

**IN THE FAIR WORK COMMISSION**

**MATTER: AM2016/25 HORTICULTURE AWARD 2010 (MA4028)**

**4 Yearly Review of Modern Awards**

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**OUTLINE OF SUBMISSIONS BY GAYNDAH PACKERS**

1. In accordance with the Directions issued by Vice President Catanzaritti on 12 September 2016 and the subsequent submission filed on 21 October 2016, Gayndah Packers Pty Ltd (**Gayndah Packers**) makes the following further submission in support of the application to vary Clause 4 of the Horticulture Award.
2. The intended affect of the proposed changes (as previously filed) to the coverage clause would confirm that employees working within a packing shed and in connection with a horticultural enterprise (that is a related legal entity) would be covered by the Horticulture Award.
3. The application to vary the Horticulture Award in the terms proposed is necessary to give effect to the modern awards objective, rectify the uncertainty and ambiguity about award coverage and give effect to the Objects of the Fair Work Act 2009.
4. The Act provides that the Commission must conduct a 4 yearly review of modern awards (s.156 (1)). Section 156(2) deals with what has to be done in a Review:

*Legislative context for the 4 yearly modern award review*

- (1) In a 4 yearly review of modern awards, the FWC:
  - (a) must review all modern awards; and
  - (b) may make:
    - (i) one or more determinations varying modern awards: and
    - (ii) one or more modern awards: and
    - (iii) one or more determinations revoking modern awards; and
  - (c) must not review, or make a determination to vary, a default fund term of a modern award.
5. The general provisions relating to the performance of the Commission's functions apply to the Review. Sections 577 and 578 are particularly relevant in this regard. In conducting the Review the Commission is able to exercise its usual procedural powers, contained in Division 3 of Part 5-1 of the Act.

Importantly the Commission may inform itself in relation to the Review in such manner as it considers appropriate (s.590).

6. The Full Bench have previously considered the parameters of the award review and when considering variations for example including to annual leave provisions.
7. We submit that the reasoning of the Fair Work Commission in that matter<sup>1</sup> should be adopted and has been reproduced as follows.
  - 7.1 The modern awards objective is central to the review. The modern awards objective applies to the performance or exercise of the Commission's "modern award powers", which are defined to include the Commission's functions or powers under Part 2-3 of the Act. The Review function in s.156 is in Part 2-3 of the Act and so will involve the performance or exercise of the Commission's "modern award powers". It follows that the modern awards objective applies to the Review.

The modern awards objective is set out in s.134 of the Act, as follows:

**"134 The modern awards objective**

*What is the modern awards objective?*

- 7.2 The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
  - (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 of work; 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

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<sup>1</sup> [2015] FWCFB 3406 refer paragraphs 16-19, 21 -23.

- (e) the principal 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.
- 7.3 The modern awards objective is directed at ensuring that modern awards, together with the NES, provide a "fair and relevant minimum safety net of terms and conditions" taking into account the particular considerations identified in paragraphs 134(1)(a) to (h). The objective is very broadly expressed. The obligation to take into account the matters set out in paragraphs 134(1)(a) to (h) means that each of these matters must be treated as a matter of significance in the decision making process.
- 7.4 No particular primacy is attached to any of the s.134 considerations and not all of the matters will necessarily be relevant to a particular proposal to vary a modern award.
- 7.5 The modern awards objective requires the Commission to take 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 supports the proposition 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 the merit argument required will depend on the variation sought. As the Full Bench observed in the *4 yearly Review of modern Awards: Preliminary Jurisdictional Issues decision*:
- "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."
- 7.6 In order to found a case for an award variation it is usually necessary to advance detailed evidence of the operation of the award, the impact of the current provisions on employers covered by it and the likely impact of the proposed changes. Such evidence should be combined with sound and balanced reasoning supporting a change. Ultimately the Commission must assess the evidence and submissions against the statutory tests set out above, principally whether the award provides a fair and relevant minimum safety net of

terms and conditions and whether the proposed variations are necessary to achieve the modern awards objective. These tests encompass many traditional merit considerations regarding proposed award variations.

