



## About the research



### ***A sociological investigation of illegal work in Australia***

The Howells 2010 Review of the *Migration Amendment (Employer Sanctions) Act 2007* examined the effectiveness of criminal sanctions introduced in 2007 for businesses that employ illegal workers. It found these provisions ineffective as a deterrent, and recommended implementation of a three-tiered framework of sanctions, including warning notices, civil and criminal penalties. As part of its 2010-11 research and evaluation program, the Department of Immigration and Citizenship commissioned Hall & Partners | Open Mind to conduct a sociological investigation of illegal workers and their employers to identify the psychological, situational and behavioural drivers that facilitate illegal work, leading to recommendations of how to improve its management under the new framework. An examination of the perceptions, behaviours and experiences of the Australian community towards non-citizens working illegally was included as part of this research.

The methodology for this project was qualitative in nature, involving a small number of individuals from the target audiences. As such, the information contained in this final report should not be used to make inferences about populations or the prevalence of particular findings.

### **Key messages**

The study identifies two important dimensions for understanding the attitudes and motivations of illegal workers: personal agency and intention to work illegally prior to entering Australia. It also proposes two dimensions for differentiating those who employ illegally: awareness of the legislation regarding illegal work and compliance with this legislation.

As noted in the academic literature, family, community and ethnic networks facilitate connections to illegal employment for many entering Australia. This research also highlights the importance of online networks such as job search websites. As well as their role in facilitating illegal work, networks are also revealed as a potential setting for disrupting these opportunities or discouraging potential workers from accepting illegal employment. This is posited as a more effective intervention than targeting illegal workers directly.

With the introduction of new employer sanctions for breaching the Migration Act, this research provides timely insight into the motivations and barriers, for both workers and their employers, relating to work that contravenes visa conditions.

Policy Innovation, Research and Evaluation Unit  
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# A SOCIOLOGICAL INVESTIGATION OF ILLEGAL WORK IN AUSTRALIA

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A report submitted to the Department of Immigration and  
Citizenship by Hall & Partners | Open Mind -

30<sup>th</sup> November 2012



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## 1. EXECUTIVE SUMMARY

The following report presents the results of 12 groups and 20 depth interviews with a range of illegal workers, stakeholders, employers and members of the general public. While this is a relatively modest qualitative sample for a topic as complex as this one, our findings also take into account three additional relevant studies conducted by HPOM for the Department over the past two years: amongst illegal workers on an enforcement pathway (*Removals and Returns Project, 2011*), foreign students (*Intentions of International Students Affected by Changes to the General Skilled Migration (GSM) program, 2011*) and a recent study amongst employers employing/at risk of employing illegal workers (*Engagement Strategies Associated with Deterring Illegal Workers, 2012*). The current study took a wider perspective and has allowed us to bring to life the experience of different players contributing to illegal work in Australia.

The following summarises key findings and insight from the three target audiences of illegal workers themselves, their employers, and the general public.

There appear to be four key themes underlying the diverse experiences of illegal work described in this study. Namely:

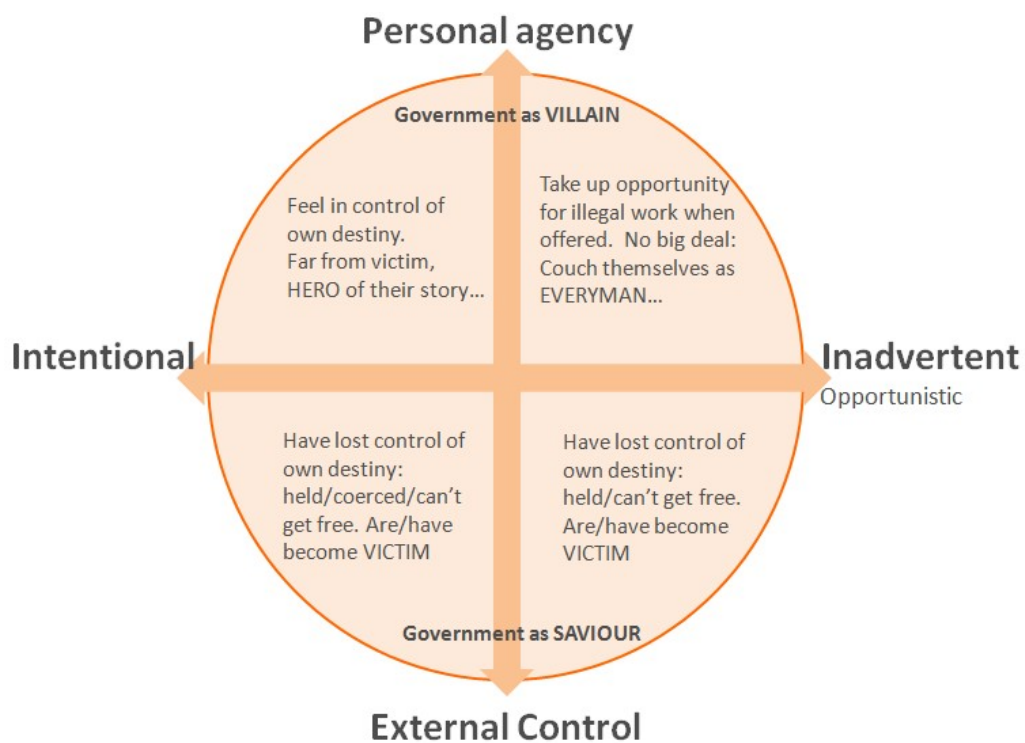
- The importance of personal agency and intention on travelling to Australia, with respect to undertaking illegal work.
- The importance of networks, both in understanding connections to, but also ways to disrupt illegal work.
- A common community framing of the conversation about illegal work to focus on the negative consequences.
- Confirming the employer segmentation developed for the Department with respect to motivations for and circumstances surrounding illegal work.

### PERSONAL AGENCY AND INTENTIONS

The study has highlighted two important dimensions which appear to be significant in distinguishing between illegal workers. The first, differentiates between those who have *intentionally* travelled to Australia to work knowing this to be illegal, and those who 'fell into' opportunities to work once they were here. Whether they initially came in on student, holiday or tourist visas, those who came specifically *intending* to work beyond their visa entitlements appear to use different networks; (by and large) experience work very differently; and (along with the general public) view the nature of their activities (and therefore the legitimacy of

government intervention) from very different perspectives.

The second key distinction highlighted by the study concerns the level of personal agency or *control* the illegal worker perceives over their work. Whether working for organised syndicates (including in situations of bondage or trafficking), or for individuals within their community (including family), illegal workers who perceive the situation as one they want, and feel in charge of, will describe themselves as the ‘hero’ of their stories, and the government in trying to intervene as ‘the villain’. On the other hand those who feel themselves bound to and unable to get free of the illegal work situation they are in, irrespective of how they found themselves in the situation, see themselves as ‘victims’ and the government as a potential ‘saviour’ (though possibly not a sufficiently powerful one). Sometimes they are victims because of the criminal action of employers; sometimes they are victims of family expectations or other outside circumstances which render them impotent to change their situation, even though they want to. The following diagram illustrates the conceptual framework that emerges from this analysis and the resultant categorisation of illegal workers on the basis of their motivations, perceived role and attitudes towards government intervention.



Our study spoke to illegal workers covering each of these categories as well as knowledgeable stakeholders who confirmed the importance of this framework for making sense of the actions and responses of illegal workers to government initiatives and attempts to intervene. The following case examples illustrate the explanatory power of this conceptual framework:

**Hero:**

H is originally from India but has worked in Malta and the UK. He entered Australia on a tourist visa intending to find professional work and obtain a 457 visa. In the meantime H is working illegally finding a range of work through online sites including [online employment site], as well as networks he has developed in the restaurant industry. He sends money back home and has no intention of returning as he believes he is bettering his own and his family's situation. He feels confident he will succeed in finding work as a (legal) professional.

**Everyman:**

M is a student from Iran who started working a few hours a week for the first time in her life and enjoyed the pocket money; she began to work well in excess of the legal 20 hours. She is not intending to stay and does not view this as 'really illegal', rationalising that she paid a lot of money to come here to study and is therefore entitled to earn some back... "*What is the big deal?*" she asks.

**Victim (Intentional):**

G is a Muslim woman from Malaysia who used an agent to come to Australia believing this was to work in a shop. She was met at the airport by a 'brothel shop owner' who forced her to work in dreadful circumstances, threatening to expose her to her highly religious family back home, and bring shame upon them. Caught up in a raid on the brothel and found to be on a tourist visa, the brothel owner had this changed to a student visa so that she was forced to continue working. She was a great deal more frightened of the agent and brothel owner than of the government, which she saw as unable to protect her.

**Victim (Inadvertent):**

F came from India on a student visa intending to study IT. However, back home circumstances changed abruptly when his father was bankrupted and the family made destitute. Not only could they no longer support him but they needed money to survive. He changed his course to one he believes may allow him to stay, and is working as hard as he can to send money home. He feels trapped and very unhappy, carrying a lot of responsibility on his young shoulders. He is a victim, but not so much of unscrupulous employers as of circumstances beyond his control that he doesn't know how to deal with. He says: "*I feel so alone I cry at night*".

## THE IMPORTANCE OF NETWORKS

The study has also pointed to the importance of *networks*, both in understanding connections to work but also in suggesting ways to disrupt illegal work. Some networks are more likely to be used by those who are opportunistic and in control of their situation; others are more likely to figure in the stories of those who feel out of control and a victim of their situation. However, the key insight is that the opportunity to disrupt these networks would seem to be greater than the opportunity to intervene at the level of the individual illegal worker. As discussed above, unless they are clearly being victimised and looking to the government to 'save' them, illegal workers appear very unlikely to see what they do as truly 'wrong'... just 'unfair'! And by and large, this mirrors the view of many of the employers and the general public.

The main networks discussed by this sample of illegal workers and employers were:

- **Online job search:** [online employment site] was regularly mentioned. While 'cash in hand' may not be explicitly stated in the ad, it is implied and illegal workers understand how to read requests for jobs that they will be able to do without the appropriate visa. This network is however, most popular with those who are opportunistic illegal workers who see this as 'totally normal and not really illegal at all' – a perception strongly shared by most in the general public. Work in hospitality, casual labouring, domestic chores, babysitting or nannying etc, are seen as a universal right of travellers enjoyed all over the world. However, there are also those who started out with this inadvertent introduction to work, and became a victim to it as in F above. Money can become something they and their family come to depend on and they can find themselves caught in a cycle of illegal work that was never their real intention.
- **Ethnic community networks:** this can include family or friends or pre-existing contacts within an ethnic community that the illegal worker always intended to use when they arrived in Australia. But it can also be the network used by opportunistic illegal workers who hadn't intended to work or to work more than allowed, prior to coming to Australia. However when the opportunity offers itself, they take it on. Employers tell us that they can look specifically for people from their own communities, especially where the work place is predominantly non-English-speaking: a Thai restaurant owner claimed to seek out visitors or students from his community to work casually in the restaurant because they can speak with the others working there and he feels more



comfortable dealing with employees of the same ethnicity as himself. These workers don't necessarily see themselves as being exploited: they neither know nor seem to care that they do not have the same conditions as other Australian workers. If they feel the pay is good, they do not feel victimised. But some can also *become* victims, caught up in a cycle of threat or need that leaves them powerless to bargain or to leave.

- **Long-term holiday makers and student networks:** younger people in particular form networks with fellow students and travellers both on line and through bulletin boards and meeting spots – backpacker hotels, bars and student sites are a critical source of shared information, including about work for those who don't have the appropriate visas.
- **Labour hire and contractors:** while no labour hire contractor would take part in the study, we spoke to illegal workers and end employers who used their services. Not all illegal workers see these contractors as 'villains' – some (including construction, agriculture and sex industry workers) appreciate the work they get and believe that they are paid fairly. Others however, recognise that they are victimised, find that the promise of contracts is not fulfilled when they arrive in Australia, and find themselves in very difficult circumstances. Similarly, end clients of these contractors, such as farmers for instance, were not necessarily comfortable using contractors, although they did not agree that workers were being exploited when working on their own farm. They simply saw that they have no choice: there is no other way, they argue, to get the work done.

This analysis suggested that disrupting these networks is likely to be the most effective mechanism for limiting illegal work, particularly the most insidious aspect through contractors.

### FRAMING THE CONVERSATION ABOUT ILLEGAL WORK: COMMUNITY VIEWS

In terms of priorities, the issue of illegal work is not top-of-mind for the general community. When it is given consideration, the general public see-saws between supporting and damning illegal work and this attitude very much reflects how the conversation is framed. The positive framing of illegal work, one shared by illegal workers and their employers, focuses on the *deserving individual*:

- Willing to work/sacrifice everything to get ahead... therefore *deserving*

- Bring new ideas, talents and skills... therefore *enriching*
- Doing work Aussies won't...therefore *contributing*
- Making services/goods cheaper for us... therefore *benefiting me*
- Helping them contribute to their families/get ahead... therefore *I am caring*

However, framing the issues at a macro level of the overall system elicits concerns about lawlessness (impoverishing the nation). These negative frames are recognised by members of the general public and some employers, although not by illegal workers themselves, who take an individual rather than a broader macro view:

- Making us like Greece/lawless/no tax... therefore *impoverishing the nation*
- Taking jobs from Aussies...therefore *unfair*
- Pressure on work rights...therefore diminishing worker rights
- Workers exploited (no superannuation/work place insurance/training)...therefore *unconscionable*
- Making legitimate business uncompetitive...therefore *unfair*.

