



**Covid-19 and
Undocumented Workers
in the Australian
Horticulture Industry**

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Executive Summary

This report was commissioned to examine the risk arising from Covid-19 in undocumented workers in the horticulture industry in Australia. We find that undocumented workers are prone to a high risk of infection and generating new clusters of infection. Undocumented workers have precarious living and work conditions. These put at risk Australia's initial success in controlling Covid-19 infection, hamper infection control protocols and pose measurable risk to the Australian population.

The risk of infections due to Covid-19 cannot be ruled out in Australia. Covid-19 is an ongoing public health crisis that has led to severe disruptions, costed lives and brought millions to the brink of unemployment. With generous welfare provisions, accelerated infrastructure to infection control, evidence-based scientific decisions and population-wide compliance, Australia is among international leaders in managing this crisis. However, early successes can be jeopardised as we have seen in the case of Singapore where infection among migrant workers is responsible for a second phase of pandemic. In addition, a recent outbreak among meatworkers in Victoria and the ongoing identification of clusters in care homes within Australia indicate the need for concentrated efforts among sub-populations to minimise infections.

Our report finds that substandard and overcrowded accommodation, the nature of work on farms, sharing of essential facilities and the social and economic circumstances of undocumented workers place them at risk of low compliance to physical distancing and optimum hygiene. Risk of identification, detention and deportation renders them unlikely to opt for testing and assist in contact tracing – crucial elements of infection control. Undocumented workers do not have access to social and healthcare services including mental health services despite being at a high risk of grave outcomes due to Covid-19. We establish that there is enough evidence that undocumented workers are a permanent feature and indispensable part of Australian horticulture workforce. Australia needs to prioritise human considerations and ethical considerations in preparing a response plan for the risk posed to and by undocumented workers during this crisis.

We propose:

- a) Addressing the irregular immigration status of undocumented migrant farm workers
- b) Extending social, economic and mental health welfare benefits to undocumented migrants during the crisis
- c) Removing legal and cost barriers to testing for Covid-19 and enhancing trust to increase compliance to infection control measures through the introduction of a firewall between health and immigration authorities
- d) Placing strong regulations and monitoring strict compliance on avoiding overcrowding in temporary accommodation for horticulture workers
- e) Targeting and tailoring health promotion efforts to minimise the spread of misinformation and empowering undocumented workers to reduce their risk of infection and to that of the community
- f) Planning a short-term and long-term recovery plan from the current crisis for formally integrating and empowering undocumented workers as an indispensable part of Australian horticulture industry. This will acknowledge the contribution of undocumented workers in maintaining food supply during this crisis and minimise their exploitation going forward.

Introduction

Undocumented migrant workers are a permanent and significant feature of Australia's harvest workforce. The vulnerability of temporary migrant workers employed on Australian farms has

garnered considerable interest,¹ with studies showing that close to 80% of Australia’s harvest workforce comprises of backpackers,² international students³ and workers from Pacific nations.⁴ On the other hand, little attention has been given to the vulnerability of undocumented migrant workers.

Yet, undocumented workers are *the* most vulnerable of all temporary migrant workers working on Australian farms. This vulnerability has substantially heightened in the Covid-19 outbreak and will continue to escalate if overlooked. Undocumented migrants do not have a legal right to work, are excluded from Medicare, have no access to sick leave and face deportation if detected by the authorities.

Undocumented migrant workers are not a homogenous group. The term ‘undocumented migrants’ is a catch-all phrase which captures a range of working situations, including:

- Migrants whose visas have either expired or cancelled⁵
- Migrants with a valid visa but who do not have a right to work in Australia
- Migrants with a valid visa with work rights, but who work in breach of a condition of their visa.

Despite early gains in controlling Covid-19 in Australia, the crisis should not be considered as over. First, Singapore had achieved significant infection control when the pandemic was unfolding in Asia. However, it has seen a big spike in number of cases mainly sourced from migrant workers.⁶ Second, care homes continue to remain at a high risk of Covid-19

¹ See, generally, Caro Meldrum-Hanna and Kerry O’Brien “Slaving Away: The Dirty Secrets behind Australia’s Fresh Food” (4 May 2015) Four Corners <www.abc.net.au>; Fair Work Ombudsman *Harvest Trail Inquiry: A Report on Workplace Arrangements along the Harvest Trail [Harvest Trail Inquiry]* (November 2018); Ben Doherty “Hungry, Poor, Exploited: Alarm over Australia’s Import of Farm Workers” *The Guardian (Australia)* (online ed, Sydney, 3 August 2017); Nick McKenzie and Richard Baker “Fruits of their Labour: Investigation into Exploitation of Migrant Fruit Picking Workers in Australia” (November 2016) *The Sydney Morning Herald* (online edition, Sydney, November 2016); Elsa Underhill and Malcolm Rimmer “Layered Vulnerability: Temporary Migrants in Australian Horticulture” (2015) 58 JIR 608; Senate Education and Employment References Committee, Parliament of Australia *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (17 March 2016); Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia* (December 2017); and Fair Work Ombudsman *Inquiry into the Wages and Conditions of People Working under the 417 Working Holiday Visa Program [Inquiry into Wages and Conditions]* (October 2016).

² These are officially designed as Working Holiday Makers (WHMs) under the Working Holiday (subclass 417) and Work and Holiday (subclass 462) visas.

³ International students who reside in Australia are on one of a range of study visas (subclasses 570 – 576).

⁴ Pacific workers in the Seasonal Worker Program are on a Temporary Work (international relations) (subclass 403) visa.

⁵ Under s 14 of the *Migration Act* 1958 (Cth), these migrants are designated as “unlawful non-citizens”.

⁶ Jake Sturmer, “Singapore was the envy of the world when it came to coronavirus, but then the second wave hit” (ABC News, 25 April 2020) < <https://www.abc.net.au/news/2020-04-25/singapore-hoped-they-contained-coronavirus-but-second-wave-hit/12172446>>.

infections.⁷ The reliance on care staff and the ability to limit physical distancing continue to point unique challenges on how to maintain care while reducing the risk of infection. Finally, the recent cluster of cases arising from the Cedar Meats Australia abattoir in Victoria, has revealed challenges in contact tracing when accurate information is not provided or it is difficult to get in touch with infected people and their recent contacts in a timely manner.⁸ These three case studies point towards why the vulnerabilities of undocumented migrants in the current Covid-19 crisis must not be ignored.

This report examines the working and living conditions of undocumented migrants working in the Australian horticulture industry. The health risks that they face in light of the Covid-19 outbreak are reviewed and discussed. The first part of the report stresses the prevalence of undocumented workers in the Australian horticulture industry. This part establishes that undocumented workers are a significant, yet hidden part of Australia's harvest workforce. In some regions, undocumented workers are a majority of the workforce during the harvest. The second part considers the factors which render undocumented workers especially vulnerable during the Covid-19 outbreak. Undocumented workers live and work in deplorable conditions, coupled with the risk of deportation and a lack of access to health care and other forms of support. The Covid-19 outbreak exacerbates these existing vulnerabilities. The final part of the report offers measures to mitigate the public health risks posed to undocumented migrants, and faced by people in Australia from undocumented migrants during the Covid-19 outbreak. There are strong scientific, humanitarian, ethical and evidence-based reasons for the federal government to incentivise undocumented migrants to come forward and self-identify to the authorities during this public health crisis and to introduce measures which address the myriad causes of their vulnerability in the labour market. Welfare provision ensuring minimal standard of income, housing and food security for undocumented farm workers is essential to minimise new infections and maximise compliance with preventive measures implemented for infection control in Australia.⁹

In summary, the public health risks of Covid-19 on undocumented migrant farm workers and for the broader Australian population are significant and must not be overlooked. With international borders closed and undocumented workers currently hidden within unsafe living and working arrangements within the Australian community, this is a pressing public health challenge which will not go away. There are, therefore, cogent reasons for the federal government to address the risks arising to, and from, undocumented workers during the Covid-19 outbreak.

