

Impact on growers of the 2019 Horticulture Award changes to casual work hours

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This report is an analysis of an industry-initiated survey of growers, conducted mainly in the second half of 2019. The survey questions were developed by Growcom to find out about the impact of the [April 2019 changes to the Horticulture Award](#), which in essence required growers to pay overtime rates to casual workers. The reason the author accepted Growcom's offer of access to the data was his work interest in the effect of this change on workers engaged through the Seasonal Work Programme (SWP).

The key questions the analysis seeks to answer are:

- (1) What has been the impact overall on the hours worked by casual workers?
- (2) How have different types of growers in terms of size, type of crop and location responded to the requirement to pay overtime?
- (3) Why have not more growers made use of piecework to avoid the requirement to pay overtime?
- (4) What has been the effect on growers with SWP workers in particular?

Background to the survey

In a [presentation](#) on Growcom's Fair Farms Initiative in October 2018, Rachel McKenzie refers to the proposed changes to the ordinary hours of work under the Horticulture Award. In response to the question: what can the grower do? three options were offered: Get an Enterprise Agreement ASAP, enter into Individual Flexibility arrangements with your workers¹, or put everyone on to piece rates. The survey provides information on how growers did respond.

Growcom designed and administered a survey to measure the impact of changes to the Horticulture Award in April 2019.

[Measuring impacts of changes to the Horticulture Award](#)

On 15 April 2019 changes to the Horticulture Award came into effect. This included changes to ordinary hours of work, night loading and overtime entitlements. The Horticulture Award National Survey is to capture changes to your employment practices as a result of these changes made to the Award.

Completing the survey will give your industry representatives the evidence they need to advocate for future changes to the Award. Unless you state otherwise, responses to this survey will remain strictly anonymous.

¹ According to Fair Work Australia, an [individual flexibility arrangement](#) (IFA) is a written agreement used by an employer and employee to change how parts of an award apply to them. It is used to make alternative arrangements that suit the genuine needs of the employer and employee. An IFA must be in writing and be genuinely agreed to without pressure. The Horticulture Award and the Wine Industry Award allow for IFAs to be used. However, an employer cannot make an IFA a condition of employment. An employee also cannot be treated adversely or discriminated against for not agreeing to an IFA. The IFA must result in the employee being better off overall at the time the agreement is made than the employee would have been if no IFA had been agreed to. An employer cannot enter an employee into an IFA to replace piecework arrangements ...

This survey has been developed and distributed by Growcom in collaboration with other peak industry bodies around Australia.

Survey administration

As the above introduction to the survey makes clear, the survey was administered online nationally with the support of other horticulture industry bodies such as AUSVEG. The survey began at the end of August 2019 and continued to early June 2020. However, three out of four replies (75 per cent) were received between 28 August and the end of October 2019. The survey did not ask growers to identify their peak harvest period. However, for many growers, their responses may not reflect their experiences during their peak work times.

The survey received 406 anonymous replies. However, 118 of these replies were from growers who employed workers under an Enterprise Agreement, leaving 288 growers who employed workers under the Horticulture Award. Some 280 growers provided data that could be used to work out the change in casuals' working hours

How representative is the survey?

As only the latter group were asked any further questions, it is unfortunately not possible to identify the differences such as the number of staff they employed between growers who make use of Enterprise Agreements and those who rely on the Horticulture Award. It is likely that the growers with Enterprise Agreements have a larger workforce simply because a larger enterprise would have the resources, in terms of time and effort, to develop and gain approval for a separate enterprise agreement.

The sample of growers who responded shows that the arithmetic average number of their employees currently employed under the Horticulture Award is 56.5 per grower and the median average is 130 employees per grower. The size distribution is highly skewed to the left due to the large number of growers with few employees, as shown in Figure 1.