What is interesting is that the general public (and a lot of employers) can see both sides and will argue one or the other depending on how the narrative is pitched. Framing the issues at the individual/personal level (the frame used by illegal workers themselves) almost invariably elicits sympathy (these individuals are 'deserving'). Framing the conversation about illegal work around the negative consequences to the country (lawlessness) elicits recognition that something has to be done. Talking about 'illegal work(ers)' confounds the issues with what is considered a more benign tax problem of cash-in-hand labour; on the other hand the idea of 'over stayers' raises the risk of lawlessness.

The study has also highlighted the risk of conflating illegal work with legal workers who are not Australia-born or lack good English language skills and/or appropriate training, leading discussions away from questions of illegality to ones of race or culture. Any government communication on these issues needs to be framed in such a way that it is clearly about illegal activity and not language/race.

## DESCRIBING EMPLOYERS OF ILLEGAL WORKERS

Research conducted by Hall & Partners | Open Mind mid-2012<sup>1</sup> was used to develop a qualitative

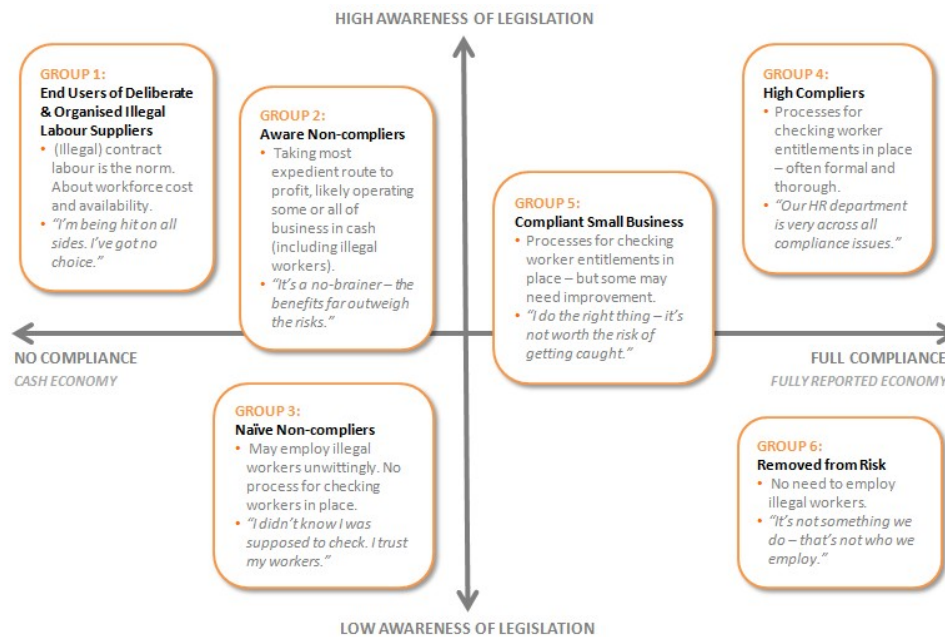
<sup>1</sup> The 'Engagement Strategies Associated with Deterring Illegal Workers' (11<sup>th</sup> October, 2012) report prepared for the

segmentation which clearly categorises employers and business types. Interviews with employers as part of the current study validated the explanatory power of this conceptual approach. The variables that best distinguish business in respect to their employment of illegal workers are:

- 1) The level of awareness of employer obligations required under the 2007 employer sanctions legislation
- 2) The level of compliance with the legal obligations required under the 2007 employer sanctions legislation.

Quantitative analysis of employers in high-risk industries (in the report referred to above) indicated that businesses that could be considered both aware of the legislation and non-compliant form less than 1 in 10 of the sample, indicating a small, but not insignificant proportion of businesses are of major concern.

Having segmented businesses according to these variables, six employer groups were identified as follows:



**Group 1: End users of deliberate and organised illegal labour suppliers:** Typified by the agriculture and construction industries, they reported use of illegal workers as being the only way to meet their needs in relation to supply and quality of workers.

Compliance Status Resolution Branch of Department of Immigration and Citizenship by Hall & Partners | Open Mind identified a qualitative segmentation of employers in high-risk industries, with regards to their propensity to employ illegal workers. The list of high risk industries included in that study were: construction; manufacturing; food services; hospitality / accommodation; agriculture (esp. horticulture); retail; sex industry.

**Group 2: Aware non-compliers:** This segment was typified by small businesses, which appear to have embraced the black economy more broadly. The combination of low perceived risk and high benefits in terms of cost and convenience make illegal workers an attractive workforce option.

**Group 3: Naïve non-compliers:** Unlike their more aware counterparts, and as their name might suggest, when these typically small businesses employ illegal workers they are generally doing so because they don't know these workers are illegal.

**Group 4: High compliers:** These typically larger businesses have human resources departments to ensure that they meet all their legal obligations with respect to government workforce regulation. They are likely to already be making use of VEVO (Visa Entitlement Verification Online).

**Group 5: Compliant small business:** This segment is more organised and risk averse than groups 2 and 3 when it comes to employing illegal workers. However, they may not necessarily already know about VEVO and hence require further education as to the tools available to meet the legal requirements in this context.

**Group 6: Removed from risk:** The 'professionalization' of this category means the highly educated and highly developed skill set required of employees limits their ability to recruit illegally and hence removes them from risk, for example executive or skilled positions.

## 2. BACKGROUND AND METHODOLOGY

The aim of this study was to explore the nature of illegal work in Australia. The individual areas of study were expressed as a set of research questions, and are detailed below.

1. A thorough examination of the perceptions, attitudes, behaviours and experiences of the general Australian community towards non-citizens working illegally.
2. Fully scope the push and pull factors that lead to the use of illegal work in Australia from the point of view of illegal workers.
3. Fully scope the push and pull factors that lead to use of illegal workers in Australia from the point of view of their employers.
4. And hence fully understand the factors and drivers (psychological, situational and experiential/behavioural) that lead to non-citizen workers becoming illegal workers in Australia.
5. And in turn identify what this analysis tells us about ways to improve the management of illegal work in Australia.

A qualitative research methodology was employed, with fieldwork conducted in regional and metropolitan Victoria and New South Wales between the 13<sup>th</sup> of August and the 15<sup>th</sup> of October 2012. The following sample frame was achieved:

| General community discussion groups:                                               |                    |                                                                                                                    |
|------------------------------------------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------|
| 1                                                                                  | Metro and regional | SES: Low – mid, Male, SINK / DINK <sup>2</sup> , 18-29                                                             |
| 2                                                                                  |                    | SES: Low – mid, Female, Empty Nesters 55+                                                                          |
| 3                                                                                  |                    | SES: Mid – high, Female, SINK/DINK 18 – 29                                                                         |
| 4                                                                                  |                    | SES: Low – mid, Female, Midlife families, 30 – 55                                                                  |
| 5                                                                                  |                    | SES: Mid – high, Male, Midlife families, 30 – 55                                                                   |
| 6                                                                                  |                    | SES: Mid – high, Male, Empty Nesters 55+                                                                           |
| 7                                                                                  |                    | Non-Anglo-Celtic Australian from target communities. Working age & working full or part-time in target industries. |
| 8                                                                                  |                    | Non-Anglo-Celtic Australian from target communities. Working age & working full or part-time in target industries. |
| Opportunistic discussion groups: student & working holiday visa holders struggling |                    |                                                                                                                    |
| 9                                                                                  | Metro              | Student and working holiday visa holder, low-income, have had to work                                              |

<sup>2</sup> SINK = Single Income No Kids; DINK = Double Income No Kids. To be included in the Non-Anglo-Celtic Australian groups, participants self-identified as having non-Anglo-Celtic ancestry.

|    |  |                                                                                           |
|----|--|-------------------------------------------------------------------------------------------|
|    |  | while in Australia.                                                                       |
| 10 |  | Student and working holiday visa holder, low-income, have had to work while in Australia. |

#### Opportunistic discussion groups: employers:

|                                                                                    |                    |                                                                          |
|------------------------------------------------------------------------------------|--------------------|--------------------------------------------------------------------------|
| 11-12                                                                              | Metro              | Employers – from mix of target industries & ethnicities                  |
| Depth interviews with illegal workers, their employers and industry/illegal worker |                    |                                                                          |
| 1-15                                                                               | Metro and regional | Illegal workers <sup>3</sup>                                             |
| 16-20                                                                              |                    | Employers of illegal workers and industry/illegal worker representatives |

General Community, Non-Anglo-Celtic Australians and Employer groups were drawn from 'High Risk' Industries (Manufacturing, construction, food services, accommodation, cafes, restaurants, retail). Depths (employers & employees) were drawn as follows: Agriculture (farmer); food service and accommodation (Restaurants (including Chinese (x 3), Thai, Indian and other), coffee shops; convenience stores; backpacker hostel, city hotel; sex industry; security. For the substantive visa holders (6 depths) DIAC requested focus on industries that had not previously been identified as high risk and respondents were sourced to represent the following industries: Financial and Insurance Services (Bank in NT); Communications Industry (call centre); Retail (clothing store); Manufacturing (photographic services); Sex industry; Wholesale.

<sup>3</sup> Six depth interviews were conducted with people holding substantive visas recruited from industries separate to those already identified as falling in the high-risk category:

1. Communications: Indian worker on a student visa who lapsed paying his enrolment fees at a regional university then got a job in a call centre where they didn't check his work rights.
2. Sex Industry: Trafficked Malaysian sex worker.
3. Banking: Indian student whose enrolment lapsed so he went to NT and got a job in customer service with a large bank who didn't check his work rights.
4. Wholesale: Indian student working for a wholesaler in Victoria, they wanted him to work more hours and rostered him on. He didn't monitor it and needed the work, so he worked in excess of his 40 hours per fortnight.
5. Food service: Indian with almost no English at all, his wife is a student, he is here on a partner spouse visa. He worked at a local bakery cash in hand, then they needed to cut staff so they doxed him in to the department.
6. Retail: Malaysian student who came to Australia seeking Permanent Residency. She worked for a retail clothing concession in a large department store. She had told them she was a student but wasn't explicit that her work hours were limited. The HR people in her company had no idea about how to check.

**Qualitative statement:** In reading this report it must be borne in mind that this research is essentially qualitative and must be interpreted as such. Qualitative research explores ideas and develops hypotheses. It is not intended to be a precise and definitive index of behaviours or beliefs. The approach adopted in the study was basically non-directive and relied upon a relatively free and unprompted conversation between participants. The report is based on observations and interpretations of the moderators, together with analysis of the transcripts. Verbatim comments from respondents have been included in the report to illustrate opinions.

### 3. DESCRIBING ILLEGAL WORK

Throughout this report we use the term ‘illegal work’ to mean work undertaken by those without an appropriate visa. However, it is important to note that employers and the general public in Australia are more likely to associate the term with black market illegal work where tax is not paid. The two types of ‘illegal work’ are clearly identified in the body of the report.

#### INTENTIONAL VS INADVERTENT

The study has highlighted two important factors which distinguish between illegal workers; one factor has to do with work intentions on coming to Australia, and the other the person’s sense of agency or control over their situation. Those who have intentionally travelled to Australia to work, knowing this to be illegal (‘intentional’), and those who ‘fell into’ opportunities to work once they were here that they agreed to take up (‘inadvertent’) differ in many significant ways. Whether they initially came in on student, holiday or tourist visas, those who have come specifically intending to work beyond their visa entitlements appear to use different networks and (by and large) experience work very differently: and (along with the general public) they view the nature of their activities (and therefore the legitimacy of government intervention) from very different perspectives.

Intentional illegal workers talk of making the decision to pursue illegal work in a clear and rational fashion, having carefully weighed up the pros and cons as they understand them, including their life options in their country of origin, and the benefits that will come from undertaking illegal work in Australia. This ‘rational assessment’ is about how much money they can earn here compared to back home: but it can also include a latent desire to turn the illegal work into permanent, legitimate work, fuelled by a comparison of wages and working conditions to those in their home country.

*“In my country, the economy is not good first of all, whatever I am earning here, it is impossible to earn there. I am very lucky to have come here, and I would be very much interested in getting the citizenship”* Student, seeking permanent residency.

It seems that for these workers, there is very little concern about unscrupulous employers either before they arrive or even after they are working – by and large the perception is that conditions are better than at home. Nor does the fear of being caught appear to be a particularly effective deterrent. The belief is that the worst that can happen is to be sent home earlier than anticipated.

