

FAIR WORK COMMISSION

Matter No. 2016/25

FOUR YEARLY REVIEW OF MODERN AWARDS

HORTICULTURE AWARD 2010

SUBMISSIONS OF THE NATIONAL UNION OF WORKERS

Background

1. These submissions are filed on behalf of the National Union of Workers (NUW) in accordance with the directions issued by the Full Bench on 12 September 2016 and amended on 23 March 2017.
2. These submissions are made in respect of the applications by Mitolo Group Pty Ltd, Australian Industry Group and Maranello Trading Pty Ltd and others (**the employer parties**) to vary the *Horticulture Award 2010* (**Horticulture Award**).
3. The employer parties seek orders varying the *Horticulture Award* pursuant to:
 - (a) Section 156 of the *Fair Work Act 2009* (Cth) (**FW Act**) (**the four yearly review application**); and
 - (b) Section 160 of the FW Act (**the ambiguity, uncertainty or error application**).
4. For the reasons set out in these submissions the NUW opposes the proposed variations. The applications should be dismissed.

5. The status quo is that employees who perform work at “off-farm” packing and processing facilities are covered by the *Storage Services and Wholesale Award 2010 (SSW Award)* and are not covered by the *Horticulture Award* (**the relevant workers**).
6. The proposed variations each seek to vary the coverage of the Horticulture Award so that it covers the relevant workers.
7. As explained further below, the *Horticulture Award* has vastly inferior wages and conditions to the *SSW Award*.
8. The proposed variations are significant and will have the following dual effects:
 - (a) Firstly, the coverage of the *SSW Award* will be reduced;
 - (b) Secondly, the modern award minimum wages applicable to the relevant workers will be varied as minimum wages will be drastically reduced.
9. If the variations are ordered this will result in a significant diminution of the award safety net for low paid workers. The proposed variations would result in employer parties increasing profit margins at the expense of the low paid.
10. The NUW is entitled to represent and does represent workers covered by the *Horticulture Award* and the *SSW Award*.
11. The NUW relies on the following witness statements:
 - (a) The witness statement of George Robertson dated 21 April 2017 (**the Robertson Statement**);

- (b) The witness statement of Kay Rault dated 21 April 2017 (**the Rault Statement**);
and
 - (c) The witness statement of Mark Johnston dated 21 April 2017 (**the Johnston Statement**).
12. In Part A of these submissions, the NUW explains the impact of the proposed variations being granted by illustrating the vast differences between the *Horticulture Award* and the *SSW Award*.
 13. In Part B of these submissions, the NUW makes submissions as to why the four yearly review application should be dismissed.
 14. In Part C of these submissions, the NUW makes submissions as to why the ambiguity, uncertainty or error application should be dismissed.
 15. In Part D of these submissions, the NUW makes submissions as to why the Commissions should not entertain making a retrospective variation.

PART A: THE HORTICULTURE AWARD VERSUS THE SSW AWARD

16. The wages and conditions provided for in the *SSW Award* are vastly superior to the wages and conditions provided for in the *Horticulture Award*.
17. The Horticulture is inferior in the following key respects:
 - (a) ordinary hourly rates (across all classifications);
 - (b) early morning shift loadings;
 - (c) afternoon shift loadings;

- (d) night shift loadings;
 - (e) overtime rates; and
 - (f) public holiday rates.
18. Further to the above it must be noted that the *Horticulture Award* also provides employers with the option of negotiating “piecework agreements” which can significantly reduce the wages received by workers.
19. Attached to this statement and marked “**Schedule 1**” is document prepared by the NUW which illustrates the disparity between the wages that are payable under the *Horticulture Award* and the *SSW Award*.
20. Furthermore, the NUW relies on the Robertson Statement at paragraphs [9] to [19] which also addresses the disparity between the wages that are payable under the *Horticulture Award* and the *SSW Award*.
21. It is plain that if the proposed variations are granted the relevant workers will face significant detriment and hardship as the living standards of these workers will be drastically reduced.

PART B: THE FOUR YEARLY REVIEW APPLICATION

The legislative scheme and applicable principles

The central importance of the “modern awards objective”

22. Section 156 of the FW Act provides that the Commission must conduct a review of the modern awards after each four years of operation.

23. The Commission’s task in conducting a four yearly review is relevantly constrained. The task is to review the modern award against the modern awards objective to ensure that the modern award, in conjunction with the National Employment Standards (**NES**), “*provide a fair and relevant minimum safety net of terms and conditions*” (section 134 of the FW Act).
24. Pursuant to section 134(1) of the FW Act the Commission is required to take into account the following which are defined as “the modern awards objective”:
- “(a) relative living standards and the needs of the low paid; and
 - (b) the need to encourage collective bargaining; and
 - (c) the need to promote social inclusion through increased workforce participation; and
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
 - (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
 - (e) the principle of equal remuneration for work of equal or comparable value; and
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
 - (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
 - (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.”

25. In *National Retailers Association v Fair Work Commission* (2014) 225 FCR 154 at [109], the Federal Court explained that the above are “*broad considerations which the Commission must take into account when considering whether a modern award meets the objective set by s 134(1).*”
26. The Commission has accepted that no particular weight should be attached to any one consideration over another and to the extent that in a particular matter there is tension between some of the considerations in section 134(1) of the FW Act “*the Commission’s task is to balance the various considerations and ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions*” (*Four Yearly Review of Modern Awards – Annual Leave* [2015] FWCFB 3406 at [19] and [20]).

Necessity versus mere desirability

27. The Commission must be satisfied that the proposed variation is “necessary” to achieve the modern awards objective as section 138 provides:

“A modern award may include terms that it is permitted to include, and must include terms that it is required to include, ***only to the extent necessary to achieve the modern awards objective*** and (to the extent applicable) the minimum wages objective.” (emphasis added).

28. There is guidance on the requirement of “necessity”. It has been found that when considering whether the requirement is met the Commission is required to form a “value judgement” which is based on the prescribed considerations in s 134(1) with regard to the submissions and evidence provided by the parties on the prescribed considerations (see *Four Yearly Review of Modern Awards* [2014] FWCFB 1788 at [36]) (**the Preliminary Jurisdictional Decision**).

29. The Federal Court has emphasised the importance of the Commission distinguishing between what is “merely desirable” and what is established to be “necessary” (*Shop, Distributive and Allied Employees Association v National Retail Association (No 2)* [2012] 205 FCR 227).

