommodation, which were often paid via wage deductions (and where, in some instances, the only way to have a particular job was to take the accommodation that the contractor/ employer provided and pay whatever rate they insisted upon).

Many participants explained that accommodation is a significant way to make large profits. This participant recognised that the contractor she was working for was connected to the agent who had arranged for her to travel to Australia on the promise of well-paid work. The contractor was making significant profit from housing people in sub-standard conditions, and there was nothing she was able to do about it:

*There is eight people in [one room]... Just two [bedroom house]. ... [all the people living there are] from [my country], but... the problem is the subcontractor own the house. They don't care about how [we] sleep, how [we] shower, how [we] cooking, they just take the money... I know if they go to the real estate, right, maybe only 100 or 200 every week we have to pay. But if the subcontractor take all the house, maybe they can put all the staff there, already they get \$1,000, so they can make profit \$700..... They [the subcontractor] rent the house [from the real estate agent], but they rent again for the staff. (15 February 2017, 2 female workers)*

Other participants also recognised the same practices:

*One thing contractors usually do is [they] apply for houses in real estate and then they put their workers inside, flood them with workers. [T]hey're three bedroom houses; they put 13 people - 14 people... And three bedroom house with 13 people inside, people also sleep in the garage - what do you call it - the carport.... So sometimes - what do you call - the contractors are not fair with the rental, I mean the accommodation and they charge the rent quite high....So we were paying \$100 per person [a week], times 14 people; that's \$1400 for that house. That's how much they will get renting. (20 April 2017, 8 male workers)*

However, the link between accommodation and the connection to work opportunities varied. In some cases, the employer or contractor organised and was paid for accommodation (i.e. as a salary deduction), in other cases people found accommodation separately and these were private rentals that appeared to be sub-let to many non-citizens:

*P1: Sometimes the contractor organises for us and sometimes we find our own. [In one place] at first I was concerned that, like we pay \$100 each person per week. It was six people - there was seven, eight people and they take for that - - \$800 a week, yes, so they're taking money on that and then somehow we try to talk with these people if they could reduce it. (20 April 2017, 4 female workers, 1 male worker, one NGO worker).*

*The situation regarding accommodation charges and conditions was frequently raised by participants: \$90 for a shared room was a common cost, and often many people were in the one house. It was similarly reported by NGO stakeholders in NSW that workers coming on student visas to work in the hospitality sector were equally living in substandard and overcrowded accommodation, with no option of leaving if they wanted to keep their jobs (16 June 2016, 4 NGO workers).*

These issues are not simply about regional locations. Clearly there are significant concerns about overcrowding, simply from a community safety perspective. However, it is also poorly regulated and there is much money to be made in housing individuals who are unable to access the private rental property market (for many reasons, including being non-citizens with no proof of income and no rental history, in addition to language barriers etc.) and who cannot negotiate these costs.

The challenge for many in this study was arriving in Australia and immediately building debt in relation to accommodation and working in jobs that were often short term, and the ways in which this impacted on their livelihood, as they needed to pay exorbitant rental costs and other living expenses. Comments from participants echoed these situations:

*we hear from someone, the agent [they will] bring people from [our country] to Australia, and work here, and then they said [they] have got accommodation, have everything,*

*have job, ready job after you arrive, just arrive and you get everything include[ed] for the \$8,000 [paid to the agent]. So, we come here, okay.... We went here, we wait until a week, and we get the job, because they're not prepay the job, yes, and then we get upset because we have to pay the room, it's not include[ed] [in] the 8,000 [we had paid]. We have to pay rent every week, \$100 every week.... Each person.... [At] the time we arrive 14 people [were living in the house].*

What was also evident, for those who had been in Australia for at least a year and who had moved around, was the variation in experiences with regards to accommodation. This participant had been in Australia for ten years (he had arrived on a tourist visa and had travelled to his destination to begin work he had been promised). He relayed his varying experiences in relation to accommodation in the interview:

*when I stay in [State] our boss give us the caravan, so we stay... beside his farm without renting anything, we just stay there. After the work we go to the caravan. He never asks to pay the caravan, yeah, sure, we just pay our part; he pays for the electricity, all these other things, because we work direct to him. Yeah. That is one of my experience. ... That is how he treat us. So it's very good for me and I stay with him... [Now] when I stay in here I rented a unit. Okay. In unit when I rent it I rent \$90 for a week, then after three months I pay my electricity bills, which almost cost \$400, between \$300 to \$400, that's how I pay it. That is pay enough because they provide everything in that unit to eat, utensil things, bleach, everything provided. So I am grateful for this one. Okay. Elsewhere here I... rent with some... [nationality] people. Very bad condition, but they still [ask]... \$90 for a week to rent. No TV, no refrigerator, just a room, a room to stay. And three of us or four of us stay in the one room. That's the thing I see ... when you rent from them that's how they treat us.... Now I stay with my boss here now; he give us everything privilege - accommodation free of charge, nothing, we just work for him. What we earn, we're earning for us. So that is the current one now. So, yeah, that's the difference I've seen. Yeah. That's for me. (20 April 2017, 8 male workers)*

The current situation for this worker was rare, but highlighted as noted above that some groups of workers are highly valued and are in fact not necessarily being exploited. However, for many participants, the issue was not just the cost, but the standard of accommodation. As highlighted in the experiences related above, the accommodation that stood out was where there was nothing provided and many people were sharing a room. Some participants expressed shock at the conditions they were, or had been, living in:

*they gave us tourist visa, and place to stay, they're writing everything [when advertising for us to come to Australia], but actually when we arrived here, it's nothing. They put us in, I tell you, and I said, I'm very poor in [my country], but I never sleep on the floor before. They put us in floor... maybe eight persons in one room.... in [my country]... I have nicer [home] than that... I never sleep like that, but because we're here and expensive money here, we don't have choice, we have to do what they tell us. (15 February 2017, 2 female workers)*

Another worker in the same interview echoed this sentiment:

*My experience from the farm is... very sad, actually we never sleep like [this before], five or six person[s] in one room, even when we were in [our country], we don't do that.... We not do. But because of subcontract and the agent... lie[d] [to] us to come [here in the] first place... we have to accept whatever happen, we have to accept. (15 February 2017, 2 female workers)*

Not all participants had such negative experiences regarding accommodation, and in this study a number of focus group interviews were conducted where workers were living in good, stable accommodation, rather than the substandard situations some workers had endured previously.