However, it is clear that a certain degree of information asymmetry exists, particularly for those who have arrived in Australia via contract, debt-bondage or trafficking (where their opportunities or experiences in Australia may have been misrepresented prior to arrival).



*"[In the sex industry] the difference is amount that they then work. A contract is you pay \$1500 for a ticket then you get here, do 5 jobs and you pay it off. A debt bondage is you pay \$1500 for a ticket over here then you get here and suddenly its \$10,500 and you have to do 20 jobs to pay it off. Then it's another 20, then another 20. Contracts are more common, debt bondage is a crime. And that is a criminal offence."* Stakeholder, sex industry.

Others describe a more inadvertent trajectory with respect to illegal work, generally making the decision to undertake illegal work once in Australia, or else taking up illegal work in a more ad hoc or less thought-through fashion. Many point to a change of circumstances after arrival in Australia which they say has necessitated them working illegally. This was particularly true of students or working holiday makers who are here for an extended period of time. They tend to be young, to have few savings, to be dependent on family, and often because of their youth, make ill-informed, opportunistic decisions with little real regard for the consequences.

*"I got a good job here, and I was working full-time for a few months but I was still on my working holiday, but it was good money and something I was interested in so I wanted to stay and do it".* UK Student, working illegally

Again these workers didn't see much risk at all – and in fact are inclined to see what they are doing as 'not really illegal' and are pretty sure immigration has bigger fish to fry. In other studies we have met with people who are very frightened of being deported, but this was because they had nothing left back home, had created a life here and their concerns were therefore about more than just work opportunities.

## IT'S ALL ABOUT AGENCY

The second key distinction concerns the level of personal agency or control the illegal worker perceives they have over their work situation. Irrespective of their actual circumstances, the degree of choice and the ability to exercise that choice influences how illegal workers approach their illegal work and how they behave. It also influences the role that they accord the government with respect to their situation.

Whether working for organised syndicates (including in situations of debt bondage or trafficking), or for individuals within their community (including family), illegal workers who have engineered the situation through their own deliberate choices cast themselves (to use a common archetype) as 'hero' of their stories. Within their stories the government, with its potential to thwart their attempts at personal betterment, plays the role of 'villain' (or at least the unwelcome enforcer). Other than a deeper suspicion of government as an authoritarian enforcer, illegal workers tend to hold similar views as the general public when it comes to illegal work. They believe that rules should exist and be upheld for the good of the general community,

but are likely to express their personal situation as the deserving exception.

*“The rules in Australia are quite strict – they are too tight – on one side the country needs to be tough but on the other side you have people who are working hard and deserve to have a chance... you are like ‘just give me one single chance to show what I can do’.”* Visa overstayer.

*“The idea of Asian sex trafficking feeds into the myth of Asian sex slaves and Asian women being submissive and not having agency and people are willing to believe that these women haven’t chosen to do sex work. I mean that just because you haven’t chosen to do it, doesn’t mean these women haven’t.”* Stakeholder, sex industry.

Distinct from those who have made deliberate and specific choices to engage in illegal work and who are exercising considerable agency in executing their plans, we spoke to those who have lost control over their situation.

*“I probably should have got in touch with the department earlier, but I was too much of a pussy... I think back now, and think I coulda, woulda, shoulda done... I know... but that’s just how it happened, it wasn’t any great mal-intent... I kept subconsciously convincing myself that there will be another outcome”* Student visa overstayer – enrolment lapsed after family circumstances changed and fees went unpaid.

At the other extreme are those who feel bound to and unable to get free of the illegal work situation they are in, irrespective of how they got there. They see themselves as ‘victims’ and would look to the government as a potential ‘saviour’ (though possibly not a sufficiently powerful one). Sometimes they are victims because of the criminal action of employers; sometimes they are victims of demand from family or other outside circumstances that render them impotent to change their situation even though they want to.

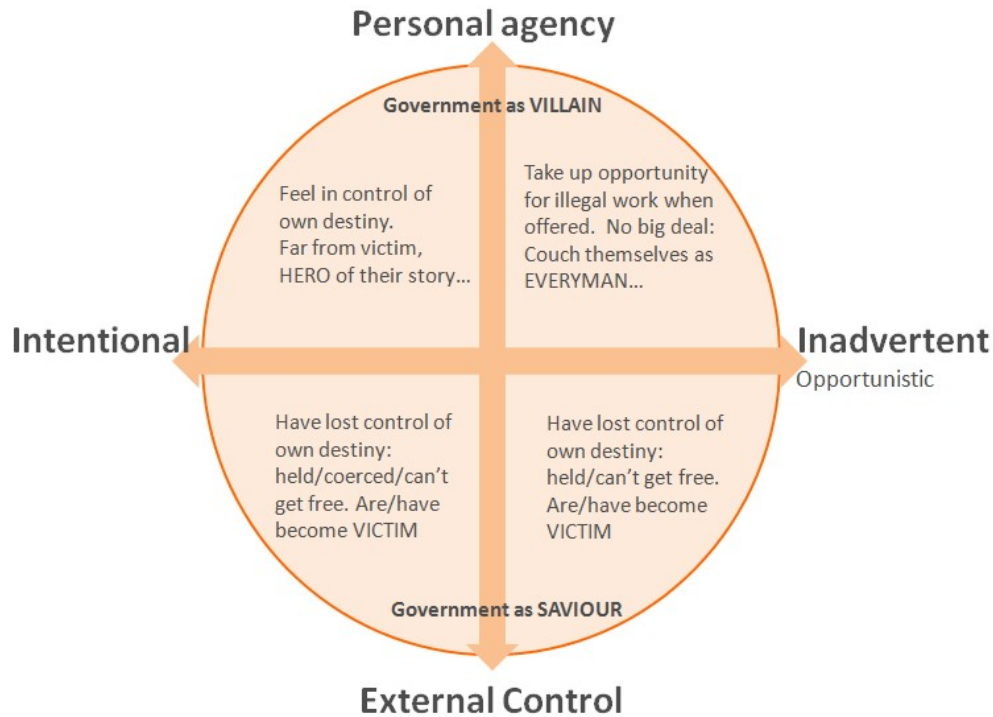
*“I know that I was doing the wrong thing by overstaying... I was constantly looking over my shoulder, it made me hollow inside, no-one else knew... every day was like ‘oh ohh... there’s a police siren – is it coming for me?’”* Student visa overstayer, working illegally.

*“Would I really push back? If I know I need the job and I’m afraid of being sent back? Because, trust me, I wiped out my whole life savings to come here. It wasn’t easy to get here.”* Non-Anglo-Celtic Australian, former illegal worker on student visa, Indian.

Neither segment appears to be particularly affected by the fear of being caught by Immigration. Those we have described as the Heroes of their story do not appear to be too concerned about being caught, believing that the worst that could happen is to be sent home. Some are convinced that their situation means the government would make an exception for them anyway.

Those we have described as the Victims are often much more afraid of their employer and don't necessarily believe the government is able to help them anyway. However, once caught (one respondent) they were also confident their special situation would lead to permanent residency (PR).

The following diagram illustrates the conceptual framework that emerges from this analysis and the resultant categorisation of illegal workers on the basis of their motivations, perceived role and attitudes towards government intervention.



Our study spoke to illegal workers covering each of these categories as well as knowledgeable stakeholders who confirmed the importance of this framework for making sense of the actions and responses of illegal workers to government initiatives and attempts to intervene. In essence:

**SEGMENT 1: HERO (intentional and in control)**

These illegal workers intended to work: they came out on whatever visa they could get, and through a variety of means, but they all talk about their motivation for coming to Australia as being about 'making a better life' for themselves and their families (often back home). They describe their journeys in terms of the risks they are taking, the challenges they are up against and the battles they are prepared to fight in order to forge a better life for themselves and their families.

From their point of view, their position has legitimacy. It might be illegal, but it clearly isn't fair: they have a need for money, and are working gainfully to earn it. The government should understand their situation: they are good people and willing to do work Australians will not. If the Australian Government attempts to intervene – to prevent these 'heroes' from achieving their goals, it is not understood in terms of a legitimate ruler or leader exercising rightful authority. Instead the government is cast as the villain – to be battled and thwarted.

*"I have to support all of them, they are dependent on me – they rely on me, it's a big thing... For example if I call and say that I am sending them \$10 – they are very happy"* Indian on student visa, working illegally.

In this study, those who intentionally came to Australia to work, knowing this to be illegal, included a range of life stages, backgrounds and visas. We talked to students who came to Australia, not for the prestige of its educational institutions and sunny lifestyle, but for its work and financial opportunities. Others were older, arriving in Australia on short term visas such as tourist and visitor visas, which they say serve as a 'default' visa (i.e. they are reportedly not eligible for the working holiday or skilled visas due to age and lack of qualifications, nor do they have sufficient financial resources to get a student visa). These workers report that they are attracted by the opportunities Australia offers to earn a living (our economy is known to be surviving the GFC) and the safe, well-regulated nature of the country. Some point out that they will earn a great deal more than they can in their home country and that the conditions are a lot more difficult back home than they experience here, even as an illegal worker. Workers who pick tea in Malaysia are apparently paid 6 cents a kilo – and a good picker could expect to pick 300kg a day thus around \$18.00 a day.... Here they can expect to be paid a great deal more.

*"If you earn \$100 in Australian currency, in my currency that is 6000 rupees, and for 6000 rupees a person can have his lunch and dinner for 3 months over there – here basically I tell you who is coming, 90% of who is coming, because here life is very easy – I am earning \$20 in an hour here, but they are not earning that over there in a month"* Indian student working illegally.

*"Sex work is largely tolerated in Australia. That's a factor. Australia is also known to be a lucrative location and there is support for sex work. In countries where sex work is criminalized, coming to Australia is very different. Coming from heavily criminalized regions, Australia would see working conditions as an improvement."* Asian sex worker.

There appear to be clear trends between life stage and visa type for the illegal workers including in this qualitative sample. Of those who are coming to Australia with the intention of seeking to work illegally, we saw a trend for younger people entering on student visas with those over 30 entering on visitor or tourist visas (the latter may be more subject to issues such as debt bondage and

trafficking). Those who came not intending to work, but have fallen into it opportunistically, tended to be younger and on student or working holiday visas (although there were also reports of intentional workers entering on working holiday visas). It would be interesting to confirm this hypothesis quantitatively.

While most initially intend to return home after earning sufficient funds, it appears that for some this intention can alter over time and they expect somehow to be able to stay. Others in this category always intended to find a way to legitimise their position.

There appear to be a number of trajectories into illegal work for this segment:

- Financing study (and long term, a migration pathway) mostly or wholly through illegal work.
- Coming to Australia primarily to work and earn money for later for self/to send money back home for family (study is a front only).
- Unskilled workers who come to Australia because of family or community connections (having scoped out work beforehand) or those who come hoping to 'bump into' work opportunities.
- Unskilled workers who have arrived on falsified documents – usually involving some kind of repayment through work in Australia (debt-bondage).
- Skilled workers who are hoping to find work in their field once arriving in Australia but then fail to find work due to lack of experience/relevant qualifications.
- Overstaying intentionally and working illegally.

### Experience of finding and doing illegal work

For these illegal workers, earning money is everything, and they are prepared to trade off a significant amount in terms of conditions and comfort, to get it. They might suspect life as an illegal worker in Australia will be tough, but the prospect of hardship is significantly offset by potential earning capacity. Once they get here, the working conditions, even if their work rights may appear significantly eroded to an Australian, are described by them as at least comparable and in some cases preferable, to those they have experienced in their home country.

*"For me, I look at these guys who work for me, they are in the kitchen, they're mopping floors, washing dishes... they do it because they need the job, when they are given that pay packet, it's a feeling that you see, they are very happy with it."* Restaurant owner employs illegal workers.

These illegal workers told us that finding illegal work was relatively easy through their networks. For some, the path to work started with approaching a facilitator (travel, migration or education agent) in their home country, or with hearing of the work experience of others in Australia from returning friends and family. Others found work once in Australia, through online classifieds and job search sites or through family and friends or other community members.

*“Coming in as a student I was ready to do any job. I’ve done cleaning, I’ve been a waitress at an Indian restaurant, I’ve worked in call centres which I hated, I’ve worked in [fast food restaurant], I’ve worked in [fast food restaurant], I’ve basically took whatever job came my way because I needed money to live.” Non-Anglo-Celtic Australian, former illegal worker on student visa, Indian*

They spoke of different levels of organisation in the workforce, some appearing more controlled, characterised by labour hire contractors and provision of accommodation and transport. Workers who are closely aligned with illegal labour hire contractors reportedly can have little contact with the ‘outside world’ – they are transported together to work places and live together in organised accommodation. This is not necessarily seen as a disadvantage – those who are visa overstayers have a particular reason to be wary of ‘outsiders’. However, others are much more integrated as part of the broader community, living and working and possibly studying alongside everyday Australians whilst performing illegal work.