- 7.7. The proponent of a variation to a modern award must demonstrate that if the modern award is varied in the manner proposed then it could only include terms to the extent necessary to achieve the modern awards objective (see s.138). What is "necessary" in a particular case is a value judgement based on an assessment of the s.134 considerations having regard to the submission and evidence directed to those considerations.
- 7.8 In performing functions and exercising powers under a part of the Act (including Part 2-3 Modern Awards) the Commission must take into account the objects of the Act and any particular objects of the relevant part (see s.578(a)). The object of Part 2-3 is expressed in s.134 (the modern awards objective) to which we have already referred. The object of the Act is set out in s.3 as follows:

### **"3 Object of this Act**

The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promote national economic prosperity and social inclusion for all Australians by:

- (a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations; and
- (b) ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and
- (c) ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be determined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and
- (d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and
- (e) enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and
- (f) achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial actions; and

- (g) acknowledge the special circumstances of small and medium-sized businesses."

*Evidence to Support the Award Variation*

8. Collectively, the following matters support the need for the award variation in respect to the coverage provision of the Horticulture Award.
9. Until the *Mitolo*<sup>2</sup> decisions the application of the Horticulture Award was well understood.
10. The FWC has now thrown into question the application of that Award as opposed to the Storage Services and Wholesale Award 2010 (**Storage Award**).
11. The *Mitolo* decisions have created confusion as there are potentially two awards that may apply.
12. The current landscape is such that the award coverage is uncertain. The application of the Storage Award would have a significant financial and operational impact to the business.
13. The existing positions are not easily transferable to the classification structure within the Storage Award.
14. There is an immediate additional dollar cost through the translation to the new classification structure and other provisions within the Storage Award.
15. The additional costs threaten the viability of the business.
16. Gayndah Packers is a major employer in the local community, the continuation of this is threatened.
17. There are other like businesses within the immediate vicinity that can and do pay lower rates under the Horticulture Award. In most cases this is because they have an orchard on the same property. This creates an unfair playing field that causes significant disadvantage to Gayndah Packers.
18. The industrial landscape is such that employees doing the same work within close vicinity will be paid different rates and have different conditions that apply.
19. The market reality is that there is no practical way for the additional costs to be passed onto other growers.
20. Cheaper packing alternatives are available to the contract packers as such the probability that contract packing opportunities will be lost is high.

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<sup>2</sup> *Mitolo Group Pty Ltd v National Union of Workers* [2015] FWCFB 25 24 (21 April 2015)  
*Mitolo Group Pty Ltd* [2014] FWC 7682 (31 October 2014)

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21. There is incongruence between bio security measures and the requirement for the packing shed to be on the farm.
  22. There is an absurdity that exists because of the ability that an employer has to manipulate the outcome of the applicable industrial regulation which arises depending on the legal structure of an operation.
  23. The closure of Gayndah Packers would have a considerable impact to not only to the community but also the domestic and export citrus markets.
  24. The fundamental nature of the business is not storage or warehousing but work within the citrus industry. The products are perishable and there is no storage or warehousing of products of a kind that is traditionally understood by the meaning of storage.
  25. The variation to the coverage provision would provide the financial security and certainty for the business to operate amongst like business competitors.

*Historical application of pre modern awards*

26. Prior to the introduction of the modern awards the Fruit and Vegetable Growing Industry Award – State 2002 operated (**pre modern award**).
27. The pre modern award was a feeder award to the Horticulture Modern Award.
28. Clause 1.4 Coverage of the pre modern award provides:

*Subject to the exemptions in Clause 1.7, this Award applies to all employers and their employees engaged in the fruit and vegetable growing industry, including the preparation of land, cultivation, planting, care, picking, handling, treating, packing and despatching of all fresh fruits (including tomatoes) and vegetables on or from fruit and vegetable farms, vineyards, orchards and plantations throughout the state of Queensland.*

29. This coverage clearly covers packing sheds who were not located on a farm.
30. There is no exemption under clause 1.7 that excludes the packing shed.
31. Accordingly it is arguable that the intention of the award modernisation process was to continue the parameters of the scope of coverage that existed previously. There is no evidence to the contrary. As such the coverage of the Horticulture Award should be varied to give effect to what existed previously.