The Preliminary Jurisdictional Decision

30. The *Preliminary Jurisdictional Decision* provides guidance to the Full Bench as to how it should conduct the review.
31. In the *Preliminary Jurisdictional Decision* the Full Bench explained that when conducting the review the Commission is not conducting this process divorced from the context of the creation of the modern award and will proceed on the basis that “prima facie” the modern award met the modern awards objective when it was made in 2010. Relevantly, the Full Bench stated:

“In conducting the Review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Part 10A of the *Workplace Relations Act* 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see Item 4 of Schedule 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective. The considerations specified in the legislative test applied by the AIRC in the Part 10A process is, in a number of important respects, identical or similar to the modern awards objective in s.134 of the FW Act. In the Review the Commission will proceed on the basis that *prima facie* the modern award being reviewed achieved the modern awards objective at the time that it was made.”
(emphasis added)

32. In the *Preliminary Jurisdictional Decision* the Full Bench has provided guidance as to how this review should be conducted. Significantly at [23] the Full Bench stated:

“The Commission is obliged to ensure that modern awards, together with the

NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a 'stable' modern award system (s.134(1)(g)). The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI's submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation." (emphasis added)

33. Without any doubt the proposed variations in the instant matter qualifies as a "significant change". This would seem to be an uncontroversial proposition.
34. Thus, it is incumbent on the employer parties to justify the proposed significant changes with a cogent merit argument supported by probative evidence. The employer parties carry the onus of satisfying the Commission that the modern awards objective is no longer being met. As explained below the employer parties fail to discharge this onus.

The special rule about reducing award coverage

35. Further to the above, there are a number of "special rules" in the legislation. It is submitted that two of these special rules are applicable in the instant matter and set out additional requirements that must be met by the employer parties.
36. Firstly, the special rule about varying modern award minimum wages in section 156(3) of the FW Act is applicable.

37. Section 156(3) provides:

“In a 4 yearly review of modern awards, the FWC may make a determination varying modern award minimum wages **only if the FWC is satisfied that the variation of modern award minimum wages is justified by work value reasons.**” (emphasis added)

38. Work Value reasons are defined in section 156(4) as follows:

“Work Value Reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

- (a) the nature of the work;
- (b) the level of skill or responsibility involved in doing the work;
- (c) the conditions under which the work is done.

39. Accordingly, in the present matter it is incumbent on the employer parties to satisfy the Commission that the proposed variations, which will vary the modern award minimum wages payable to the relevant workers, is justified on work value reasons. As explained below, the employer parties do not satisfy this special test.

40. Secondly, the special rule about reducing coverage in section 163(1) of the FW Act is applicable and key to the Commission’s consideration of whether to vary the award pursuant to the four yearly review application.

41. Section 163(1) provides:

“The FWC must not make a determination varying a modern award so that certain employer or employees stop being covered by the award **unless the FWC is satisfied that they will instead become covered by another modern award** (other than the miscellaneous modern award) **that is appropriate for them** (emphasis added)

42. The *Explanatory Memorandum to the Fair Work Bill 2008* explains that the legislative intent behind section 163(1) is to ensure that when workers cease to be covered by one award and commence being covered by another that the new award provides an adequate safety net.

43. Paragraph 623 relevant provides:

“Subclause 163(1) provides that FWA must not vary a modern award to restrict coverage unless it is satisfied that the relevant employers or employees will instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate to them. This requirement, together with the modern awards objective, is designed to ensure that when considering a change in award coverage, FWA considers **whether the content of the new award is an appropriate safety net for the employers and employees that would become covered by it.**” (emphasis added)

44. Accordingly, in the present matter it is incumbent on the employer parties to satisfy the Commission that altering the coverage of the Horticulture Award and the SSW Award will result in the relevant workers being covered by an award that is appropriate for them.

Should the Commission vary the Award pursuant to the four yearly review application?

Is the special rule about varying modern award minimum wages satisfied?

45. The NUW submits that the special rule in section 156(3) about varying award wages is not satisfied and accordingly the four yearly review application should be dismissed.

46. It is submitted that this rule is engaged because the variation would result in the minimum award wages payable to a particular class of workers (the relevant workers) being varied.

47. As explained above, it is incumbent on the employer parties to satisfy the Commission that the variation is justified on “work value reasons”.

48. All of the employer parties have failed to even mention this key rule in their submissions. This rule significantly qualifies the Commission’s power when minimum award wages are being varied and is of central importance to the jurisdiction invoked.

49. The employer parties' failure to address this rule is a fundamental deficiency in the four yearly review application.
50. On the basis of the submissions and witness statements relied on by the employer parties (which are directed at matters other than section 156(3)) the Commission cannot be satisfied that work value reasons justify the proposed variation.
51. There is no material that suggests that the nature of the work performed by the relevant workers, their level of skill and responsibility nor the conditions under which they perform the work has changed since the modern awards were created in such a way that would justify the variations.
52. There is material before the Commission that indicates the contrary:
 - (a) the Robertson Statement at [19];
 - (b) the Rault Statement at [19]; and
 - (c) the Johnston Statement at [24].
53. In summary the four yearly review application should be dismissed because section 156(3) is not satisfied.

Is the special rule about reducing coverage satisfied?

54. The NUW submits that the special rule in section 163(1) about reducing award coverage is not satisfied and accordingly the four yearly review application should be dismissed.

55. All of the employer parties have failed to even mention this key provision in their submissions. This rule significantly qualifies the Commission's power when coverage is being varied and is of central importance to the jurisdiction invoked.
56. The employer parties' failure to address this rule is a fundamental deficiency in the four yearly review application.
57. On the basis of the submissions and witness statements relied on by the employer parties (which are directed at matters other than section 163(1)) the Commission cannot be satisfied that the *Horticulture Award* would provide an appropriate safety net for the relevant workers. The Four yearly review application should be dismissed for this reason alone.
58. In light of the submissions made in Part A above if the four yearly review application was granted this would result in a significant diminution of the award safety net for the relevant workers. Thus, the *Horticulture Award* would not provide an appropriate safety net within the meaning of section 163(1).
59. Further to the above in support of the submission that the Horticulture Award would not provide an appropriate safety net for the relevant workers the NUW relies on the following two matters.
60. Firstly, in *Award Modernisation* [2009] AIRCFB 345 (the decision that, inter alia, created the *Horticulture Award*) the six member Full Bench presided over by Justice Giudice specifically considered how far the coverage of the *Horticulture Award* should extend and expressly ruled that it should be confined within the "farm gate". The Full Bench relevantly found at [53]:

“Our overall approach to coverage of the pastoral and horticultural awards is that they should be confined to agricultural production within the “farm gate.”

61. Secondly, in *Mitolo Group Pty Ltd v National Union of Workers* [2015] FWCFB 2524 at [46] the Full Bench accepted that “*work location was intended to be a critical element in the coverage of the Horticulture Award...*”.
62. As established in the *Preliminary Jurisdictional Decision* at [27] the Full Bench when conducting this review is required to follow previous Full Bench decisions unless there is a cogent reason for not doing so.
63. There is simply no cogent reason for the Full Bench to entertain derogating from the above rulings.
64. Consistently with the above Full Bench decisions the present Full Bench should not be satisfied that the *Horticulture Award* is an appropriate award for the relevant workers who perform their work outside of the “farm gate”.
65. In summary the four yearly review application should be dismissed because section 163(1)) is not satisfied.