⁷ Sean Warren, "Coronavirus cluster at Melbourne meatworks grows as Victorian aged care homes in lockdown" (ABC News, 7 May 2020) <<https://www.abc.net.au/news/2020-05-06/coronavirus-cases-in-victoria-rise-including-meatworks-cluster/12218540>>.

⁸ Sean Warren, "Coronavirus cluster at Melbourne meatworks grows as Victorian aged care homes in lockdown" (ABC News, 7 May 2020) <<https://www.abc.net.au/news/2020-05-06/coronavirus-cases-in-victoria-rise-including-meatworks-cluster/12218540>>.

⁹ International Union for Health Promotion and Education. Statement of the IUHPE Global Working Group on Social Determinants of Health <<https://www.iuhpe.org/index.php/en/iuhpenews/1365-covid19-sdh>>.

Part #1: The prevalence of undocumented workers in the Australian horticulture industry

The precise number of undocumented migrants in Australia is unknown. It is difficult to gather data on the profile of undocumented workers because of their interest, and that of their employers, in not being detected.

Considering uncertainty in estimated numbers, there are between 60,000 and 100,000 undocumented migrants in Australia.¹⁰ In 2017, the Department of Home Affairs estimated that there were 62,900 visa overstayers.¹¹ However, as researchers Chris Wright and Stephen Clibborn note, departmental estimates are problematic given the sheer number of temporary migrants without any work rights, those with restricted work rights and the mounting numbers in recent years.¹² Thus, official figures likely underestimate the number of undocumented migrants in Australia.

Although undocumented migrants are identified in a range of industries such as hospitality, massage, cleaning and construction, there is now sufficient evidence establishing the significant prevalence of undocumented migrant workers on Australian farms. Researchers Malcolm Rimmer and Elsa Underhill posit that the numbers of undocumented workers in the horticulture industry is likely to be a third of the harvest workforce.¹³ Evidence given to a parliamentary inquiry by the Office of the Chief Trade Adviser to the federal government in 2016 suggested that the use of the Seasonal Worker Program by growers had been cruelled through widespread reliance on “existing cheaper sources of labour such as illegal workers”.¹⁴ A World Bank discussion paper in 2015 found that “the use of illegal labour still seems to be widespread in the horticulture sector. Four out of five growers recognized that it was prevalent to at least some extent in the industry”.¹⁵

In some Australian growing regions undocumented workers are the majority of the harvest workforce. A three-year study of labour use on Australian farms found that the horticulture industry had a ‘structural reliance’ on undocumented migrants as a key source of farm

¹⁰ Department of Immigration and Border Protection, *BE17/172 – Visa Overstayers for the Financial Year – Programme 1.2: Border Management* (Budget Estimates Hearing, Question Taken on Notice, 22 May 2017) 2. Numbers are rounded which may result in rounding errors. See also: Stephen Howells, *Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007* (Department of Immigration and Citizenship, 2011).

¹¹ Minister for Home Affairs, “Matters requiring immediate attention and consideration” (DHA, 2019) 8, <<https://www.homeaffairs.gov.au/foi/files/2019/fa180801356-document-released.PDF>>.

¹² Chris F Wright and Stephen Clibborn, ‘Back Door, Side Door or Front Door? An Emerging De-Facto Low-Skilled Immigration Policy in Australia’ (2017) 39 *Comparative Labor Law & Policy Journal* 165.

¹³ Malcolm Rimmer and Elsa Underhill, ‘Temporary Migrant Workers in Australian Horticulture: Boosting Supply but at What Price?’ in Massimo Pilati et al (eds), *How Global Migration Changes the Workforce Diversity Equation* (Cambridge Scholars Publishing, 2015) 143,145 (citations omitted).

¹⁴ The Parliament of the Commonwealth of Australia, “Seasonal Change: Inquiry into the Seasonal Worker Program”, Joint Standing Committee on Migration, May 2016, Canberra.

¹⁵ Jesse Doyle and Stephen Howes, *Australia’s Seasonal Worker Program: Demand-Side Constraints and Suggested Reforms* (Discussion Paper, World Bank Group, 2015) 25.

labour.¹⁶ This study, ‘*Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*’,¹⁷ interviewed growers and industry association officials who reported widespread use of undocumented migrants on farms. For example, the study refers to estimates from a Northern Territory grower that undocumented migrants comprise close to one fifth of the horticulture workforce in the greater Darwin region. A Victorian industry association official suggested that 80–90% of the Mildura and Robinvale workforces rely on undocumented migrants. A Wanneroo grower posited that 70–80% of the workforce in that region were undocumented migrants, while another grower estimated that across Western Australia, at least half of the state’s harvest workforce comprised of undocumented migrants.¹⁸ *Towards a Durable Future* reported a problematic relationship between labour challenges facing the industry and the industry’s reliance on undocumented migrant workers. A Wanneroo grower states in the study:¹⁹

“If we take them [undocumented workers] out, I don’t know what the level beyond crisis is, but that’s where we’re at”.

Thus, accounting for regional variations, the horticulture industry has a substantial reliance on undocumented workers. A number of growers and other stakeholders report that growers in some regions have ‘no choice’ but to engage undocumented workers because of inadequate labour supply from legal sources of labour.

There is increasing acknowledgment by the horticulture industry that the employment of undocumented migrants is not a marginal phenomenon. A 2019 survey performed by the Victoria Farmers Federation (VFF) in the Sunraysia region found that 71% of growers believed they had undocumented migrants working on their farm, with undocumented migrants accounting for close to a third of the total workforce in the region.²⁰ VFF Vice-President Emma Germano stated,²¹

“The grave reality is that undocumented workers account for a large proportion of Australia’s seasonal harvest workforce. Farmers cannot share information that reflects this reality for fear of reprisal from Government agencies”.

In 2018 a discussion paper by the National Farmers Federation advocating for visa reform to address labour shortages acknowledged the use of undocumented migrants on farms. This paper observed,²²

“While it may be naïve to suggest that no members of the sector take advantage of illegal workers because they are cheaper than legitimate labour, by-and-large,

¹⁶ Joanna Howe, Stephen Clibborn, Alexander Reilly, Diane van den Broek and Chris F Wright, *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry* (2019).

¹⁷ Hereafter “*Towards a Durable Future*”.

¹⁸ *Towards a Durable Future*, 39.

¹⁹ *Towards a Durable Future*, 40.

²⁰ Victorian Farmers Federation, “VFF Calls for Ag Visa to Legalise Workers” (VFF, 2019) <http://vff.org.au/vff/Media_Centre/Media2019/VFF_calls_for_Ag_Visa_to_legalise_workers.aspx>.

²¹ Ibid.

²² National Farmers Federation, “Ag Visa Discussion Paper” (NFF, 2018) (copy on file with authors).

where farmers are associated with these arrangements, it's because of their chronic labour shortages and the fact that they have little alternative”.

In summary, undocumented migrants form a critical part of the workforce on Australian farms, though, their contribution is usually masked and not acknowledged. Given complex supply chains transiting fresh fruit and vegetables from the farm to the consumer, these workers are invisible to the Australian public who purchase fruit and vegetables through retailers, independent grocers and farmer markets. Nonetheless, given the extent to which undocumented migrants are employed on Australian farms, it is likely that all Australians, at one time or another, have purchased fruit and vegetables produced through the labour of undocumented migrants.