Figure 1: Distribution of growers by number of employees (per cent)

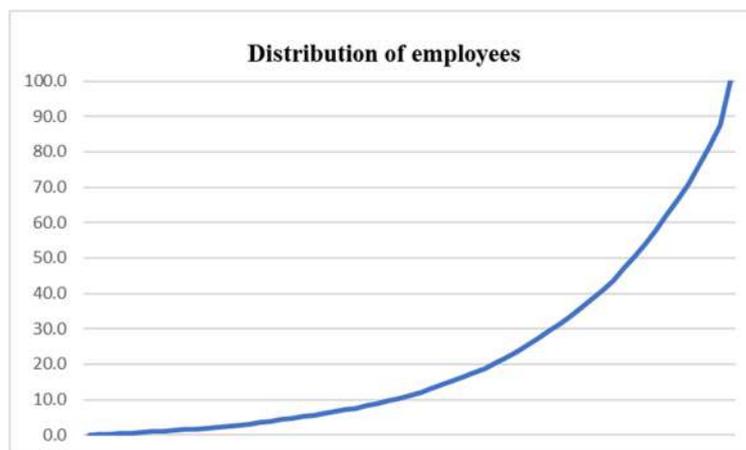


Figure 2: Distribution of growers by groups of employee size (per cent)

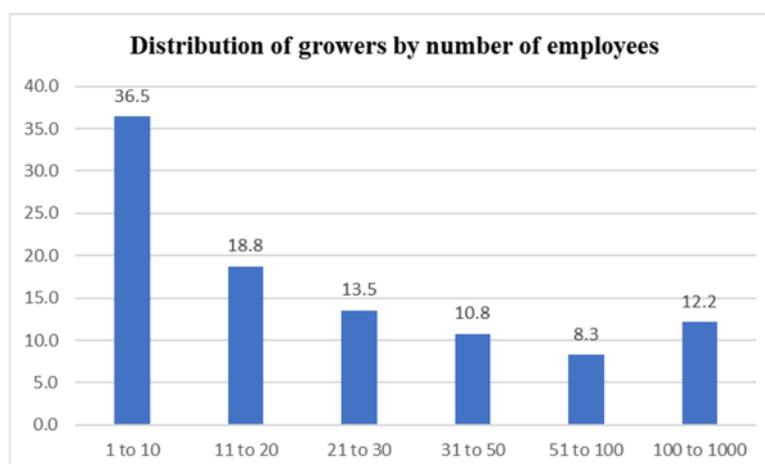


Figure 2 shows that over one third of the growers who responded had only 1 to 10 employees, and just over half (55 per cent) had 1 to 20 employees. The largest employers with 100 to 1,000 employees accounted for just over one in ten growers (12 per cent).

Table 1: Vegetable farm profile by annual turnover (millions), share of farms and vegetable production value (per cent), 2016-17

Vegetable farms turnover	Proportion of farm population	Proportion of total vegetable production value
<500k	63%	39%
500k-1m	17%	12%
1m-5m	17%	32%
5m+	4%	16%

Source: ABARES vegetable survey 2016-17.

This distribution of growers by size of employees is confirmed by a comparison with the ABARES Vegetable Survey 2016-17 (Table 1) which shows a broadly similar distribution of growers by value of vegetable production.

Figure 4 shows the distribution by state of the respondents is based on grouping their postcodes. The figure shows the percentage distribution of growers and their share of employment.

Figure 4: Distribution by state of growers and number of employees (per cent)

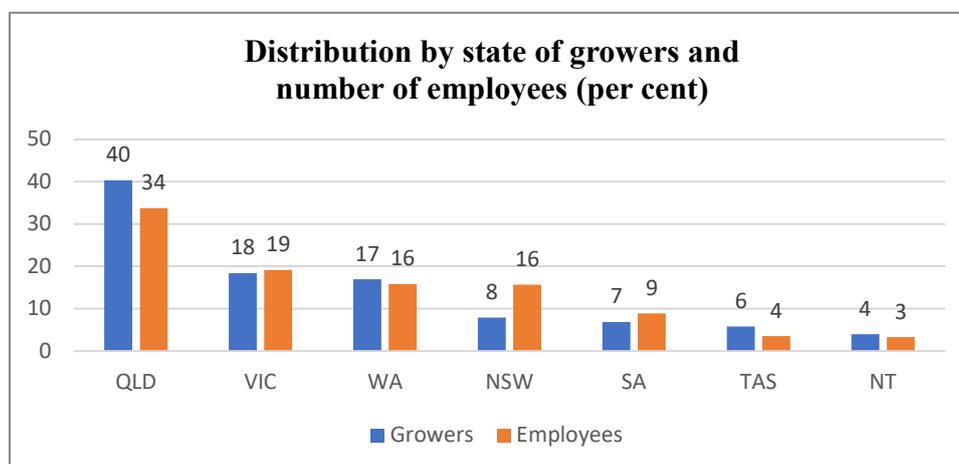


Figure 4 shows that Queensland has the most growers represented in the survey. The Figure also shows that Queensland has more smaller growers by employment size and NSW has growers with larger workforces.

