



# Australia's Pacific Seasonal Worker Pilot Scheme and its interface with the Australian horticultural labour market: is it time to refine the policy?

Rochelle Ball

The Pacific Seasonal Worker Pilot Scheme (PSWPS) signals a new level of engagement between Australia and Pacific island countries and is of major significance for all participating countries. It embodies the ramping up of the globalisation of labour markets, communities and nations in the Pacific region and constitutes international people movement that inevitably will have a transformative impact on labour receiving and sending nations in terms of their social, political and economic structures. This article focuses on the demand side of this relationship, with emphasis on the newly established Australian PSWPS. The article raises questions concerning how, after an overview of New Zealand's Recognised Seasonal Employer (RSE) scheme and the Australian PSWPS, the advent of seasonal emigration from the Pacific will affect, and be affected by, existing employment and labour relations in the Australian horticultural sector. In this context, it examines information about undocumented workers in the Australian horticultural labour market and the degree they are impacting on the success of the pilot scheme. Finally, the article discusses the long-term viability of the pilot, based on a range of stakeholders' perspectives, and identifies some impediments to its expansion in its current form.

**Rochelle Ball** is a Fellow in the State, Society and Governance in Melanesia Project, The Australian National University, Canberra.

Labour mobility is a key geopolitical issue in the Pacific region and has been in the background of Australia's political agenda since 1984 when it was first flagged in the Jackson Review of Australian aid. Labour mobility is regarded as a key mechanism for regional integration, for enhancing the development potential of countries in this region (<http://www.dfat.gov.au/geo/specific/pacer/index.html>) and is central to regional trade negotiations. It is regarded

within the region as pivotal to Australia's relationship with the Pacific, which could be one by which Australia's relations with the Pacific will be judged in the next few years (Yourn 2007:59).

Since the Organisation of Petroleum Exporting Countries (OPEC) oil crisis in the early 1970s, labour-deficit countries have increasingly imported temporary labour from the developing world. Typically, labour-importing countries are either



industrialised, largely Western nations with ageing populations and increasingly acute labour shortages or countries with rapidly growing economies such as in the Middle East and in some parts of Asia. Rarely, however, have labour-importing countries given priority to protecting the rights of imported labour or to the development outcomes of a labour-export strategy.

The New Zealand Recognised Seasonal Employer (RSE) Scheme and Australia's Pacific Seasonal Worker Pilot Scheme (PSWPS) are substantial steps towards greater regional integration of labour markets in the Pacific region (AusAID 2009:84) and developing labour migration schemes based on workers' rights and positive development goals. Potentially, the schemes provide a mechanism for meeting the predicted labour shortages and to create positive economic development impacts in labour-sending countries.

This article focuses on the Australian demand side of the equation and reveals that these objectives, while admirable, are also far from straightforward. The article examines the structure of both schemes, but with greater emphasis on the Australian pilot, as little has been written about it thus far.<sup>1</sup> The discussion seeks to contextualise the PSWPS within a broader analysis of the labour market dynamics in the Australian horticultural sector and canvasses some explanations for the poor performance (in terms of much lower uptake than expected) of the pilot, in contrast with the New Zealand RSE scheme. It concludes by emphasising that there are several factors that will affect the viability and growth of the PSWPS—such as the greater political will that will need to be exerted in the sensitive area of deporting at least some segments of what appears to be a structurally embedded illegal labour force in Australian horticulture and reducing the rigidities in the labour recruitment and employment system.

## The New Zealand RSE scheme

The New Zealand government established the RSE scheme in April 2007 (Hugo 2009:13). The RSE scheme was developed by the New Zealand government to meet the heavy seasonal labour demands of employers in the horticultural and viticultural sectors of the New Zealand economy, particularly during peak harvesting, planting and pruning times. It is also considered an important mechanism for meeting New Zealand's foreign policy objectives.

While the New Zealand government has permitted 11 Pacific Island Forum member countries access to its labour market on a seasonal basis, bilateral agreements have been negotiated with five priority 'kick-start' country governments—Kiribati, Samoa, Tonga, Tuvalu and Vanuatu—with the understanding that arrangements will be reviewed periodically (Luthria 2008). Fiji was removed from the list of preferred countries after the December 2006 military coup (M. Klapdor, 2008, 'New Zealand's seasonal guest-worker scheme: background note', <http://www.aph.gov.au/library/pubs/BN/200708/NZSeasonalWorker.htm>). The first workers from these five countries began work in New Zealand in 2007.

The RSE scheme has grown rapidly. Initially, 5,000 visas were made available to Pacific island workers each year under the RSE scheme. In the first full season of the RSE scheme (2007–08), 126 employers employed 2,883 overseas workers. Of these, 83 per cent came from the five kick-start states, with the majority from Tonga, Samoa and Vanuatu (2,247) (IMSED Research 2009:4). By June 2008, the number of RSE workers had grown to 5,079 (Ramamy, Krishnan, Bedford and Bedford 2008) and by 2009 the number had increased to approximately 8,000.

The RSE policy represents a major departure in immigration policy for New



Zealand and allows a great deal of flexibility in worker recruitment and labour supply mechanisms. It is estimated that seasonal fluctuations in demand for workers in horticulture and viticulture can be as high as 20,000 to 30,000. Similar to the Australian scheme on paper, under the RSE scheme, where no suitable New Zealanders are available for work, workers can be recruited internationally to meet this demand, with preference given to the five kick-start states. Under the RSE scheme, Pacific island workers can remain in New Zealand for up to seven months at a time (and for nine months for workers from the more distant countries, Kiribati and Tuvalu, because they have higher travel costs). Where workers are unable to be recruited from Pacific island countries, employers can source workers from other countries (Hugo 2009:13). As a result, in 2009, up to 25 per cent of workers under the RSE scheme came from Asia.