Part #2: Risks to Undocumented Workers during the Covid-19 outbreak

Covid-19 has caused severe disruptions and incurred catastrophic outcomes internationally with over 3.5 million recorded cases and over 200,000 deaths in a relatively short timeframe.²³ In addition, millions of people are on the brink of unemployment. In response to the current public health crisis, with only physical distancing and optimum hygiene as preventive measures available, countries have closed borders and restricted movements. The negative effects of Covid-19 on temporary migrants are also being widely noted and discussed. Being alienated in the foreign land with limited access to health and social services places migrants at a uniquely disadvantaged place in this infectious disease outbreak. Undocumented workers are in a double bind – suffering work restrictions on top of no access to benefits. In usual times temporary migrants and undocumented workers have worse health outcomes than residents.²⁴ Grave impacts on mental and physical health outcomes for undocumented workers as a result of the Covid-19 crisis can be forecasted based on this evidence.²⁵

Australia is among the few countries that have managed to flatten the infection curve through reducing infection rates to a level that health systems can be prepared to cope.²⁶ This achievement puts Australia in a relatively strong position to plan and execute an exit strategy out of this crisis.²⁷ However, the messaging is clear. Covid-19 cannot be eradicated yet and precautions must be taken to avoid a second spike in infection.²⁸

Before discussing specific risks to undocumented migrant workers it is crucial to understand the current epidemiological context of Covid-19 to anticipate its effect on undocumented migrant workers. Key observations are:

²³ COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU).
<<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>>

²⁴ The Lancet, “Safeguarding the health and livelihoods of migrants” (2020) *Lancet* 395(10222):390.

²⁵ R Bhopal, “Covid-19: undocumented migrants are probably at greatest risk” (2020) *BMJ* 369:m1673.

²⁶ Prime Minister, “Update on Coronavirus Status” (Media Statement, 1 May 2020),
<<https://www.pm.gov.au/media/update-coronavirus-measures-1may20>>.

²⁷ Prime Minister, “Update on Coronavirus Status” (Media Statement, 1 May 2020),
<<https://www.pm.gov.au/media/update-coronavirus-measures-1may20>>.

²⁸ Prime Minister, “Update on Coronavirus Status” (Media Statement, 1 May 2020),
<<https://www.pm.gov.au/media/update-coronavirus-measures-1may20>>.

Australia

1. Currently, as of 6 May 2020, Australia has 6,875 reported cases and a total of 97 deaths.²⁹
2. State variations in Covid-19 cases, and consequently deaths, are observed with NSW and Victoria having greater numbers than other states.³⁰
3. Case fatality ratio, a measure of the proportion of deaths among those infected, ranges from 0.58% in Queensland to 5.8% in Tasmania.³¹
4. Incidence rate, a measure of new cases among those at risk, ranges from 11.81 per 100,000 people in Northern Territory to 42.02 per 100,000 people in Tasmania.³²

Internationally

1. Countries like Singapore that achieved early gains in controlling the spread of Covid-19 have failed to sustain the gains and seen a recent spike of infections mainly due to high infection rates in migrant workers.³³
2. Case fatality ratio is higher among people with existing disability and co-morbidity, particularly those suffering with diabetes, respiratory illness and cardiovascular disease.^{34 35}
3. Socially disadvantaged groups have suffered with more severe outcomes of Covid-19.³⁶
4. Blanket lockdown policies have led to poor compliance among relatively low-income and migrants on casual employment (Indonesia and India).³⁷
5. Each infectious disease agent, in this case Covid-19, has a basic reproduction number (R_0) that is a metric to describe the contagiousness or transmissibility of an infectious agent. It represents the number of new cases an existing case would produce in a susceptible population. As R_0 is determined through biological, socio-behavioural and

²⁹ COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU) <<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>>.

³⁰ COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU) <<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>>.

³¹ COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU) <<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>>.

³² COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University (JHU) <<https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6>>.

³³ Weiyi Cai and K.K. Rebecca Lai, "Packed With Migrant Workers, Dormitories Fuel Coronavirus in Singapore" (Ney York Times, April 28, 2020) <<https://www.nytimes.com/interactive/2020/04/28/world/asia/coronavirus-singapore-migrants.html>>.

³⁴ World Health Organization. Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19): (16 -24 February 2020) <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>

³⁵ J Bedford, D Enria, J Giesecke, DL Heymann, C Ihekweazu, G Kobinger, HC Lane, Z Memish *et al*: "COVID-19: towards controlling of a pandemic" (2020) *Lancet* 395(10229):1015-1018.

³⁶ EK Choo, "COVID-19 fault lines" (2020) *Lancet* 395(10233):1333.

³⁷ International Union for Health Promotion and Education. Statement of the IUHPE Global Working Group on Social Determinants of Health <<https://www.iuhpe.org/index.php/en/iuhpenews/1365-covid19-sdh>>.

environmental factors, it can vary by time, population, sub-population and geography. At this stage, substantial variations in R_0 ratio – meaning both the infectious potential and lethality of Covid-19, between and within nations are confirmed.³⁸

An important caveat in interpreting the above epidemiological parameters is that they are dependent on both the extent of population-wide testing as well as the properties of tests in accurately identifying cases and non-cases.³⁹

In light of this information, we argue that the public health risks of Covid-19 on undocumented farm workers in Australia are significant and must not be overlooked. In the short to medium term undocumented farm workers suffer both an increased risk of getting infected, as well as, pose a risk to spreading infection to people and communities in Australia. There are myriad factors which heighten these risks, to which we now turn.

- **Risks arising from living conditions**

First, regarding the risk of getting infected with Covid-19, poor and overcrowded accommodation pose the biggest threats. Overcrowded and poorly furnished dormitories for migrant workers have emerged as the petri dish for the latest spike in infections in Singapore and responsible for changing the trajectory of Singapore from a global leader in prevention of Covid-19 to a shocking and rampant increase in Covid-19 cases within a couple of months.⁴⁰ As demonstrated in the review of available evidence below, temporary accommodation provided to undocumented seasonal farm workers are precarious and overcrowded. Therefore, housing conditions are likely to be similar to those for migrant workers in Singapore. Overcrowding makes physical distancing next to impossible, one of the main preventive remedies in infection control. Next, hygiene practices vary significantly between people and households. Strict stay at home orders for non-essential workers have been ineffective and deleterious for workers in poor accommodation.⁴¹

Particularly in rural areas, undocumented workers rely on labour contractors to arrange accommodation and workers are required to live in the accommodation in order to obtain work. This accommodation is typically densely-filled private dwellings, with several people sharing a single room. The accommodation is often sub-standard, with limited heating, cooling and ventilation and unsafe and unhygienic given that sanitary and cooking facilities are shared between large numbers of occupants in the one house. The cramped housing conditions typically experienced by undocumented migrants are of particular concern during the Covid-19 outbreak. The evidence suggests that the spread of infection is at the highest risk within the household unit.⁴² This risk has been recognised by the International Organisation for

³⁸ Coronavirus disease (COVID-19) technical guidance: The Unity Studies: Early Investigations Protocols <<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/early-investigations>>.

³⁹ N Pearce, JP Vandenbroucke, TJ VanderWeele, S Greenland, “Accurate Statistics on COVID-19 Are Essential for Policy Guidance and Decisions” (2020) *American journal of public health*: e1-e3.

⁴⁰ Weiyi Cai and K.K. Rebecca Lai, “Packed With Migrant Workers, Dormitories Fuel Coronavirus in Singapore” (New York Times, April 28, 2020) <<https://www.nytimes.com/interactive/2020/04/28/world/asia/coronavirus-singapore-migrants.html>>

⁴¹ Weiyi Cai and K.K. Rebecca Lai, “Packed With Migrant Workers, Dormitories Fuel Coronavirus in Singapore” (New York Times, April 28, 2020) <<https://www.nytimes.com/interactive/2020/04/28/world/asia/coronavirus-singapore-migrants.html>>.