Change of hours worked by casual workers

The first key issue was extent of the change in average working hours growers made in response to the Horticulture Award change that required the payment of overtime. The two questions were:

- On average, how many hours did your casual employees work each week before the changes to the Award?
- On average, how many hours do your casual employees work each week now?

Table 2 reports the average hours worked for those growers who reported that they employed casual workers. Before the award changes, 91 per cent of growers paid casual workers for working more than 38 hours a week. After the award changes, only 15 per cent of growers paid casual workers to work more than 38 hours a week. Three different average measures are presented for the periods before and after the award changes.

Table 2: Measures of the reduction in average hours of casual workers per grower before and after requirement to pay overtime changes to the horticulture award in April 2019

	Before	After
Arithmetic average	45.3	35.8
Median	45	38
Mode	50	38
SD	9.7	7.3
% above 38 hrs	90.5	15.3
N	280	280

The arithmetic or simple average went from 45.3 hours to 35.8 hours per week for casual workers, a difference of 9.5 hours per week. The median measure which excludes high-end results was 45 hours before and 38 hours per week after the award changes. The mode or most frequent number of hours was 50 before and 38 after the changes. The standard deviations report the spread or range of the results, showing that the reported hours are within a range close to the simple average, especially for the hours worked post award changes.

Table 3: Size of employer and average hours worked by casuals, average and standard derivation (SD)

Grower’s number of employees	Average of Hours worked before	SD	N	Average of Hours worked after	SD	N	Difference in average hours
1 to 10	41.5	11.7	100	34.2	9.4	101	7.3
11 to 20	47.0	9.2	53	35.2	6.3	53	11.8
21 to 30	46.4	6.2	37	37.6	5.1	37	8.7
31 to 50	48.2	5.1	31	38.0	4.5	30	10.2
51 to 100	45.8	10.8	24	35.9	8.4	24	9.8
101 to 1000	49.3	4.4	35	37.3	2.5	35	12.1
Total	45.3	9.7	280	35.8	7.3	280	9.5

Based on the simple average of the new hours worked, the impact on casual workers is to lose an average of \$235 a week based on \$24.80 per hour. This is 20 per cent of the gross income they earned on average before the award changes were introduced.

Table 3 shows the reductions in average hours worked by casuals by employment size of the grower, summarised in the final column of the table. The shaded row highlights that the growers employing the most award-based employees had the largest decrease in hours (12.1 hours). The low standard deviations for the averages both the before and after award changes show that the range of hours recorded by each grower in that group was close to the average reported.

Table 3 also shows that even smaller growers in terms of their number of award-based employees also had recorded a large fall in average hours worked. This applied especially to growers with 11 to 20 employees, followed by growers with 31 to 50 employees and 51 to 100 employees. It is only the smallest growers who recorded the smallest decrease in average hours, which, nevertheless, was still notable at 7.3 hours per week.

Impact on workers in the Seasonal Worker Programme

One quarter of the respondents said that the Seasonal Worker Programme (SWP) was one of the sources of their workforce. The growers with more workers were more likely employ SWP workers, rising to 41 per cent of growers with 51 to 1,000 workers, and over a quarter (27 per cent) of the largest employers (101 to 1,000 workers).

For growers who engaged SWP workers, the reduction in average hours worked by casuals was close to the overall pattern, as shown in Table 3 above. For growers who sourced workers from the SWP, the overall reduction in average hours was 9.6. The largest growers with SWP workers had the most decreased hours of work for casual workers (12.4).

Grower feedback on the change in available hours related to SWP included the following:

- ‘I’ve had to cut back my seasonal workers to 30-38 hours a week to save overtime penalties and I’ve had some say it’s not worth them coming back being away from there families for only 36 hours a week...’
- ‘Using the seasonal workers program, we are employing extra workers to ensure that we don't go over 38 hrs per week. This has made the existing workers frustrated they can no longer work 6-7 days per week’.
- ‘We have had to bring in extra South Pacific workers scheme workers to keep their hours under 38 each week. These workers are very keen to work longer hours at the standard rate’.

Disruptive effect on horticulture workforce

About three out of four growers (72 per cent) said that the award changes had resulted in a higher turnover of staff. These changes were particularly disruptive in NT, Tasmania, WA, Qld and SA, and to a lesser extent in NSW.