The work itself as reported in these interviews appears varied. Employers and illegal workers categorise much of this as work that Australians do not want to do (whether because it is physically demanding, located in regional areas, poorly paid or rostered at awkward times). This serves to reinforce their own legitimacy in the eyes of illegal workers and for them and according to their calculations, the trade-offs they might be asked to make, are clearly worth the income.

### Sex industry (stakeholder perspective):

Australia's sex industry is viewed as a desirable place to work by overseas sex workers, relatively safe and well-regulated. Overseas sex workers reportedly come with a view to maximising their earnings over a period of time, with the intention of returning eventually to their home country. Younger workers enter Australia on a student or working holiday visa with older workers (women in their 30s and 40s) on tourist and visitor visas. However, it appears that these older workers can come under greater scrutiny from the department, particularly those from Asian countries. If this happens, facilitators are engaged to circumvent the visa requirements and put work into place. This might include a 'companion' to legitimise the application, as well as arranging for a job when the worker arrives. Sex workers report paying amounts of \$40-\$50,000 to agents, which are then worked off in the first two to three months of their stay in Australia. Industry stakeholders emphasise the extent to which this situation represents a high degree of agency for many women, a significantly different situation to trafficking and enforced sex work.

### Worker case study:

H is originally from India but has worked in Malta and the UK as an IT professional. He entered Australia on a tourist visa intending to find professional work and obtain a 457 visa. In the meantime H is working illegally finding a range of work through [online employment site] and networks he has developed in the restaurant industry. He sends money back home and, while he would prefer to work in a professional capacity, has no intention of returning home as he believes he is bettering his own and his family's situation. While the work can be hard, he would highly resent any Australian Government intervention that curtailed work while it was his choice to continue. This makes it most unlikely that he would willingly engage with the government.

### *SEGMENT 2: EVERYMAN (opportunistic and in control)*

Those who do not come to Australia primarily to work but become illegal workers when the opportunity presents itself, view themselves as essentially law abiding. From their point of view they are not doing anything unusual, and the fact that it is 'technically illegal' is ignored as a bureaucratic oddity. Everyone, they believe, engages in this level of 'illegal' work. And by and large, members of the general public agree with them, recalling how they worked cash in hand as a student or young overseas traveller. Neither the illegal worker, the employer nor the general public could see a role for the government to intervene: they are committing only a

minor misdemeanour, similar to jaywalking. This is understood all over the world. They are 'Everyman'.

Illegal workers we spoke to who fell into this segment tended to be better educated and relatively articulate. They included students who came to Australia with the primary intention of studying, but who have found they can work more than 20 hours, and working holiday makers whose youth and highly changeable lifestyle and motivations means that they are drawn to opportunistic work when it comes up, whether this is allowed on their visa or not. For many of them, work is part of the experience of being in a different country.

Those on short-term visas seem likely, at least on the basis of this analysis, to represent a small proportion of the illegal worker population. When they do work illegally it appears to be short term - a matter of 'helping out' a friend or family member for a short period of time rather than an extended experience.

### Trajectories into illegal work

While these students and working holiday makers arrive in Australia with little specific intention of working illegally, a change in circumstances or simply the opportunity can derail these good intentions, including with respect to:

- only being able to find undeclared 'cash in hand' work in Australia
- a miscalculation of the cost of living in Australia (students finding they need to work more than their 20 hours once in Australia; working holiday makers running through their funds)
- a change of family circumstances (leading them to have to support themselves to a greater extent)
- for students a change of study circumstances (choosing to stay and work illegally when their student visa is cancelled)
- for students an attempt to gain permanent residency (as part of an employer-kickback deal)
- wanting to stay longer than a visa will allow (and overstaying).

Often this trajectory seems to be part of a spiral into illegal behaviour – the youth of these visa holders in particular appears to lead them to find unwise short-term solutions or otherwise make bad decisions about their lives. They can be quite isolated from family and friends in Australia which can exacerbate the consequences of this behaviour.



## Experience of finding and doing illegal work

For these opportunistic illegal workers, illegal work appears to be a matter of a gradual slide, or inadvertent slip. For some it is almost experimental – with the right to apply for a TFN comes the natural progression to looking for work. It might be as easy as knowing another student or friend who works in the kitchen of a local restaurant and who needs to take a night off, and could they find someone to cover for them. It can be a notice for help in the window of a shop or restaurant, or a search for casual work on [online employment site]. Home country ties are strong – a chance encounter on a train with someone from their region of India or from a local town in Holland engenders an immediate familiarity and a desire to share networks and contacts, a feeling that *“those of us on the outside should stick together and look after each other”*. While they might be initially reluctant to accept a job involving illegal work because of their inexperience, reassurances from their friend(s) and the immediate availability of an opportunity gets them over the first hurdle.

*“I met guy from Gujrat on the train, and I told him I looking for job, searching for job, and he gave me advice for getting job, he is working in Docklands, so now I am working there – in cleaning only now – in security I couldn’t keep working because I had to work at night and I had to be at college in early mornings, also it was not very interesting work.”* Indian student, working illegally.

Finding themselves in a new situation for the first time and having to learn the rules and requirements can be challenging, but for these young people, the assimilation of new experiences is part of their everyday lives, and with the support (and often training) of their friends, a feeling of being underqualified or underskilled is quickly overcome, and a significant barrier to work is removed. The capacity to earn can also be very motivating to some students – earning their own money gives them a freedom and independence that they have not previously experienced. Becoming engaged in work can give meaning and purpose to their lives, and is particularly facilitated by their higher level of English. For this younger group, expectations of work fulfilment are low, particularly in what they perceive to be temporary jobs – and thus ameliorate the downsides of the work being underpaid and largely unskilled. If protective factors do not start to be engaged at this point, the potential for work behaviour to tip into illegal work is high.

*“But one of my friends who I met and he was working here... he came on a tourist visa, and he was working. He said, as long as I am able to cover the cost that I spend I mean, my airfare, my seeing the country a little bit here, a bit on top of that, that’s fine. A little bit of holiday, plus, money a bit.”* Non-Anglo-Celtic Australian, general community, Sri Lankan

The illegal work described by these respondents was focussed on work that was not allowed as part of their visa, but this does also tend to overlap with working cash-in-hand and undeclared. A

range of illegal work experiences were reported, from students working beyond the 20-hour limit imposed as part of their visa requirements for undeclared 'cash-in-hand', across one or more service industry or entry level jobs; and working holiday makers focussing on the harvest trail. Workers often report the work as being tedious (night shift security work), boring, repetitive and physically demanding – but it is not mentally demanding, and as such their capacity for doing it is high. Having said this, students also explained that working in ethnic businesses can provide them with a sense of home – of shared culture and language that they might not get in their studies. There were also reports of students undertaking more skilled work on an illegal basis as part of trying to build up work experience to gain permanent residency. The experience of work then becomes more serious and important – they are no longer 'playing at working' – decisions about employment have longer-term implications and workers are conscious of sacrificing short-term gain for future goals – which requires significant maturity and commitment, and engagement in illegal work practices can become significantly more entrenched and long-term.

For those who are here on temporary visas, it appears that the primary way into illegal work is through close contacts between family and friends. A visitor to Australia, who is staying with family who own and run a business, may see it as a natural progression of their family responsibility to help out where it is needed. For instance, the owner of a Korean BBQ restaurant in Sydney described the win-win situation of employing the nephew of a family friend. A teenager, in need of some extra pocket money, and with the business being run mostly in Korean language (especially in the kitchen) it was an easy fix to a temporary absence of a kitchen hand due to illness.

#### Worker case study:

Cees is an easy going Dutch backpacker who has now spent over a year in Australia. He has spent most of his time here working at cash-in-hand jobs (much easier work to find, he says for a working holiday maker). He made an arrangement with a land manager through the [charitable] association to state that he had worked sufficient hours in regional areas to qualify for an extension on his visa, although he had in fact only worked half the number of days required. Cees sees this as quite usual behaviour for a backpacker and says he would be shocked if the government intervened: *"haven't they got better things to do with their time?"*

### Worker Case Study:

M came to Australia from South East Asia to study, drawn by Australia's reputation as multicultural "melting culture". Throughout her education here (she has studied English language and for a business diploma whilst in Australia) she has funded her studies by working. Initially she worked in a Thai restaurant, where her lack of English language ability would not hamper her. When her English improved she shifted to a clothing store, where she stayed even after her visa expired. M hoped the store would sponsor her to stay in Australia more permanently. At this time M didn't welcome Australian Government intervention – she was making her way in the world and expected to be left alone to continue to do so.

*"I came to Australia and paid a lot of money to come and study here – students should be allowed to work more hours."*

### Employer Case Study:

'M' runs a Thai restaurant staffed by Thais. Most of the workers are students working more than their allowed 20 hours. The restaurant has a family feel – everyone meets together before their shift to eat and many speak Thai throughout their shift. M pays cash in hand (not disclosed to the ATO) at below the minimum wage. She says:

*"Either they don't have the right visa, or they might not have the right skills. So they might not be able to speak English very well, or ... you can only work twenty hours, because you might be a student. So then after those hours, you're going to do whatever. Because then that's cash in your pocket..."*

*"And I mean, yeah, it's hard for me to say that, you're allowed twenty hours so you shouldn't do more than that... you think the government doesn't take it seriously. I'm pretty sure that I'm going to get away with it. And then they get like, if someone [from the government] just barges in, you'll be like, they're just here to help out. They didn't get paid. It's like, they don't have proof that person is working. It can just be a friend, hanging out, happen to be carrying plates."*

### SEGMENT 3: VICTIM (*intentional*)

In contrast to the significant sense of agency expressed by the 'Heroes' and 'Everyman', there are those who feel themselves bound to and unable to get free of the illegal work situation they are in. Sometimes they are victims because of the criminal action of employers; sometimes they are victims of family expectations or other outside circumstances which render them impotent to change their situation. While there was considerable overlap, the latter (those who are victimised by unscrupulous employers or contractors and agents) appear more likely to have come to Australia intending to work illegally, but once they are here find themselves preyed upon but unable to break free.

*"People have been to gaol, because of their pay, because they pay their workers... in India twenty-five thousand rupees. Here, what is it? [The employer says] 'I'll give you twenty-five thousand rupees'. They're getting ten thousand rupees there [in India]. [The employer says] I'll pay you twenty-five thousand rupees [to work in Australia] plus the air ticket, accommodation. [The worker says] 'Wow. I'm coming out here.' And what are they getting? Not even a hundred, two hundred bucks a week."* Non-Anglo-Celtic Australian, employer, Indian

*"They are working in a farm, picking fruit, and when you take the money back home it is a lot of money."* Non-Anglo-Celtic Australian, general community, Sri Lankan

Within this segment we spoke to illegal workers who are highly vulnerable in terms of predatory employment practices. At the extreme end, this included forced sex work as well as individuals paying employers large sums of money to gain work that would lead to skilled visa arrangements. Less extreme examples included poor pay, and work that is extremely physically hard or has little scope to meet occupational health and safety requirements. They feel they have little choice but to follow the pathway laid out for them by their agent and contractor. They included individuals who have been trafficked or arrived in Australia through debt-bondage arrangements where the work situation had been misrepresented to them, and they were being threatened with exposure if they tried to leave. For individuals in this segment, the Australian government could be 'their saviour', but in fact many lack faith in the government's willingness or ability to protect them.

For those who are working in a more organised fashion – for instance through predatory labour hire companies – we note that this situation might not be driven by end employers, but rather through intermediaries. Employers in this situation say they can have very little interaction with workers, with all arrangements mediated through the contractor; lacking English also acts as an effective barrier to direct engagement. For instance, a land manager in this study reported seeing what he thought to be teenage Indian girls working on his farm – without doing anything about it. The implication is that the system operates as a closed circle – and it is in the interests of every

party involved to draw as little attention to the situation as possible. The worker is likely to be well aware of their tenuous situation, and the threat of deportation and risking their income acts as a serious disincentive to focus any attention on their working conditions; the contractor in Australia would also be well aware of the illegality of their practice. Under the current legislation, it serves the purposes of the employers to sit outside the circle; they are the beneficiaries of the arrangement and – as they see it – there is currently no requirement for them to take responsibility for their role.

This cohort experienced the poorest working conditions, with physically demanding, dangerous or demeaning work, long hours, few breaks and low pay. The workers themselves are highly reliant on the income stream they are receiving through illegal work and although they often find little joy in the work, or find it very difficult, they report they have no negotiating power with their employers. To draw attention to work environment issues is to risk being deported. And there are others who would replace them in the workplace. The extreme is those who are working in a forced work scenario – in this study, this was limited to the sex industry.