⁴² Leilani Farha, “Protecting those living in homelessness”, United Nations Human Rights Special Procedures, 28 April 2020, <https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf>.

Migration which has observed that migrant farm workers living in crowded conditions are “even more vulnerable to the disease and there is growing concern that Covid-19 could spread rapidly if it hits these environments”.⁴³

Undocumented workers are typically accommodated in illegal share-houses through contractors. In *Towards A Durable Future*, a former undocumented worker described how contractors are vigilant in ensuring undocumented workers do not make local connections and remain concealed, describing how,⁴⁴

“The contractor will just sleep in the car outside [the houses of undocumented workers] and watch them. So no-one walks outside”.

In *Towards A Durable Future* a local government official is quoted as observing the unsafe nature of farm accommodation in his area, stating:⁴⁵

*“First of all, the bloody sheds shouldn’t be stuck against the house. This one caught on fire...They couldn’t get enough power to come to the back bedrooms, so they stuck a three-inch nail into the box as a fuse. So, the bloody thing melted down and the house caught on fire. There’s about a dozen or more people living in there. This one here is just chock-a-block. They all work at the farms. That house over there has just been bought. This one here, there’s about 12 people in there or more out the back...A caravan over there, there’s about 15 or 20 people in it”. In one of the regional case studies presented in *Towards A Durable Future* an interviewee drew attention to the main street of the town where there were many painted-out shop windows, indicating where shops had been converted into illegal accommodation. He lamented, “one of those used to be a very large menswear shop, and God knows how many bunks are in there, that’s what will be in there.”*

Media reports have also found mounting evidence that other groups of migrant farm workers, such as backpackers and workers from the Pacific are often living in cramped housing, sometimes with up to 70 farm workers in a five-bedroom house.⁴⁶ Prime-Minister Scott Morrison has rightly recognised the risk of overcrowded accommodation in controlling the spread of Covid-19. In a media conference on 3 April 2020 announcing new measures for backpackers to self-isolate prior to travelling for regional farm work, he stated:⁴⁷

“For working holiday makers who are looking to engage in those occupations as they regularly do. They will be required to self isolate...Now this is important to ensure that we don’t get a lift up of the virus that might be in many metropolitan areas and it gets transferred to more vulnerable areas in rural and regional communities, which as yet are not experiencing the same level of the virus being

⁴³ International Organisation on Migration, *COVID-19 Analytical Snapshot #18: Migrants and Global Food Supply* (IOM Research, 2020).

⁴⁴ *Towards a Durable Future*, 40

⁴⁵ *Towards A Durable Future*, 88.

⁴⁶ Katri Uibu and Erin Cooper, “Dozens of foreign workers found living in five-bedroom building in Latrobe in Tasmania’s north” (ABC News, 7 February 2020) <<https://www.abc.net.au/news/2020-02-07/dozens-of-foreign-workers-live-in-five-bedroom-building/11942660>>.

⁴⁷ Prime Minister, “Update on Coronavirus Status” (Press Conference transcript, 3 April 2020), <<https://www.pm.gov.au/media/press-conference-australian-parliament-house-act-030420>>.

*transmitted in those communities. So this is being done to ensure that those producers can get the work done, but also to ensure that the communities are protected... **We will be working to ensure that the workers accommodation that would be in those places is also respecting strict health requirements. You can't have 6 backpackers in a caravan up out in rural parts of the country. That's not on. Not gonna happen.** You need to have more strict rules around that and local governments and shires will be observing those health rules and working with their states and territories to put those conditions in place."*

Notably, none of the measures announced on 3 April 2020 which are intended to address the risk that backpackers working on farms will spread Covid-19 apply to undocumented farm workers. Furthermore, it is highly likely that this problem of unsafe and unhygienic accommodation facing backpackers and Pacific workers is even worse for undocumented migrant farm workers. The more vulnerable the worker, the more likely they are to be exposed to exploitation through being forced into poor quality, unsafe and high cost accommodation.

Crammed, sub-standard accommodation is also a way of exacerbating the economic exploitation of undocumented migrants by labour contractors. The Victorian Inquiry into the Labour Hire Industry found that it was a common practice for contractors to give workers envelopes with wages from which accommodation, transport and often a finder's fee had already been deducted. This could result in workers getting hourly rates ranging from \$10 to \$15 an hour.⁴⁸ One witness told the Forsyth Inquiry that a three-bedroom house owned by a labour contractor was housing approximately 20 people. The kitchen had been taken over as accommodation and the residents were cooking in the yard.⁴⁹ These reports are commonplace with suggestions that hostel networks are experiencing higher vacancy rates due to illegal contractors that house workers in their own accommodation that is out of sight to the general population.⁵⁰

Another important qualitative study of undocumented migrants exposed similar issues of exploitative accommodation provided by labour contractors.⁵¹ This study found numerous examples of contractors making significant profits through housing workers in substandard conditions and overcharging workers through exorbitant salary deductions. The study's author Marie Seagrave concluded, "clearly there are significant concerns about overcrowding...[with] 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) and who cannot negotiate these costs".⁵²

⁴⁸ Anthony Forsyth, *Victorian Inquiry into the Labour Hire Industry and Insecure Work* (Final Report, Industrial Relations Victoria, 31 August 2016) 154.

⁴⁹ Anthony Forsyth, *Victorian Inquiry into the Labour Hire Industry and Insecure Work* (Final Report, Industrial Relations Victoria, 31 August 2016) 179.

⁵⁰ Elsa Underhill et al, 'Migration Intermediaries and Codes of Conduct: Temporary Migrant Workers in Australian Horticulture' (2016) *Journal of Business Ethics* DOI 10.1007/s10551-016-3351-z.

⁵¹ Marie Seagrave, *Exploited and Illegal: Unlawful Migrant Workers in Australia* (2017) 47-48 <https://arts.monash.edu/__data/assets/pdf_file/0020/1532063/exploited-and-illegal_unlawful-migrant-workers-in-australia.pdf>.

⁵² Marie Seagrave, *Exploited and Illegal: Unlawful Migrant Workers in Australia* (2017) 47-48 <https://arts.monash.edu/__data/assets/pdf_file/0020/1532063/exploited-and-illegal_unlawful-migrant-workers-in-australia.pdf>.

Thus, there are clear risks that undocumented workers will be infected and spread Covid-19 through their living arrangements which are typically overcrowded and precarious, making physical distancing and optimal hygiene practices very difficult to achieve.

- **Risks arising from working conditions**

Undocumented workers face heightened risks arising from poor workplace health and safety during the Covid-19 outbreak. Covid-19 necessitates that farm workers are provided with access to additional safety equipment such as face masks, gloves, hand sanitiser, soap and disinfectant.⁵³ With evidence suggesting poor health and safety standards on many farms already, it is highly unlikely that undocumented workers will be able to access these additional protections during the Covid-19 outbreak. Furthermore, the inherent nature of harvesting certain types of fruit and vegetables which are densely planted makes social distancing impossible. Although the International Organisation on Migration cautions against working in close proximity during the COVID-19 outbreak,⁵⁴ and the National Farmers Federation working guide for farms recommends reorganising workers into smaller teams, this is difficult for some commodities and it is unlikely to garner compliance in growers and contractors who employ undocumented workers.

In usual circumstances, farm workers work within small teams (1-2 members) to pick fresh produce and often compete for picking opportunities. This further jeopardises maintenance of physical distancing and places workers at a high risk of Covid-19 infection. Compliance on physical distancing policies are likely to vary between small teams, and therefore, risks rampant increase in infections unless controlled.