A key feature of the structure of the RSE scheme is that it helps to regularise worker recruitment in these industries, which, before the scheme, were characterised by high levels of undocumented workers. In order to create labour demand from the outset, the New Zealand government conducted immigration raids to deport undocumented workers. While there was initial resistance by many New Zealand employers to a regularised labour supply system, evaluation of the RSE found that most RSE employers believed that participating in the RSE and having a secure and reliable labour supply outweighed the costs, resulted in productivity increases, improved the ability to produce at the 'high end' of the market and gave producers greater business confidence, resulting in increased levels of business investment (IMSED Research 2009:8).

### **Labour supply mechanisms and structure of the RSE scheme**

Under the RSE scheme, the recruitment and employment of temporary/seasonal workers is a highly individualised, employer-driven model whereby the New Zealand farmer is the direct employer and often the direct recruiter of Pacific seasonal workers. The RSE employer is also responsible for the provision of pastoral care to seasonal workers, which evaluation research has found to be a grey area of responsibility with wide-ranging levels of employer engagement.

In order to hire workers under the scheme, employers must first apply to the New Zealand Department of Labour for recognition as a Recognised Seasonal Employer. In order to gain recognition, businesses must be a New Zealand employer and meet a range of conditions (M. Klapdor, 2008, 'New Zealand's seasonal guest-worker scheme: background note', <http://www.aph.gov.au/library/pubs/BN/200708/NZSeasonalWorker.htm>). Once recognised, employers must apply for an Agreement to Recruit (ATR). Under an ATR, an employer is able to recruit workers directly from participating countries or may choose to obtain workers through recruitment agents in source nations.<sup>2</sup> Employers have a number of obligations: to pay half the travel costs; provide pastoral care, accommodation, basic health care and local transport; and contribute to funds for locating workers who overstay at the end of their employment (Hugo 2009:14). The fact that workers can return in the next season for further employment is believed to have resulted in a low rate of overstaying, with less than 1 per cent of workers overstaying visas between April 2007 and January 2009 (IMSED Research 2009:9).



Under this model, individual workers' rights can be marginalised. This is because of the degree of control that employers have over workers who are non-nationals and who therefore are in a weaker position to have knowledge of, and make claims over, their labour rights. While the high rate of return of workers from the first 2007–08 season for the 2008–09 season is 55 per cent (IMSED Research 2009:9), which is clearly positive, the fact that almost half of the workers did not wish to return indicates a substantial degree of worker dissatisfaction with some aspects of the RSE. Evaluation of experience in the first season found that there were concerns about the fairness of salary deductions and the degree of employer control over these, particularly concerning accommodation costs and the development of dispute-resolution mechanisms (IMSED Research 2009:9). This research found that 'pay deductions impacted negatively on some worker–employer relationships, leading to distrust and disillusionment on the part of some workers' (IMSED Research 2009:6).

In his research on the first season of the RSE scheme, Maclellan (2008:20) found that there had been disputes between seasonal workers and employers across a range of issues—such as poor housing, lack of work at down times (which meant no income but continuing expenses for housing and food), contracts being set on a 'piece rate' basis (for example, per bin or per tree) at minimum wage rates rather than 'market rates' and the contentious issue of deductions where workers might be told the gross rate of pay, but not fully informed of all deductions by employers to cover housing, transport costs or airfares. Maclellan (2008:20) writes

Initially, the RSE scheme mandated that any deductions from workers' pay couldn't take the hourly rate below the minimum wage [NZ\$11.25

an hour]. However after industry lobbying, this provision was later amended to allow employers to deduct for half the airfare below the minimum wage if the full airfare was initially paid by the employer. This highlights the contentious issue of deductions which is common across the horticulture industry—workers may be told the gross rates of pay, but not informed of all deductions by employers to cover housing, transport costs or recouping airfares.

Ultimately, the extent of worker exploitation is contingent on the extent of government regulations of deductions, labour inspections and compliance monitoring of employers.

While there have been obvious concerns about the initial functioning of the RSE scheme, it is important to maintain perspective. From the perspective of employers, there have been clear productivity gains from having a reliable labour supply (IMSED Research 2009:8). The extent of these gains is reflected in the rate at which the scheme has expanded. From the perspective of workers, sending communities and nations, there is evidence that the scheme is generally pro-poor, although the degree of benefit is not spread evenly throughout sending countries (Gibson, McKenzie and Rohorua 2008; McKenzie, Garcia Martinez and Winters 2008). However recent research indicates there have been some unanticipated negative impacts on productivity and even in diet and health in some sending country communities, (Rohorua, Gibson, McKenzie and Garcia Martinez 2009). This finding as well as evidence from countries with substantial experiences of labour migration (Ball 2009) reveals that migration is always highly selective and that development outcomes are not as straight forward as often presumed by labour sending countries and aid donors alike.



## Situating the PSWPS: the demand for labour and undocumented workers in the Australian horticultural sector

The Australian horticultural sector has a growing reliance on a temporary international labour supply.<sup>3</sup> The nascent development of the PSWPS needs to be viewed in this context. While the demand for workers in Australian agriculture has been declining in general terms, there has been a high employment growth rate in the more labour-intensive horticultural sector (Australian Productivity Commission 2005:97; National Farmers Federation 2006). The Australian Farm Institute has estimated that the number of horticultural farm businesses increased by 6 per cent in the 10 years to 2003 and the number of people employed in horticultural industries across Australia has increased by more than 40 per cent to approximately 68,000. The National Farmers Federation (2008) estimated that there would be a need for an additional 100,000 workers in agriculture in coming years.