#### Worker case study:

G came to Australia from South-East Asia in her late 30s. For \$40,000 a facilitator in her country of origin organised a short stay visa (with no work rights) and an (illegal) job in a restaurant. However, when she arrived at the airport in Australia she was met by the owner of what she describes as a 'brothel shop', who arranged for her to change to a student visa and work in the sex industry. Through her work G was required to repay the facilitator (\$20 from each client she saw). She describes her work in terms of torment – a whirlwind work, poor physical health, pain, lack of food to eat, and humiliation (as she described working while menstruating). G says she did not leave for a long time – partly because she feared her employer, but also because her employer had threatened to report her doings to her devoutly religious family back home. She finally reached the limit of her mental and physical capacity to survive the situation and says she "ran away", and is now getting assistance from a not-for-profit organisation and an immigration lawyer.

#### *SEGMENT 4: VICTIM (Inadvertent)*

We also spoke to illegal workers who didn't come to Australia intending to work illegally but have through a combination of opportunistic work coming their way and/or changes in their circumstances, finding they are caught in a cycle of illegal work that they don't know how to get out of. They included workers who are vulnerable because of their high need for any or particular kinds of work: for instance, those whose visa arrangements give them limited or no work

rights compared to their economic need; those who need particular work arrangements to comply with current visa restrictions or to acquire a desired visa; and those who have unstable life circumstances both within and outside Australia.

*"[Employers] They kind of smell it on you, that you're new in the country. So ten dollars [an hour] sounds like a very big deal, oh my god, ten dollars, you know seven days and I pay off my rent! That's the kind of mentality you go with. As you work there, then you get to know people and you come to find out that you're supposed to be paid eighteen dollars, and then you think oh, I'm only being paid ten! And then as soon as you bring it up with them they say, okay, ten dollars, this is what we're offering you."* Non-Anglo-Celtic Australian, former illegal worker on student visa, Indian

While they too would view themselves as victims with little control over their circumstances, by and large this did not reflect an unscrupulous employer they couldn't escape from, but rather external circumstances that have meant their need is such they have to accept illegal work even if they don't want to. Family expectations back home seem to play a significant role here.

#### Worker case study:

'C' and her friend came from Malaysia to study at a vocational college in metro Australia, with the aim of achieving qualifications that may eventually enable them to stay. Although initially keen to go to America, the agent they used 'sold' them on Australia, with the lure of coloured brochures and attractive pictures of where they would be studying and staying. The college was promoted with a prestigious name and a multicultural student body – and they trusted their agent who promised that everything would be completely organised and taken care of, a service for which they paid several thousand dollars. The reality when they arrived was quite different – the 'college' was one room in an office building in the city, and the homestay accommodation was more than 50km away. The promises of help with finding work were also unforthcoming. *"I need a job, thought you would be able to find work"*. There was no-one to complain to, no-one to help them. The agent back home had disappeared – the college just took the position that they hadn't arranged things, so they had no responsibility. With everything being set in place and paid for before they arrived, they had little capacity to get out of it. They are both now working as "rubbish pickers" at a large sports venue to clean up after games and events, and as a cleaner at a restaurant and dishwashing, earning \$12 an hour. 'C' wants to change her study to do a course in Aged Care – but is finding it difficult to get the experience she needs to satisfy the coursework requirements. Through necessity, they are both gradually becoming more resourceful about changing their situation now that they are here and learning about what is possible. But the risk of working illegally figures low on their priorities – they are more concerned with maximising the few resources they have available to them.

## RISK AND PROTECTIVE FACTORS

This analysis also identified a number of risk and protective factors for different visa holders at different stages of life, and depending on whether their motivation to work illegally in Australia is inadvertent or intentional.

### 1. For Students' and working holiday makers' whose uptake of illegal work is opportunistic:

#### *Protective factors:*

- Studying at a reputable university and a highly involving course.
- Stable family and study situation.
- Full family financial support.
- Stable living arrangements in Australia.
- Clear lines of communication with family.
- High family expectations<sup>4</sup>.
- Good English language skills.
- Clear options in and ties to country of origin.

#### *Risk factors are:*

- Changing circumstances (family finances, study arrangements, romantic attachment to Australian).
- Less well-off family.
- Needing work to resolve visa status (ie work experience to achieve permanent residency).
- Lack of knowledge about work entitlements.
- Requiring complementary financial assistance (to that provided by family).

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<sup>4</sup> As an example, a student from Bangladesh explained (and in subsequent interviews others agreed) that his parents had strong opinions that certain types of work would be beneath their son – so they had sent him to Australia to get an education that would better his circumstances, and although they knew that he would probably have to do some work, they would prefer it to be something like tutoring that would garner respect, not something they considered demeaning (like cleaning or working in [fast food restaurant]).

- Poor English language skills.
- Dissatisfaction with the course of study.
- Little involvement in organising study or travel.
- Wanting to stay in Australia longer than visa allows.

## 2. For students who came to Australia intending to work illegally

*Protective factors are:*

- Study requirements policed by educational institution.
- (Long term) pursuing a legitimate course/migration pathway.

*Risk factors are:*

- Unaffordable living arrangements or living arrangements that are inaccessible to study.
- Lack of attendance/engagement in course.
- Family less well off/lack of opportunity in home country.
- Lower level of English.
- Attendance ELICOS/vocational education.
- Attendance at a college that does not have an established reputation in the tertiary education marketplace (may be marketing their services in a very optimistic way, with the reality far different to the heavily promoted expectations).
- Not having enough money to really survive – and then without the resources to negotiate any pay levels.
- No knowledge of rights / award wages.
- Corrupt home country.
- Travel/study highly organised<sup>5</sup>.
- Work available in language/community from country of origin.

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<sup>5</sup> If the pathway to getting here is already very structured but turns out not to be what they were expecting, many don't have the means to change their circumstances because they are already locked in to their arrangement. E.g. if they can't get out of the expensive Homestay arrangement – then they have to find some extra means of supplementing their income.



### 3. Short stay visa holders who came to Australia intending to work illegally

#### *Protective factors:*

- Policing of illegal work by government.

#### *Risk factors:*

- Existing or easily established pathway into illegal work.
- Poor English language ability.
- Poor financial circumstances.
- Unskilled.
- From country with poor economy.

Reports from students about financing skilled migration pathways – with the expectation that this will lead to permanent residency.

*“Employers in Australia – there are many students who are giving money to the employers – you know in the automotive course, many students have given money to them – ‘take \$40,000 and please then sponsor me’ – if I go to a garage and I say I want to work here – they will say work for free – I will work for free but when I need money I will do cleaning – just because of one person, if they give money then they expect everyone to give money – but I will not give them money, they are taking advantage... an employer who knows that the job they are providing is a pathway to PR will charge an employee for working there - \$40k \$50k, \$60k - plus they have to pay a minimum wage of \$51k per annum, and they don’t pay that either... they are taking money also, and secondly they are not giving money, they are saying you have to work for free... Later on if you don’t agree – they get the work from you and then they tell the government about you and the government will come and get you and you will be deported.” Student of automotive engineering, currently working illegally.*

## 4. EMPLOYERS OF ILLEGAL WORKERS

The following findings combine insights drawn from a larger business sample as part of the Engagement Strategies Associated with Deterring Illegal Workers study (2012)<sup>6</sup>. The current study, which included a smaller number of discussions and interviews with employers, was found to strongly validate these findings. The following descriptions incorporate case studies and other examples of illegal employment from the current study that validate the employer segmentation from the wider context of the employee and general community perspectives.

When we look to the issue of employer willingness to comply with their legal obligations with respect to illegal workers, we can distinguish between those who believe the norm is to comply; and those who believe that employing illegal workers is acceptable practice, and very much the status quo within high risk industries. In relation to the latter cohort, this acceptance appears to be part of a broader tolerance of a 'cash-in-hand' economy and a significant proportion of employers for whom the black market with respect to workforce payments, and employing illegal workers, is seen as normal industry practice.

Those employers who seem to be using illegal workers or who more generally believe it to be a normal practice are strongly characterised by a 'do what it takes mindset' which emphasises business sustainability and competitiveness (potentially at the cost of meeting legal obligations). In contrast, there appear to be a number of protective factors that shape legal compliance more positively. More professionalised industries and larger companies (with the exception of construction) appear to be much less inclined to see employment of illegal workers as a usual thing to do, along with highly risk averse small to medium businesses. These employers appear to see complying with legal obligations as an end in themselves (whether through fear of being caught, and subsequent legal or reputational damage) or through seeing this as the right, or only way to practice.

Further to this, membership of the two cohorts in turn perpetuates these perspectives, so that those who see illegal work as the acceptable norm are part of a 'vicious' circle and those who value compliance are part of a 'virtuous' circle; with circle membership helping to reinforce current behaviour and attitudes into the future. It is likely that these points of view appear to strengthen over time, making it easier to dismiss alternative practice and arguments that support different ways of doing things. Within these concepts – of vicious and virtuous circles – a qualitative segmentation was developed which clearly categorises employers and business types.

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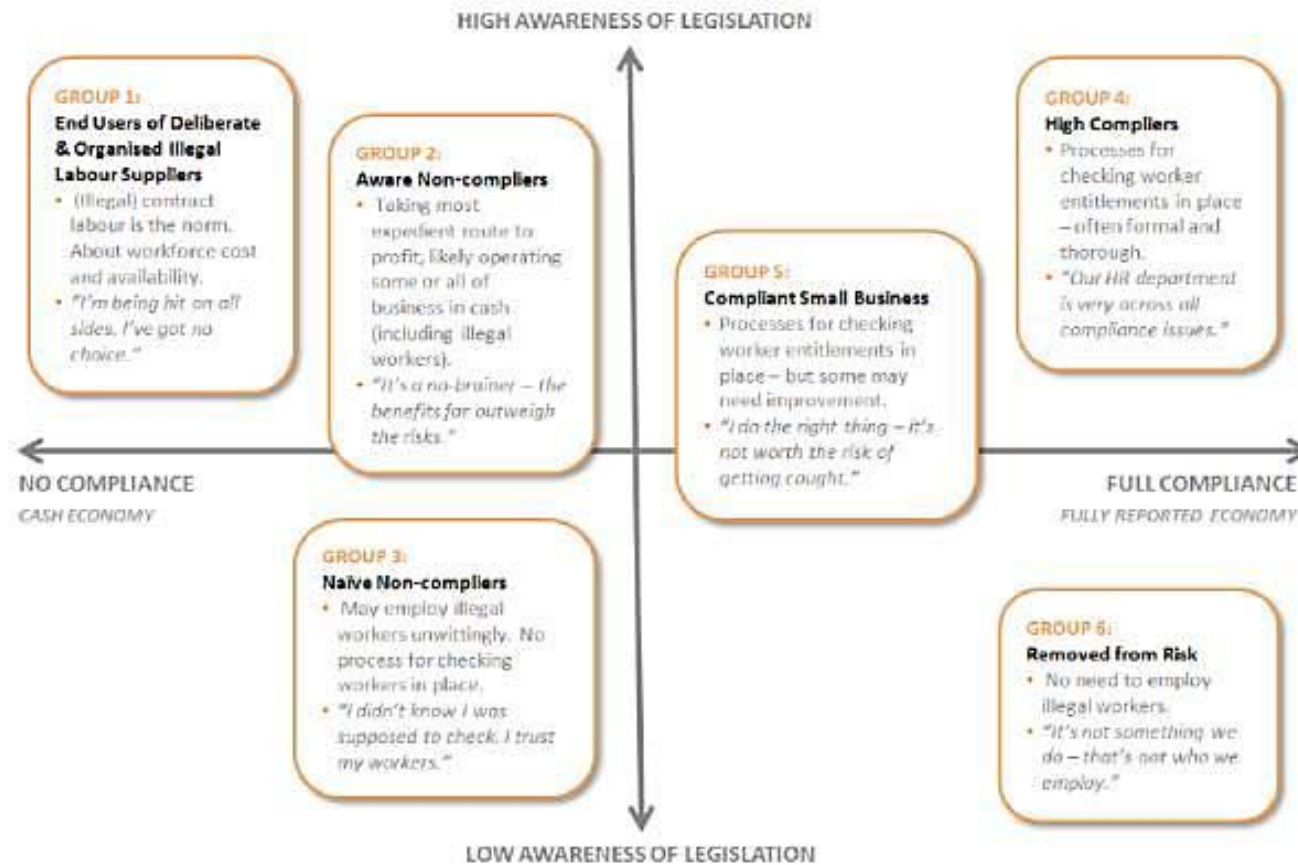
<sup>6</sup> The 'Engagement Strategies Associated with Deterring Illegal Workers' (11<sup>th</sup> October, 2012) report prepared for the Compliance Status Resolution Branch of Department of Immigration and Citizenship by Hall & Partners | Open Mind identified the segmentation of employers in high-risk industries, with regards to their propensity to employ illegal workers.

The variables suggested that best distinguish business in respect to their employment of illegal workers are:

- 1) The level of awareness of employer obligations required under the 2007 employer sanctions legislation
- 2) The level of compliance with the legal obligations required under the 2007 employer sanctions legislation

Quantitative analysis of employers in high-risk industries indicates that businesses who could be considered both aware of the legislation and non-compliant form less than 1 in 10 of the sample, indicating a small, but not insignificant proportion of businesses are the issue.