The elevated workplace health and safety risks arising from Covid-19 build upon pre-existing concerns about poor health and safety standards on Australian farms. Farm work is notoriously unsafe because of the use of vehicles and machinery, such as tractors, quad bikes and elevated work platforms, environmental hazards such as heat stress, sunburn and cold, isolation in remote locations and exposure to chemicals. A study by researchers Elsa Underhill and Malcolm Rimmer found poor workplace health and safety standards on Australian farms which were exacerbated by a contractor system “associated with work intensification under hostile conditions and with weaker environmental protection (such as water and sunblock)”.⁵⁵ Media reports have also exposed how migrant farm workers in Australia risk dehydration because of limited access to safe drinking water.⁵⁶ In *Towards A Durable Future*, a temporary migrant worker described a particularly harrowing situation:⁵⁷

“It got to 40-something degrees one day and it was really humid because Coffs [Harbour] can get really humid and we were still working in the full sun and we

⁵³ Food and Agriculture Organisation of the United Nations, *Migrant Workers and the COVID-19 Pandemic*, (FAO UN, 7 April 2020) <<http://www.fao.org/3/ca8559en/CA8559EN.pdf>>. See also this CNN report about safety concerns for undocumented migrant farm workers in America during the COVID-19 pandemic: <<https://edition.cnn.com/2020/04/11/us/farmworkers-coronavirus/index.html>>.

⁵⁴ International Organisation on Migration, *COVID-19 Analytical Snapshot #18: Migrants and Global Food Supply* (IOM Research, 2020).

⁵⁵ Elsa Underhill and Malcolm Rimmer, “Itinerant foreign harvest workers in Australia: the impact of precarious employment on occupational safety and health” (2015) 13(2) *Policy and Practice in Health and Safety*, 25-46.

⁵⁶ See, for example: Marina Freri, ‘Working holiday makers exposed to exploitation’ (SBS News, 2014) <<https://www.sbs.com.au/news/working-holiday-makers-exposed-to-exploitation>>.

⁵⁷ *Towards A Durable Future* 98.

couldn't really have water breaks as we were only allowed one break a day. And there was no shade and we were all having heat stroke but the farmer eventually called us off when he realised we were going so slow so there was no point paying us per hour because we couldn't pick fast enough for him. And he wouldn't let us put sunscreen because he said it could damage the blueberries' wax."

Thus, there are risks that undocumented workers will be infected and spread Covid-19 in the workplace given poor safety records on farms where undocumented workers are employed, the lack of access to safety equipment such as masks, gloves and sanitiser, and the inherent nature of farm work which makes physical distancing very difficult.

- **Risks arising from immigration status**

Undocumented workers are liable for deportation if detected so have strong reasons to remain hidden during the Covid-19 outbreak. A significant number of undocumented workers in the horticulture industry are from Malaysia, Indonesia and other southeast Asian countries. Undocumented migrants are almost entirely reliant upon the contractors who bring them into Australia and transport them directly to farms in regional Australia. Many undocumented workers are forced into undocumented work through a complex network of offshore and onshore labour hire contractors and migration agents who have a business model of recruiting overseas workers on visas without work rights such as tourist visas. A landmark report of unauthorised work in Australia by Stephen Howells emphasised the role of offshore agents who supply tourist visas that do not permit work:⁵⁸

"There are many people who come to Australia on a tourist visa ... but who work to support their stay ... This method of gaining access to the labour market in Australia by non-citizens has proved reasonably successful and so it becomes attractive for organisers to arrange for tourist visas and passage to Australia and then to arrange work and some form of accommodation ... A person then meets them on arrival and takes them to a workplace. They may not actually meet the employer, rather they perform work and they are 'paid' by the intermediary. They may move from one workplace to another".

The report *Towards a Durable Future* concludes that organised crime does have a role in misleading workers in their home countries and enticing them into significant debt to fund an all-inclusive package involving a visa, flights, pre-arranged accommodation and employment. Many undocumented workers recruited through offshore networks are unaware until they arrive in Australia that their visa does not include work rights and that the potential earnings are being inflated by the recruiter. In *Towards A Durable Future*, a grower described this situation as "slave labour", explaining that,⁵⁹

"It all starts when they're home in their own countries. They've made promises to repay money, then they're trapped".

Thus, the conditions under which undocumented migrant farm workers are recruited overseas and hired in Australia resembles bonded servitude rather than informed participation in a free labour market.

⁵⁸ Stephen Howells, *Report of the 2010 Review of the Migration Amendment (Employer Sanctions) Act 2007* (Department of Immigration and Citizenship, 2011) 55–6.

⁵⁹ *Towards A Durable Future* 43.

The reliance of undocumented workers on contractors to access work heightens vulnerability to exploitation because these workers cannot report mistreatment for fear that their contractor will report them to the Department of Home Affairs. Undocumented workers risk detention and removal from Australia if detected. Mandatory detention arrangements mean that officers of the Department of Home Affairs or Australian Border Force *must* detain a person without a valid visa that is in effect.⁶⁰ A clear deficiency in this enforcement approach is that it entrenches the vulnerability of undocumented migrants to exploitation by contractors. This vulnerability is worsened by the isolation faced by many undocumented migrants. Many undocumented workers have limited contact with the broader community because of their migration experience and the remote location of their work. Many undocumented migrants have limited facility in spoken and written English. In *Towards A Durable Future*, a local government representative from Mildura described the daily transportation of busloads of undocumented migrants to farms in the early morning, stating,⁶¹

“There’s a lot of people that don’t want to be found...they’re mainly [buses of] Asians. Some of them don’t speak English. I think there’s Asian contractors keeping a lid on these workers.”

- **Risks arising from exclusion from health and other services**

Undocumented workers do not have access to state-funded healthcare. It is also highly unlikely that they have the ability to self-fund private health insurance, given that these workers typically earn below the minimum wage and are beholden or in debt to contractors. Researcher Marie Seagrave’s study into unauthorised work found that undocumented workers were highly reluctant to access healthcare because it is so expensive and preferred to return to their home country in the event of serious illness.⁶²

Whilst it is commendable that various State governments have committed to providing cost-free treatment for Covid-19 regardless of visa status,⁶³ this does not extend to primary health-care, for example, flu and pneumococcal vaccinations, both of which are recommended to prevent complications from the virus.⁶⁴ Additionally, without assurances that undocumented migrants will not be deported if they make their presence known to health authorities to access cost-free treatment for Covid-19, it is highly unlikely that they will avail themselves of this treatment unless it is absolutely necessary. This poses clear risks that Covid-19 may spread through to others in the community via undocumented migrants who are asymptomatic or have mild symptoms of Covid-19. In *Towards A Durable Future*, a hospital social worker described the reluctance of undocumented workers to access health services, even in the case of medical emergency:

⁶⁰ *Migration Act 1958 (Cth) s198.*

⁶¹ *Towards A Durable Future*, 41.

⁶² Marie Seagrave, *Exploited and Illegal: Unlawful Migrant Workers in Australia* (2017) 47-48 <https://arts.monash.edu/__data/assets/pdf_file/0020/1532063/exploited-and-illegal_unlawful-migrant-workers-in-australia.pdf>.

⁶³ See, for example information for temporary migrants by the Victorian government: <<https://www.dhhs.vic.gov.au/information-overseas-travellers-coronavirus-disease-covid-19#what-if-im-from-overseas-and-im-not-eligible-for-medicare>>

⁶⁴ See, for example, advice by the NSW government: <<https://www.health.nsw.gov.au/immunisation/Pages/vaccination-advice-during-covid-19.aspx>>.