Primary producers in Australia's agricultural and horticultural sectors rely on legal and undocumented ('illegal') workers to meet seasonal labour needs. The legal/ documented workforce is wide ranging. It includes itinerant farm labourers, family members, local casual workers, students (including overseas students), grey nomads (retirees travelling around Australia) and working holiday makers (Hanson and Bell 2003; Shorten 2006:7). Seasonal agricultural work is based largely in remote locations, described as 'hot, hard and dirty', often poorly paid and of low social status. These conditions are generally unattractive to Australian citizens, particularly as workers are often paid on a piece-work or short-term casual basis (Millbank 2006:11).<sup>4</sup>

It is extremely difficult to obtain estimates of illegal workers by nationality. What is known is that the undocumented workforce consists of unauthorised residents not showing up in Department of Immigration and Citizenship records (primarily from the Pacific islands,<sup>5</sup> Southeast Asia and China), overseas students working in excess of permitted hours, Australians working while in receipt of benefits, foreign travellers working without authorisation (Mares 2005; Shorten 2006:7) and people working on forged documents ('Illegal meatworkers to be deported', ABC Rural, 13 March 2009, <http://www.abc.net.au/rural/news/content/200903/s2515173.htm>). One in four growers in the Murray Valley surveyed in 2005 by Mares (2006) admitted to employing 'illegals'—that is, visa overstayers or people working outside their visa conditions. Research has indicated a high Tongan presence in the harvest workforce (Mares 2005, 2006; Henderson 2004). The high degree of dependence on illegal workers and the urgency of the labour shortage in horticulture are reflected in the frequent calls from politicians and industry bodies for short-term amnesties on illegal workers ('Council to crack down on illegal workers' camps', ABC News, 27 October 2004, <http://www.abc.net.au/news/stories/2004/10/27/1228897.htm>; 'Fed MP calls for amnesty for illegal workers', ABC AM, 6 February 2004, <http://www.abc.net.au/am/content/2004/s1039291.htm>) so they can be allowed to stay in Australia.

It is difficult to gain a comprehensive understanding of the extent of illegal employment practices in this industry, by virtue of its illegality, and caution needs to be applied to the anecdotal nature of the figures available. Although estimates of the number of illegal workers employed in this sector vary considerably, neither industry nor government is disputing their importance or widespread existence. For



example, Hunt Sharman from the Australian Table Grape Association claimed that there were between 40,000 and 70,000 illegal people across Australia ('Fruit growers call for amnesty on illegal farm workers', *ABC Rural*, <http://www.abc.net.au/rural/news/stories/s1072710.htm>, accessed 27 March 2009). In 2000, the then Immigration Minister, Philip Ruddock, claimed that there were about 50,000 international tourists overstaying their visas working in horticulture ('Itinerant workforce sweating over changes by Ruddock', *Radio National*, 21 August 2000, <http://www.abc.net.au/pm/stories/s165927.htm>). Over-stayers are concentrated in particular towns: there is a culture of hiding workers in major regional centres such as Griffith, Robinvale and Bundaberg. It is in these regions that the PSWPS aims to supply labour. For example, in Shepparton in Victoria, it was estimated that 4,000 workers (of 10,000 in total) were employed on tourist visas each harvest season ('Itinerant workforce sweating over changes by Ruddock', *Radio National*, 21 August 2000, <http://www.abc.net.au/pm/stories/s165927.htm>). While Immigration Department raids have received high-profile media attention, rarely are employers prosecuted for employing illegal workers ('CFMEU says illegal workers a serious problem', *The World Today*, 1 April 2005, <http://www.abc.net.au/worldtoday/content/2005/s1336240.htm>).

Illegality in the horticulture industry concern not only who is employed but under what conditions they are employed. In horticulture, where there can be substantial variations in profit margins, some primary producers fail to offer adequate wages and conditions, contributing to labour supply problems in the industry (Mares 2005:3). There have been serious attempts by the horticultural industry to lobby government to lower labour costs through the supply of temporary migrant workers. Although

unsuccessful, some Australian fruit growers have sought to bring in 10,000 Chinese workers to pick fruit (Mares 2005). The role of unscrupulous labour brokers is also problematic: through the use of illegal employment contracts, they secure large profits by paying workers well below the award wage and claiming the award wage from the grower. Mares (2005) and Rule (2009) report that the seriousness of the labour shortage in horticulture has meant that growers are increasingly turning to labour-supply contractors who provide them with teams of undocumented workers, although the extent of this practice remains unclear.

## The PSWPS

Australia announced at the Pacific Islands Forum meeting in August 2008 that four Pacific island countries had been selected to be involved in a pilot labour mobility program. This announcement was widely welcomed by Pacific island communities after many years of lobbying. For instance, in 2001, the Pacific Island Forum Countries (excluding Australia and New Zealand) signed the Pacific Islands Countries Trade Agreement (PICTA) in order to promote regional integration into the global economy and to lay the groundwork for the establishment of a single regional common market. Trade in goods and labour services was considered the major vehicle for economic development and regional integration, based on the view that labour and skill shortages would be met from within the region (Peebles 2005:124). The PSWPS is regarded in the Pacific as a major increase in the level of commitment Australia has to engagement with its Pacific island neighbours.



While the political decisions behind the countries selected for the pilot remain unclear, the countries involved in the Australian pilot scheme are Tonga, Vanuatu, Kiribati and Papua New Guinea. In terms of regional balance, this equates to one Micronesian and one Polynesian country (both of which have migration histories and experience) and two Melanesian nations (neither of which has had significant international emigration). The first three countries have participated in the New Zealand RSE program since 2007.