Table 4: Proportion of growers experiencing a higher staff turnover due to award changes, per cent

State	Yes	No	Total	N
NT	91%	9%	100%	11
TAS	88%	13%	100%	16
WA	79%	21%	100%	47
QLD	78%	22%	100%	112
VIC	65%	35%	100%	51
SA	58%	42%	100%	19
NSW	41%	59%	100%	22
Grand Total	72%	28%	100%	278

In terms of the size of the impact, Table 5 shows that larger growers were most affected in Tasmania, WA and NSW, followed by Qld, NT and Victoria.

Table 5: Proportion of growers by employment size who experienced higher staff turnover due to award changes, per cent

Employees	Yes	No	Total	N
1 to 10	54%	46%	100%	105
11 to 20	81%	19%	100%	54
21 to 30	77%	23%	100%	39
31 to 50	94%	6%	100%	31
51 to 100	71%	29%	100%	24
101 to 1000	86%	14%	100%	35
Total	72%	28%	100%	288

Overall, most growers (62 per cent) said that they have had casual employees leave their job due to change in their hours. This disruptive effect was most noticeable among growers in Tasmania, WA, QLD, Vic and NT.

Table 6: Proportion of growers in each state who had lost casual workers due to the award changes, per cent

State	Yes	No	Total	N
TAS	81%	19%	100%	16
WA	70%	30%	100%	46
QLD	69%	31%	100%	112
VIC	69%	31%	100%	51
NT	64%	36%	100%	11
NSW	32%	68%	100%	22
SA	26%	74%	100%	19
Grand Total	62%	38%	100%	277

Table 7: Average number of award-based workers employed by growers in each state who had lost casual workers due to the award changes

State	Average no employees	N
NSW	107.3	22
TAS	82.8	16
WA	61.0	46
NT	47.6	11
VIC	45.9	51
QLD	44.9	112
SA	25.7	19
Grand Total	53.7	277

Strategies adopted to respond to disruptive effects

Managing work hours of casual workers to avoid overtime and payment of night loading

According to the [Fair Work Australia website](#), the Horticulture Award allows an employer and employee to agree to the employee taking paid time off instead of being paid overtime pay. This is known as 'time in lieu' or 'time off in lieu (TOIL)'. The agreement must be in writing and include specified details. This allows an employee to work overtime, and then instead of being paid additional remuneration for working such overtime, the employee is granted paid time off work by their employer, to the equivalent of the overtime hours worked.

Growers were asked if they had managed the hours of work done by casual employees to limit the accumulation of overtime. Most growers (88 per cent) said they had managed the work hours of their casual workers. The only difference was for small growers with 1-10 employees, with 77 per cent making this change. Over half (55 per cent) of growers had changed the span of daily work hours to limit the payment of night loading. The largest growers (101 to 1,000 employees) were the most likely to use this strategy (71 per cent).

Individual Flexibility Arrangements

Another strategy used by a smaller proportion of growers (19 per cent) was to create new Individual Flexibility Arrangements. The larger growers (101 to 1,000) were more likely to do this (36 per cent).

Use of labour hire company

One in three growers (33 per cent) said they had outsourced their employment administration to a labour hire company or similar. Those outsourcing their employment admin were more likely to be smaller growers (average 38 workers employed compared with growers with an average of 61 workers who had not).

Converted casuals to permanent workers

One-in-four growers (23 per cent) had converted casual workers to permanent workers. The larger growers were more likely to do this, with over half of growers with 51 to 100 employees (54 per cent) doing this and 43 per cent of growers with 101 to 1,000 employees.

Use of piece rates

Surprisingly, only one-in-four growers (26 per cent) had converted casuals from payment by hour to piecework as an alternative to paying the overtime pay rate. Growers with more casual

worker hours before the award changes were more likely to switch to piece rates. About a half of growers (48 per cent) with workforces of 31 to 50 converted casual workers to piece rates. Growers with 100 or more employees were only more slightly more likely to convert their casual workers to piece rates (31 per cent).

What factors cause growers to use piecework?

Piecework payment is set at a high rate of pay to make it less attractive for growers to use. A small grower does not have the margin and turnover to absorb the extra cost of piece rates. A large employer may have the economy of scale to make good use of piecework because they have the number of workers and admin staff to collect enough data to work out what a viable piece rate should be for a range of conditions.