A summary of each of the six groupings is as follows:



The groups are:

**Group 1: End users of deliberate and organised illegal labour suppliers:**

Typified by some agriculture and (non-unionised) construction sub-industries, this segment reports use of illegal workers (supplied through contractors and agents) as being the only way to meet their business needs in relation to workforce quality and supply. Cost is also an issue, and black market employment rates have become the benchmark labour cost in industries where the level of illegal employment is high. Hence, they say, while they would like to operate within the law, using illegal labour is the only way to remain in business. There is some discomfort with the semi-acknowledged potential for exploitation of illegal workers and their own tenuous position with regards to the law, but these employers see these as risks that they have no choice but to manage.

It is the use of unlawful labour hire contractors that for many is driving employment of illegal workers, rather than specifically seeking out illegal workers themselves. Contractors are valued for the flexibility they provide and subsequent reduced administrative and financial burden for employers. Contractors allow employers to manage their fluctuating employment needs by season or by job and take on the paperwork of employing workers, with employers only having a single invoice (i.e. per week/job). While many employers reported paying at or near the minimum wage to contracted workers, they did not have to meet the additional burden of payroll tax, superannuation or WorkCover. They tend to argue that contractors are the 'real employers' and bear ultimate responsibility for employment issues including illegal work. These end users of subcontractors tend not to position themselves as an 'employer' (and therefore can rationalise or block out messages targeted at employers).

They will strongly argue that employing illegal workers is the only way to meet their workforce needs – and dismiss as 'uncaring' and 'lacking in understanding' any propositions to the contrary that do not involve measures to address these workforce shortages. Anything less is seen as unjust.

**INDUSTRY INSIGHT – HORTICULTURE INDUSTRY:**

Fred and his brother own several farming businesses, among them citrus and packing. They have had an arrangement for several years with groups of Fijians and then Tongans who would come and work at their farms and live in the accommodation they provide.

They work during the harvest season and are paid cash-in-hand. When they leave to go back to their own countries – they ‘replaced themselves’ – sending other friends or relatives to fill in their positions. They have left now (this season – after having a successful arrangement over the last few years)

Fred and his brother were then approached by two contractors, one Indian, one Turkish – and now use them to supply the labour needs.

*“It’s contract labour – piecework – they turn up and say “that job’s worth \$5k” and so we just pay them that much to do the work ... it’s brilliant – it’s so much easier – they just come with the people and we don’t have to bother about anything – we just get the invoice at the end of the week and give them a cheque – they come every Thursday and it’s all sorted out for that week ... we don’t even know who’s on the property – sometimes it’s 4 people, sometimes it’s 12 – but it doesn’t matter - we don’t mind – they always turn up ... I hope they’re doing the right thing – but it must be alright – they keep on coming back”*

**Group 2: Aware non-compliers**

This segment is typified by SMEs which appear to have embraced the black economy more broadly. The combination of low perceived risk and high benefits in terms of cost savings and convenience make illegal workers an attractive workforce option. In our sample they included food, manufacturing, retail, construction and transport (delivery) sectors. Taking the most expedient route to profit, they are likely to be operating some or all of their business ‘off the books’, including paying employees cash in hand. This is seen as normal, and a minor legal infringement. There is an attitude that these are not serious offences as *“everybody does it”*. Qualitatively, SMEs ethnic backgrounds, from sub-sectors including restaurants, cafes, takeaways, small manufacturing, service sector, small construction, trades, landscaping, gas stations, convenience stores, cleaning, delivery van driving and unlicensed brothels were identified as falling into this category.

These employers are highly likely to be paying less than the award wage to their workers, and may justify this with a strong belief that Australian award wages, penalty rates, and taxes on employers are excessively high. Similarly to Group 1, these employers will justify lower wages by making comparisons to standard rates in their workers’ home countries.

While there is a clear financial benefit to using illegal workers, employing illegal workers is also largely opportunistic. The path to finding workers is informal: referrals from existing employees,

family and local community connections; workers who approach them directly or through other less formal channels (e.g. [online employment site]). Smaller businesses (< 50 employees) were more likely to be approached directly by illegal workers (41% vs. 25% of sample)<sup>7</sup>.

They have a low perceived risk of getting caught: Employers consider that there is minimal government enforcement of policy in this area, and hence the risks of getting caught are felt to be very low. They also have a strong culture of 'off the books' activity: To these employers, their own and their peers black market operations appear highly normalised. In the qualitative sample we heard of "half on the books, half off the books" activity, in which employers will have a mix of legal and illegal workers, or where employees will work some hours legally, and additional hours illegally (i.e. international students with legal work hour limits). Some employers said that making tax evasion arrangements not only for illegal workers, but also for Australia workers who may receive Centrelink benefits (such as university students on youth allowance), is not an uncommon practice. This suggests an ingrained pattern of behaviour that will be hard to disrupt.

#### INDUSTRY INSIGHT – RESTAURANT INDUSTRY:

Tony is from China and runs his family-owned Chinese dumpling restaurant in a suburb of a major city that has a high concentration of Chinese businesses. He has 7 employees, some of whom walked into the restaurant looking for work, some of whom were recommended by other colleagues, and some he found after placing an ad in the local Chinese newspaper. Their skills and availability are more of a deciding factor for him deciding to employ them than their eligibility to work, he says that there aren't enough Chinese chefs in Australia who have the skills in making dumplings, and especially to innovate. *"We've spent 10 years making the same thing, now we want to do new product, expand... to train a new chef requires significant investment"* – and there are no courses offered in local training colleges that he could take advantage of, so he employs chefs who come to Australia on a WHV. He is aware that having someone work more than 6 months on a WHV is illegal, and is wary of being caught... especially as he says that it is common knowledge that there is a financial incentive for local business to "dob in" illegal workers *"they get \$5,000 from the immigration office – this money won't make them rich, won't change their lives – they go and spend it at the casino - this is wrong, very wrong... Immigration is giving us too much stress"* Language is also an issue in his entirely Mandarin-speaking workplace. *"I've never had an Australian citizen work for me – we tried once with an [English speaking] chef but he didn't last 3 months – too hard in the kitchen to translate all the time – we have all local people, we are helping the economy"*. Tony sees his position as one of necessity and inevitability – he needs the staff, they are available and willing, and there is little disincentive to continue operating in this fashion.

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<sup>7</sup> The 'Engagement Strategies Associated with Deterring Illegal Workers' (11<sup>th</sup> October, 2012) report prepared for the Compliance Status Resolution Branch of Department of Immigration and Citizenship by Hall & Partners | Open Mind

### Group 3: Naïve non-compliers

These employers are typified by smaller business owners who, while generally law abiding, do not prioritise a high level of awareness of (and hence compliance with) their legal obligations with respect to employing illegal workers. They tend not to have processes in place to check the working entitlements of their non-citizen/resident employees (this cohort is not a large part of their workforce), and as such might easily – and unwittingly – employ illegal workers. They rely on the honesty of their employees and express shock if drawn into a compliance situation.

We suspect, and suggest this is tested out in the quantitative study, that employers of Anglo-Celtic ancestry are over represented here – small businesses in a variety of industries that are not even necessarily operating cash in hand who might have inherited employees when they bought a business, or are just unaware of their obligations. This could be in the food / restaurant industry, but also a wider variety of small business – for example landscape gardening, small manufacturing etc. It could also be that an employer takes on someone who is legal at the time, but is not aware that their status has changed and that they have forfeited their work rights.

These employers are unaware of their legal obligation to check work rights. It simply does not occur to them that they might have a role in ensuring that their workers are legal – they feel time-poor and immigration is not top of mind in the day-to-day running of their business. Whilst law abiding, these employers can be reluctant to agree that this is a burden that should be shouldered by business. If pressed, they are likely to assert that an employee's visa status is matter for the individual employee and the government – not the employer.



## INDUSTRY INSIGHT – COFFEE SHOP FRANCHISE

Sharon and her husband bought a coffee shop franchise after they were both made redundant during the GFC – with little experience of running their own business, they appreciated the initial support provided by the franchisor, which included the hiring of the original employees. The challenges of learning how to manage a business were significant, and now 18 months down the track, Sharon admits that she was quite “green” when she first started – and that finding and managing their own staff was a very steep learning curve. She employed a young student and had no idea that she had any work restrictions in terms of her hours – and the girl did not bring it to her attention. The first that Sharon heard of it was a visit from immigration *“I just had absolutely no idea – the franchisor did the original employment and maybe they checked the original workers, I don’t know, but I feel annoyed that if they knew they should check that they didn’t tell us... I’ve called them up, and also raised it at a franchisee meeting... that they should give us training about doing this... and there are maybe 17 franchisees in Victoria, and none of them at the meeting knew they had to check, not one!”* Sharon then reduced the employee’s working hours but the situation had soured – Sharon felt resentful that the employee hadn’t been upfront when she was hired, and the young girl persisted in wanting to work more hours – and after a few weeks she left.

Sharon has now insisted that the requirements and methods for checking work status are included in the company’s training manual.

### Group 4: High compliers

These typically medium to large businesses have dedicated human resources functions to ensure that they meet all their obligations with respect to government workforce regulation, and in general place a high degree of importance on compliance (including for reputation reasons). They appear highly likely to be members of industry associations and peak bodies and otherwise have links to organisations interested in employee welfare (i.e. unions) and include large businesses across all at risk industries: hotels, clubs, labour hire agencies / intermediaries, supermarket chains, fast food chains. They also appear more likely to be already conducting checks.

### Group 5: Compliant small business

Typified by SMEs, these businesses are highly risk averse and tend to believe in the effectiveness and fairness of ‘the system’. In our qualitative sample they appeared to have a number of protective factors that help avoid the need for illegal labour – they are less likely to be under severe financial pressure (including those sectors with low margins such as hospitality) and more likely to have a permanent and stable workforce. Some non-Anglo-Celtic Australian employers in this group voiced concerns about the way in which illegal workers can stigmatise immigrants more generally.

They have a lack of awareness as to the best way to check illegal worker status (i.e. might check copies of passports not originals, using TFN / ABN or bank account details as evidence of right to work, only checking visas in passports, or not checking work rights regularly).<sup>8</sup>

### Group 6: Removed from risk

These are businesses whose circumstances do not require access to illegal workers – they are highly specialised or require excellent English language skills or professional qualifications. If they do have non-citizen or resident workers it is more likely that they have entered Australia and are working legally through the skilled migration program.

### The vicious and virtuous circles of compliance

The following discussion is drawn from the broader Employer study and is reproduced here for the sake of completeness.

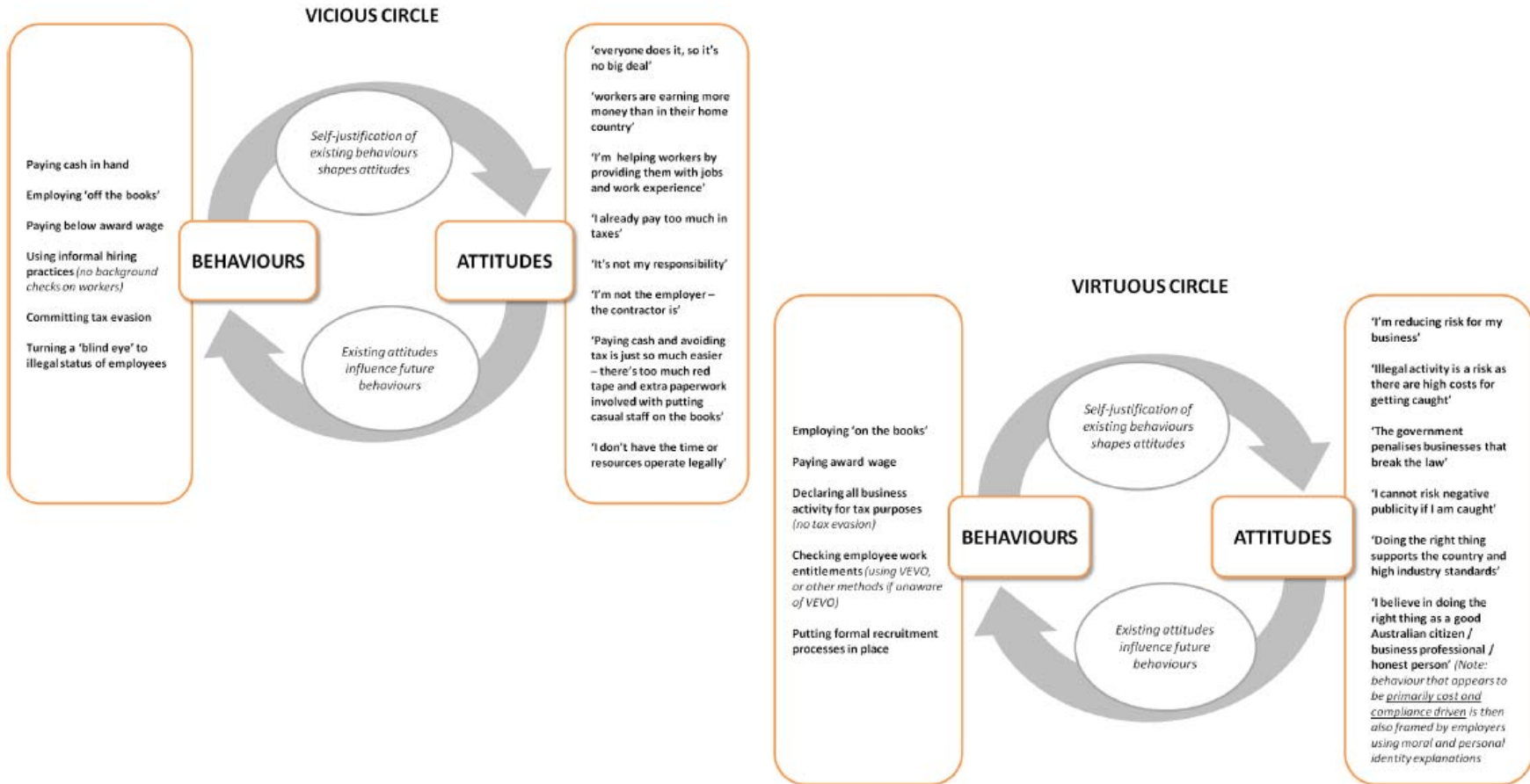
Above we discuss two very distinct perspectives from employers on how they view 'normal' with respect to employing illegal workers. We would further suggest that membership of the two cohorts in turn perpetuates these perspectives, so that those who see illegal work as the acceptable norm are part of a vicious circle and those who value compliance are part of a virtuous circle; with circle membership helping to reinforce current behaviour and attitudes into the future. It is likely that these points of view appear to strengthen over time, making it easier to dismiss alternative practice and arguments that support different ways of doing things.