The Australian labour mobility pilot scheme has two main objectives (Hooper and Strasiotto 2009). First, it will contribute to economic development in the Pacific through remitted income, employment experience and training gained in Australia. From a Pacific island country perspective, the development orientation of the scheme is regarded as being critical and encompassing many potential benefits to individuals, families and communities in sending nations, particularly as remittances are more important than foreign aid for some of the nations in this region. Second, it targets areas of unmet labour demand in the Australian horticultural industry.<sup>6</sup>

The Australian pilot is structured into two main phases. Under phase one, up to 100 visas were made available and 56 were issued: 50 to Tongan and six to ni-Vanuatu seasonal workers (in February and April, respectively). For phase two, which began in July 2009 and finishes in June 2012, up to 2,400 visas have been made available. For the 2009–10 stone-fruit harvest season, which runs approximately from October to March, it appears that (at the time of writing) perhaps 30 Pacific workers will be brought in under the pilot. This is the second harvest season under the pilot when very few or perhaps even no Pacific seasonal workers will be brought into Australia, despite the enormous importance of this initiative for

filling labour shortages in horticulture and the potential that this labour supply model has to be expanded into other labour-deficit segments of the Australian economy. Some explanations for this will be canvassed later in this article.

The arrival of the first workers under the Australian pilot was delayed by several months, reflecting the complexity of the process and the poor preparedness of Australian and labour sending country government agencies for coping with these complexities in terms of developing new policy, bureaucratic processes and procedures.

It was initially announced that the first workers would begin work at two locations (Swan Hill, Victoria, and Griffith, New South Wales) by Christmas 2008. The first intake of 50 workers from Tonga did not arrive, however, until mid February 2009, and workers from Vanuatu arrived soon thereafter. It is unknown when the first workers from Kiribati will arrive; the expectation is that this will occur during 2010. At present, negotiations concerning Australian–PNG arrangements for the pilot are continuing. It is only after the Memorandum of Understanding has been signed that PNG workers will be able to work in Australia under this scheme. It is expected that labour demand will increase during 2010 and the hopes of an expanded PSWPS will be realised.

### **The structure of the PSWPS**

The Australian model of recruitment differs from the New Zealand RSE scheme. Under the Australian model and in the first phase of the pilot, four labour-hire companies have been selected by the Australian government to recruit and supply workers to farmers. In contrast with the RSE scheme, these companies, rather than individual farmers, act as the workers' employers. These companies have signed a special



program agreement with the Australian government (<http://www.workplace.gov.au/workplace/Individual/Migrant/LabourHireCompanies.htm>). The process for growers to access workers under this scheme is as follows

Australian horticulture growers in any region of Australia can apply for access to Pacific seasonal workers. Growers may apply even if they are not sure of the number of workers they require. Applying to participate in the Pilot does not commit a grower to hosting any Pacific seasonal workers during the Pilot. Any grower who applies to access Pacific seasonal workers will need to demonstrate that they have first tried to recruit Australian workers.

Approval to access Pacific seasonal workers under the Pacific Seasonal Worker Pilot Scheme will only occur where growers demonstrate to the Australian Government they have tested the local labour market. This means that they have taken reasonable steps to first recruit Australians and are willing to commit to participate in labour market programs for the training and career development of Australians, particularly income support recipients, Indigenous Australians and Humanitarian job seekers.

Once approved, growers can then negotiate an agreement with one of the approved labour hire companies to manage the recruitment and placement of Pacific seasonal workers. (<http://www.workplace.gov.au/workplace/Individual/Migrant/LabourHireCompanies.htm>)

The design of the PSWPS has taken into account the concerns of Australian unions to protect Australian workplace standards by protecting the Pacific seasonal workers themselves. The involvement of Australian unions in discussions regarding the structure of the scheme demonstrates a clear government intention for this system to be worker friendly, in terms of the protection of migrant workers' rights and in the maintenance of Australian labour market workplace standards and conditions.

Under the PSWPS, approved labour-hire companies or approved employers are the employers of Pacific seasonal workers. The employer places workers with eligible growers. As part of being an employer, the employer is required to enter into a deed of agreement with the Department of Employment, Education and Workplace Relations and a special program agreement with the Department of Immigration and Citizenship ([www.workplace.gov.au/pswps](http://www.workplace.gov.au/pswps)). Both these agreements establish a range of obligations relating to the treatment and welfare of Pacific seasonal workers in terms of: worker recruitment; on-arrival assistance; conditions of employment; working with government; and requirements on departing Australia (Hooper and Strasiotto 2009).

The parameters governing the PSWPS set by the Australian government are clearly structured to protect the rights of workers. Under the pilot, employers are required to provide to workers: an average of 30 hours' work a week for six months (relevant industrial instrument); transparency of wage deductions; twenty-four-hour phone contact number of employer; responsibility for and clear methods of pastoral care provision; personal protective equipment; worker participation in Australian government-funded training while in Australia; and assisting workers to comply with their visa conditions (Hooper and Strasiotto 2009).



The conditions relating to transparency of wage deductions and pastoral care are measures that have been put in place to address some of the problems found in the initial operation of the RSE scheme.

In addition to employment rights, the Australian pilot seeks to provide workers with training in skills relevant to their home countries. This is part of the development focus of the PSWPS. Under the Australian pilot, it is intended that workers be provided with access to a range of skills training in financial literacy, basic literacy and numeracy (AusAID 2009). The first PSWPS workers in 2009 received first-aid training and this training has enhanced access to basic medical care in some of their home communities.

As in the case of New Zealand, in Australia, employment under this scheme is strictly seasonal and circular. Part of the rationale for this international labour provision model is that it allows workers to stay connected with their families and communities (AusAID 2009) and thereby provides strong incentives for remitted income to be spent in labour-sending households and communities. It is also highly selective, with requirements clearly reflected in the criteria for visa eligibility, including that workers must be in prime working age and health and of good character. Workers are allowed to work under the scheme for seven months in any 12-month period and are permitted multiple entries during this period. They are able to return to work in Australia in future years if they comply with visa conditions and they are required to maintain private health insurance during their stay. As with the New Zealand scheme, in Australia, workers are required to pay for half their international travel costs, accommodation and other living expenses while in Australia. In terms of restrictions, workers are limited to working with approved employers. Family members/

dependents cannot accompany workers and there is no pathway to residency or permanent migration (Hooper and Strasiotto 2009).