As noted above, size of the growers has some effect on the decision to use piecework. However, grower size alone does not seem to be a key factor in explaining why growers on the award changed to piecework. The type of crop is also important in explaining why growers move to the use of piecework. Some 43 per cent of larger fruit growers with 51 to 1,000 workers said they switched to piecework compared with 22 per cent of vegetable growers. Growers with mixed crops also had a similar proportion who switched to piecework. Vegetable crops are more likely to be harvested as group work which means that piecework is more difficult to use because of the Horticulture Award requirement that piecework can only be done by individual workers.

By state, fruit growers in Tasmania with an average of 375 award employees stood out as users of piecework. Other important users of piecework were mixed crop growers in WA with an average of 201 workers, and vegetable and mixed crop growers in Queensland with averages of 190 and 122 workers respectively.

The problems encountered by growers using piecework

One grower noted the difficulties involved in moving to payment based on piece rates in these words:

We have had to assess many of our tasks and piece rate them where possible but with this there is an added admin and supervision cost to ensure that we are paying the correct rate for the task. We have also had to develop a monitoring system for managing ...

Open-ended responses on the effect on SWP workers

The following open-ended responses to the invitation to 'describe any other changes made to your employment practices' are from 46 respondents who engage SWP workers. SWP workers themselves were referred to in nine replies, with most growers highlighting the frustration of SWP workers denied the chance to gain higher earnings. Other growers stated a preference for sourcing SWP workers in the future.

- I've had to cut back my seasonal workers to 30-38 hours a week to save overtime penalties and I've had some say it's not worth them coming back being away from their families for only 36 hours a week ...
- A large percentage of our workers are employed as part of the SWP and these workers have left their families to make as much money as possible and are willing to work any additional hours offered to them. Under the current award we can only work them for 38 hours and under the guidelines of the SWP we have to provide a minimum of 30 hours a week. There really isn't any wiggle room for extra opportunity without incurring overtime penalty rates. We are finding that we now need to recruit an extra percentage of

workers to accommodate the work we have which means the net pool of money is averaged over more people with less net gain for the workers and the also means we need to have more accommodation facilities for the extra workers which is already very scarce to find as it is.

- Using the seasonal workers program, we are employing extra workers to ensure that we don't go over 38 hours per week. This has made the existing workers frustrated they can no longer work 6-7 days per week.
- The new Hort award is not fair on the SWP workers they want to work 6 days a week. But now they can't. They are very disappointed. No one is happy with the arrangement.
- We also have seasonal workers and they are here for six months and want to work more than 38 hours in a week.
- As we use seasonal workers they like to work as long hours as possible to take as much money home as possible now we have to limit their hrs or bring extra people.
- The seasonal workers we employ are stating that they will try to find work with other employers that can offer piece rate. These workers make great sacrifices to travel to Australia to earn as much money as possible and the change in the award is limiting;
- Can no longer deliver fresh produce 7 days per week as can not afford to harvest/pack over weekends. Moving towards seasonal worker program based on piece rates;
- Considering seasonal worker programs as an alternative to hiring backpackers.

Open-ended responses of SWP growers about changes to employment practices

Larger employers who commented on their changed employment practices were more likely to increase their workforce to avoid paying overtime. One grower with a workforce of 400 has added a second shift to limit casual hours. Another grower with 1,000 employees stated that they had 'increased the number of staff which is difficult in itself'. A grower with 150 workers stated they had doubled the workforce to ensure work is done. They had reduced casuals 30 hours per week with the result that 'they are extremely unhappy by this'. A fifth grower with 200 workers stated:

... We are trying to employ more staff to reduce overtime hours. We are totally overwhelmed with the extra workload that our government has dumped onto our family business.

A grower with 100 workers said they had limited the number of hours employees work and changed work practices. An employer of 65 said they 'needed to increase staffing levels to reduce hours worked per employee'. Another with 63 employees stated that they are 'employing more experienced staff to get the job done in a more economic manner'.

A grower with 60 workers said they had 'employed more staff to reduce hours that normal staff would have worked [and] avoided working on any public holidays. A grower employed 50 workers had 'limited hours allowed to work for all new employees to 38 hours per week and existing workers are allowed 48 hours per week (10 hours of overtime per week) only.

Another employer of the same size stated:

Making new employees aware they may need to take significant time off as the 8-week casual window is beginning to close. Also, we have had to employ more people with smaller hours to reduce the chances of needing to pay overtime.