The following charts flesh out these concepts more fully.

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<sup>8</sup> You can only complete the TFN application online if you are a permanent migrant or temporary visitor who is actually in Australia. You must also be either:

- a working holiday-maker
- a New Zealander and you are automatically granted a visa on arrival
- an overseas student and your visa has been amended to allow you to work
- a person with a valid visa allowing you to stay in Australia indefinitely
- a person with a business visa



## 5. FRAMING ILLEGAL WORK AMONGST THE GENERAL COMMUNITY

The issue of illegal work is not a top of mind one for the Australian community. And even when it is raised, it is poorly understood. The term, ‘illegal work’ has connotations of the informal labour market and undeclared income, rather than suggesting work rights as conferred by visa status. Thus the community is more likely to associate the term with ATO and Centrelink infringements rather than ones to do with immigration.

Since many people have at some stage worked for ‘cash-in-hand’ (for instance as students or when travelling overseas or casually helping out a friend) they don’t tend to see *illegal* work defined as cash-in-hand as a serious issue for Australia.

*“You care if it [illegal work] affects you personally - as long as they are doing all the right things and it doesn’t affect me - I don’t care”* Female, general community, Melbourne.

*“I worked in a bar in London for cash. It was illegal, but no one cares about that. It’s what everyone does”.* Female, aged in her 30s, General Community

Terminology is therefore important here. There is a need to qualify the meaning of ‘illegal’ work as work by those who don’t have the right to work in Australia. However, as this group is (by definition) not Australian, this can lead into racist territories by conflating lack of language skills/not being Anglo Australian with being ‘illegal’. The risk is that the discussion leads away from issues of illegality (wrong visas) to one of racism. Hence policy and programs need to be explained in such a way that they are clearly about illegal activity and not ethnicity.

If pressed further about the definition of ‘illegal work’ beyond the immediate association with cash-in-hand, people will associate ‘illegal work’ with farming, and then with the restaurant, sex industry, construction industry, open air markets, labouring, cleaning jobs, manufacturing and taxi industries. Non-Anglo-Celtic Australians also tend to associate illegal work with local community businesses including those in the retail and the service industry (i.e. convenience or grocery stores, gas stations and nail bars). The extent to which illegal work is perceived as an issue of concern to the general community is also mediated by the general community expectation that government is doing what needs to be done to monitor and control the incidence of illegal work.

A frame analysis was applied to Australian community perceptions of illegal work to identify key underlying heuristics and cognitive biases shaping the way audiences including the general public, employers and illegal workers themselves engage with the issues. This analysis shows views about illegal work vary enormously depending on how they are defined and put into

context. The same individual or group can in one sitting express both highly positive and highly negative views of illegal work – they very easily see both sides, and will fall to one or the other depending on how the issue is presented to them.

The table below presents some commonly expressed themes. Of note is the way in which positive frames (those that position illegal work in a positive light) have to do with the individual illegal worker and their personal situation; the more negative frames concern macro issues – the economy as a whole, such as job shortages, our industrial relations system, occupational health and safety system and productivity.

|              | Views                                                                                                                                                                                                         | Frame                                                                                                                          |
|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| +ve framing: | Willing to work/ sacrifice everything to get ahead<br>New ideas/talents and skills<br>Doing work Aussies won't<br>Making services/goods cheaper for us<br>Helping them contribute to their families/get ahead | <i>Deserving</i><br><i>Enriching</i><br><i>Contributing</i><br><i>Benefiting me</i><br><i>Caring</i>                           |
| -ve framing: | Making us like Greece/lawless/no tax<br>Taking jobs from Aussies<br>Pressure on work rights<br>Workers exploited (no super/workplace insurance/training)<br>Making legitimate business uncompetitive          | <i>Impoverishing our nation</i><br><i>Unfair</i><br><i>Diminishing worker rights</i><br><i>Unconscionable</i><br><i>Unfair</i> |

These frames are described in more detail below:

- **Willing to work/to sacrifice everything to get ahead – illegal workers framed as ‘deserving’:** These community attitudes focus specifically on the moral attributes of the individual worker, positioning them as someone in deserving circumstances who is (rightly) prepared to go far to provide for themselves and their families, even if this means operating outside of the accepted norms. The general community acknowledges they may not be able to fully appreciate their situation, not having had the misfortune to find themselves in similar economic circumstances. Work becomes the means for people to pull themselves out of dire situations – the worker is deserving of sympathy and recognition for their efforts.

*“I know people who are so desperate that they just do whatever they can to extend their stay.”* Female in her 30s, general community.

*“Illegal workers really bust their arse – they are fired up.”* Employer

*"I'm grateful to be born in Australia – if other people are able to make that luck for themselves – then good luck to them!".* Female in her 40s, general community.

- **New ideas/talents and skills – illegal workers framed as 'enriching':** People arriving to work in Australia from overseas are often recognised as having considerable skills and talents, which may be ascribed to a strong commitment to education in their home country (particularly Indian and Chinese).

*"This guy right, from [south-east Asia] is really amazing at tiling, he does in hours what other guys would take days to do... but see the thing is... he has had that much more experience, 'cos they work much longer hours over there, so he's done loads more of it, and it really shows"* Employer, tiling business

- **Doing work Aussies won't – illegal workers framed as 'contributing':** This heuristic is reflexive and pervasive – and is deployed as one of the most common responses in explaining the dynamics of illegal work. It positions Australians as lazy and expecting something for nothing (something employers grumble about at the best of times!) and illegal workers as the opposite, for which they should be admired. However, this is not to say that Australian workers aren't seen to have a point. There was also a commonly held view that it's expensive to live here and that Australians would be compromising their moral stance if they just accepted work 'no matter what'. Jobs should go to Australians – and then "fair enough if they can't fill them" – employers should then be able to look around.

*"So when it comes to those kind of jobs that you actually need labour, you need someone to be there, Australians don't want the job. Then you need other people to fill in those kinds of places. And it ended up that you have to pay cash. Because they're willing to work, but they can't work on paper."* Non-Anglo-Celtic Australian Employer

*"Because I think, the way I see it is, people from other countries are hard workers. While Australians are all laid back, people from different ethnicity they're all hard workers... it could be because they have to try to be here, so they have to try harder, put extra work into it."* Non-Anglo-Celtic Australian Restaurant owner

- **Making services/goods cheaper for us – illegal workers framed as 'benefiting me':** There is a recognition in the general community that cheaper labour means cheaper goods and services.

*"Unless you have a conscience about supporting the economy – you are always driven by the price."* Male, 40+, General Community

*"There are a lot of refugees, Afghans, who have saved a lot of businesses – they've put them together with work opportunities and they might sometimes be people who don't have a work visa, but the problem there is that the farmers are getting squeezed by the supermarkets"* Non-Anglo-Celtic Australian employer

- **Helping them contribute to their families/get ahead – illegal workers framed as ‘caring’:** This attitude that highlights the benefits to other people of illegal work serves as a way to mitigate the negatives. Again on a personal level, it is a projection of what an individual might do (if pushed to it economically) to provide for their family. It positions illegal workers as compassionate, responsible and caring.

*“They’re doing right by their families – it’s not really their fault.”* Female, 50+, general community.

*“They can be working really hard, and they send their money back home... they’re not hurting anyone... maybe the rules need to be looked at.”* Female in her 40s, general community
- **Making us like Greece/lawless/no tax – illegal work framed as ‘impoverishing our nation’:** This view reflects a broader economic concern of the effects of illegal work on society generally. In conjunction with taking work away from Australians, concern about the lack of regulation of illegal work drives a critical view of the workers themselves.

*“It can’t be a free for all otherwise it would just be a race to the bottom – it sort of spirals down – somewhere there needs to be a balance – where it’s reasonable.”* Male, 40s, Small business owner

*“If you are paying tax you are contributing to the economy and you are contributing to the public fund as well. But if you are working without visa, and then they take that money away, they aren’t contributing. Actually the Australian community is losing because money is going outside.”* Non-Anglo-Celtic Australian respondent, general community
- **Taking jobs from Aussies – illegal work framed as being ‘unfair’ to Australians:** This attitude reflects the idea that when illegal workers accept work below the minimum wage, that they are removing opportunities from Australians. This is most strongly felt by those who were currently unemployed.
- **Pressure on work rights – illegal work framed as ‘diminishing worker rights’ for all:** This view highlights larger issues around illegal work, as they are perceived to affect workers more generally – reflecting a general concern that a downgrading of standards in some areas can have the effect of creating new benchmark lows across entire sectors, as well as being dangerous to other workers where minimum safety standards are not enforced.

*“We are here – we should play by the rules – if you don’t it creates an environment where working conditions all get undermined.”* Male, General community
- **Workers exploited (no super/workplace insurance/ training) – illegal work framed as being in an ‘unconscionable’ situation:** There is genuine concern that illegal workers have little potential or means to assert their rights, and that this is clearly wrong from a moral perspective. At the extreme end, this is framed as ‘trafficking’, where the worker is forced against their will into an illegal labour situation, and is particularly associated with the

sex industry. In its milder form, is seen as an unscrupulous employer taking advantage of the illegal work status of an employee.

*“Trafficking? This willingness to buy into Asian sex trade and to see Asian women as submissive and sex slaves and it is quite entrenched and from movies, it is the popular perception of media portrayal. There are a lot of myths about the sex industry, say an incident that happens if it had been in another industry it wouldn’t have been a big deal or the occupation wouldn’t have been bled across the front pages. When 99.9% of the cases you don’t hear about as it is just people going about their work”. Asian sex worker and sex industry stakeholder*

*“I don’t know if you guys have heard but there used to be an Indian restaurant here... he used to pay cash in hand to this worker. What he did he put camera there, got a recording, and he was a student here. He took that to the government. He said this guy pays me 6 dollars an hour. Gets me to work like a dog. Right. Because he was doing kitchen hand, waitering, everything. Got the restaurant shut”. Non-Anglo-Celtic Australian General Community, Male.*

- **Making legitimate business uncompetitive – illegal work framed as being ‘unfair to Australian businesses who do not engage in such behaviour:** This attitude is the inverse of the positive view that illegal work can contribute to keeping prices low. Closely linked to the cash-in-hand economy, the ready supply of illegal workers who are willing to work for low wages results in lower operating costs and cheaper prices for businesses that are not discriminating in who they employ. Businesses that choose to operate legally are then at a competitive disadvantage.

Like the general community, illegal workers frame illegal work both positively and negatively. Their positive frames are based on very similar views to that of the general community, but of course, reframed from an individual perspective: they include ‘willing to work/to sacrifice everything to get ahead’, ‘New ideas/talents and skills’ and ‘Doing work Aussies won’t’.

In this they focus almost entirely on the important contribution they make to Australia. They have firsthand experience of the struggles their employers have to find adequate workers, and know their value. While most appear to know that what they are doing is illegal, the tendency is to view this as a technicality. In fact, they tend to argue, not that they should be adhering to the law, but that the law should change to legitimise their work.

Awareness of illegal work is higher amongst employers, particularly in those industries where illegal work is more prevalent. But even here it is not top of mind – the issue has to be raised. Like illegal workers, employers frame illegal work very similarly to the general community. If anything, illegal work arrangements tend to be seen as fair and normal – they provide work to those who really need it, and help businesses continue to operate in a difficult environment.