### **Key issues affecting the Australian pilot**

The PSWPS is situated in one of the sectors of the Australian labour market in which employment conditions are most marginalised and these constitute a clear disincentive for Australian nationals to seek employment in it.<sup>7</sup> From an industry standards perspective, a strong argument could be made that the PSWPS is a key mechanism for 'cleaning up' substandard employment practices in the horticultural sector.<sup>8</sup> The pilot appears to be structured around precautionary principals: starting small scale, located in a limited number of districts and, in so doing, with sufficient flexibility to refine policy and program delivery before the large-scale program begins.

The PSWPS is very tightly controlled, in contrast with the New Zealand model, which provides individual farmers or collectives of employers greater flexibility. The Australian government has tried to closely regulate the scheme in its efforts to minimise risks of adverse outcomes, including exploitation of workers. These tight controls could be making the PSWPS unnecessarily rigid and uncompetitive.<sup>9</sup> Initial farmer uptake of workers in the PSWPS has been poor despite claims of acute worker shortages. Although it is too early to draw strong conclusions, the following brief discussion canvasses a range of factors that could help explain the small farmer uptake.

### **The global financial crisis**

As a result of the global financial crisis, labour shortages do not appear to be as acute as before the crisis. For example, stakeholders



have reported increased availability of visiting holidaymakers as workers. There has also been increased availability of domestic workers in horticulture as a result of the restructuring of rural businesses (for example, the sale of Barter Chicken resulted in 1,000 worker redundancies in the horticultural hub of Griffith), redundancies and reduced labour demand in the capital cities. In comparison, the RSE scheme was well established before the global financial crisis and the demand for Pacific seasonal workers does not appear to have softened in New Zealand.

### **The size of the pilot and economies of scale**

There are diverse views about the size of the pilot and the very small numbers of workers brought into Australia thus far. For example, one view is that these very small numbers are insufficient to test the broad appeal of a seasonal labour program, even in one district. Further, the limited scale of the pilot and uncertainty about its future could have resulted in farmer reluctance to invest in taking on workers and training them in horticultural skills when they are not confident that workers will be able to return. Historically, harvesting in Australian horticulture has been characterised by significant numbers of pickers returning to the same farms each season. Other stakeholders maintain that the small numbers of workers have provided an opportunity to test and refine the labour facilitation and pastoral care systems and community consultation mechanisms that will enable a quick scaling up when labour demand increases.

### **The labour-hire company model**

There are a number of concerns about the rigidity of the labour-hire company model. For example, international experience with the labour-hire company approach is that this

model in a significantly expanded scheme could lend itself to worker exploitation by cutting wages (directly or indirectly), thereby substantially increasing labour-hire company profits and marginalising workers. While there would be monitoring of employment under an expanded scheme, we have already seen widespread exploitation of temporary migrant workers such as international students and other workers employed under the 457 visa, despite monitoring by immigration and labour authorities.

Another concern is whether this model will be sufficiently responsive to fluctuations in the demand for labour and whether a minimum of six months' continuous work is too onerous a requirement for one labour-hire company/employer, particularly given the sometimes very large distances between major horticultural districts and the logistical difficulties associated with this. One possibility for a more responsive labour supply system could be through the expansion of the labour-hire company model to include farmers' collectives<sup>10</sup> that are regionally based (as in New Zealand, where workers are sometimes shared between farmers). The close management of workers required under this model, with small numbers of workers employed over vast distances, would inevitably affect the cost effectiveness and perhaps the quality of service delivery of the labour-hire company.

### **Undocumented migrant workers and impacts on the pilot**

A serious structural impediment to the expansion of the PSWPS is the extent to which the large presence of undocumented workers in horticulture has impacted on the demand for workers under the PSWPS. Unless the issue of the large numbers of undocumented workers—spanning a wide range of wages and conditions in the horticultural industry—is addressed, there



is great potential for a growing number of jobs to be filled by undocumented workers, given their established networks in often-closed communities and their central role in labour supply in particular regions (Mares 2006; Rule 2009).

Is there sufficient political will to create demand for legal labour-supply mechanisms in the Australian horticultural sector? If the Australian government is committed to regularising labour supply in horticulture through the PSWPS, employment conditions in the sector will need to be stringently monitored by the Department of Immigration and Citizenship, the Department of Employment, Education and Workplace Relations and unions. To support compliance monitoring, immigration raids will be needed to send a message to illegal labour-supply contractors that these methods will no longer be tacitly accepted.

### **Role of government: stakeholder perspectives**

Stakeholders have expressed two major concerns about the role of government in establishing the structure of the PSWPS. First, that the Australian government was unprepared for the complexity of establishing an international seasonal labour supply system. In particular, that there was poor Australian government knowledge of the highly complex issues surrounding seasonal labour supply systems and lack of capacity and readiness to set up the bureaucratic structures and bilateral mechanisms needed to cope with establishing the PSWPS within the very short initial time lines of only five to six months of the announcement of the pilot (August 2008). A second major concern is that the national government is creating rigidities in the labour supply system for Pacific seasonal workers due to high levels of centralised bureaucratic control—a situation that could be improved by decentralisation

of management of the PSWPS to labour-receiving districts, perhaps through local advisory bodies.