*Application of the evidence to the modern award review parameters*

32. If the award variation is not granted the following elements of the modern awards objectives are arguably not satisfied:

- (a) Section 134 (f) likely impact on business, including on productivity, employment costs and the regulatory burden:

For the reasons that:

- (i) The employment costs make the business uncompetitive and non financial; and
- (ii) The Storage Award inhibits productivity and will have a negative effect on the business, impose costs and create unnecessary burdens on the business to apply an Award which is out of step with the true nature of its business.

- (b) Section 134 (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.

For the reasons that:

- (i) Without the variations there is an argument that the Storage Award may apply;
- (ii) In the Award Modernisation decision the Full Bench noted that where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work<sup>3</sup>;
- (iii) In this case the substantial character of the business is that it operates within the citrus industry, it is not concerned with storage or wholesale of goods; and
- (iv) The variation would provide the necessary clarity for the Horticulture Award to apply.

- (c) Section 134 (h) the likely impact on ..... the sustainability, performance and competitiveness of the national economy:

For the reasons that:

- (i) The lack of clarity threatens the viability and sustainability of an important part of the national economy; and
- (ii) The competitiveness of the business is affected since either like businesses operate under a different cost structure.

33. The variation to the coverage provisions gives effect to the objects of the Act and considerations required by the Fair Work Commission when fulfilling the modern awards objectives, specifically, promoting productivity and economic growth.

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<sup>3</sup> Transport Worker's Union of Australia v Coles Supermarkets Australia Pty Ltd [2014] FCCA 4 referred to at paragraph 141

*Orders Sought*

34. The variation pursuant to section 156 to the clause 4 Coverage of the Horticulture Award in the terms proposed be granted.
35. That the uncertainty be rectified by applying the variation retrospectively in accordance with the section 160 application.
36. In the absence of the orders above being granted that there be a separate hearing in respect to the application of transitional provisions.

**Macpherson Kelley Lawyers**

**For Gayndah Packers Pty Ltd**

**December 2016**



**IN THE FAIR WORK COMMISSION  
AT MELBOURNE  
AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT LYNN TONSING**

I, Ms Lynn Helen Elizabeth Tonsing of 37 Bridge Street, Gayndah, in the state of QUEENSLAND, state as follows:

1. I make this statement from my own knowledge and belief, except where I indicate otherwise.
2. I am authorised by the Respondent to make this statement.

**BACKGROUND**

3. On or about 20 January 2013, I commenced working for the Gayndah Packers Cooperative as an Administrative Manager.
4. On or about 14 October 2014, I was retained with the new owner and continued on as the Administrative Manager with Gayndah Packers Pty Ltd. The scope of the position broadened as I had responsibility for finance, payroll, business planning and review, human resources and general employment compliance matters.
5. I have over 20 years experience in various administration manager roles in the horticultural sector both within Australia and South Africa. Each position I have held has entailed responsibility for labour cost management and associated functions.
6. Between 2009 and 2013, I worked for Sunland Agriculture (Hillston, NSW) as an Administration Manager.

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7. Prior to 2009 I worked in South Africa in finance management roles for Lebombo Growers Pty Ltd & Lebombo Cape.
8. I hold a Bachelor of Agricultural economics from the University of Pretoria in South Africa.