The considerations in section 134(1)

66. The NUW makes the submissions set out below in relation to the considerations in section 134(1).

Section 134(1)(a) - relative living standards and the needs of the low paid

67. This consideration militates in favour of rejecting the proposed variation. It is submitted that in light of the submissions made in Part A above if the variation was granted this would result in a significant diminution of the award safety and thus living standards.

68. The employer parties have not given appropriate attention to this consideration which on any view holds great significance in the present matter.

Section 134(1)(b) – the need to encourage collective bargaining

69. This consideration militates in favour of rejecting the proposed variation. It is submitted that in light of the Robertson Statement at [18] the Commission should find that the proposed variation would be likely to stifle enterprise bargaining.

Section 134(c) – the need to promote social inclusion through increased workplace participation

70. This is a neutral consideration.

Section 134(d) – the need to promote flexible modern work practices and the efficient and productive performance of work

71. To the extent that any of the employer parties establish any of these matters this must be balanced against the significant detriment that will be caused to workers.

Section 134(da) – the need to provide additional remuneration for prescribed matters

72. This factor militates in favour of rejecting the proposed variation as the proposed variation would result in inferior loadings as detailed in Schedule 1.

Section 134(e) – equal remuneration

73. This is a neutral consideration.

Section 134(f) – impact on business, including on employment costs and the regulatory business

74. To the extent that any of the employer parties establish any of these matters this must be balanced against the significant detriment that will be caused to workers. It should also be noted that employers in many cases choose to have their packing and storage work performed “off-site” due to benefits arising from this.

Section 134(g) – simple and easy to understand modern award system

75. This is a neutral consideration.

Section 134(g) – simple and easy to understand modern award system

76. This is a neutral consideration.

Section 134(h) – impact on employment growth, inflation etc...

77. To the extent that any of the employer parties establish any of these matters this must be balanced against the significant detriment that will be caused to workers.

Summary on the considerations in section 134(1)

78. The NUW contends that the proposed variations are not necessary to provide a fair and relevant minimum safety net. The modern awards objective is currently met. In the circumstances of this matter given the significant diminution of the award safety and thus living standards the balancing of the considerations compels the conclusion that the variations should be rejected.

79. The employer parties fail to establish that the variations are anything more than “merely desirable” and fail to put forward a cogent merit argument that would even come close to justifying the significant changes proposed.
80. In summary the four yearly review application should be dismissed.

PART C: THE AMBIGUITY UNCERTAINTY OR ERROR APPLICATION

The legislative scheme and applicable principles

81. Section 160 relevantly provides:

“The FWC may make a determination varying a modern award to remove an ambiguity or uncertainty or to correct an error”

82. In *Re Tenix Defence Pty Limited* [2012] FWAFB 3210 it was observed that:

“[28] Before the Commission exercises its discretion to vary an agreement pursuant to s.170MD(6)(a) **it must first identify an ambiguity or uncertainty. It may then exercise the discretion to remove that ambiguity or uncertainty by varying the agreement.**

[29] The first part of the process – identifying an ambiguity or uncertainty – involves an objective assessment of the words used in the provision under examination. The words used are construed having regard to their context, including where appropriate the relevant parts of a related awards. As Munro J observed in *Re Linfox – CFMEU (CSR Timber) Enterprise Agreement 1997*:

“The identification of whether or not a provision in an instrument can be said to contain an ‘ambiguity’ requires a judgment to be made of whether, on its proper construction, the wording of the relevant provision is susceptible to more than one meaning. Essentially the task requires that the words used in the provision be construed in their context, including where appropriate the relevant parts of the ‘parent’ award with which a complimentary provision is to be read.”

[30] We agree that context is important. Section 170MD(6)(a) is not confined to the identification of a word or words of a clause which give rise to an ambiguity or uncertainty. A combination of clauses may have that effect.

[31] The Commission will generally err on the side of finding an ambiguity or uncertainty where there are rival contentions advanced and an arguable case is made out for more than one contention.

[32] **Once an ambiguity or uncertainty has been identified it is a matter of discretion as to whether or not the agreement should be varied to remove the ambiguity or uncertainty.** In exercising such a discretion the Commission is to have regard to the mutual intention of the parties at the time the agreement was made.” (emphasis added)

83. It is submitted that the above principles are applicable to section 160.
84. In *Re: Timber & Allied Industrial Award 1999* [2003] AIRC 1137 Munro J observed that the Commission’s power to correct an “error” to an Order that it has made is analogous to the “slip and error rule” in Court. Munro J held that it allows a correction in circumstances where the error was unintentional, the order or judgment does not conform to the intention of the Court and there is no matter of controversy about the error.
85. It is submitted that the above principles are applicable to “error” in section 160.

Step 1: Is there an ambiguity or uncertainty or error?

86. It is submitted that there is no ambiguity or uncertainty.
87. As explained above, when the *Horticulture Award* was created the six member Full Bench presided over by Justice Giudice specifically considered how far the coverage of the *Horticulture Award* should extend and expressly ruled that it should be confined within the “farm gate”. The Full Bench relevantly found at [53]:

“Our overall approach to coverage of the pastoral and horticultural awards is that they should be confined to agricultural production within the “farm

gate.”

88. That the Full Bench which created the *Horticulture Award* deliberately put in place a location limit on coverage was confirmed by the Full Bench in *Mitolo Group Pty Ltd v National Union of Workers* [2015] FWCFB 2524 at [46] wherein it accepted that “*work location was intended to be a critical element in the coverage of the Horticulture Award...*”.
89. There is no merit in the submission that the *Horticulture Award* contains an ambiguity or uncertainty. It must fail. The creators of the Award expressly intended for the coverage of the Award should be confined within the “farm gate”. The unique situation in this matter is that the Commission has the benefit of the decision which created the *Horticulture Award*. The submissions which are made about the predecessor awards are of little assistance in these circumstances.
90. Turning to the other threshold question of whether there is an “error” it is submitted that it cannot be said that the error was unintentional, nor that the coverage of the *Horticulture Award* does not conform to the intention of the Full Bench which created it and finally it is matter of controversy between the parties. In summary, this ambitious claim is fundamentally misconceived and must fail. It is noted that understandably this particular claim is not made by the AIG in its submissions.
91. On the basis that there is not an ambiguity, uncertainty or error established this application must be dismissed.

Step 2: If there an ambiguity or uncertainty or error how should the Commission exercise its discretion?

92. In the event that contrary to the above submissions the Commission finds that there is an ambiguity or uncertainty or error the NUW makes the following submissions.
93. It is submitted that the Commission should exercise its discretion by refusing to grant the variation. The NUW relies on the matters set out in Part B above.