Still another of the same employment size noted that:

Needed to get more employees for same amount of work. Increased hours paid to casual administration staff to manage employees' hours

The changes to employment practices included:

- 'We have implemented an eye scanner' [as] we are trying to employ more staff to reduce overtime hours.
- 'employing more experienced staff to get the job done in a more economic manner';
- 'We are adjusting to a high staff turnover model';
- 'constant training and education of employees about what the changes the horticulture award means, and why they can't earn as much money now because we have to cap them at 38-hour weeks';
- 'Changes made to allow workers to be picked up and transported to work';
- 'spent more time training new employees because of turnover due to hours restrictions';
- 'Moving towards more automation wherever possible to remove jobs'.

Growers were also asked to 'identify changes made to other parts of your business or operations as a result of change to the Award'. Only 11 responses were made to this request. The main focus was on changing planting, pruning, harvesting or packing methods; changes to the type of crop, less volume of crop and area under crop.

One grower reported that they had:

Reduced the number of lines being grown due to their lower margins. Although these lines are important to us to offer a range to our customers, we have had to stop growing and put more importance on our volume lines we can increase efficiency in.

Effect on business in the future

Growers were also asked to 'describe any likely additional impacts or changes to your business in the future'. The following are the responses of growers who have engaged SWP workers as part of their harvest workforce. Of the 53 replies, 37 are negative in tone.

Examples of negative responses are:

- 'Employers are now limited with the drought & overtime rates to limit the expense on farm to try get the work done' (300 employees);
- 'We will dramatically reduce our plantings at the end of this 2019-2020 season if we can't make ends meet or government regulations are impossible to comply' (200 employees).
- 'Extra admin, more training, disgruntled staff' (140 employees);
- 'Very uncertain future in the industry as it is hard to find workers now (100 employees)';
- 'We are considering all options to reduce employees' hours, all employees are very disgruntled at the amount of hours they are allowed to work when the work is available but they are not allowed to do it.' (25 employees).

Other growers are looking at how to attract and retain staff:

- ‘Regular, reliable local labour, the people that are employed all year round who have been with us for years will start to look for other employment. The increased rate of turnover will only increase in future. Local workers will become even more difficult to find in an already challenging industry to find reliable employees. Working holiday maker numbers will decrease dramatically once it becomes common knowledge in their information circles that hours are being managed and 38-hour weeks are the maximum they'll get ...
- ‘Attraction and retention of staff. Increased labour budget pressure and increased cost of turnover’;
- ‘Increase workforce to an area that has a lack of quality accommodation. Administrative and cost burden to secure more accommodation’;

Some growers mentioned the use of more technology to replace workers:

- more automation to remove people out of our business;
- more technology used to reduce staff numbers as have become too expensive and loss of flexibility with workforce; and
- purchasing more machinery to reduce the amount of staff needed.
- ‘To limit overtime hours, we have to rent more accommodation to house more seasonal workers as we can not afford overtime rates. Invest in more infrastructure’.
- ‘More robotics, more backpackers. We can’t afford the higher rate per hour. The staff were happy with their rate of pay and liked the extra hours’.

Conclusion

Are growers are caught in a low-productivity, high-regulation trap? The high-regulation operating environment refers in part to the April 2019 change to the Horticulture Award which requires employers to pay overtime rates at 175 per cent of the ordinary hourly rate. Employers also have had their use of piecework severely restricted by the enforcement of piecework for individual workers only. It is also complex for individual growers or labour hire operators to determine an appropriate piecework rate for variable conditions. In addition, employers are closely monitored by the unions and the FWO on how piece rates are set. For these reasons, three major SWP labour hire companies, MADEC, Jobs Australia Enterprises, and Top of the Crop no longer allow their workers to be paid via piecework.

The high cost of overtime means growers can either make use of piecework for existing workers to work longer hours or they can employ more workers on ordinary hours. The latter option itself involves additional marginal costs incurred in finding and recruiting new workers.

However, if employers employ more workers to avoid paying overtime or offering piecework, this makes SWP workers unhappy who are stuck with a 38-hour week. This means that they are earning 20 per cent or more less than they earned previously. They are dissatisfied because they have too much idle time when they want to use this time to earn a high enough reward to justify coming to work in Australia.

Moreover, with the closure of international borders, employers cannot employ more workers, so this creates intense pressures on growers and labour contractors to poach workers. This has resulted in SWP workers absconding from the SWP employer in response to offers of work with higher pay cash-in-hand and lower accommodation costs.