## **DESCRIPTION OF THE BUSINESS**

9. Gayndah Packers operates a citrus packing shed that is located 2 kilometres from the town centre of Gayndah in northern Queensland, 380km north-west of Brisbane. The total population of Gayndah is approximately 2,500-3,000 people.
10. We are the largest employer outside the government, with four permanent staff and between 15 to 130 casual employees, with numbers varying depending on the season.
11. About 80% of the workforce is sourced from local labour and the remainder is supplemented by backpackers.
12. About 80% of the citrus (lemons, limes, mandarins and oranges) is provided by the three owners of Gayndah Packers and the remaining amount is sourced from other growers that we contract pack for.
13. Our business comprises of about 13 orchards (each registered with Citrus Australia in Queensland) and in turn we make up about 10% of the Queensland citrus industry.
14. Domestically, we supply mandarins to Coles and Woolworths under the Gaypak brand, which makes up about 6% of the domestic market, with about 50% of mandarins being exported, principally to Asia.
15. Whilst we operate all year, the business is seasonal in nature, with the peak season being between mid-March to June.
16. Each variety of fruit has different harvest times and there are particular ways that we operate to maximise the product quality and price the fruit is sold for. A breakdown of the market and peak times is as follows:
  - Imperial mandarins comprise 58% of the fruit packed in about 14 weeks between April and June;
  - Murcott mandarins comprise 23% of the total fruit packed in about 8.5 weeks between July and August;

- Lemons and limes comprise of 14% and 4% respectively of the total fruit and which is packed throughout the year; and
  - Other fruit such as Avana, Daisy, & Navel Oranges comprise 1% of the total fruit packed during April to June.
17. During the peak periods we need to move the fruit quickly as it cannot be stored. The imperial mandarins in particular have a short product life, from when they are picked to when they need to be placed for sale in store. This would be within 24-48 hours. The fruit is washed, treated, sprayed, graded and packed within a couple of hours of its arrival to the facility.
  18. Whilst there is a cold room, there is no storage of fruit on site and there is no storage facility as such of the kind that would be synonymous with a warehouse or traditional storage facility.
  19. Our operation is based on continuous movement of fruit given the nature of fresh produce and the limited shelf life. The fresh produce is unlike other products, such as toothpaste or shampoo, which can be stored for much greater periods.
  20. During the peak times, the hours of work for the packing shed require award-covered employees to work about 10 hours per day across 6 days, from Monday to Saturday. A copy of the labour hours based on the 2016 past season is attached and marked as 'LT-1'.
  21. Aside from the peaks in season, there are also weather events which require work to be performed for extended periods. For example, if we have rain, hail, fog or heavy dew forecasted, the growers try to get as much fruit picked as possible, since all these events damage the fruit. In turn this means the shed will receive a huge volume of fruit that needs to be packed within a short timeframe.

## **BUSINESS OPERATING MODEL**

22. When I commenced the Cooperative was not financially sustainable. This was because many shareholders had left the Cooperative, leaving only a few shareholders to carry the debt, and a top-heavy management structure.
23. Over the last couple of years there has been significant consolidation within the industry and the old style of cooperatives have changed their structure and a greater level of managerial control has been imposed.

24. Gayndah Packers is owned by three growers (who operate separate and distinct legal entities) who bought the packing shed so their own produce could be packed.
25. The growers were able to secure a marketing advantage by continuing to use and sell their product under the Gaypak brand.
26. The additional costs of the Gayndah Packing business are supplemented and offset through the revenue received for contract packing.
27. The income from the packing shed is derived by the bin price that is paid by the three owners and other growers who engage Gayndah Packing to contract pack for them.
28. Contract packing is carried out based on packing of bins. Each bin contains about 400 kilos of fruit; we charge about \$90.00 per bin to contract pack, and about \$103.00 per bin to the three owners.
29. The packing charge covers the costs of the carton and other consumables such as stickers, labour, and a small profit margin of between 2-5%.
30. The contract packing aspect of Gayndah Packing comprises about 20% of its revenue and allows the owners the ability to repay the loans on the shed.
31. There is no room to move on the bin rate because the numerous packing sheds in the district all charge the same or close to the same bin rate.
32. If the Storage Services and Wholesale Award 2010 (**Storage Award**) applied, then the bin rate would need to increase from \$90.00 to \$97.00 per bin. I have calculated this increase based on a monthly calculation using hours worked, forming a comparison between the two awards. A copy of the calculations are attached and marked as 'LT-2'.
33. I expect that we would lose the contracts to pack because the growers could source alternative packing sheds that could provide cheaper packing rates within the local area.
34. Either way, from a financial perspective, our business would not be financially viable.
35. We are not in a position to be able to manipulate the price that we ultimately sell the product for. The price that we receive for the fruit is dictated to us by the market, the main drivers are Woolworths and Coles, and for export markets, via the broker.