### **Lack of clarity over workers' wages and conditions**

While government articulation of the conditions of employment of the workers under the industrial award system is quite clear, the implementation and monitoring of the program by the Department of Employment, Education and Workplace Relations has been problematic in the initial phase. This has been due to the complexity of Australian industrial agreements, which vary by state and employment sector. The conditions under which seasonal workers in the PSWPS are employed can vary considerably—by state and by the employment model preference (for example, permanent versus casual contracts) of labour-hire firms that act as the workers' employers. Problems have also arisen due to differences in the most suitable payment mechanism. For example, before the scheme began, the Federal Government negotiated a framework employment agreement with the peak body representing labour-hire firms. Under this agreement, seasonal labourers were to be given all the rights of permanent employees, even though they would be in the country for only seven months. Within one week of the first seasonal (Tongan) workers arriving in Australia, there was discord over the type of employment contract under which the workers were employed ('ACTU says Pacific workers not being paid their full entitlements', *ABC Radio National*, 2 June 2009, [www.radioaustralia.net.au/asiapac/stories/200906/s2587586.htm](http://www.radioaustralia.net.au/asiapac/stories/200906/s2587586.htm)). The first employer of workers under the PSWPS, the Tree Minders labour-hire firm, claimed the 50 Tongans would be employed only as casual workers and if there was no work they would not be paid ('Seasonal workers' scheme hits hurdle



over employment status', *ABC News*, 23 February 2009, <http://www.abc.net.au/news/stories/2009/02/23/2499319.htm>). After this, the employment contract was changed to a casual work contract<sup>11</sup> with an average of 30 hours a week guaranteed pay, which would provide the workers higher total wages than if they were employed under a permanent employment contract. Subsequently, workers under the PSWPS have been employed under permanent and casual work contracts. A related issue raised by stakeholders is: what is the most appropriate mechanism for workers to be paid? For example, one stakeholder expressed the view that an hourly rate did not encourage productivity or provide workers with the incentive to work hard so they could earn more money, in the same way that a piece rate may do.

One possible explanation for low demand and the difficulties experienced by labour-hire companies seeking to place workers is the higher wage costs of seasonal workers relative to market rates, particularly given the high numbers of undocumented workers present in the labour market. The Department of Employment, Education and Workplace Relations' web site emphasises that these workers are not a cheap option. The cost of PSWPS workers to employers is often about \$2 an hour above the relevant award rate. The higher cost of immigrant labour does not, however, appear to have affected the expansion of the RSE scheme, with the higher costs apparently being offset by productivity gains. It therefore seems that the system of documented protection of temporary workers' labour rights in Australia is still evolving and is not separate from employment practices in the sector more broadly. The compliance of all employers in this sector will need to be monitored by government, unions, the Australian Federal Police and the Workplace Ombudsman, as the PSPWS becomes more

established and the numbers of workers significantly expand.

## Conclusion

The PSWPS presents an opportunity to clean up employment practices in the horticultural industry and to restrict temporary labour migration to a particular region: Pacific island countries. A variety of factors have compromised the expansion of the PSWPS thus far, such as rigidities in the labour supply model and the extent of responsibility of risks borne by the labour-hire companies. As well, the extensive presence of undocumented workers in horticulture and the impact of the global financial crisis, has created a downward pressure on the demand for labour.

While the PSWPS remains small, its significance far outweighs its numbers. Australia and New Zealand have ageing populations and low rates of unemployment; both countries' unskilled and skilled labour shortages will substantially increase in the future. Ageing populations also mean that there is growing demand for health and service workers (AusAID 2009). Australia and New Zealand, like many highly industrialised nations, need to begin putting in place well-articulated strategies to meet these labour shortages. The supply of seasonal workers to both countries begins to fulfil this need; the strategy for Pacific regional integration is also central to this. Embracing contract labour migration from the developing world by Australia and New Zealand at one level is only catching up with global trends in international labour supply—and expanding the labour supply options that have historically relied on permanent migration pathways. While in Australia, the Temporary Skilled Working Visa (no. 457) offers a mechanism for meeting skilled worker shortages;



the PSWPS represents the beginning of initiatives in Australia for meeting unskilled worker shortages on a seasonal basis. It is time now for Australia to have a debate over the relationship between migration, the free movement of people and meeting its future national labour needs, while balancing these with the development needs and aspirations of its Pacific Island neighbours. Similarly, in the Pacific Region it is also time now for a debate about how international labour migration/mobility may be used to achieve individual country's development goals, as this relationship is contentious and not as straightforward as often assumed.

The goal of the PSWPS is to meet unmet labour demand from the international labour market, but it is doing this with an important difference. As a partner in development, Australia is developing the PSWPS through respecting workers' rights, enabling greater capital flows into Pacific island countries and focusing on skills development. While discussion of the development side of the PSWPS is beyond the scope of this article (see Ball 2009, Forthcoming), this aspect is also an important component of Australian assistance to Pacific island countries. The PSWPS is making an effort to offer these workers employment conditions that are built on respect for workers' rights, rather than offering the kinds of marginalised employment conditions that too often occur in international labour migration schemes. In all these respects, the structuring of the RSE scheme and the PSWPS should be applauded.

Having said this, there is a long way to go for Australia to develop a scheme for labour-hire companies and farmers that is sufficiently flexible and keeps workers' rights at the forefront of policy. An odd counterpoint to this scheme is the existence of tens of thousands of illegal workers in this sector. The lack of political will on this issue has translated into compromised

immigration and labour regulation of illegal workers in horticulture, which, paradoxically, is undermining the expansion of the PSWPS and the institution of a regulated international labour supply for this sector. If Australia wishes to address its increasing labour shortages based on recognition of workers' rights, it must address illegal labour supply systems or else there is the potential for the PSWPS to not achieve its laudable objectives. Ahead of the RSE scheme, New Zealand sought to clean up illegal labour supply in its horticultural and viticultural sectors, which created sufficient labour shortages to stimulate demand for a regularised labour supply for the RSE scheme. The next step for Australia is to do the same, to allow this important scheme to expand for the benefit of Australia and its Pacific island neighbours. If Australia is successful in this complex task, the Australian model could set new international benchmarks for temporary labour migration schemes based on development partnerships and respect for source nations and their workers.