*“Often they don’t access health services... So usually when they come in, we see them when they’re acutely unwell, because generally they’re frightened to come to the hospital. ... because they don’t tend to get any pre-natal care, and then by the time they come in, there could be things wrong with the baby, or diabetes, things like that. Often, they’re still out working [fruit picking] at eight and a half months pregnant”.*⁶⁵

The vulnerability of undocumented workers is heightened by the absence of a safety net. There is no income support or sick leave available to undocumented migrants in the case of sickness or lockdown. Undocumented migrants cannot work remotely, like other types of workers during the Covid-19 outbreak. Put simply, undocumented migrant farm workers have to go to work or they get no money. A briefing paper by the International Labor Organisation identifies this group of workers as the most vulnerable of all workers during the pandemic,⁶⁶

“Staying home means losing their jobs, and without wages, they cannot eat”.

It is well known that public health messages have differential impact on individuals depending on their social and economic backgrounds. Despite best intentions, sometimes public health messages increase existing social inequalities in health outcomes by disproportionately benefitting people who can understand and act swiftly on messages.^{67,68} Undocumented workers have diverse linguistic and cultural backgrounds with often limited ability to communicate in English. They are less likely to benefit from non-tailored public health messaging. Covid-19 is a dynamic and evolving crisis with new information being generated on a regular basis. Governments frequently adapt, update and change policies based on their reassessment of the situation. Often states depending on the extent of public health crisis locally need to implement policies and legislations that are unique to them. Staying updated on the information and acting on it promptly can be difficult with language barriers and minimal interaction with community. Such barriers are addressed in health services through translation, but, for a population that is unlikely to identify themselves due to risk of deportation and detention, delivering public health messages effectively can be challenging. In addition, spread of misinformation through informal and alternative channels of communication (social media) can be a risk and adequate measures must be taken to stop their spread.

- **Risks posed by unidentified infections in undocumented workers**

There is a serious threat to sustaining Australian early success in prevention and control of Covid-19 unless necessary measures are put in place to prevent new infections and address existing infections among undocumented farm workers. Testing for Covid-19 is crucial to identify, isolate and treat symptoms as well as to trace and test who infected people have come in close contact with. Undocumented farm workers are less likely to utilise testing due to two reasons. First, due to costs. Undocumented farm workers are less likely to be insured, as visa status is key for health insurance eligibility,⁶⁹ hence they would need to pay out of

⁶⁵ Towards A Durable Future 81.

⁶⁶ International Labor Organisation, *ILO Monitor: COVID-19 and the World of Work* (ILO, 3rd edition, 29 April 2020) 7.

⁶⁷ BG Link and J Phelan, “Social Conditions as Fundamental Causes of Disease” (1995) *Journal of Health and Social Behavior* 35:80-94.

⁶⁸ T Lorenc, M Petticrew, V Welch, P Tugwell, “What types of interventions generate inequalities? Evidence from systematic reviews” (2013) *Journal of Epidemiology and Community Health* 67(2):190-193.

⁶⁹ H Legido-Quigley, N Pocock, ST Tan, L Pajin, R Suphanchaimat, K Wickramage, M McKee, K Pottie: “Healthcare is not universal if undocumented migrants are excluded” (2019) *BMJ* 366:14160.

pocket to get tested. Only two (NSW and WA) among all states have waived testing costs for Covid-19 for those without health insurance or Medicare.⁷⁰ Second, they are less likely to visit health services assuming the risk to be identified as illegal migrants leading to detention and deportation. Hence, in absence of the inclusion of undocumented farm workers, the testing and tracing being carried out may not achieve population-wide gains. Undocumented farm workers are also less likely to download apps for contact tracing due to the anticipated risks of deportation and detention. Finally, testing and tracing is also difficult for undocumented farm workers as they often move between areas to avoid immigration raids.

Undocumented farm workers do not engage much with the wider community. However, the risk of infection to co-workers and community cannot be undermined. This misconception is evident in the Covid-19 spike due to migrant workers in Singapore.⁷¹ Further, infections during time at the farm may further lead to increased infection within communities and households. There is strong evidence that inclusive healthcare policies for undocumented workers at large reduces onward transmission of infection.⁷²

- **Risks arising from co-morbidities and a higher risk of more severe Covid-19 outcomes**

Individuals with other non-communicable diseases, like diabetes, cardiovascular disease and respiratory disease⁷³ are known to have a higher risk of death and more severe outcomes when infected with Covid-19. Data on the health status of undocumented migrants is sparse internationally and in Australia. However, based on the existing social inequalities in non-communicable diseases related to health compromising behaviours and risk factors such as cigarette smoking, heavy alcohol use, poor nutrition and stress,⁷⁴ it can be speculated that non-communicable diseases are more prevalent among undocumented farm workers than the general Australian population. If this is the case, then a high risk of death and poor prognosis cannot be ruled out among undocumented farm workers. Challenges in diagnosis and the management of existing non-communicable diseases cannot be avoided as these workers do not have access to free healthcare despite having a low income.

- **Risks arising to mental health**

Undocumented farm workers, like other undocumented workers, are more likely to suffer negative mental health impacts of the crisis as described in an article published in *Lancet Psychiatry*.⁷⁵ It is reported in Sweden that in addition to insecure living conditions without a guarantee of basic needs being met is stressful, and many undocumented migrants live in

⁷⁰ Seeing a doctor and getting tested for COVID-19. <<https://www.healthdirect.gov.au/coronavirus-covid-19-seeing-a-doctor-getting-tested-faqs>>

⁷¹ Harry Edmund Moroz, Maheshwor Shrestha and Mauro Testaverde, "Potential Responses to the COVID-19 Outbreak in Support of Migrant Workers" (April 21, 2020) COVID-19 Living Paper, Washington D.C: World Bank Group.

⁷² H Legido-Quigley, N Pocock, ST Tan, L Pajin, R Suphanchaimat, K Wickramage, M McKee, K Pottie: "Healthcare is not universal if undocumented migrants are excluded" (2019) *BMJ* 366:l4160.

⁷³ J Bedford, D Enria, J Giesecke, DL Heymann, C Ihekweazu, G Kobinger, HC Lane, Z Memish *et al*: "COVID-19: towards controlling of a pandemic" (2020) *Lancet* 395(10229):1015-1018.

⁷⁴ Di Cesare M *et al*, "Inequalities in non-communicable diseases and effective responses" (2013) *Lancet* 381(9866):585-597.

⁷⁵ A Liem, C Wang, Y Wariyanti, CA Latkin and BJ Hall, "The neglected health of international migrant workers in the COVID-19 epidemic" (2020) *Lancet Psychiatry* 7(4):e20.

constant fear of disclosure and deportation, all of which has a detrimental effect of the mental health.⁷⁶

The fear of Government imposed quarantine and immediate loss of income can significantly increase the risk of poor mental health among undocumented farm workers. Finally, there are concerning reports of episodes of racial hatred and xenophobic attitudes towards people of Chinese and Asian descent.⁷⁷ Undocumented farm workers can be easily targeted racially owing to their limited rights in Australia leading to poor mental health outcomes. The government has promptly acted on increased funding for mental health services for the general population in Australia. Concerns of higher suicides rates during the pandemic are mounting⁷⁸ and it is known that vulnerability is not same across sub-populations. However, mental health support systems and social support are inaccessible to undocumented workers leading to a heightened risk of an immediate mental health crisis.

- **Long-term risks**

It is well known that being unemployed, living in inadequate and unaffordable housing, suffering with a disability, undergoing a humanitarian crisis, having low income and low education, negatively impact people's mental and physical health. They are known as the social determinants of health.⁷⁹ Undocumented farm workers suffer many of these simultaneously on a usual basis as underscored in a study.⁸⁰

An analysis of mental health by migrant groups in Australia found that compared to three or more generation of Australians, Asian (-1.13, 95% CI: -1.98, -0.28), North African and Middle Eastern (-3.94, 95% CI: -5.89, -2.00) and European (-2.4, 95% CI: -3.16, -1.71) immigrants had worse mental health scores. Only English-speaking migrants had better mental health scores (0.62, 95% CI: 0.07, 1.18) than Australians.⁸¹ Enduring a public health crisis of this scale can further aggravate the existing inequalities in mental health and would place undocumented farm workers at a serious risk over the long term.

