

Fair Work Act 2009 s.158—Application by The Australian Workers' Union to vary the *Horticulture Award 2020*

AFPA's submission addressing the Campbell Article (AWU-30)

(filed pursuant to leave granted by the Commission on 30 July 2021)

1. In its oral closing submission on 30 June 2021, the AWU tendered as Exhibit AWU-30 an article by Iain Campbell entitled "Harvest Labour Markets in Australia: Alleged Labour Shortages and Employer Demand for Temporary Migrant Workers" (**Campbell Article**). The Commission then granted interested parties leave to file any submission they wish to make in relation to the Campbell Article.
2. The Campbell Article is a lengthy publication that makes a range of observations that, for the most part, have not been explored and debated in evidence and submissions. Accordingly, it would be inappropriate for the Commission to make any factual findings based on such observations. For example:
 - a) The author's assertions of "mistreatment of seasonal workers, starting with effective hourly wage rates that fall below – sometimes well below – the legal award minimum" and "widespread underpayment"¹ rise no higher than the five sources on which the author relies. Four of those sources ("Berg and Farbenblum 2017; FWO 2018; Howe et al. 2019; ... Underhill and Rimmer 2016") are in evidence and have been debated in submissions. The remaining source ("MWTF 2019") is not in evidence and should not be relied on to make any findings.
 - b) The author's main contention that there is no shortage of labour in the horticulture industry does not reflect the position of the parties.²
3. The Commission should limit its consideration of the Campbell Article to the section on which the AWU relied in its closing oral submissions, being the section entitled "Changing size and composition of the seasonal workforce" on pp 58-61.³ In relation

¹ Campbell Article at 46-47; see also at 70.

² See, eg, Reply Submissions of the United Workers Union dated 5 July 2021 at [30(e)]; Reply Statement of Anthony Beven dated 29 June 2021 at [13] (AWU-5, CB15).

³ Transcript PN64-80 (30 July 2021).

to that section, AFPA makes the following submissions:

- a) The AWU acknowledges that this section is “not an additional primary source”; rather, the AWU relies on it as a “useful overview of the available data and studies as to the changing workforce composition within the seasonal harvesting workforce”.⁴ Hence, the claims in this section rise no higher than their sources. Further, to the extent that some of these sources are not in evidence, these sources, and any claims derived from them, should not be relied on to make any findings.
- b) The reference in the Campbell Article to “recent grower surveys” showing that “around 70% of seasonal workers were classified as visa holders”⁵ relies on a 2017 ABARES publication that is not in evidence. It should not be used as a basis for any findings and is, in any event, superseded by the 2019 ABARES figure of 53% of migrant workers in the horticulture workforce as a whole and by Dr Underhill’s figure of 57% of migrant workers in the harvest workforce.⁶
- c) The reference in the Campbell Article to the possibility that undocumented migrant workers “may account for as much as one quarter to one third of the overall seasonal workforce”⁷ cites Dr Underhill’s 2016 Layered Vulnerability Article.⁸ In that article, Dr Underhill is extrapolating and surmising from the results of a 2010-2011 Department of Immigration and Citizenship operation to deport illegal workers.⁹ Dr Underhill does not provide any information about that operation that would enable the reader to assess whether the group of undocumented workers located by the Department is likely to be a representative sample. But in any event, these claims are superseded by the more recent figures about which Dr Underhill made concessions in cross-examination.¹⁰
- d) The reference in the Campbell Article to “one estimate” that “working holiday-makers constitute around 50% of the harvest workforce”¹¹ cites a 2016 Joint

⁴ Transcript PN64 (30 July 2021).

⁵ Campbell Article at 59.

⁶ AFPA Closing Submission at [13] and evidence there cited.

⁷ Campbell Article at 60.

⁸ The Layered Vulnerability Article is at CB2207 et seq (the version of the article in the courtbook, which is annexed to Dr Underhill’s report, is dated 2015; but this article is cited, including by Dr Underhill in her report, as “2016”).

⁹ CB2213.

¹⁰ Transcript PN1161-PN1189.

¹¹ Campbell Article at 60.

Standing Committee on Migration report that is not in evidence. It should not be used as a basis for making any findings and is, in any event, superseded by the more recent figures discussed in the AFPA Closing Submission.¹²

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¹² AFPA Closing Submission at [11], [13].