PART D: THE APPLICATION FOR RETROSPECTIVITY

94. The employer parties seek to have any variation granted under section 160 applied retrospectively.
95. It is submitted that the employer parties have failed to establish “exceptional circumstances” within the meaning of section 165(2)(b). Accordingly, the Commission should refuse to grant any retrospectivity.

Further submissions

96. The NUW reserves its position to make further submissions after the evidence has closed.

Disposition

97. The NUW submits that the Commission should dismiss the four yearly review application and the ambiguity, uncertainty or error application.

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21 April 2017

SCHEDULE 1

	Storage Services Award		Horticulture Award		Difference	
	Hourly	Weekly	Hourly	Weekly	Hourly	Weekly
Ordinary Hourly rates						
Full & Part Time						
Level 1 / Grade 1 (SSW after 12 months)	\$19.38	\$736.40	\$17.70	\$672.70	\$1.68	\$63.70
Level 2 / Grade 2	\$19.56	\$743.20	\$18.21	\$692.10	\$1.35	\$51.10
Level 3 / Grade 3	\$20.13	\$765.10	\$18.74	\$712.00	\$1.39	\$53.10
Level 4 / Grade 4	\$20.72	\$787.40	\$19.44	\$738.90	\$1.28	\$48.50
Level 5 (Horticulture Award)			\$20.61	\$783.30		
Casuals						
Level 1 / Grade 1 (SSW after 12 months)	\$24.23		\$22.13		\$2.10	
Level 2 / Grade 2	\$24.45		\$22.76		\$1.69	
Level 2 / Grade 2	\$25.16		\$23.43		\$1.73	
Level 4 / Grade 4	\$25.90		\$24.30		\$1.60	
Level 5 (Horticulture Award)			\$25.76			
Shift allowances/loadings						
Full & Part Time						
Early Morning Shift						
Level 1 / Grade 1 (SSW after 12 months)	\$21.80	\$828.40	\$17.70	\$672.60	\$4.10	\$155.80
Level 2 / Grade 2	\$22.01	\$836.38	\$18.21	\$691.98	\$3.80	\$144.40
Level 3 / Grade 3	\$22.65	\$860.70	\$18.74	\$712.12	\$3.91	\$148.58
Level 4 / Grade 4	\$23.31	\$885.78	\$19.44	\$738.72	\$3.87	\$147.06
Level 5 (Horticulture Award)			\$20.61	\$783.18		
Afternoon Shift						
Level 1 / Grade 1 (SSW after 12 months)	\$22.29	\$847.02	\$20.36	\$773.68	\$1.93	\$73.34
Level 2 / Grade 2	\$22.49	\$854.62	\$20.94	\$795.72	\$1.55	\$58.90
Level 3 / Grade 3	\$23.15	\$879.70	\$21.55	\$818.90	\$1.60	\$60.80
Level 4 / Grade 4	\$23.83	\$905.54	\$22.36	\$849.68	\$1.47	\$55.86
Level 5 (Horticulture Award)			\$23.70	\$900.60		
Night Shift						
Level 1 / Grade 1 (SSW after 12 months)	\$25.19	\$957.22	\$20.36	\$773.68	\$4.83	\$183.54
Level 2 / Grade 2	\$25.43	\$966.34	\$20.94	\$795.72	\$4.49	\$170.62
Level 3 / Grade 3	\$26.17	\$994.46	\$21.55	\$818.90	\$4.62	\$175.56
Level 4 / Grade 4	\$26.94	\$1,023.72	\$22.36	\$849.68	\$4.58	\$174.04
Level 5 (Horticulture Award)			\$23.70	\$900.60		
Casuals						
Early Morning Shift						
Level 1 / Grade 1 (SSW after 12 months)	\$26.65		\$22.13		\$4.52	
Level 2 / Grade 2	\$26.90		\$22.76		\$4.14	
Level 3 / Grade 3	\$27.68		\$23.43		\$4.25	
Level 4 / Grade 4	\$28.49		\$24.30		\$4.19	
Level 5 (Horticulture Award)			\$25.76			
Afternoon Shift						
Level 1 / Grade 1 (SSW after 12 months)	\$27.13		\$22.13		\$5.00	
Level 2 / Grade 2	\$27.38		\$22.76		\$4.62	
Level 3 / Grade 3	\$28.18		\$23.43		\$4.75	
Level 4 / Grade 4	\$29.01		\$24.30		\$4.71	
Level 5 (Horticulture Award)			\$25.76			
Night Shift						
Level 1 / Grade 1 (SSW after 12 months)	\$30.04		\$22.13		\$7.91	
Level 2 / Grade 2	\$30.32		\$22.76		\$7.56	
Level 3 / Grade 3	\$31.20		\$23.43		\$7.77	
Level 4 / Grade 4	\$32.12		\$24.30		\$7.82	
Level 5 (Horticulture Award)			\$25.76			
<i>Note: It is the NUW's position that Casual workers covered by the Horticulture Award are entitled to shift allowances. Widespread industry practice is to not pay Casual workers shift allowances.</i>						
Overtime & Weekend Work						
Overtime						
Full & Part Time						
First 2 hours						
Level 1 / Grade 1 (SSW after 12 months)	\$29.07		\$26.55		\$2.52	
Level 2 / Grade 2	\$29.34		\$27.32		\$2.02	
Level 3 / Grade 3	\$30.20		\$28.11		\$2.09	
Level 4 / Grade 4	\$31.08		\$29.16		\$1.92	
Level 5 (Horticulture Award)			\$30.92			
After 2 hours						
Level 1 / Grade 1 (SSW after 12 months)	\$38.76		\$26.55		\$12.21	