It is naïve to imagine that the impact of Covid-19 will be equal across levels of social disadvantage⁸² and it is known that undocumented farm workers are nearly at the bottom of the scale. The economic and health impact of Covid-19 is palpable with underemployment and unemployment, and high burden of attributable mortality and poor mental health. In the

⁷⁶ LMC Andersson, A Hjern, H Ascher, "Undocumented adult migrants in Sweden: mental health and associated factors" (2018) *BMC public health* 18(1):1369.

⁷⁷ M Balasubramanian, A Boucher, A Short, M Stears, T Southphommasane and D King, "Migration and COVID-19", University of Sydney Policy Lab
<https://www.sydney.edu.au/content/dam/corporate/documents/sydney-policy-lab/migration_and_covid-19-spl.pdf>.

⁷⁸ Stephanie Dalzell, "National suicide register needed soon to manage increased risk from coronavirus", (ABC News, 7 May 2020) <<https://www.abc.net.au/news/2020-05-07/national-suicide-register-needed-coronavirus-surge/12208668>>.

⁷⁹ M Marmot, "Social determinants of health inequalities" (2005) *Lancet* 365(9464):1099-1104.

⁸⁰ E Underhill and M Rimmer, "Layered vulnerability: Temporary migrants in Australian horticulture" (2015) 58(5) *Journal of Industrial Relations* 608-626.

⁸¹ R Lee, "Does the healthy immigrant effect apply to mental health? Examining the effects of immigrant generation and racial and ethnic background among Australian adults" (2019) *SSM - Population Health* 7:100311.

⁸² International Union for Health Promotion and Education, "Statement of the IUHPE Global Working Group on Social Determinants of Health" <<https://www.iuhpe.org/index.php/en/iuhpenews/1365-covid19-sdh>>.

time of this crisis, an increased exposure to unsafe working environments and poor housing can put undocumented farm workers on a path to poor long-term mental and physical health trajectories.

Part #3: Measures to address public health risks arising from undocumented migrants in the horticulture industry

In documenting how Covid-19 can aggravate public health risks among socially disadvantaged people, Esther Choo in an article published in *Lancet* aptly stated:⁸³

“My daughter’s art project, a small ceramic bowl, tipped over the edge of the table and broke into pieces. To assuage her tears, I used what I had on hand, a thin wood glue, to patch it together. It was a rushed effort, but I deemed it good enough for the moment. The bowl hung precariously together until she decided, one day, to fill it with water to bathe a toy. Under that small challenge, the fragile bonds between the pieces gave way. The water dribbled out, and the bowl cracked open.”

Australia has a unique opportunity to put ethical and human considerations at the centre of the Covid-19 response⁸⁴ by addressing the persistent discrimination and disadvantage experienced by undocumented farm workers. We propose the following measures to address public health risks arising from undocumented migrants in the horticulture industry.

a) Measures that related to visa status

Given the horticulture industry’s dependence on undocumented workers, the labour of these migrants contributes both economically and to food security in Australia. In *Towards A Durable Future*, undocumented workers were regarded as a highly productive and experienced workforce by growers.⁸⁵ Removing undocumented workers from Australian farms is highly resource-intensive, has largely been ineffective to-date by border enforcement authorities and would result in the horticulture industry being unable to harvest fresh fruit and vegetables. The latter is of particular importance during the Covid-19 outbreak when growers cannot access new sources of backpackers and Pacific workers given closed border arrangements. The horticulture industry was already concerned about its ability to source labour before the outbreak of Covid-19, a concern which has only been heightened since the announcement of lockdown measures which have had the effect of limiting the supply of labour to farms.

It is also highly unlikely that undocumented workers will voluntarily return to their home countries during the Covid-19 outbreak. Closed borders, the limited availability of international flights leaving Australia, the high cost of these flights and the fact that many undocumented workers are poor or in debt means that most undocumented workers will choose to stay hidden in Australia and keep working in order to support themselves and their families. The pandemic is yet to unfold in many low- and middle- income countries or may be in a very advanced stage in their countries. Australia’s early gains in control of pandemic will reassure them of having a low probability of risk of new infection and despite challenges faced here can be calculated as a better option during the crisis.

In order to ensure that the risk of Covid-19 will not be spread to undocumented workers and transmit through the community on farms and in regional areas, steps need to be taken to

⁸³ EK Choo, “COVID-19 fault lines” (2020) *Lancet* 395(10233):1333-1333.

⁸⁴ International Union for Health Promotion and Education, “Statement of the IUHPE Global Working Group on Social Determinants of Health” <<https://www.iuhpe.org/index.php/en/iuhpenews/1365-covid19-sdh>>.

⁸⁵ *Towards A Durable Future*, Chapter Five.

ensure these workers are no longer hidden but have incentives to come forward and regularise their visa status. Government reports and independent research by academics have advocated for undocumented farm workers to be given an opportunity to resolve their immigration status so that they can work on Australian farms without fear of deportation and without being beholden to exploitative and unscrupulous contractors.⁸⁶ Both unions and horticulture industry associations have advocated for a ‘visa amnesty’ to resolve this situation.⁸⁷ There are also international precedents from Spain, Saudi Arabia, Malaysia, Sri Lanka and the United States of America where worker amnesty schemes have been used to address the presence of undocumented migrant workers.⁸⁸ In response to food security and public health challenges emerging from the Covid-19 outbreak, Italy has announced that it is considering regularising the immigration status of its undocumented migrant workforce.⁸⁹

There are other clear national benefits to addressing the irregular immigration status of undocumented migrant farm workers.

First, this will shed light on prior illegal practices, particularly by unscrupulous labour hire contractors, which will ensure stronger and more effective management of Australia’s border security once Australia’s borders are reopened at the conclusion of the Covid-19 outbreak. It has the potential to allow the federal government a unique opportunity to accurately monitor the regions in which undocumented workers have been previously employed and ensure workers are properly treated once they regularise their immigration status. This provides an opportunity for government to interview undocumented workers in order to gain crucial intelligence of how these workers entered Australia and entered the horticulture labour market in the first place.

Second, this measure will allow the horticulture industry to have greater certainty and security around its workforce. Labour supply challenges have been a major problem for the industry for many years. By enabling undocumented farm workers to be legally employed in the industry, growers will now be able to access this critical labour force in a legal and transparent manner.

Third, undocumented workers will no longer need to resort to illegal mechanisms created by unscrupulous labour hire contractors to access farm work. And, those workers who have been victim to bonded labour and other forms of modern slavery would not have to fear speaking out for fear of deportation. This will lead to the overall improvement of labour standards in the Australian horticulture industry.

In summary, without addressing the fear of deportation that undocumented workers have because of their uncertain immigration status, it will be almost impossible for the government

⁸⁶ See, for example: *Inquiry into Establishing a Modern Slavery Act in Australia* (Report, Parliament of Australia, December 2017) Recommendation 9; Marie Seagrave, *Exploited and Illegal: Unlawful Migrant Workers in Australia* (2017) 47-48 <https://arts.monash.edu/__data/assets/pdf_file/0020/1532063/exploited-and-illegal_unlawful-migrant-workers-in-australia.pdf>.

⁸⁷ Victorian Farmers Federation, “Horticulture Policy Statement” (VFF, 2018) <http://www.vff.org.au/vff/Documents/Policy/2018/VFFHorticultureLabourPolicy_2018.pdf>. See also, Ben Schneiders, “Amnesty calls grow amid rampant use of black market farm labour” (*The Sydney Morning Herald*, 3 December 2018) <<https://www.smh.com.au/national/amnesty-calls-grow-amid-rampant-use-of-black-market-farm-labour-20181201-p50jku.html>>.