## APPLICATION OF AWARD CONDITIONS

36. I have always understood that the Horticulture Award 2010 applied to regulate the terms and conditions of the work that we do at Gayndah Packing.
37. The former cooperative leased orchards and also operated the packing shed. There were employees who worked in the orchards and the shed.
38. With the change in employer to Gayndah Packers, the structure of the operation is different as the entity which operates the packing shed does not own or operate orchards.
39. When I was engaged by Gayndah Packers Pty Ltd I was responsible for the payroll function. I expected that the Horticulture Award continued to apply since this has been the only award that has ever been referred to. I also reviewed the coverage and classifications and believed that this was the best fit to apply. I also formed this view because we are members of the local industry organisation, Growcom, and the information provided by it referred to the Horticulture Award. A copy of an example of the type of material provided by Growcom is attached and marked as 'LT-3'.
40. We operate in a district which has 12 packing sheds within the immediate vicinity of our business. Most who operate sheds apply the Horticulture Award. A copy of the aerial map depicting the sheds in the vicinity is attached and marked as 'LT-4'.
41. It has only been since the *Mitolo* decision that question about award coverage and the potential application of the Storage Award has ever been raised. This latest decision throws into question which is the appropriate award to apply to those persons performing work in the shed.
42. The following sets out the process of the movement of the fruit at the packing shed.
- Fruit arrives at shed in 400kg bins and is offloaded.
  - Forklift lifts bin onto a manual bin tipper.
  - Fruit goes through water bath with bicarb soda/ chlorine wash.
  - Fruit goes through descaler under high pressure water nozzles to remove any scale or impurities.
  - Fruit gets pre-sorted, manually to remove unwanted fruit.
  - Fruit gets treated with chemicals (Insecticide and fungicide) as per DAFF specifications.
  - Fruit goes through a waxing unit where wax is applied for a nice shine.

- Fruit proceeds through a gas fuelled drying tunnel to dry the wax on the fruit.
- Fruit gets sorted manually by staff to separate 1st, 2nd and sometimes 3rd grade fruit from rejected or juice fruit.
- The sorted fruit then falls into different cartons according to their sizes. Once a carton reaches the required weight it gets pushed onto a conveyer.
- The conveyer takes the full carton to a stacking area where it is stacked on a pallet in different sizes.
- The pallets are recorded and moved into a cold room by forklift to cool down before transported to various markets.

43. The Horticulture Award is the most appropriate award because it is the most specific in respect to coverage and the type of classifications that cover the work being performed.
44. I have taken the most common provisions that apply to our business during harvest season, being the positions of pallet stacker, sorter/pre-sorter, quality personnel, shed hand & forklift operators.
45. I have attempted to align the existing classification of positions under the Horticulture Award to the structure within the Storage Award. In doing this I considered not just the title of the provision but also the duties that were undertaken. A copy of the position descriptions is attached and marked as 'LT-5'.