## Notes

- <sup>1</sup> Ball (forthcoming) examines the labour demand and supply dynamics surrounding the PSWPS and participating Pacific island countries. Part of this article is derived from this longer work.
- <sup>2</sup> From the perspective of development outcomes, one of the issues surrounding the direct recruitment model is that while recruiting from specific communities can be efficient from an employer's perspective, it might not be equitable from a labour-sending country's perspective in terms of the distribution of benefits. Under the RSE scheme, employers have found it efficient to develop long-term relationships with workers and the communities from which they come. While community-to-community labour supply recruitment systems can



have many benefits—for example, in the establishment of cohesive work groups and a sense of mutual obligation—how this system impacts more broadly on development objectives and outcomes in the longer term is clearly an area requiring continuing research and evaluation.

- <sup>3</sup> While it is beyond the scope of this article to examine the range of mechanisms to supply workers sourced internationally to the Australian labour market, there are many irregularities surrounding these international labour supply systems. Australia has 4.6 million non-citizens entering the country each year, 500,000 of whom have work rights. It is estimated that currently there are 600,000 workers on 457 visas. For example, the Deegan Review (Deegan 2008) on Visa Subclass 457 (the Temporary Skilled Migration Program) highlighted some concerning trends in the application of this temporary working visa scheme, which had relevance to how the PSWPS is administered and regulated. There is evidence of increasing frequency of employers breaching the 457 scheme, with the number of formal warnings issued increasing from 99 in 2005–06 to 1,353 in 2007–08. Sanctions of employers violating the scheme also rose significantly from three in 2005–06 to 192 in 2007–08 (AMWU 2008). It is unclear whether this increase reflects higher numbers of visas issued in later years or a shift in regulation of migrant working conditions. In addition, the Department of Immigration and Citizenship's figures showed that 80 per cent of 457 tradespeople were earning at least \$10,000 less than local tradespeople (AMWU 2008). From a union perspective, the application of the 457 visa works to undercut wages and conditions in the Australian labour market. One of the Deegan Report's recommendations was to abolish the minimum salary level in favour of market rates of pay for all temporary visa holders on salaries less than \$100,000 (DIAC 2009), underpinned by Australian awards and industrial instruments. This recommendation, while providing more flexibility in the labour market, could also work to undercut employment conditions.
- <sup>4</sup> Workers in this sector are the lowest paid
- workers in the economy (Shorten 2006:5–6), with full-time employed agricultural and horticultural labourers earning almost one-third less on average than other low-skilled workers (\$598 a week in May 2004 compared with \$868 a week for all full-time, non-managerial employees) (ABS 2005).
- <sup>5</sup> According to Hugo (2001), Tonga and Samoa ranked in the top 10 countries of origin in terms of their rate of overstaying relative to the total number of entrants into Australia from each country. This indicates that there is a culture of visa violation among workers from these two Pacific island countries and substantiates claims that Pacific island workers are significant components of the undocumented labour force in Australian horticulture.
- <sup>6</sup> The possible achievement of these two broad aims through a labour export scheme is highly contested. Ball (2009) has written a critique of the migration–development relationship in the context of the Australian government's promotion of the PSWPS as a mechanism for development in Pacific island nations. This review identified critical research gaps in the international literature, particularly concerning the relationships between gender, remittance behaviour and development; knowledge gaps concerning the impacts of international labour mobility on families and communities; the importance of the role of technology in facilitating transnational relationships; and the role of social remittances, particularly knowledge transfers and political impacts.
- <sup>7</sup> The rural sector is one of the four major areas of employment of undocumented workers in Australia; the other three are the hospitality, sex and industrial manufacturing sectors (Shorten 2006).
- <sup>8</sup> For example, the Australian Workers Union (AWU) has found that a significant proportion of Victoria's fresh-fruit crop is picked by undocumented workers who are highly vulnerable to exploitation and in some cases are offered wages as low as A\$3 an hour. In addition, primary producers are vulnerable to immigration raids that can have a devastating effect on output during highly sensitive harvest periods (Shorten 2006:7).



Such raids have been widely reported in the media and have led to a call for amnesty for illegal workers (for example, 'Council to crack down on illegal workers' camps', *ABC News*, 27 October 2004, <http://www.abc.net.au/news/stories/2004/10/27/1228897.htm>; 'Fed MP calls for amnesty for illegal workers', *ABC AM*, 6 February 2004, <http://www.abc.net.au/am/content/2004/s1039291.htm>; 'CFMEU says illegal workers a serious problem', *The World Today*, 1 April 2005, <http://www.abc.net.au/worldtoday/content/2005/s1336240.htm>; 'Illegal meatworkers to be deported', *ABC Rural*, 13 March 2009, <http://www.abc.net.au/rural/news/content/200903/s2515173.htm>).

- <sup>9</sup> The evaluation of the PSWPS at the 18-month mark will undoubtedly provide more insight into this issue.
- <sup>10</sup> While organisations or collectives that meet the criteria outlined in the 'expressions of interest' document on the Department of Employment, Education and Workplace Relations' web site are allowed to become an 'approved employer' under the pilot, why have collectives of farmers not elected to do so?
- <sup>11</sup> The Australian government did not alter its arrangements with the approved employer to enact this change. It was allowed under the deed that was in place before the PSWPS workers arrived in Australia.