This worker (as told through an interpreter) had lived in substandard and unregulated accommodation on a property, not in a caravan park, and the conditions appeared to contribute to his very poor health:

*The caravans were on the first farm that he worked at. There were about 13 caravans, and at any time there would be 50 people living in them (depending on the size of the caravan). There were only two toilets, and many people regularly got dysentery/diarrhoea. The toilets were always blocked and never cleaned. They had one cook house for everyone, and that was always dirty as well. No one ever cleaned it, and he thought that is why everyone got sick. He cooked for himself, and would clean as much as possible but it was never clean. During this time, the worker was taken to hospital three times. Each time, the contractor paid his expenses, which he then had to pay back. The first time, a Greek friend that he had made took him to the hospital, however the contractor still charged him for that visit. When he could not repay the money, because he was sick and unable to work, he still had to pay rent. So he borrowed more money from the contractor, who then took his passport until he could pay the money back. It was around this time he found out that he was actually working in Australia illegally. Someone in the camp told him about the law in Australia, and he worked out that he was here illegally. He then got very sick with a pre-existing heart condition and was taken to hospital in critical condition. At that time, he was still living in the caravan, without air-conditioning in the middle of summer. He went into a 'code-blue' three times during this stay. (19 February 2017, Interview with one male worker, notes- recorded interview denied)*

We return later to broader issues related to health and seeking medical attention. What is worth noting here is that clearly a key issue is paying for accommodation, both in terms of days/weeks when there is not much work (in horticulture, for example, due to weather conditions) and also due to cost of paying for moving quickly and the issues that arise, such as bonds not being returned:

*Because we know as soon as you're arriving in Australia, what particular place, first thing you have to do is pay your rent. So we cannot just move and go there otherwise you can't pay the rent and the owner of the house sometimes may feel upset. Yeah. One thing in the rental area is, for example, when we stay in [State] as soon as we enter we pay the rent at the first place, that is good, but the second time sometime job never takes place in that particular week. So maybe three or four days or two days we do no work, but still these people are asking the rent because people who make accommodation is different, the farmer who own the work is different. So these people are - that's the place sometimes we were - we had problem with that. So even though it's hard we have to give him. (20 April 2017, 8 male workers)*

*It's [not a rental it's] somebody's house. [we pay bond and]... Sometimes we do [get it back]. Sometimes, because they go in a rush, they just get their things and go. (20 April 2017, 3 female workers)*

*For me I have so many experience about working in different farms like accommodation. If they give you a job, for example like you have to pay \$100 for accommodation but the work you did, is you only work one or two days. You have to pay \$100 for accommodation. It's not good here because you not earn so much money to pay for the accommodation and sometimes the contractor, you work for the contractor, they didn't pay you well here... [So] I just walk out from that farm. (20 April 2017, 3 female workers)*

A number of women from a group of six indicated that they found alternative, cheaper accommodation and moved, but as a consequence their deposit was not returned. They accepted they could do nothing about this.

A second welfare issue raised in the research was the health of workers, together with concerns related to workplace and non-workplace accidents or ill-health and the options available to workers with limited financial security and no medical insurance. The medical issues that arose ranged from relatively minor issues (though risks related to infection are always present) to more serious health issues.

In one interview, a participant's hand (a retired teacher) was covered in cuts and small lacerations. She explained that she had an allergic reaction to the chemicals they used on the vines. It was evident, by the way we were sitting (this interview took place outside, sitting under a tree) that she had the same rash on her feet and the bottom of her legs. When a query about her rash was raised she sat on her hands so they could no longer be seen.

When the broader group of six women were asked if anyone had been hurt at work, no one raised any serious injuries, although one the younger women laughed as she recounted an accident she had whilst picking [fruit]. She was at the top of a ladder picking from the top of the tree and lost her balance falling off the ladder into the [fruit] bin. She was not hurt, and continued to laugh about it. However, injuries related to falling from ladders for those working in horticulture were one of the most common experiences reported, and in every case workers carried on and nothing was done in terms of the supervisors checking on the worker and/or seeking medical attention.

Another participant in a different group of workers had a long-term injury as a result of a similar fall. She explained that she had fallen from a ladder on a farm and injured her knee badly. She had managed the pain and the injury for some time, but she had received no treatment (and had not stopped working in labour-intensive, physical employment). The knee had become very painful and it was difficult to walk, so she decided she had to seek medical advice:

*I fall from the ladder before. Yeah, three years [ago]... Because I [didn't] got any [insurance]... and Medicare, that's right. So, I scared to go to the hospital but this year I'm not scared to go to the hospital. I have to face because my life is important. And the job. So, I have to pay for the medicine. (20 April 2017, 3 female workers)*

In fact, in the end her medical costs were covered. The reason for this was not clear – she was amazed. However, this was not true for everyone, and many were concerned and had known others who had paid significant sums for medical care and/or who had left the country after being injured at work to return home to seek care.

In another interview, a worker who had been working unlawfully, but was now able to work as a result of successfully applying for a protection visa, had been injured at work after a fall from a ladder and herself paid for the medical care she received:

*I had a fall when I was picking [fruit] in January when I first came. I had a fall from the ladder. Because we were asked to climb the trees. If we don't climb we'll be shouted at by supervise[r] ... and so we have no choice to climb and it's that ladder, that small ladder that I had has no, no nails in the end to pop into the ground to fix it, so when I got up to the ladder, the ladder move slight[ly] and I fell. I fell following the ladder and it went pop, my hand hit the ground and this one went pop. [I went to the doctor] this is all on your own, because you can legally [pay but it was not covered by compensation]. (20 April 2017, 4 female workers, 1 male worker, one NGO support worker)*

These situations raise clear concern about occupational health and safety practices and the extent to which workplaces are ensuring that safe practices are being adhered to. For this group, however, the larger concern was that they had no protection if sick or injured and that the costs of medical care were significant, as these statements reflect:

*You have to have money. If we put to the hospitals ....it's not cheap. Very expensive.... (20 April 2017, 3 female workers)*

*So, we're scared to get in the hospital. (20 April 2017, 3 male workers)*

*[Getting sick or injured] that's the only things make me worry here. (20 April 2017, 3 male workers)*

As non-citizens without medical insurance, health care was an upfront cost and it was



reported that in most cases employers/contractors would instruct injured workers to simply take the day off. For example:

*I was in [state] last few months ago and - you see the scar, like, there's a change there and the accident it cut here and we are a bit afraid to - they said the contractors will pay this, but because we just no, just leave... I go and see a doctor.... But my friends say, "He should pay you."... But because we just leave, I'll just leave it... but I think if I had a [work] visa or something like this he'll pay me, but... we didn't have, so, just leave it. (14 February 2017, 4 male workers, 2 female workers, 1 NGO support worker)*

Despite the requirement for work sites to ensure WorkCover and other compliance conditions are met, there are clearly no provisions for workers who are not legally employed. In a focus group with six women the need for health insurance was a major concern:

*P2: There's one issue that I would like to bring up that - workers coming over here, they should have health insurance or something.... Because it happens that the lady got sick and then she was at the last stage of cancer.*

*P1: And she did not have money to go back home, so - so everybody - the [workers from other countries], those in the WhatsApp, everybody was asked to donate something and then send her back home. Within one week, she's gone. (18 February 2017, 6 female workers)*

This acquaintance returned to her country of origin and died a week after her return. When the participants were then asked if they would go to hospital or seek other medical care if they needed it, their responses were consistent:

*P3: No.*

*P5: It's too expensive.*

*P6: Try not to get too sick.*

*P2: Too expensive.*

*P4: Too expensive....*

*P1: My hospital - my private doctor is very, very expensive. We're really concerned about our health and try our best to take care of our health....For me, if I'm getting sick, I would go back home.*

*P2: I think so [I would go home also].... Because there's no point to being here. (18 February 2017, 6 female workers)*

However, as this participant reflected, going home is not always an option:

*P3: Yeah, but some - yeah, it's true, but if someone let's like, my brother like I just mentioned, right, they know they already have - they're sick, not feeling well, but they can't afford to going back to [their home country], because no money. So, what we're going to do is we just try to do - even we know already the expenses here is very, very expensive in hospital here, but some - things will need to because someone to help her so, now it's - - - very lucky to get this helpful thing [from other people they know]. So, now, it's - I think it's my brother quite good now. (18 February 2017, 6 female workers)*

Other participants reported that acquaintances had become ill and returned home to seek medical care, simply because they could not afford care in Australia. The issues raised here

*"The issues raised here are indicative only, but point to the significant vulnerability of this group of workers, both in the workplace and more generally in the community, in relation to requiring health care and their reluctance to access this."*



are indicative only, but point to the significant vulnerability of this group of workers, both in the workplace and more generally in the community, in relation to requiring health care and their reluctance to access this.

The final issue related to welfare intersects with health concerns and criminal concerns, i.e. experiences of sexual assault. Gathering evidence and accounts of sexual assault and other gendered violence and abuse is challenging in this context. For many reasons women are unwilling to disclose this. None of those interviewed talked about personal experiences. Some women made reference to sexual harassment; this was more common. The most explicit account of the types of practices that were occurring was as follows, explained by one participant who was referring to a friend:

*[His] friend... was a [nationality] woman, and her husband was still in [country]. The [other nationality] man that owned the caravans and the farm in [town] went into her caravan while she was asleep, and did not knock and "was inappropriate" with her. Because of this she returned to [country of origin] to her husband. The worker then explained that his friend also told him that the [other nationality] man used to do this to lots of young women staying at the caravans on his farm. (19 February 2017, Interview with one male worker, notes (recorded interview denied)*

However, there were also extensive accounts of practices such as young people on working holiday visas who had significant accommodation debts 'paying off' this debt via providing sex to the operator of the accommodation venue (this was reported in relation to both young men and women).

In one account, offered by the operator of a backpacker hostel, a young man recounted this experience to the owner, but was extremely embarrassed and while he was advised that this was unlawful and could be identified as sexual assault, he did not wish to pursue the matter.

In other instances, young women were reported to have been offered money to provide sexual services. For unlawful temporary migrant women, it was reported by NGO and other supporters that in some cases women were able to secure some stability via a sexual relationship with a contractor or employer. It was not suggested in all of these cases that this was coerced.

This is a further area of complex, potentially criminal activity that is conducted in Australia with impunity.

## 2.2 Migration status in Australia

What is evident across the negative experiences related to work is that migration status is most often the leverage that enables, sustains and reinforces situations that range from employment law breaches, to potential criminal exploitation, to exploitation related to accommodation that go largely unrecognised.

Workers are well aware that their migration status makes them targets for non-payment and poor treatment because there is nothing they are able to do, other than leave (the workplace, the town) and seek other opportunities to survive in Australia. However, this research sought to explore the way in which migration status impacted the daily lives of this group of workers. It may be assumed that this group is living in fear of being identified as unlawful – both in the workplace and when in the community.

Knowing more about how workers in these contexts live and survive in Australia offers an important counter to expectations of what modern slavery can look like. While many of these cases do not amount to potential Commonwealth trafficking or slavery offences, under the broad definition of what is considered to equate to 'modern slavery', a number of these contexts do amount to this form of exploitation.

For workers in this study based in both regional and city locations, driving was a necessity. For some, where and how they drove was, in part, informed by their awareness of the danger of drawing attention to themselves, as they saw driving as one point of exposure where they were at risk of being identified by Immigration authorities:

*I know how to drive, but I cannot drive in the highway, otherwise when they check me then they will catch me. So, yes, that's... [how I] secure... myself. (20 April 2017, 8 male workers)*

Similarly, in a group interview, this group of workers laughed at the explanation of how P1 talked about his driving skills, and spoke of their own alertness to being prepared at any moment to turn their car and head in a different direction if they suspected Immigration officials were on the road ahead:

*P2: On the way to work we always hurry...*

*P1: Sometimes there's a [police car or white vehicle]... when you see them down there we think these must be the people from the Department, so we... turn our car up and I said to these people, when we turn the car [around] - that fear is our lifestyle. (14 March 2017, 4 male workers, 2 female workers, 1 NGO workers)*

Awareness and readiness to contact others quickly was the general situation described by participants, rather than fear *per se* controlling or significantly impacting how they lived.

*P1: We're just like normal people here, working, we can drive, we just overstayed, because we've got a Victorian licence, we drive, we go out, we go to the club, we do it all the time but how often do people get caught. We hear, we hear, we don't hear, we don't, that's it.*

As this participant's comment reflected, there was a broad view that luck was a major element of how well things would go in Australia, including how long you might stay:

*P1: Just depends on your luck, you can stay one year, you stay, you can stay five years, ten years, depends how you stay, you know.*

*P3: it's not a big problem for us - if we get busted, we go back - we go back, it's not a big deal. (11 December 2011, Immigration Detention, 3 male workers)*

As these three participants reflected in a group interview, they are aware of what might happen, but living in fear of this is not realistic. There is an acceptance that at some stage it is likely that they will come into contact with Immigration:

*P1: sometimes Immigration can visit, but they come through highways in... the junction road, where they make a block, then they check all the workers who may be whatever. So when somebody was there first they call us all things - things like this happen here, so we will never go to that area, otherwise they catch us. So we just stay at the farm with the other boss or we will - cannot go to that farm because something is taking place in that area. So that's my experience.*

*P2: So, yeah, that's how we contact each other. We are not scared. There is a time when they're going to catch us, but because we want to stay here so we take ourselves to not go into the area while they were still assessing things. So, yeah, that's my experience here.*

*P3: Yeah. For myself I've been more farms, several places. Our contractor, he knows most of us overstays and so forth; he just warns us that even though we follow the road or whatever, he says he just take a person this - otherwise things can happen instantly. So most of the time we're just go in fear and we're not safe. I always think to myself I'm not safe, but because of - I have to take a risk for supporting my family also. I have to face it. Yeah. I just replace, yeah. (20 April 2017, 8 male workers)*

Importantly, as this final participant indicated in the conversation above, in some instances

contractors are equally aware of the potential for Immigration to identify workers and they are also invested in trying to ensure workers are not identified (in part because of the impact of detection and removal via Immigration on the workforce generally, and the potential exposure they may face via the detection of workers they employ).