Level 2 / Grade 2	\$39.12	\$27.32	\$11.80
Level 3 / Grade 3	\$40.26	\$28.11	\$12.15
Level 4 / Grade 4	\$41.44	\$29.16	\$12.28
Level 5 (Horticulture Award)		\$30.92	
Casuals			
First 2 hours			
Level 1 / Grade 1 (SSW after 12 months)	\$33.92	\$22.13	\$11.79
Level 2 / Grade 2	\$34.23	\$22.76	\$11.47
Level 3 / Grade 3	\$35.23	\$23.43	\$11.80
Level 4 / Grade 4	\$36.26	\$24.30	\$11.96
Level 5 (Horticulture Award)		\$25.76	
After 2 hours			
Level 1 / Grade 1 (SSW after 12 months)	\$43.61	\$22.13	\$21.48
Level 2 / Grade 2	\$44.01	\$22.76	\$21.25
Level 3 / Grade 3	\$45.29	\$23.43	\$21.86
Level 4 / Grade 4	\$46.62	\$24.30	\$22.32
Level 5 (Horticulture Award)		\$25.76	
Weekend work			
Full & Part Time			
Saturday			
Level 1 / Grade 1 (SSW after 12 months)	\$29.07	\$26.55	\$2.52
Level 2 / Grade 2	\$29.34	\$27.32	\$2.02
Level 3 / Grade 3	\$30.20	\$28.11	\$2.09
Level 4 / Grade 4	\$31.08	\$29.16	\$1.92
Level 5 (Horticulture Award)		\$30.92	
Sunday			
		Outside "Harvest Period"	
Level 1 / Grade 1 (SSW after 12 months)	\$38.76	\$35.40	\$3.36
Level 2 / Grade 2	\$39.12	\$36.42	\$2.70
Level 3 / Grade 3	\$40.26	\$37.48	\$2.78
Level 4 / Grade 4	\$41.44	\$38.88	\$2.56
Level 5 (Horticulture Award)		\$41.22	
		Harvest Period - First 5 hours within first 8 hours of overtime per week	
Level 1 / Grade 1 (SSW after 12 months)	\$38.76	\$26.55	\$12.21
Level 2 / Grade 2	\$39.12	\$27.32	\$11.80
Level 3 / Grade 3	\$40.26	\$28.11	\$12.15
Level 4 / Grade 4	\$41.44	\$29.16	\$12.28
Level 5 (Horticulture Award)		\$30.92	
		Harvest Period - After 8 hours overtime in week or after 5 hours work	
Level 1 / Grade 1 (SSW after 12 months)	\$38.76	\$35.40	\$3.36
Level 2 / Grade 2	\$39.12	\$36.42	\$2.70
Level 3 / Grade 3	\$40.26	\$37.48	\$2.78
Level 4 / Grade 4	\$41.44	\$38.88	\$2.56
Level 5 (Horticulture Award)		\$41.22	
Casuals			
Saturday			
Level 1 / Grade 1 (SSW after 12 months)	\$33.92	\$22.13	\$11.79
Level 2 / Grade 2	\$34.23	\$22.76	\$11.47
Level 3 / Grade 3	\$35.23	\$23.43	\$11.80
Level 4 / Grade 4	\$36.26	\$24.30	\$11.96
Level 5 (Horticulture Award)		\$25.76	
Sunday			
Level 1 / Grade 1 (SSW after 12 months)	\$43.61	\$22.13	\$21.48
Level 2 / Grade 2	\$44.01	\$22.76	\$21.25
Level 3 / Grade 3	\$45.29	\$23.43	\$21.86
Level 4 / Grade 4	\$46.62	\$24.30	\$22.32
Level 5 (Horticulture Award)		\$25.76	
<i>Note: Industry contention is that Casual workers covered by the Horticulture Award are not entitled to any Overtime pay. It is the NUW's position that Casual workers are entitled to Overtime pay in the Horticulture Award. Current widespread industry practice is to not pay Casual workers any overtime rates.</i>			
Public holidays			
Full & Part Time			
Level 1 / Grade 1 (SSW after 12 months)	\$48.45	\$35.40	\$13.05
Level 2 / Grade 2	\$48.90	\$36.42	\$12.48
Level 3 / Grade 3	\$50.33	\$37.48	\$12.85
Level 4 / Grade 4	\$51.80	\$38.88	\$12.92
Level 5 (Horticulture Award)		\$41.22	
Casuals			
Level 1 / Grade 1 (SSW after 12 months)	\$53.30	\$39.83	\$13.47
Level 2 / Grade 2	\$53.79	\$40.97	\$12.82

Level 3 / Grade 3	\$55.36	\$42.17	\$13.19
Level 4 / Grade 4	\$56.98	\$43.74	\$13.24
Level 5 (Horticulture Award)		\$46.37	
Piecerates			
	No provision for piecework; all hourly employment	Piecework agreements can be made under the Horticulture Award which can give the effect of workers earning less than the minimum ordinary hourly rates	
* Note: Differences in Allowances have not been detailed here, however where there are similar allowances in both Awards, the Storage Services Award allowances are slightly higher.			

FAIR WORK COMMISSION

Fair Work Act 2009

IN THE MATTER OF:

AM2010/25 HORTICULTURE AWARD 2010 [MA00028]

4 Yearly Review of Modern Awards (AM2016/25) –

Application to Vary the Award by Mitolo & Ors

WITNESS STATEMENT OF MARK FRANCIS JOHNSTON

I, Mark Francis Johnston, of c/o 22-30 Wheeler Street, Shepparton in the State of Victoria, Forklift Driver, make the following statement in this matter before the Fair Work Commission:

Background

1. I am a forklift driver at Geoffrey Thompson & Growers Cooperative Company Pty Ltd (**Geoffrey Thompson**).
2. I work at Geoffrey Thompson's apple storage and packing facility located 22-30 Wheeler Street, Shepparton, Victoria (the **Site**).
3. I have been employed by Geoffrey Thompson for approximately 7 years on a permanent full-time basis. Prior to working at Geoffrey Thompson I was a forklift driver at SPC in Shepparton.
4. I work on the apple line at the Site. I arrive at 5am each day and collect apples out of storage and set up the apple line by 6am ready for when the production line workers arrive. Throughout the day, I supply product to the grader, take away juice from the line, help move pallets into the cool room and collect and move pallets to the line as they are

needed. I have a forklift license and my duties and responsibilities primarily revolve around forklift work.

The Site

5. The Site is a packing shed located in an industrial area in the town of Shepparton. The site is across the road from a Star Track express depot and next door to the SPC cannery. There are a couple of other small factories in the area. Attached to this statement and marked “MJ-1” are photographs that show the area surrounding the packing shed site.
6. The Site is busiest from January until March/April when more casual workers are brought on. After that, work is pretty steady all year round.
7. No apples or other produce is grown at the Site. Workers employed to work at the packing shed only work at the packing shed, they don't move between orchards and the packing shed location.
8. At the Site, apples are received from orchards owned by Geoffrey Thompson and some other growers, then stored, packed or prepared for dispatch to supermarkets and other sellers.
9. The Site is approximately 10km from the nearest orchard where the apples are grown.

Employment conditions at the Site

10. There is an enterprise agreement in place at the Site called the *Geoffrey Thompson & Growers Co-Operative Company & National Union of Workers Enterprise Agreement 2013* (**Enterprise Agreement**), which will expire on 31 December 2017.

11. The *Storage Services and Wholesale Award 2010* forms part of the safety net for workers employed at the Site and was referred to in bargaining for the current Enterprise Agreement.
12. I've never been paid piece rates by Geoffrey Thompson. They might have paid piece rates at the Site about 10 years ago before the union was here.
13. I work at least 40 hours a week, and am paid \$21.50 an hour plus overtime. On most days, I do some overtime work, ranging from half-an-hour to two hours.
14. At the moment, overtime is pretty fairly distributed between permanent and casual staff, but I would prefer permanents to get asked to do overtime first.