## References

- Australian Agency for International Development (AusAID), 2009. *Pacific Economic Survey: engaging with the world*, Australian Agency for International Development, Canberra.
- Australian Bureau of Statistics (ABS), 2005. *Employee Earnings and Hours*, Cat. no. 6306.0, Australian Bureau of Statistics, Canberra.
- Australian Manufacturing Workers Union (AMWU), 2008. 'Overhaul of 457 visa scheme urgently needed', 1 December 2008, Australian Manufacturing Workers Union, Barton. Available from <http://www.amwu.org.au/read-article/news-detail/220/Overhaul-of-457-visa-scheme-urgently-needed/> (accessed 30 March 2009).
- Australian Productivity Commission, 2005. *Trends in Australian Agriculture*, Productivity Commission Research Paper, Australian Productivity Commission, Canberra.
- Ball, R., 2009. *Labour Mobility and Development: key findings and research gaps*, May, Australian Agency for International Development, Canberra.
- , (forthcoming). *Pacific seasonal worker labour mobility schemes and their implications for governance, development and labour market integrity*, ILO Working Papers, International Labor Organization, Bangkok.
- Deegan, B., 2008. *Visa Subclass 457 Integrity Review: final report*, Department of Immigration and Citizenship, Canberra.
- Department of Immigration and Citizenship (DIAC), 2009. *Visas, Immigration and Refugees: subclass 457 integrity review*, Department of Immigration and Citizenship, Canberra. Available from <http://www.immi.gov.au/skilled/457-integrity-review.htm> (accessed 30 March 2009).
- Gibson, J., McKenzie, D. and Rohorua, H., 2008. 'How pro-poor is the selection of seasonal migrant workers from Tonga under New Zealand's Recognised Seasonal Employer Program?', *Pacific Economic Bulletin*, 23(3):187–204.
- Hanson, J. and Bell, M., 2003. *Queensland's fruit and vegetable industry: the seasonal labour force—characteristics, spatial behaviour and recruitment*, Discussion Paper 2003/08, Queensland Centre for Population Research, The School of Geography, Planning and Architecture, University of Queensland, Brisbane.



- Henderson, R., 2004. 'Educational issues for children of itinerant seasonal farm workers: a case study in an Australian context', *International Journal of Inclusive Education*, 8(3):293–310.
- Hooper, D. and Strasiotto, S., 2009. The Pacific seasonal worker pilot: an Australian government view, Presented at the Caregivers Workshop, Crawford School of Government, The Australian National University, Canberra, 18 November 2009. Available from [http://ips.ac.nz/events/Ongoing\\_research/Lowskill%20Migration%20Downloads/Darren%20Hopper%20and%20Simon%20Strasiotto.pdf](http://ips.ac.nz/events/Ongoing_research/Lowskill%20Migration%20Downloads/Darren%20Hopper%20and%20Simon%20Strasiotto.pdf)
- Hugo, G., 2001. International migration and agricultural labour in Australia, Paper prepared for the Changing Face Workshop, Imperial Valley, California, 16–18 January 2001.
- , 2009. *Labour migration for development: best practises in Asia and the Pacific*, Working Paper No. 17, ILO-Asian Regional Programme on Governance of Labour Migration, International Labor Organization, Bangkok.
- IMSED Research, 2009. *Summary of Evaluation Findings from Recognised Seasonal Employer (RSE) Policy: first season (2007–08)*, New Zealand Department of Labour, Wellington. Available from <http://www.dol.govt.nz/publications/research/rse-summary/summary.pdf>
- Luthria, M., 2008. 'Seasonal migration for development? Evaluating New Zealand's RSE Program', *Pacific Economic Bulletin*, 23(3):165–70.
- McKenzie, D., Garcia Martinez, P. and Winters, L.A., 2009. 'Who is coming from Vanuatu under the new Recognised Seasonal Employer Program?', *Pacific Economic Bulletin*, 23(3):205–28.
- MacLellan, N., 2008. *Workers for All Seasons? Issues from New Zealand's Recognised Seasonal Employer (RSE) Program*, Institute for Social Research, Swinburne University of Technology, Melbourne.
- Mares, P., 2005. Seasonal migrant labour: a boon for Australian country towns?, Paper presented at the second Future of Australia's Country Towns Conference, Bendigo, Victoria, 11–13 July 2005.
- Mares, P., 2006. *Labour shortages in Murray Valley horticulture: a survey of growers' needs and attitudes*, Discussion paper, Institute for Social Research, Swinburne University of Technology, Melbourne.
- Millbank, A., 2006. *A seasonal guest-worker program for Australia?*, Research brief, no. 16, 2005-06, ISSN 1832-2883, 5 May 2006, Parliamentary Library, Canberra.
- National Farmers Federation, 2006. National Farmers Federation submission to the Inquiry into Pacific Region Seasonal Contract Labour, 27 March 2006, National Farmers Federation, Canberra. Available from <http://www.nff.org.au/read/2428457166.html?hilite=seasonal+labour+mobility>
- , 2008. *Labour Shortage Action Plan*, National Farmers Federation, Canberra.
- Peebles, D., 2005. *Pacific Regional Order*, ANU E Press and Asia Pacific Press, The Australian National University, Canberra.
- Ramasamy, S., Krishnan, V., Bedford, R. and Bedford, C., 2008. 'The Recognised Seasonal Employer policy: seeking the elusive triple wins for development



through international migration',  
*Pacific Economic Bulletin*, 23(3):171–86.

Rohorua, H., Gibson, J., McKenzie, D.  
and Garcia Martinez, P., 2009. 'How  
do Pacific island households and  
communities cope with seasonally  
absent members?', *Pacific Economic  
Bulletin*, 24(3):19–28.

Rule, A., 2009. 'Worker scam exposed', *The  
Age*, 10 October 2009. Available from  
[www.theage.com.au/.../worker-scam-  
exposed-20091009-gqt3.html](http://www.theage.com.au/.../worker-scam-exposed-20091009-gqt3.html)

Shorten, B., 2006. Inquiry into Pacific  
region seasonal contract labour,  
Submission to the Senate Employment,  
Workplace Relations and Education  
Reference Committee, Canberra.

Yourn, F., 2007. 'Transcript of evidence  
before the Joint Standing Committee  
on Foreign Affairs, Defence and Trade  
inquiry into Australia's aid program in  
the Pacific', *Official Committee Hansard*,  
26 October 2007.

## Acknowledgment

The author acknowledges support from  
the State, Society and Governance in  
Melanesia Program, The Australian National  
University, and the AIC.