

PR:KS

Our Ref: 17C-016

23 August 2017

Vice President Hatcher
Fair Work Commission
80 William Street
East Sydney NSW 2011

By email: chambers.hatcher.vp@fwc.gov.au

Dear Vice President

M2014/197 Casual and Part-time employment - Horticulture Award 2010 - overtime for casuals

We refer to the decision of the full bench in the 4 yearly review of modern awards – Casual employment and Part-time employment (AM2014/196 and AM2014/19) [2017] FWCFB 354.

We note that interested parties have been provided with an opportunity to provide submissions and further evidence in relation to the daily hours of work and span of ordinary hours for casual employees under clause 21.1 of the Horticulture Award 2010 (**Award**), and the period over which weekly ordinary hours should be averaged.

We refer to the submissions of the Australian Workers' Union (**AWU**) dated 21 August 2017 in relation to these matters. The NUW supports the submissions of the AWU and further submits that:

- a) the span of hours for casual employees should be the same as for other employees, as is standard in modern awards;
- b) the ordinary hours of work for casual employees should not exceed 8 hours a day without the payment of overtime, unless the majority of employees concerned consent to longer ordinary hours up to a maximum of 12 hours a day, as is currently the case for full and part-time workers under the Award. The NUW notes that the provisionally proposed maximum of 12 hours a day would not require employee consent to reducing overtime entitlements and could result in casual workers working up to 72 hours between Monday to Saturday in some weeks without the payment of overtime. We submit that this outcome would not be consistent with the modern award objectives set out in sections 134(1)(a), 134(da)(i) and 134 (1)(da)(iii) of the Fair Work Act 2009 (Cth) (**Act**); and

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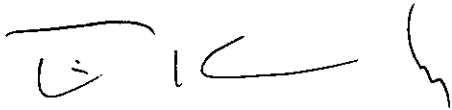
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- c) the period over which weekly ordinary hours should be averaged should be no longer than four weeks. A longer averaging period of 8 weeks would deprive low-paid seasonal workers and a large number of low-paid casual employees who are engaged on an ongoing and systematic basis from the entitlement to earn overtime, even where it has been established that extreme, unsociable, and unpredictable hours are worked. We submit that a 4 week averaging period would achieve a more appropriate balance between the modern award objectives in sections 134(1)(a), 134(da)(i)-(iii), and 134(f).

Yours faithfully

A handwritten signature in black ink, appearing to read 'T. Kennedy', with a horizontal line above the first part of the name.

TIM KENNEDY
NATIONAL SECRETARY