Effect of changing award coverage

15. I would struggle if piece rates were introduced.
16. If the casuals at Geoffrey Thompson didn't get paid overtime rates for extra hours, Geoffrey Thompson would send all the permanents home early. The local permanent workers like me would be sent home early and wouldn't get overtime.
17. I really notice it now if I have a week without overtime. The overtime gives me extra money so I can maybe save for something. I struggle more after weeks without overtime. For example if I just do my 40 hours, I don't have extra money to drive to Melbourne for the footy.
18. Geoffrey Thompson would also hire more casuals. It's really important for me, workers in Shepparton and the local community to have permanent jobs. If you don't have a permanent job, the bank won't even look at you if you want a car or home loan.

19. A decrease in pay to the rates under the *Horticulture Award 2010* would be a big change for me. I'm flat out now earning \$50K a year and it's already a struggle. A pay cut would be chaotic.
20. I would struggle to pay off my house. I'm 60 now and getting toward the end of my working life but I'm still paying off a mortgage. Hopefully I can pay it off before I retire.
21. I know other people I work with would struggle to pay off their cars or houses. We don't live like kings here. We don't have much extra spending money after costs like electricity, fuel and gas bills. I really worry about younger people now.
22. For those with young families, it'd be even tougher. I paid to put my kids through school and two through uni, but it was a struggle. I did it because I didn't have the opportunity for an education to get a high paying job.
23. It's not just me that would struggle, the whole community in Shepparton would struggle. I'd spend less on groceries. I wouldn't be able to get my car fixed. I wouldn't go to the local bakery, instead I'd have to get the 95c special from the supermarket.
24. During my employment with Geoffrey Thompson the work done at the Site has stayed the same. The way the work is performed, the type of work and the level of skill or responsibility involved in doing the work at the site has remained unchanged.

Mark Francis Johnstone

21 April 2017

MJ-1: Photographs of the Geoffrey Thompson packing shed site, Shepparton VIC



FAIR WORK COMMISSION

Fair Work Act 2009

IN THE MATTER OF:

AM2010/25 HORTICULTURE AWARD 2010 [MA00028]

4 Yearly Review of Modern Awards (AM2016/25) –

Application to Vary the Award by Mitolo & Ors

WITNESS STATEMENT OF KAY RAULT

I, Kay Rault, c/o Mitolo Group Pty Ltd, Angle Vale Road, Virginia in the State of South Australia, Grader, make the following statement in this matter before the Fair Work Commission:

Background

1. I am employed by the Mitolo Group Pty Ltd (**Mitolo**) as a Grader.
2. I work at Mitolo's packing and storage facility located at Angle Vale Road, Virginia, South Australia. (**the Site**).
3. I have been employed by Mitolo since about August 2010 on a permanent part-time basis.
4. I work on the grading tables at the Site and my main duty is grading potatoes and onions in preparation for their storage and sale.

The Site

5. The Site is a stand alone production site which processes potatoes and onions and stores them ready for the market place.

6. The main work performed at the Site is washing, grading, packaging and storage of potatoes and onions and their wholesale distribution.
7. The produce arrives on Site in four ton bins on trucks from sites related to the Mitolo Group each day. Nothing is grown on the Site.
8. Sometimes small loads of produce come in from local growers that are not related to the Mitolo Group. We know this because the produce arrives in one or half ton bins, and we will be told before grading by supervisors or people from quality control that we are dealing with produce from a smaller grower.
9. When the produce arrives from the farm sites, it is washed and graded by computers, then it is physically graded. After the produce is graded it is packed into bags, crates or cartons. It is then put onto pallets and taken to the quality control area by forklift.
10. In the quality control area, it is checked, wrapped and labelled and sent to the cool room. From the cool room the produce is dispatched by truck throughout Australia.
11. The roles at the Site for employees who work in or in connection with the production shed are:
 - a. Forklift drivers: Forklift drivers load and unload trucks and move produce packed onto pallets into different areas.
 - b. Wash Operators: Wash operators operate the computer to control the feeding of the potatoes through the wash system and out onto the conveyers to the grading tables.
 - c. Graders: Graders grade the produce to remove any defects with the product as it continually rolls over a moving table bed.
 - d. Labourers: Labourers work with the end product that has been packed and sorted, putting it onto pallets ready for the forklift driver to remove it to another area for the next part of the process.

- e. Quality Control: Quality controllers move around the factory checking the quality being packed with a final check being done at the wrapping station.
 - f. Wrapping and Labelling: After the final quality check the pallets are wrapped with a plastic film then labels are printed and each pallet is labelled. From here it is sent by forklift to the cool room ready for dispatch.
 - g. Supervisors: The supervisors oversee the whole operation from the delivery until it is sent into the cool room, where it is managed by another supervisor.
12. Approximately 80 to 90 employees per shift work in the above roles. There are currently two shifts, an AM shift and a PM shift.
13. There is also another shed which deals with a range of smaller potatoes and also onions (the C Shed), and operates 6 days a week, and the main onion shed (the E Shed) which operates on a seasonal basis (for approximately 7 to 8 months of the year). There are approximately 25 to 30 employees within these two areas.
14. Production within these two sheds is carried out in the same way as it is in the main area. The onions are not washed and the potatoes of C Shed are washed and sorted in the main shed before the final production is done in C Shed.
15. Away from the production sheds is another section called the seed shed. This is where Mitolo produce the seed for their crops. At this location there is one forklift driver that works in the area and a supervisor. During some months Mitolo employ 2 or 3 back packers to work within this area. At the seed shed we grade a lower grade of potato and cut the potatoes into smaller sections. They are then coated in a hormone or rooting powder, then put into the cool room and stored.
16. The seed shed represents a small fraction of the total employees on site.

17. A sitemap showing the location of different areas and a key to this map is attached to this statement and marked "KR-1."
18. There is no planting or cultivating of produce in the seed shed or anywhere else on site.
19. The work at the Site has not substantially changed since I began my employment with Mitolo in about August 2010. The way in which I perform my work at the Site, the nature of the work I perform and the level of skill or responsibility involved in doing the work at the Site is the same now as it was then.
20. I have never worked on a farm site. During my time at the Site I do not know of anyone who works in the production shed and has also been to work at one of the Mitolo Group's farm sites.