⁸⁸ For further information on amnesty schemes in each of these jurisdictions, see *Towards A Durable Future*, chapter five.

⁸⁹ Virginia Pietromarchi, “Amid food shortages fears will Italy legalise migrant workers?” (*Aljazeera News*, 5 May 2020) <<https://www.aljazeera.com/news/2020/05/food-shortage-fears-italy-legalise-migrant-workers-200504091006353.html>>.

to mitigate the public health risks arising from undocumented workers during the Covid-19 outbreak. It is therefore essential that steps are taken to regularise the status of undocumented migrant farm workers to address the needs of growers for labour, the vulnerability arising from the deplorable living and working conditions of these workers and the public health risks to the general population.

b) Measures that relate to social and income support

Through timely enhancing of the JobKeeper allowance and increasing social safety nets to Australian citizens and permanent residents, Australia has achieved considerable success in increasing compliance to lockdown for effective control of infection. Countries like India have risked compliance with infection control (mass exodus of migrants) when a lockdown was implemented without adequate welfare support.⁹⁰ Drawing on the international experience,⁹¹ the existing social safety nets must be extended to temporary migrants, but first so to those who need it the most, in particular, undocumented migrants.

Recognising the public health risks and financial losses faced by undocumented workers, the state of California in the USA and South Korea has made cash transfers.⁹² The distribution of income does not necessitate identification of workers and therefore is a model that can be successful in the Australian context. Generous welfare provision ensuring minimal standard of income, housing and food security for undocumented farm workers is needed to reduce risks of infection, its spread and increase compliance to public health measures implemented for infection control in Australia.⁹³

c) Measures that relate to health

A suite of responses are needed to address the health needs of undocumented migrant workers on an immediate basis to avoid public health risks arising from this population sub-group.

Trust between authorities, health system and undocumented workers

Trust needs to be established between authorities and workers that accessing health services does not risk raid from immigration department and consequently detention and deportation.⁹⁴ Building this trust is paramount to removing barriers for timely testing and reducing the risk of spreading infection. The trust must also extend to contact tracing as it is a crucial element for the prevention of further transmission of infection. A welcome example is from Portugal and

⁹⁰ International Union for Health Promotion and Education, "Statement of the IUHPE Global Working Group on Social Determinants of Health" <<https://www.iuhpe.org/index.php/en/iuhpenews/1365-covid19-sdh>>.

⁹¹ Harry Edmund Moroz, Maheshwor Shrestha and Mauro Testaverde, "Potential Responses to the COVID-19 Outbreak in Support of Migrant Workers" (April 21, 2020) COVID-19 Living Paper, Washington D.C: World Bank Group.

⁹² Harry Edmund Moroz, Maheshwor Shrestha and Mauro Testaverde, "Potential Responses to the COVID-19 Outbreak in Support of Migrant Workers" (April 21, 2020) COVID-19 Living Paper, Washington D.C: World Bank Group.

⁹³ International Union for Health Promotion and Education, "Statement of the IUHPE Global Working Group on Social Determinants of Health" <<https://www.iuhpe.org/index.php/en/iuhpenews/1365-covid19-sdh>>.

⁹⁴ K Hacker, M Anies, BL Folb and L Zallman, "Barriers to health care for undocumented immigrants: a literature review" (2015) *Risk Management and Healthcare Policy* 8:175-183.

Malaysia where any visa requirements to access tests during this crisis are removed.⁹⁵ Otherwise, mobile testing facilities for Covid-19 on farms that do not require identification and risk detention or deportation will be needed for infection control and reducing risk to the Australian population as well as undocumented migrant workers. This measure is consistent with other proposals for a firewall between immigration authorities and health services during the Covid-19 outbreak.⁹⁶

Healthcare costs

Out of pocket costs are strong financial barriers to accessing healthcare for people with low income. For example, approximately 40% of the Australian population and as high as one in two Indigenous adults, have reported avoiding dental visits due to financial barriers.⁹⁷ The lack of health insurance and free healthcare under Medicare places undocumented workers at farms in a similar disadvantage, but for any healthcare, not just dental. There is an urgent need to find ways to eliminate costs related to testing and Covid-19 related treatment as well as management of co-morbidities that poses risk of severe Covid-19 outcomes for undocumented workers. The arguments for removing costs for undocumented workers have significant spill over benefits to Australian public by limiting new infections.⁹⁸ NSW and Western Australia have already recognised this by removing costs as a barrier to accessing testing for Covid-19.

Targeted health promotion initiatives

Except for physical distancing and optimum hygiene, no other preventive aids or treatments exist for Covid-19 at this stage. The development of a vaccine and its mass production and availability is far from sight. In addition, early hypothesis on the effectiveness of drugs in reducing the negative impact of some drugs such as hydroxychloroquine have proven to be wrong, or in fact harmful. Therefore, health promotion initiatives with targeted and tailored public health messaging on Covid-19 can be significantly beneficial for a culturally diverse group such as undocumented migrants. Health promotion workforce must engage at the frontline to enhance the practice of physical distancing and optimum hygiene among undocumented migrant workers.⁹⁹

Development of guidelines and framework for infection control in farms and strict compliance with regulations

The role of social conditions in facilitating or restricting the spread of infectious diseases is historically well established. Strict laws must be placed to identify and implement best known practices for infection control in farms as well as temporary accommodation housing farm workers. Efforts must be carried out to check compliance by employers and contractors so

⁹⁵ Harry Edmund Moroz, Maheshwor Shrestha and Mauro Testaverde, "Potential Responses to the COVID-19 Outbreak in Support of Migrant Workers" (April 21, 2020) COVID-19 Living Paper, Washington D.C: World Bank Group.

⁹⁶ Marie Seagrave, "The coronavirus risk Australia is not talking about: testing our migrant workers", *The Conversation* (7 May 2020); See also: Marie Seagrave, *Exploited and Illegal: Unlawful Migrant Workers in Australia* (2017) 47-48
<https://arts.monash.edu/__data/assets/pdf_file/0020/1532063/exploited-and-illegal_unlawful-migrant-workers-in-australia.pdf>.

⁹⁷ S Chrisopolous, L Luzzi, A Ellershaw, "Dental Care. 97-124. In: ARCPOH. Australia's Oral Health: National Study of Adult Oral Health 2017-18" (2019) The University of Adelaide, South Australia.

⁹⁸ H Legido-Quigley, N Pocock, ST Tan, L Pajin, R Suphanchaimat, K Wickramage, M McKee, K Pottie: "Healthcare is not universal if undocumented migrants are excluded" (2019) *BMJ* 366:l4160.

⁹⁹ S Van den Broucke, "Why health promotion matters to the COVID-19 pandemic, and vice versa" (2020) *Health Promotion International*.

that the spill over benefits can be received by all farm workers regardless of their visa status. Where possible, financial support must be provided to enable employers to upgrade housing and working conditions for farm workers.

Targeting the most vulnerable undocumented workers

Elderly workers, workers with disability and those with existing morbidity (diabetes, cardiovascular diseases and respiratory illnesses) remain both at high risk of Covid-19 infection and its severe outcomes. Special attention and care is needed to reduce Covid-19 related mortality among these groups within the undocumented migrant workforce.

Conclusion

Undocumented migrant workers are an essential part of the horticulture industry and make a significant contribution to the viability of the industry, the national economy and food security in Australia. This report has identified that there are clear risks for Australia's control of the spread of Covid-19 arising from undocumented migrant workers on farms. This is a highly vulnerable population that is largely hidden and excluded from control efforts by health authorities to detect, trace and test for Covid-19. A clear roadmap is needed to address the myriad vulnerabilities of undocumented farm workers to mitigate the risk of Covid-19 spreading through undocumented workers and beyond to the general population.

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