There was a general consensus that it was simply best to avoid detection via avoiding attention from police, which was a potential pathway to Immigration being contacted:

*sometimes our people they got our driver licence... police can stop[us] on the road... and they saw... our licence from our country they can't capture us [but] because they don't want our licence to work here [they will contact Immigration]. That's the one thing that cops will catch us. And some of us if we come and do problems [i.e. commit an offence or become involved in a situation that draws police attention]... If we stay good, nothing to do with cops [we are safer]. (20 April 2017, 3 female workers)*

Despite the view of wariness regarding police attitudes to some non-citizens expressed above, it was known in various locations that police were not actively asking questions regarding immigration status of non-citizens they came into contact with. It is also worth noting that while Immigration and/or police may have contact with this group, the occurrence of this was not frequent, as this participant indicated:

*There are a lot of experience, like occasions that happens [that Immigration come into contact with someone they know directly or indirectly]. We heard somebody - one of us, that they catch him... down there. Immediately we heard the next [day]... everybody is [leaving the area] because they know anything could happen..... We have to take refuge somewhere else... we cannot be identifying ourselves with somebody that they'd taken. (14 March 2017, 4 male workers, 2 male workers, one NGO support worker)*

These experiences among acquaintances and the connected community (i.e. networks across Australia who maintain contact via social media apps and mobile phone communication) translated into it commonly being reported that participants recognised rather than feared detection. Generally, there was an underlying experience of uncertainty related to their migration status, for example:

*We, where we live because we not go [have legal employment] paperwork here. So, what's make us scar[ed], [is] when we move and then we... scare[d]. We scare what - at what time Immigration catches up or cops or whatever. It's scary for us .... We no feel free now. [But] we go [to shops and other places] but we just [aware]. (17 April 2017, 3 female workers)*

It was rare for participants to express fear, though in one group a participant did talk about her experience of feeling vulnerable:

*most of time even we come all the time - came to the town and sometimes we just walking in the street in fear. (20 April 2017, 8 male workers)*

While in another group, a woman expressed a more casual hope of not being caught, as opposed to fear:

*I feel okay so far. Except I hope that I do not get caught. (18 February 2017, 6 female workers)*

For the most part, however, participants in this study were independent and self-reliant. They purchased groceries, spent time in cities and towns, and did not hide from the community. Most consistent in the interviews was alertness to potential identification, and acceptance/preparedness that at some stage participants may come into contact with Immigration:

*P1: We've been prepared for anything that could happen, so... that [is] what we have been preparing for ourselves. We just like what I usually call is that we are the people that we*

*are just living like prisoners that escape from the prison. So we have been getting out there, so that mindset that has been inside of mind will have to be [aware] all the time.*

The experience of participants was that relatively few people were identified and detained by Immigration, yet it remained an ever-present, but not necessarily likely, threat.

As a precursor to this study, and in the context of a broader study of detention and deportation practices, I interviewed three irregular workers in a Detention Centre who were awaiting a decision regarding their application for protection following their detention as a result of being unlawfully in the country. These three men had not been detained specifically as a result of working unlawfully, but due to overstaying their visas (all had entered on a visitor visa). All three nodded in agreement with this statement from one of the participants:

*- a day will come - a day when your luck - when it's a day Immigration will pick you up..... you can't avoid [it forever] - you don't know when they are going to come, maybe someone report... you or something - they [Immigration will] just knock on your house [one day]. (11 December 2011, Immigration Detention, 3 male workers)*

This was not just the reflections of those who had been identified and detained by authorities. For some, who remain in the community, the view was expressed that being picked up by Immigration was not just an issue of luck, but in fact a failing of the individual:

*Not many [we know have been deported]... Well it all depends on how they manage themselves in terms of their security, intelligence, because when you were here you have to [be careful]. (14 March 2017, 4 male workers, 2 male workers, one NGO support worker)*

Another participant reinforced a similar view regarding the importance of not bringing attention to oneself:

*And then some people they might involve only in crimes, all these things, before they can catch them back home. But for us we didn't - not plenty of us because we not even commit any crimes down there, we keep to the law until the right time that we think is [right], which [to organise] ourselves] and go back home. (14 March 2017, 4 male workers, 2 male workers, one NGO support worker)*

What was evident in this study was that participants were not generally 'living in fear', but they are alert to their migration status and the need to be wary of detection. This extended, as discussed above, to accepting that being exploited, primarily financially, was an inevitable aspect of this way of life and something about which they could do nothing.

*“...evident in this study [is] that participants [are] not generally 'living in fear', but they are alert to their migration status and the need to be wary of detection. This extend[s]... to accepting that being exploited, primarily financially, [is] an inevitable aspect of this way of life and something about which they [can] do nothing.”*

### 2.2.1 Fluidity of migration status

A critical aspect of migrant worker experiences in Australia, and something largely ignored in the accounts of trafficking and slavery-related offences in Australia, is that migration status changes.

Migration status is far more fluid than reports may suggest. When there are media reports of 'illegal

workers' identified at a workplace who are detained and then readied for removal (see for example, WA Today 2017), it is the case that for some of those workers, had the raid occurred a day, a week, a month or a year (or in some cases many years) earlier, they would have been lawfully working in Australia and not subject to removal.

For all participants in this study to date, their migration status has changed. For the majority this change has been from being lawfully in Australia on a visitor visa, to being unlawfully in Australia as a result of working in breach of their visa conditions and/or overstaying their visa.

For others the change has been more complex. In Section 2.3 details regarding onshore applications for protection visas are provided, but there were at least seven participants who were on bridging visas (approximately half had work rights attached) awaiting a determination for protection.

As indicated below, participants were not always certain about their migration status and whether they were in the process of applying and/or what type of bridging visa they had. One participant was now working legally, as she had successfully been granted protection. If these workers had been detected prior to the granting of the bridging visas they would have been subject to removal.