Employment conditions at the Site

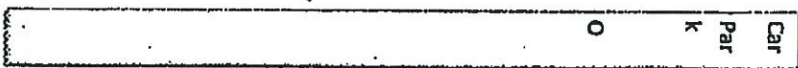
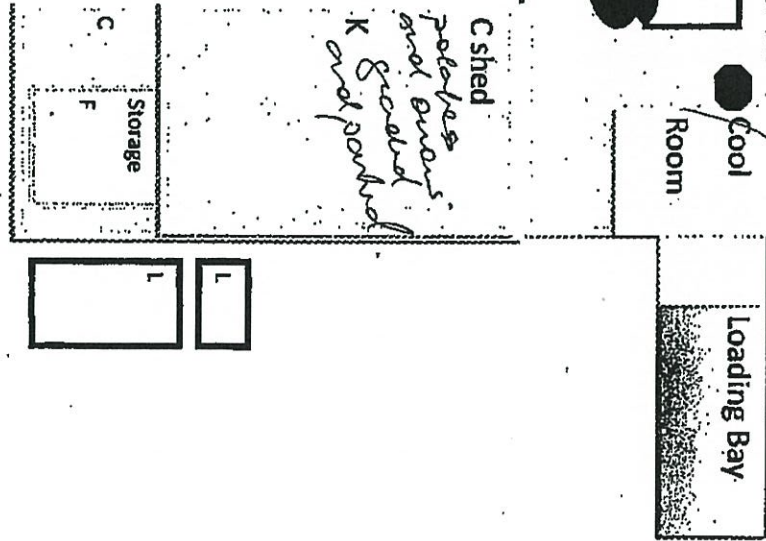
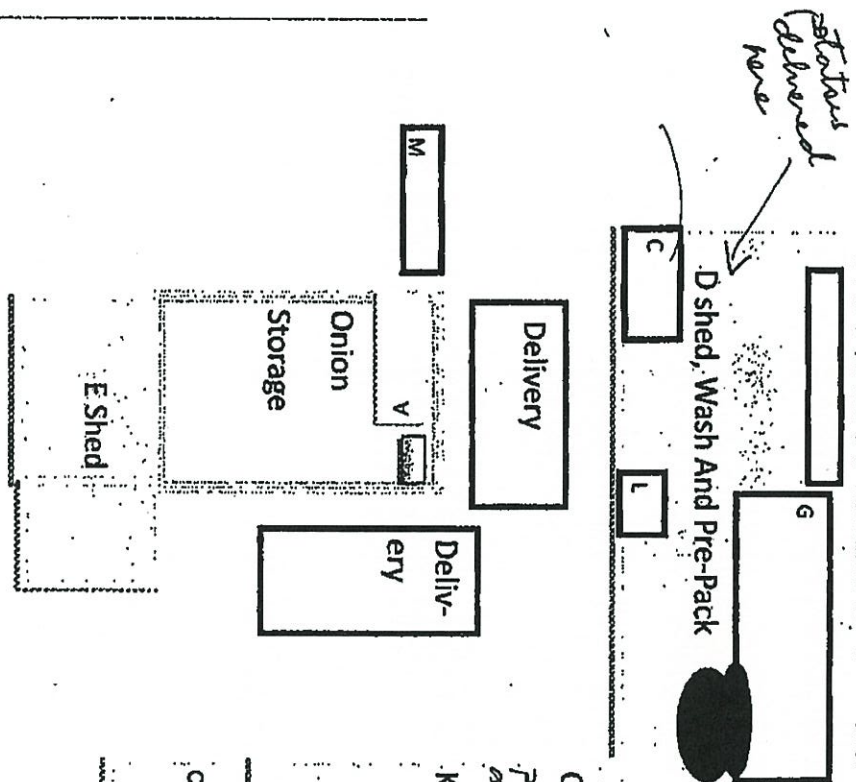
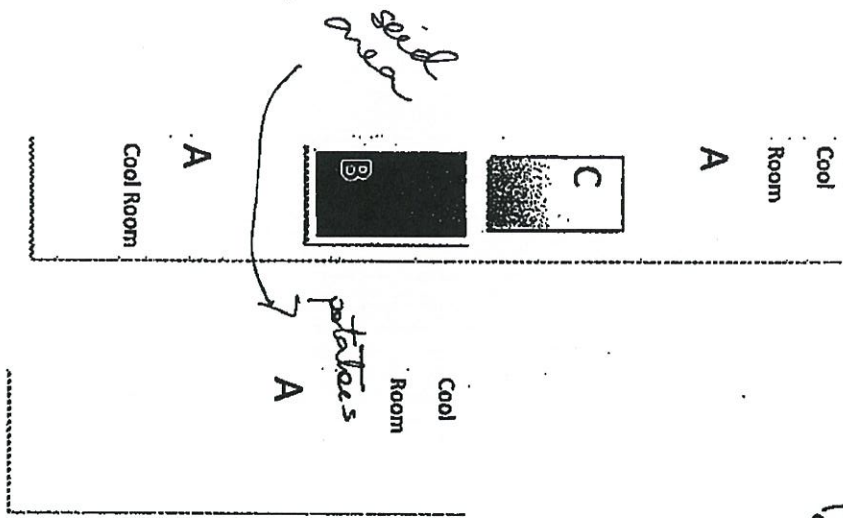
21. I am paid \$19.51 an hour as a grade two worker. This rate of pay was a recent increase. I understand that this is below the rate for a level 2 store worker or wholesale employee under the *Storage Services and Wholesale Award 2010*, which is \$19.56.
22. I understand that I am covered by an old workplace agreement which allows Mitolo to pay me below the rate of pay in the *Storage Services and Wholesale Award 2010*. Mitolo does not want to negotiate for a new collective agreement to replace this one.
23. My understanding is that Mitolo wants to class us as farm workers with this application before the Commission, which would reduce our pay and conditions. A reduction in pay back to the rates under the *Horticulture Award 2010* would be devastating to my budget and to my life. It would have a very negative impact on my living standards.

24. Before my most recent pay increase I believe I was paid \$18.76 an hour. I had to sit down and go through how every cent was spent. I still have to watch things, because my pay is not high, but things are not as tight as they were. Before this pay rise there was nothing left for a reasonable quality of life. I need to run a car (to get to work and back), pay for a phone (to call in for shifts at work), plus there is the cost of rent and basic living expenses that increase all the time. Some of the people I work with have young children and I don't know how they manage now, let alone how they would manage if pay or conditions at Mitolo were lowered. Many of the people I work with live from one pay period to the next. A few times when our pay has come late workers have been unable to get to work for a shift because they have had no petrol in the car.

Kay Rault

21 April 2017

KR-1



Codes for Map

- A. 1.... SEED SHED cool rooms, potatoes stored to be ready for seed production. Then returned and Stored until required.
- A. ... Cool Room for daily production from D Main, pre-pack and C. Shed. Held for daily distribution.
- B.... Seed production area. Potatoes graded and cut then coated in hormone powder.
- C... Maintenance area
- D... E. shed production of onions on a seasonal bases (Blue production area) (white area) storage of all onion produce Processed and non processed.
- E... Daily truck deliveries of Potatoes and onions
- F... Storage of Machinery and consumables
- G.1... Wash area
- G... D Main, Main production area
- H... Pre Pack area
Wash, D Main and Pre-pack all run as one area.
- I.----Quality Control and wrap
- J ----Loading Bay produce for market throughout Aust.
- K... C. shed production of onion and small potatoes
- L... Lunch rooms First Aid and production office
- M... Toilets
- N ... Main Management office
- O... Car Parking

FAIR WORK COMMISSION

Fair Work Act 2009

IN THE MATTER OF:

AM2010/25 HORTICULTURE AWARD 2010 [MA00028]

4 Yearly Review of Modern Awards (AM2016/25) –

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WITNESS STATEMENT OF GEORGE ROBERTSON

I, George Alexander Raphael Robertson, of 833 Bourke Street, Docklands, Victoria, Lead Organiser, make the following statement in this matter before the Fair Work Commission:

Background

1. I am employed by the National Union of Workers (**NUW**) as an Organiser. I have held this position since March 2014. Prior to being employed by the NUW, I worked as a Researcher and Organiser for unions and community organisations since 2010.
2. I am authorised to make this witness statement on behalf of the NUW.
3. Under its registered rules, the NUW is entitled to enroll as members and to represent their industrial interests, employees who work in the horticulture industry.
4. My duties as an Organiser include enrolling and organising workers as members of the NUW, speaking to workers, educating them about their working conditions and workplace rights and ensuring members receive their lawful employment entitlements.