#### *Pallet Stacker*

46. In relation to the position of pallet stacker, I have assessed this position under the Horticulture Award at Level 1 because the simple manual movement of boxes onto a pallet is covered at Schedule B, which includes indicative tasks *the sorting, packing or grading of produce*. I have aligned this under the Storage Award at Schedule B to Store worker Grade 1, because at B 1.2 (f) (i) it includes the storing and packing of goods and materials. I note that the reference in Horticulture Award is to the more specific reference of produce, which in my view is better aligned to the handling of citrus than the description of goods and materials.

#### *Shed Hand*

47. Shed hands perform general labouring duties such as levelling cartons, checking the movement of product along the conveyer, hand pack as necessary and undertake general housekeeping. As such the predominant nature of housekeeping and labouring tasks would suggest an alignment to Level 1. Whereas under the Storage Award this position was more

difficult to align, but since there was reference made to housekeeping and storing and packing, I assessed this at Grade 1.

*Sorter and pre sorter*

48. These duties go beyond a Level 1 because employees are given specifications that they need to follow for grading and sorting. For example, certain quality standards such as the amount of blemish and insect damage. As such, I have aligned them to Level 2. Under the Storage Award, I aligned them to Grade 3 because of the reference to the quality standards; alternatively they could fall within Grade 2 because they are required to follow detailed instructions.

*Forklift operation*

49. This is classified at Level 4 under the Horticulture Award because of the need to be licensed to operate forklifts. In the Storage Award, there is a reference to Forklift operation in the wholesale section at Grade 2, but the reference in the Storage Grades does not provide for forklift operators other than for steel distributing employees.

*Quality personnel*

50. This position is classified at Level 3 under Horticulture at B.3.3, since the employees are principally recording detailed information on production and quality indicators. Under the Storage Award I have aligned them to B.3.2 (a) Grades 3 and 4 which states, understands and is responsible for quality control standards. I note though that the description at this classification level is broader since the responsibility is limited to simply reporting on quality standards.
51. There are three different types of quality functions that are undertaken including:
- 51.1 the initial assessment of quality to grade the fruit;
  - 51.2 then the in line quality assessment which requires the visual assessment of the fruit to ensure that it satisfies the quality specification and stated grade; and
  - 51.3 then the end of product function takes an audit sample, reporting on a number of criteria such as wind damage, green fruit, insect damage.
52. It is clear from this exercise that the translation of classifications to the Storage Award is difficult and uncertain. I could not readily find a number of comparable positions.

53. Aside from the classification comparison, there are key and significant differences between the Horticulture Award and Storage Award. The most obvious impact of these conditions include the following matters.
- 53.1 Clause 22.1 of the Storage Award provides for the maximum number of 8 hours that can be worked on a day or 10 hours by majority agreement, as opposed to 8 hours or up to 12 hours per day by the majority in the section concerned under the Horticulture Award.
- 53.2 The Storage Award provides for ordinary hours of work to average 38 hours per week over 4 weeks, as opposed to 152 hours over a 4 week period.
- 53.3 Clause 22.2 of the Storage Award provides for a spread of ordinary hours to be between 7.00am and 5.30pm Monday to Friday, the spread to be altered by an hour either side by the majority agreement. As opposed to the Horticulture Award, which allows for the spread of ordinary hours to be worked between 6.00am to 6.00pm across Monday to Friday, and by agreement the section of employees may agree to work ordinary hours on Saturday and alter the spread of hours.
- 53.4 The Storage Award at clause 24.5 sets a penalty rate of 50% on Saturdays versus the Horticulture Award which has no Saturday penalty, for casual workers unless it's a public holiday then the pay rate of 225% as per pay guide for Horticulture Award of Fair Work Ombudsman. A copy of the information provided is attached and marked as 'LT-6'.
- 53.5 Casuals under the Storage Award are entitled, at Clause 11.4(a), to a 4 hour minimum engagement. Whereas under the Horticulture Award there is no minimum period of engagement other than on Sundays which, at Clause 24.2 (c), requires a minimum of 3 hours.
- 53.6 Further, given that the bulk of the workers are casual<sup>1</sup> the ability to work additional hours without incurring overtime is expected to have a significant financial impact to the business.
- 53.7 The application of the rates between the awards is not a clear or a direct translation. If the levels were assumed to be a direct cross reference then the rates are higher under the Storage Award by approximately \$1.50 at each level.