A number of workers had arrived in Australia lawfully on temporary working holiday visas who had overstayed those visas, and two participants who transferred onshore to a student visa. These two participants were a couple, and were encouraged by a contractor to move onto a student visa and to pay a significant amount of money per month to the education institution. They attended the 'college' once a month for the first few months before realising there was no need for them to actually attend. They were paying thousands of dollars for this 'course' whilst working considerable hours in short term work for the contractor.

The couple were supported by a different Australian contractor to leave their current situation and work with them, and to enrol in accredited training, which they were completing. They had risked detection whilst working in breach of their 40 hours per week work rights allocation, which would have resulted in their visa cancellation and removal.

This matters not least because it points to the administrative aspects of becoming unlawful. For international student visa holders the measure is one of hours worked, whereas for working holiday visa holders it is a measure of time. It also raises questions about the way in which we talk about and respond to 'illegal workers'. For those holding visitor visas, detection is an issue of where this occurs. As there are rarely contracts related to work, detection in the community does not place individuals at risk, compared with detection on a work site.

What was evident in this study, was that regulation practices can in fact hide and/or prevent the detection of exploitation that is occurring, as discussed in Section 5 below, and that the current regulatory systems in place ensure migrant workers who never had work rights attached to any visa they have held in Australia have no platform upon which to lay a claim, and no incentive to reveal the extent to which such unscrupulous practices occur. As one participant reflected, this creates an expendable labour force: "once you go, you've been replaced" (11 December 2011, Immigration Detention, 3 male workers).

### 2.3 Support options in Australia: stay or leave

As noted in the Introduction, participants in this study and those who have experienced similar levels of exploitation are essentially unsupported in Australia. As undocumented workers, any employment contract is prohibited by the Migration Act and thus invalid.

There are non-government organisations that may provide some welfare services to this



group inadvertently (such as the provision of support to homeless persons, in which case migration status is not something that is addressed) or with the knowledge that individuals are working without work rights and/or are 'overstayers' in Australia. None of this support is related directly to employment.

Notably, in relation to work, the majority of the participants in this study had no formal contract of employment and limited evidence regarding where they were working, who they were working for, and/or any agreement regarding rates of pay and/or formalised deductions.

While there is a commitment to considering 'each case on its merits' by the Department of Immigration if a case taken up by FWO relates to an individual who entered Australia on a visa that did not allow work rights (DIBP 2017: online), this is a non-binding agreement.

For those in potentially more serious, criminal situations of exploitation that may be akin to trafficking or slavery offences under s270 and s271 of the Criminal Code, the system is similarly designed to provide little to no guarantee of remuneration or compensation, and no certainty regarding long term visa status (see Segrave et al 2017).

Consequently, there are effectively no formal supports that simply respond to exploitation per se. In this study two issues arose in relation to this. One was unexpected, and related to the utilisation of protection visas; the second was the decision to go home – that is, in the face of no support, to simply leave.

The findings related to these two decisions are briefly discussed below, before the impact and limitations of regulation practices more broadly are explored.

A number of participants who were in Australia unlawfully had been granted or were in the process of applying for protection visas. There is no suggestion in this study that these protection visas were granted on an unfounded basis. However, there were some concerns regarding the processes surrounding visa access and the relatively unregulated operations of migration agents who appeared, in the limited examples proffered in this study, to be in a position to easily exploit non-citizens for profit with impunity regarding the outcome of the decision and/or the quality of the service they provided.

One NGO worker commented on a young man who had lived homeless in a capital city for six months, and paid \$1000 to apply for a protection visa:

*He had no idea what applying for the protection visa actually meant for him. Further, because he had no fixed address, he had no way to receive information about the visa. He was living at the [a common area for homeless people] and going to the local soup kitchen every night. Throughout this period, labour agents continually told him that he would just be detained and deported, and would then owe money to Australia if he went to the authorities [about the deception regarding work]. Shortly after, he presented to [a] crisis centre who referred him to other services..... He had to return back to his [country of origin], where he had no access to any support. (NGO Case Study #3, 2017)*

His experience was less common in this study, as the majority of participants were working at the time and their situations were less dire. However, the cost of the migration application, which was unsuccessful, raises concerns for further investigation.

I asked one woman why she was applying for a protection visa, when her husband was at home in their country of origin, and she stated that she had heard about a protection visa as a possible avenue to permanency:

*From many people talking about that, and there is some agent also to help to process that visa.... They help to process the visa and then we need to pay for them.... Sometimes very expensive, some of them they ask \$350 - \$400. (15 February 2017, 2 female workers)*

Another couple whose protection visa claim was being processed, and who were on bridging visas that only included the right to study not work, were working while they awaited the outcome, as they needed to survive. As the support worker said:

*They're taking a risk here. They're taking a risk because if there's no report from the public or from anybody, about illegal workers here, the farm, they can just stay on, on the farm, they don't fear you see? (20 April 2017, 4 female workers, 1 male worker, one NGO support worker)*

These workers wanted to be able to work legally, but until such time that this was a legal option, they were forced to work unlawfully. In addition, they were risking not only removal for breaching their bridging visa, but the only opportunity they had to seek to remain in Australia.

In another focus group, which involved six women all from the one country, all six had come to Australia on visitor visas with the intention of working, and had been working. All had paid around \$200 to a migration agent to assist them to apply for a protection visa. At the time of interview, five were on bridging visas; one had been granted protection. It was unclear whether they had work rights attached to their bridging visas.

Importantly, none of the women had reviewed the application or had the bridging visa conditions explained to them. They were very uncertain about their current situation, other than recognising protection visas as a pathway to being able to work legally. Considering their willingness to pay whatever cost was asked for, and what appeared often to be limited, if any, knowledge of the application itself, there are significant concerns regarding the vulnerability of these individuals.

Another worker, who had experienced serious ill health in Australia and had consequently developed a significant debt that he owed to a contractor, relayed his situation via an interpreter:

*When he was released from hospital (the contractor paid the bill for this too), a friend helped him apply for a protection visa. He paid the woman \$100, as that is all he had, however she wanted \$300 to complete the visa application. He never saw what was put on the visa application, and is now very worried that if he is questioned about it when he goes to Melbourne to give his fingerprints to the Immigration Department, he will not know what to say. He said that for many of the [people from specific faith and nationality background] that apply for a protection visa, the 'agent' puts on the application that they are gay, and they cannot return to [their country of origin] because they will be persecuted. He never saw his application, and has no idea what the woman put on it. He has since been unable to contact the agent to find out the status of his application, and is now on a Bridging Visa C while it is being processed, but he has no other information. (19 February 2017, Interview with one male worker, notes- recorded interview denied)*

There are multiple ways to view such situations. From a regulatory perspective the approach may be to review the protection applications with greater scrutiny, although with the exception of the excerpt above, there is little evidence in this study that protection applications were based on false information.