5. I work in an organising team at the NUW that is dedicated to organising and representing the industrial interests of workers in the Australian 'horticulture industry'. I have undertaken this role since about November 2014. I am currently the Lead Organiser of this team, and am therefore responsible for coordinating the NUW's organising activities at sites related to the 'horticulture industry', which includes sites and employers covered by the *Horticulture Award 2010* (**Horticulture Award**) and the *Storage Services and Wholesale Award 2010* (**Storage Services Award**).

6. In my experience, where producers utilise off-farm packing and processing facilities – which are currently covered by the *Storage Services and Wholesale Award 2010* – these facilities tend to be stand-alone facilities separate from the growing operations a producer may have. The work performed in these off-farm facilities – namely the washing, grading, processing, packaging, storage and distribution of produce – is of a different nature to the work performed on-farm, namely the planting, growing and harvesting of horticultural crops. Generally, workers who are engaged to work in an off-farm packing and processing facility will either never be assigned to perform work at a producer's farm, or will do so very infrequently for short periods of time.

7. Off-farm packing shed workers are rarely, if ever, assigned to perform work on a producers farms for a number of potential reasons. These reasons often include:
 - a. Differences in the nature of work performed and the skills the worker has acquired in order to perform the work and/or;
 - b. Geographical distance from the farm to the off-farm processing facility. For example, in the case of potato producers in South Australia, produce is grown up to several hundred kilometers away from the facility in which it is processed and packed.

8. There are a number of reasons why producers use off-farm processing and packing facilities, covered by the *Storage Services Award*. These reasons include efficiencies associated with economies of scale (including being able to process larger volumes during periods of high demand), access to marketing

and distribution channels, proximity to market and supermarket distribution facilities, and access to a steady labour force which is not readily available in more rural areas. Many of these reasons have been outlined in the witness statements accompanying many of the employers' submissions. It is clear that producers who utilise an off-farm facility enjoy clear economic benefits provided by off-farm facilities.

9. Should the coverage of the *Horticulture Award* be changed and expanded to cover off-farm processing and packing facilities, workers employed in these facilities would be significantly worse-off financially and in terms of the conditions they are presently entitled to.
10. I have discussed the potential impact of the changes with workers at SA Potato Co, an off-farm packing facility covered by the *Storage Services Award* located in Mt Barker, South Australia.
11. One of the workers I spoke to told me that they are currently employed as a Casual to work an average of 30 hours per week, 5 hours per day, six days per week, including Saturdays, year round. They told me that they were paid \$24.23 per hour, which is the Level 1 Casual rate for a worker employed for more than 12 months in the *Storage Services Award*. This worker works with approximately 30 other workers in the sorting and grading area.
12. I have calculated that should this worker be paid to perform the same work according to the *Horticulture Award* (at Level 2 at a rate of \$22.76), they would be \$1.47 per hour, and \$44.10 per week worse off than the *Storage Services Award*, based on the 30 hours the worker works on average each week.
13. This worker is currently paid \$33.92 per hour for all work Saturday work, pursuant to the requirement in the *Storage Services Award* that Saturday work be paid at 150%. For the 5 hour shift this worker regularly works, the worker would be \$55.80 worse off if they were paid according to the *Horticulture Award*, which does not stipulate that workers be paid at 150% for Saturday work. This

Saturday shift loading is particularly important for this worker, who told me that whenever they do not work a Saturday shift, they “*struggle for living expenses*”.

14. While this worker regularly works 30 hours per week, during busy periods the worker informed me that they can work up to 50 hours per week. For all hours worked after 38 hours per week, this worker is currently paid at an overtime rate of \$33.92 per hour under the *Storage Services Award*, which provides for all workers – full time, part time and casual – to be paid the appropriate overtime rate. The industry contends that casuals are not entitled to overtime pay under the *Horticulture Award*. Notwithstanding the outcome of the review of casual overtime, the widespread industry practice of not paying overtime rates to casuals, would mean that this worker, and other workers would lose \$133.92 for the 12 hours of overtime worked during a 50 hour week, should the *Horticulture Award* be applied to this off-farm site.
15. Finally, this worker informed me that workers sometimes start shifts at 4:30am, and are paid the 12.5% loading in the *Storage Services Award*, which totals an additional \$3.87 per hour or \$19.35 for this workers 5 hour day. This loading would also not be paid should the *Horticulture Award* be applied to this site, as the *Horticulture Award* does not contain an early morning shift allowance.
16. Based on my conversations with this worker and the analysis undertaken above, it is clear that all workers currently engaged under the *Storage Services Award* – and in particular Casual employees – would be significantly financially worse off, should the proposed changes to the coverage of the *Horticulture Award* be granted.
17. The NUW opposes the proposed variations primarily because of the significant adverse impacts on employees who currently receive their entitlements pursuant to the *Storage Services Award* but would become covered by the inferior *Horticulture Award*.
18. The NUW has negotiated Enterprise Agreements with employers covering off-farm packing facilities based on the safety net provided for in the *Storage*

Services Award. These Agreements include, for example, the *Geoffrey Thompson & Growers Co-Operative Company & National Union of Workers Enterprise Agreement 2013*. Should the application to change the coverage of the Horticultural Award be granted, it would become extremely difficult for workers covered by those Agreements to negotiate to maintain and improve their pay and conditions. Employers covered by these Agreements would likely seek to negotiate new Agreements based on the Horticulture Award, or seek to apply to terminate these agreements and revert to the Horticulture Award, in order to take advantage of the significantly inferior rates of pay and conditions provided for in the Horticulture Award.

19. During the time that I have been organising the Horticulture industry I have not realised any material change in: the manner in which work is performed at off-farm processing and packing facilities, the nature of the work performed at off-farm processing and packing facilities, or the level of skill or responsibility involved in the work performed by employees at off-farm processing and packing facilities.

George Alexander Raphael Robertson

21 April 2017