## Implications for building community support and cooperation

When these groups are asked directly what government should do with respect to illegal workers, many say that the real solution is allowing these people who are keen to work to stay: *“Legalise their situation. They want to work and no one else wants the job, so let them have it”*

Their second answer tends to be *“getting dole bludgers to do the work!”* This was a surprisingly common response. That is, if these illegal workers can get work, why aren't those on the dole able to?

*“So many bludgers paid out of our taxes, not fair to us. Make them work”* Non-Anglo-Celtic Australian, Filipino

*“We need a strict system... but then the local restaurants will close”* Non-Anglo-Celtic Australian, Chinese

Frames, as strongly held world views are very difficult to shift. This has implications for government efforts to gain community and business support for or participation in efforts to target illegal work.

If arguments are framed so that they tap into positive views of illegal workers – that is, in terms of the individuals who undertake illegal work – as outlined above, it is easy to elicit sympathy for illegal workers. Sympathy can be higher amongst the middle class (compared to other low paid workers/unemployed/some migrants who see illegal workers as competition and fear lowering of minimum standards).

*“How else can they survive?”*

*“They are sending money home where they have so little.”*

*“How else can they pay for courses?”*

In this context we would note that talking about ‘visa over-stayers’ escalates the seriousness of the issue – when framed in this way illegal work becomes, not an accident/doing a bit of casual work while here on holidays but criminal activity by people who shouldn't be in the country. It is universally seen as much more serious (who are these people? How can we monitor them? What if they commit a crime? How can we find them?)

Illegal workers themselves generally think that Australia has rules and regulations in place to police illegal work and that they should be enforced – even those who are on the wrong side of the law still think that the principle holds... but just not for them because their individual situation is special and they are deserving. However, many don't consider that they are at high risk of being caught (the Heroes), and there is a fairly widely held view that it is possible with perseverance to win the government around even if they are caught. ‘Victims’ on the other hand can hope that they will be caught but are inclined to think that the Australian government is outsmarted by people like their agents and employers who can seem very powerful. There is also a perception that Australia deals very well with people who are caught – that they won't ‘disappear’ or be mistreated and if sent back, this might be paid for.

## 6. NETWORKS OF ILLEGAL WORK

The study has also pointed to the importance of *networks*, both in understanding connections to work but also in suggesting ways to disrupt illegal work. Some networks are more likely to be used by those who are opportunistic and in control of their situation; others are more likely to figure in the stories of those who feel out of control and a victim of their situation. However, the key insight is that the opportunity to disrupt these networks would seem to be greater than the opportunity to intervene at the level of the individual illegal worker. As discussed above, unless they are clearly being victimised and looking to the government to 'save' them, illegal workers appear to very unlikely to see what they do as truly 'wrong'... just 'unfair'! And by and large, this mirrors the view of many of the employers and the general public.

In addition to the organisation of travel prior to leaving Australia, it appears that there are significant levels of organisation and systems within the illegal labour hiring and employment processes. The key networks include:

- **Labour hire contractors (agriculture):** There are several levels of labour hire contractors that operate to service employer requirements, particularly for the horticulture industry. At the highest level there are legitimate labour hire agents who provide a full labour hire service to their clients, many using backpacker labour. This represents the most expensive option for farmers. Entirely organised by the contractor and completely above board – clients are paying their workers full wages and entitlements, as well as a premium to the agent for full organisation and overseeing the process, which would include transport of workers to the work location and even provision of timeclocks to ensure employees are working full shifts.

The next level contains more localised businesses, for instance where the owner of a backpacker hostel provides accommodation, and also organises the backpackers to work for local farms – with fewer overheads and a bit more flexibility. This would largely be above board, but could still represent a cheaper option for clients, with the hostel owner providing transport and taking less of an overhead himself.

At the other end of the spectrum, illegal contractors work with agents / facilitators overseas to recruit workers for specific locations – in Australia they would approach a farmer (or other producer) directly and negotiate a set price for getting a crop down or a volume of work done. The rate can be negotiable, and a farmer may be paying the equivalent of close to the minimum wage, but it is certain that the agent would be taking a significant cut, and that workers are doing longer hours for the wages. The workers' food and accommodation would also be deducted from their wages. Illegal contractors are a closed circle, operating underground. Farmers report only having a mobile phone number on which to contact them, and they do not have offices, but rather visit the farmer once a week to collect a cheque – there is little interaction between the farmers and the workers, also because of a lack of English. Significantly, farmers are very willing to abrogate responsibility to these labour hire

contractors, including with regard to the extent to which they employ illegal workers.

- **Agents – sex industry:** *“It does happen. It’s not uncommon where people have to use agents to get visas. Some people refer to all 3<sup>rd</sup> party agents as trafficking, but it’s not uncommon in Asian cultures to get an agent. If you look at the [visa application] form there is some pretty complicated requirements. They don’t make it simple. If English is not your first language often you do require support, it’s often easier to go to a migration agent and pay them to do that. And there are migration agents in Australia and that is legitimate. But if it is a migration agent in Thailand then they [incorrectly assume that it] must be trafficking. It’s quite common for people to use agents”.* Asian sex worker and stakeholder – sex industry.
- **Ethnic communities (family and friends):** Finding work within a particular ethnic community or language group (including businesses owned or operated within that community) appears to be a common way to source illegal work. Illegal workers speak of being comfortable in a workplace that features a common language and culture while employers can value particular language skills (if spoken by other staff or the clientele). To illustrate, anecdotal reports included reference to illegal jobs being ‘passed on’ through particular families, cycling through Australia on temporary visas.

Historically, word of mouth, spread through friends/family already in Australia, agents and other facilitators, has indicated that it is possible to work illegally in Australia and earn money. There was always the potential that word of mouth could overemphasise ease of opportunity as well as the boundaries between illegal and legal work. Interestingly, in this study there were a number of instances of anecdotal feedback that this situation may be changing – and that the Australian Government is viewed as ‘getting tougher’ on illegal work.

In addition, the provision of jobs within these ethnic communities can act to strengthen community ties – work provided for family members and friends acts as ‘favours’ and serves a social as well as financial purpose. Many employers and employees reported opportunistic job hunting in specific geographic areas, often those that represented concentrations of ethnic businesses – restaurants will advertise in shop windows and workers will come and enquire about work direct to the place of business.

- **Online job hire and classified sites:** Advertising ‘cash-in-hand’ work on online job hire and classified sites is reportedly common practice. [Online employment site], an online classified site had reportedly recently banned use of the term, however, illegal workers say that it is still very easy to ‘read between the lines’ and source illegal work through the site. There were also reports of in-language equivalents of [online employment site] – (e.g. ‘Chinese [online employment site]’)

*“I use [online employment site], and [online employment site]. [Online employment site] is very good for sourcing labourers, because there’s a lot of itinerant Irish and English blokes travelling, who are looking for labouring work. And some of them are good, some of them aren’t, you just try them out and say thanks mate, it’s been fun but you’re out of here, or*

*come back tomorrow. And they don't care, there's no hard feelings. It's okay sweet and off they go.*" Building contractor - employer

- **Long-term visa holder communities (backpacker/working holiday makers/students):** Sourcing illegal work (amongst other visa related matters) can become a key topic of conversation and a source of useful tips amongst these communities; who as they bed down in Australia can become much more committed to staying and finding ways to prolong their stay.
- **Overstayer communities:** Similarly to the above communities, overstayer communities can pass on advice and information about working illegally. The fear and distrust of authority that can come with working illegally while overstaying a visa means that usually only other overstayers are entirely trusted.
- **Ethnic press:** as another key part of ethnic communities – many jobs will be advertised in ethnic newspapers. Given that they are in-language, and that lack of English can be a significant risk factor in seeking illegal work, they represent a key channel for those seeking casual work.

There appears to be significant value in being able to infiltrate and disrupt these networks. In particular the predatory organised labour hire and online job hire classified sites offer potential for regulation and enforcement in their activities. In addition, there is an opportunity for engagement and enforcement with ethnic businesses, to ensure that they are held to the legal standard.

## 7. CONCLUSIONS WITH RESPECT TO MANAGING ILLEGAL WORK

This study identifies a number of push and pull factors that potentially offer an opportunity to manage illegal work. These push and pull factors are both individual and structural and are discussed below.

|                                                           | Push                                                                                                                | Pull                                                                       |
|-----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|
| Individual (worker)                                       |                                                                                                                     | <ul style="list-style-type: none"> <li>• Financial need</li> </ul>         |
| Structural (Australian labour market; visa travel market) | <ul style="list-style-type: none"> <li>• Organised travel to Australia</li> <li>• Organised labour force</li> </ul> | <ul style="list-style-type: none"> <li>• Supply of illegal work</li> </ul> |

### Individual factor: financial need

While there are a variety of push-pull factors, working illegally is seen by illegal workers as something they have to do. Australia represents a chance to be employed, and to earn much more money than they could hope to earn in their country of origin. This cash bottom line means that – except for those who are in quite parlous work circumstances (the victims) – there is little opportunity to persuade illegal workers to voluntarily desist.

It would be possible to undertake communications that give information about rights and responsibilities with respect to illegal work, including as ‘prevention’ (prior to entering illegal work in Australia and overseas) and ‘cure’ (once people are in illegal work). However, targeting prevention communications would prove difficult and would likely not be successful unless very well targeted (the right communications intervention at the right time and place).

In addition, most who are already working illegally are unlikely to be easily persuaded that they should change. As we have seen – those illegal workers who see themselves as heroes or everymen tend to see the government as a villain if it intervenes. While most can agree at a hypothetical and conceptual level that the government is entitled to enact the law (especially if this protects those who are exploited) at a personal level this is mostly not welcomed. There is little chance for the government to persuade these illegal workers of its legitimacy on the level of individual action.

The inference is that this situation requires a regulatory and enforcement approach rather than information and persuasion. We would suggest that given the strength of the views held by illegal workers, the gentler end of the spectrum of available interventions (provision of information, persuasion, self-regulation, enforcement) will likely not be effective in deterring illegal work for those with this strong self-story. Provision of information (as to visa holders rights and responsibilities in relation to illegal work) as well as more persuasive techniques (social

marketing and behaviour change campaigns) are unlikely to deter those already in Australia. This tends to indicate that it is the structural push and pull factors that need to be addressed.

### Structural factors

#### Supply of illegal work (employment market)

Following financial need, this is possibly the chief factor driving uptake of illegal work. As discussed above in the 'employer' section, there appears to be a considerable supply of illegal work in Australia, especially as relates to agriculture, hospitality (and the unskilled service sector more broadly), construction and sex industries. For those workers who are highly vulnerable, and whose desperation is evident, removing supply may well be the only way to address their demand. It is anticipated that the introduction and enforcement of proposed reforms concerning employer sanctions around employing illegal workers will address some of the issues to do with employers. However, there are clearly broader compliance and enforcement issues to do with the more organised end of the illegal labour market spectrum – to do with debt bondage, trafficking and use of illegal labour hire firms – that will require additional action.

Theoretically, it may also be possible to change employer norms to do with illegal work (acceptance of illegal work, increased salience of illegal work as an issue) through shifting community views – at present there is potential for high levels of tolerance of illegal work. However, this work would be difficult to do and require a large communications budget – and there would still be a question as to how much it would achieve. While it will be important to address framing of the issue as part of routine communications, further investment seems unlikely to be worth the return.

In addition we note that industry representatives and illegal workers suggested that offering legal ways into employment makes people less reliant on illegal work i.e. visas for sex workers reducing debt bondage, and offering in language material for Korean, Chinese and Thai sex workers. Separately it has been suggested that 'trial' skills visas would be a valuable addition for other industries so that employers can make sure they want to sponsor people before taking on the commitment of full-time sponsored employment.

#### Organised travel to Australia

A common characteristic of many illegal workers is the high the degree to which their travel to Australia is facilitated by others. This includes by legitimate education, migration and travel agents, as well as less legitimate agents who deal in debt bondage and trafficking.

These agents organise everything from travel papers (passport and visas) to travel (air tickets and accommodation), study, and possibly work. This promotes illegal work in two ways – people are not necessarily aware of their exact work rights before or even after they arrive; and also,

people may arrive in Australia to a situation that they hadn't expected (students then having to work illegally, trafficked workers forced to work). The findings of this study do not suggest ways in which this organisation could easily be disrupted.

#### Organised labour force: use of semi-formal and informal networks to gain employment in Australia

In addition to the organisation of travel prior to leaving Australia, it appears that there are significant levels of organisation and systems within the illegal labour hiring and employment processes. There appears to be a key opportunity to disrupt the networks through which people find work. This avenue provides strong potential to address the problem of illegal work in a situation where employers and employees are not very interested in change. This includes targeting online advertising to become more legitimate; building support in ethnic communities for legitimate employment and further regulating organised labour hire (for example, informing farmers of their obligations, and investigating the potential to require registering and reporting of labour hire firms.)