Rather, the issue is that applicants have little understanding of the visa, appear to have little, if any, knowledge of the basis of their claim (in many instances), and not all are aware of the precariousness of their position if they do not have work rights attached to their bridging visa whilst they await the application determination.

Participants in this study who provide support to migrant workers, including irregular workers, were equally concerned.

These findings also point to some concerns regarding the operation of migration agents and the way in which they can charge money for services for which they are largely not

responsible. This was highlighted in an interview with a group of men and women from one country who had all come to Australia on 457 visas. There were some complex issues that saw two cases involving Sam and Ben [not their real names] being connected via a migration agent. This migration agent had acted to identify workers in their country of origin, assisted them to come to Australia on 457 visas and placed them with employers (they worked at separate places of employment).

Sam was placed in a job for which he had no training (he came to undertake work relating to his training and skills as a refrigeration mechanic, and instead was asked to undertake other skilled work (which he had no qualifications for). He was abused at work for making errors, despite having no training in the field and articulating this to his supervisors, and he found the work and the working conditions difficult and decided to leave. He was also not paid appropriately for the work he had undertaken. Through a network he met in the city he lived in, he met Ben, who informed Sam of his rights, his ability to pursue the employer via FWO and supported him in both leaving and taking the case to FWO.

The migration agent in this instance was very angry with both men. He called Sam multiple times and requested he return to the job (Sam and Ben speculated that this was due to an agreement the agent had with the workplace and the potential impact that a worker leaving and going to FWO would have on that arrangement).

Ben meanwhile had brought his wife and young daughter to Australia with him and was working with a 457 visa. His daughter was attending school. After two years he understood that the correct paperwork had been lodged to apply for permanent residency and to move his family from one visa to another. However, he was called by DIBP at work one day and informed that he and his family had overstayed their visa and had not submitted the appropriate paperwork that they had been contacted to submit.

Ben was in tears as he explained that this had occurred two years prior to this interview, and he was currently trying to find a way for his wife and daughter – who had been required to leave Australia and whom he had not seen for two years – to return to Australia to live with him. He was on a bridging visa at the time, without work rights. He was ‘working’ for his friends, gardening and other odd jobs, for which they would pay him so he could survive. He was working ‘unlawfully’ but in work that, unlike other participants, was very unlikely to be detected and where the money he received could easily be construed as a gift. He was devastated, and felt there was no way to pursue the inaction of the migration agent, who he believed had deliberately not submitted paperwork as a result of his support of Sam.

The practices of migration agents were not the focus of this study and yet they loom large in the background of the experiences of precarious workers who are dependent on them to advise with regard to their options, and to assist individuals to prepare convincing (and ideally successful) applications. This industry is relatively unregulated, and while there is a peak body, the regulation of this is unclear.

Yet again, the potential for those who are unlawfully in the country and/or who are awaiting a migration application decision to pursue a complaint against a migration agent is limited. Protection visas are a limited option for staying in Australia: the majority of participants in this study would not be eligible. The only option is to either be forcibly removed, or to opt to return.

### 3. Regulating borders and identifying exploitation: the impact of emphasising illegality

While much is made of compliance action on worksites, and the efforts of dedicated Commonwealth operations such as Taskforce Cadena, in terms of compliance and detection efforts across Australia, these are not comprehensive. They tend to be targeted to sites where a large number of workers may be (for example, horticulture) and are relatively ineffective at identifying and removing workers (see Commonwealth of Australia 2017).

As noted in the Introduction, there are 64,600 unlawful non-citizens in Australia (defined as 'illegal migrants' by DIBP) and of those, 70 per cent entered on a visitor visa (i.e. without work rights) (Commonwealth of Australia 2017: 17).

If we conservatively estimate that half of this group are working to survive, that equates to 22,610 people in Australia working without work rights and with no formal protections related to exploitation. Approaching the police regarding criminal offences (work-related or otherwise) must be weighed up in relation to their individual need or desire to remain in Australia.

More importantly we know further that in 2015-16, of the 15,145 unlawful non-citizens located only 1,970 were 'illegal workers', and the consequences for employers impacted only 414 business as per notices issued to employers regarding 'illegal workers' (DIBP 2016: online).

These figures are stark: few workers are detected; there is little evidence that this practice is decreasing; and the impact of compliance-focused efforts, which offer no empowerment to workers, are not creating a culture of fear or compliance for workers, or those profiting from them.

There is no recent published data publicly available regarding where unlawful non-citizens are detected and/or their countries of origin and their status with regard to the type of visa they entered Australia on.

What is most evident in this research is that police are one way for individuals to come to the attention of authorities (see Weber 2014 regarding evidence of increasing police practices in Australia related to immigration compliance), but there is no guarantee that police will follow up on migration status.

This was evidenced in this interview with a man in Immigration Detention, who had lived in Australia for seven years after arriving on a visitor visa with the intention of working:

*[I] got busted when driving.... I've got my driver's licence and the coppers just say they want to check your immigration status - that's how I get busted.... The police stopped you just for - just for normal search - normal check, check, if you're a criminal, then they will check - [but if you're not a] criminal they should let you go because they are not the same department [as Immigration]. But I've been driving since I've come to Australia, I've been pulled over more than 10 times, but this time I don't know why, I'm stressing with work, with food. Or driving to work, I leave in the morning at 7.30 and I got pulled over by the cops.... [This time] the copper say, "I have to detain you on the Immigration Act," or something and, "I've got to take you to the police station." And then the Immigration say - so when I go to the police station they lock my into custody and the Immigration talked to me and say, "Do you know you stay illegal here, blah, blah blah," I say, "I knew." All right, so he says, "I've got to give you - ask you a couple of questions and then I've got my decision to - I'm going to give you a decision. I'm going to detain you in here." So that's why I come here [to the Detention Centre] today. [I was brought] straight in here. (11 December 2011, Immigration Detention, 3 male workers)*

Another worker in the same interview was also stopped by police, but as he explained this was when he was walking the street:

*Same for me, but I'm not driving, I was just walking on the road - - - [and I got] stopped by the police.... They check[ed whether] you on your police criminal [record] first, they check your name if it is there, on the computer status, and then they say we just want to make sure your immigration status is okay, that's all. [I was living in] [location] [and I was] just walking on the road.... Early in the morning walking to work.... I thought it was Immigration, but it's not it was the police. I thought, oh, it should be all right. I've already got - a few times happened like that before, but it's all right, this is the first time, no more chance, they say. (11 December 2011, Immigration Detention, 3 male workers)*

This study has been limited in its ability to access information about DIBP practices. From the earlier study in Immigration Detention, the experience of these three men, however, highlighted the lack of questioning about working experiences and conditions, and the lost opportunity to know more about what is happening to non-citizens in the community:

*The second day in [detention] Immigration must come, it doesn't matter if it's the weekend; if you get busted they come and see you.... [T]hey didn't explain any situation anyway. They say if you doesn't happy to go back we've got the right to force you to go back, right, so there's no option for us to argue. So I say I don't want to argue, I don't care what you are doing, I just want to get out of here as soon as possible. I think the processing time is just stupid....what's the point of arguing [i.e. looking for a way to appeal the decision], there's no point arguing, to me there is no point arguing, because Immigration are the people who say yes or no .... you can't say anything, there's no point of arguing. I say what's the point of arguing with you? [Immigration officials] give me a list - everyone has the right to apply for any visa, but at the end of the day, it doesn't matter what visa we have applied for, at the end of the day it's going to be refused. So you take two months or fucking six months to process, all right, but we are staying here [in the Detention Centre] for six months for nothing. At the end of the day, we get zero, and they say it's a reject and we are going to send you back, so what's the point, I've stayed six months and I get fucking rejected. (11 December 2011, Immigration Detention, 3 male workers)*

As the interview progressed, I sought to clarify whether there had been any questions regarding their work situation and experience, given that all three had employment when they came into contact with Immigration (in separate circumstances, the three in the Detention Centre):

*Q: So they don't ask you anything about where you were working?*

*P2: No, no, no, no, no.*

*P1: No.*

*P1: They didn't ask you how much you earning a week, things like that, nothing. You are happy to leave, that's it all right, where's your passport, that's it, is and then they don't go thank you anymore nothing. And the second time Immigration see you it's over. That's it.... They give you removal [notice] and, okay here's the date where they book the ticket and here's your paper, you owe the Commonwealth - how much money you owe they say that's it, nothing [else]. (11 December 2011, Immigration Detention, 3 male workers)*

The emphasis was on the removal and punishment of unlawful workers. This may reflect the fact that these participants were not identified in the work place and as such they were not in situations that would immediately be considered suspicious in relation to exploitation. However, such an assumption is misplaced.

As the men in this interview indicated, there may be limited interest or willingness of detainees who simply want to leave now that they have been caught to share information with Immigration. They were, however, forthcoming in the interview with an independent researcher, and in this way there is a clear opportunity to learn more and to consider how we can offer incentives to enable/support this.



*“the evidence in this report is that migration status renders a significant group of exploited workers more likely to be removed, with no platform upon which to make a claim in relation to exploitation. The preoccupation with migration status is undermining every concerted effort in Australia to effectively target the full remit of exploitation, including human trafficking, slavery and modern slavery more broadly, and to give workers the opportunity to share their experiences as a way of understanding and better targeting these operations.”*

Thus, the experiences of detection in relation to police alerting Immigration is that workers may be presumed not to be in situations of exploitation. The evidence in this report is that this is not the case.

Rather, the evidence in this report is that migration status renders a significant group of exploited workers more likely to be removed, with no platform upon which to make a claim in relation to exploitation. The preoccupation with migration status is undermining every concerted effort in Australia to effectively target the full remit of exploitation, including human trafficking, slavery and modern slavery more broadly, and to give workers the opportunity to share their experiences as a way of understanding and better targeting these operations.

### **3.1 Identifying and naming exploitation: indicators of trafficking and slavery**

What is evident in this study is that there are indicators of deception in recruitment and acceptance of payments to come to Australia for promised work under false pretences, which include the migrant worker being deceived regarding whether the visa allows them to work, and/or being instructed to go to a location for work, to find there is no work available.

Specifically, the cases in this research to date have included elements of deception (as per section 271.1 of the Criminal Code, where deception includes misleading as to fact (including the intention of any person) or as to law, by words or other conduct) and potential elements of trafficking (as per ss 271.2 and 271.3), as individuals in countries of origin “organised and facilitated the transportation of the victim into...Australia, using...deception” with regard in some instances to the right to work, in other instances to the availability of work.

However, what is critical is that the cases that came to light in this study, as per the cases that generally come to the attention of the AFP, were most often not aggravated offences (such as aggravated trafficking offences, as per subsection 271.3(1) of the Criminal Code), which is the fundamental challenge at the lower end of the scale of criminal activity, where the victims are also offenders.

Examples of these scenarios relayed in this research (some were noted earlier in this report) include:

1. A man paid an agent to travel to and work in Australia, found the work promised was not forthcoming and lived destitute for six months in a capital city. He sought help to return home, as he had no money or support at home to enable his return. He had a significant debt as a result of this venture.
2. A 56-year old man paid an agent to travel to Australia and was promised both work and a visa that would enable him to work. Upon arrival in Australia, he found he had neither, and could not afford to live here. He sought help almost immediately to get home, and

was returning home with a \$5000 debt.

3. There were approximately eight additional participants who had paid an agent to travel to Australia, not all of whom realised they were travelling on visas that did not include work rights; were promised work that paid well; and were not informed that no accommodation was paid for. All found that they were brought to accommodation that they had to pay for upfront, when they had no money; that work took some time to secure and was poorly paid; and that they had no right to work in Australia.

Further, in one interview, a participant told the story of his own experience of coming into Australia, which he recounted as a shared experience, as other friends had also travelled. This account further reveals the complex elements of potential trafficking, deceptive recruitment, forced labour and/or debt bondage offences in these experiences:

*some of my friends, they come here without money you know, they just enough to pass in airport, because [if]... you don't have money, you know, the [Australian] government, the immigration in the airport, very fussy, they said, "How much money you bring here, and how much you want [have] to stay here?" Okay, if you say just one week, they must count the money is enough for one week or not, they're very fussy, all right. So, yeah, very fussy, they are, so they just have enough for the money to come for one week, okay, but actually the money [my friends have] they collect from other friends, they collect from family, actually they... [cannot] afford to come... so they keep the money and just enough for one week to stay here, so they just let them go through, and then after that, they come here, some friends borrow like me, I had extra money, I give for, but after out in the airport, they [the travel organiser] take back the money. And then once they come here, nothing money, because the agent already promised they straightaway have money. So, this is my experience, once they arrive here, you know what, they don't have money. So, what do they do? (15 February 2017, 2 female workers)*

Another worker, who came to Australia via a recruiter, explained her brother's experience of coming to Australia and his situation of debt to a contractor who held onto his passport:

*my brother... they hold the passport, my brother, okay... they stay there [at a particular house controlled by a contractor] and they had to pay a hundred dollars a week, they can't afford to pay, and then, yes, every week, they don't have money enough to pay... Of course they give [what they have] because they [the contractor] already hold the passport, [my brother] cannot run, that's why my brother spend in two years working with her, without - imagine, they don't give money, even one cent, nothing in bank, because they only, work to pay for the passport. If they not pay, then they owe to [a well-known contractor], they can't get the passport and they can't go anywhere, they can't go back to [their country of origin]. (15 February 2017, 2 female workers)*

What is evident, is that people who are being exploited have no way to pursue this exploitation, and that if they are detected by authorities are most at risk of being removed from Australia. Yet, they are, in fact, our richest source of information about the extent to

*“What is evident, is that people who are being exploited have no way to pursue this exploitation, and that if they are detected by authorities are most at risk of being removed from Australia. Yet, they are, in fact, our richest source of information about the extent to which various unscrupulous operators within Australia, and outside Australia, are profiting from the vulnerability of people whose desire is simply to earn money to support their family and who have limited working migration opportunities. “*

which various unscrupulous operators within Australia, and outside Australia, are profiting from the vulnerability of people whose desire is simply to earn money to support their family and who have limited working migration opportunities.

A major concern arising from these findings is that there is evidence of little interest from DIBP in particular to learn more about potentially criminal situations and to support exploited workers. The consequence is that despite efforts to regulate labour contractors (as per recent developments in Victoria and Queensland), there remain multiple ways in which to profit from both misleading people in the migration process and from exploiting them in relation to work and accommodation.

This is one example of a missed opportunity to find out about what was happening in a community:

*A 42 year-old woman was admitted to hospital after suffering a stroke whilst working on a fruit farm in [town]. She arrived in Australia on a tourist visa, however it expired... so she was referred to DIBP by the hospital... During her stay in hospital, the woman explained that she was visited by several different men [from the same country coming] into the ward who said they were “friends” and were bringing her belongings from Shepparton. The woman indicated that she was uncomfortable with their visits so the hospital increased security to her ward as a short term strategy to manage unwanted guests. The patient admitted to nursing staff that there are many vulnerable women working in situations where their employment conditions are being exploited; but she didn't wish to make a formal report due to fears of not understanding the reporting process. The woman explained that they had to work long hours, were paid inadequate wages, which contradicted what they told they would be paid, and they had high rental fees deducted from their already low wages. Her ill health resulted in an NGO being contacted to support this woman to leave Australia and she was returned to her country of origin. (NGO case study #3, 2017)*

A further concern is that people are returned to their country of origin and are at greater risk and/or are in situations of greater vulnerability. In Australia those who exploit and/or harm them do so with impunity, and upon their return home these workers find themselves in more challenging situations (and, arguably, more vulnerable to further exploitation), as this example demonstrates:

*A 38-year-old male from [country] was admitted to the hospital as a stroke victim. He had been working on a [farm]... He suffered severe disabilities as a result and was fearful of returning to his home country without capacity to be a breadwinner for his family. He arrived in Australia on a tourist visa, which on arrival at the hospital had expired... so he was referred to DIBP. The patient was assisted with a medical escort to assist his return*

*to his home country as traveling independently would have been impossible due to his health. The patient required a new passport as his passport had been withheld by some unknown person. The patient stated that he was forced to pay exorbitant fees for his accommodation on a remote farm and that his employment conditions were exploitive in nature; i.e. long working, non-payment at times, lack of protective working clothing or adequate breaks. (NGO Case study #4, 2017)*

This case also raises serious concerns related to the withholding of his passport, a potential element of debt bondage and/or forced labour. This NGO worker supported the man until his departure. There was no investigation into his employment experiences by DIBP or any other authority. He was simply returned home.

There are two issues here. One is that the extent to which DIBP can and/or do adequately identify potential exploitation is questionable. The second is that these findings point to practices that are widespread: there is a significant number of workers who are vulnerable because they are working without the right to work and/or have overstayed their visa.

The failure to recognise that the practice of removal obfuscates the identification of the exploitation that these workers experience (with the exception of the small number of workers whose cases come to the attention of the AFP in relation to potential slavery or trafficking offences), and in fact ensures the ongoing impunity of those who exploit this group. It is not feasible that efforts to regulate contractors will alleviate these practices to a significant degree.

Importantly, while this study is not focused on the return home, this issue arose in the interviews with workers and with NGOs whose work extends to countries of origin. The impact of unlawful workers being subject to exploitation with impunity in Australia is largely unknown. What is evident, however, is that many will be returning to higher rates of poverty – and clearly in some cases returning to debt due to prepaid contracts, and/or returning with disabilities and injuries that impact their future livelihood.

For some – notably not all, as discussed in Section 2.1.2 regarding positive impacts of working in Australia – particularly those who have gone into debt to come to Australia and who accrue further accommodation and other debt whilst here, there is the potential need/desire to continue to pursue irregular labour migration pathways, placing individuals at further risk of future exploitation.

## Conclusion: identifying opportunities

In the midst of national commitments to transparency in supply chains and the scourge of modern slavery, it is worth noting that much of this conversation is largely not focused internally. However, what is clear is that there are significant issues pertaining to exploitation in local supply chains. This report lays clear the following:

- » There is very limited, if any, effort to reduce exploitation via understanding the experiences of workers.
- » There is little appetite for investing support services in those who come forward who are in the country unlawfully but who can provide important information about their own and others experience, to enable points of exploitation to be exposed and dismantled.
- » Approaching unlawful migrant labour via a regulatory response is limited and the impact is questionable: the resources required to review all aspects of wages (incl. tax, superannuation), debt and control related to securing work, accommodation and travel, is very difficult to evidence.
- » Language and communication barriers are significant: many people who arrive may be easily misled regarding work rights and/or visa requirements, importantly people do not understand or know that their experiences may amount to criminal exploitation and/or are inclined to leave a workplace rather than complaining. This is critical to understand even in relation to those who come to Australia with work rights.
- » The desire to work and make money cannot be underestimated: participants consistently emphasized that their aim was to work, live in Australia, and send money home. They did not cause any problems in the community, they and others saw this group of workers as good workers, and many took pride in their work.
- » Community and familial connections in the labour supply chain can create significant hurdles to identifying exploitation, as the consequences for complaining/exposing an unscrupulous operator and/or leaving the situation can be significant in the short and long terms of the individual and their family.

This report seeks to lay the ground for some important reflection on the limitations and lack of transparency surrounding Taskforce Cadena and the broader emphasis on illegality of migration status, rather than a primary concern that exploitation continues to occur in Australia.

Australia has the opportunity to be a global leader in working towards a new vision of managing migrant labour, broadening the scope of opportunities in the region without attaching significant regulation and oversight that disadvantages the migrant labourers, and to work towards ending exploitation through a zero tolerance to exploitation, rather than a zero tolerance to migration breaches.



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