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<sup>1</sup> Clauses 10.4 and 22 in the Horticulture Award confirm that casuals are not entitled to overtime (unless the contrary provision applies)



54. If the Storage Award was to apply then the business modelling I have done shows extra labour costs in the vicinity of 15-20%. This assumes the same labour hours would be worked for the period and all other circumstances remain the same other than the position translation to the Storage Award. A copy of the comparison costings, including the assumptions, is attached and marked as 'LT-7'.
55. If the Storage Award is applied then the business would immediately become unviable, because the additional labour costs could not be recovered from the growers.
56. The growers will not accept the increase in the bin rates as other packing sheds are under the Horticulture Award, and can pack their fruit more cheaply.
57. I have considered the way in which the work could be arranged under the Storage Award. The only way I can see to reduce the wages' costs is to change the structure of the operation to two separate shift operations during the week, but this would mean operating two shifts of 6 hours duration. I expect that doing this would create immediate dissatisfaction with employees due to their hours being reduced, and we would lose many of them. In any event, to effectively supervise the work we would need to engage more management, which would cancel any possible savings.
58. The change in award jeopardises the financial viability of the business but also our ability to support the local community. A change in the way we operate may result in reduced income for the local community and a greater need to rely upon overseas labour through the Islander Agreements, (more formally referred to as the Seasonal Worker Programme).

## **OTHER FACTORS**

59. The following factors provide a further overview and insight into the industry.
  - 59.1 Gayndah is a recognised citrus hub, so within the region there is about 15 packing sheds of all various sizes most of whom would be attached to an orchard.
  - 59.2 Within the immediate vicinity of our business, other growers with packing sheds on their farms can and do apply the Horticulture Award to regulate the terms and conditions of their employees.
  - 59.3 The outcome of the *Mitolo* decisions creates an untenable position as other sheds in the region can operate on a different and cheaper cost structure

because of the location of their farm to the shed or because their legal structure and business operations are structured in a particular way.

- 59.4 The *Mitolo* decision only supports the application of the Horticulture Award where a packing shed is on a farm. This is at odds with the management of any bio security risks. If a farm has an outbreak of, say, *kanker*, then the whole of the farm including the packing shed must close. From a risk management perspective, it is preferable to operate discrete lots of land that are easily separated from the packing shed so as to avoid the closure of the whole operation in the event of quarantine.

#### **AWARD REVIEW AND OBJECTS OF THE FAIR WORK ACT 2009 (FW Act)**

60. I have read the parameters for the award review at section 134 and also note the objects of the Act.
61. In particular the Objects at Clause 3 (a) state that they:
- .....are to provide workplace relations laws that are fair to working Australians, are flexible for business, promote productivity and economic growth for the Australia's future economic prosperity and take into account Australia's international labour obligations.*
62. In summary, the variation to the coverage of the Horticulture Award is necessary as part of the review process of the modern award.
63. Further, the following factors demonstrate the current difficulty which may otherwise apply if the variation is not achieved and in general terms are matters which affect productivity, the business operations and competition within the industry:
- 63.1 There is a difficulty in the direct translation and application of the existing classification positions and business operations to the Storage Award.
- 63.2 There is an immediate additional dollar cost through the translation to the new classification structure, overtime and other provisions from the Storage Award.
- 63.3 The additional costs threaten the viability of the business, which has a potential impact to the labour market and in turn threatens to remove Gayndah Packers as a major employer in the local community.

- 63.4 There are other like businesses within the immediate geographic vicinity that can and do pay lower rates under the Horticulture Award. In most cases this is because they have an orchard on the same property.
- 63.5 The market reality is that there is no practical way for the additional bin costs to be passed onto other growers.
- 63.6 The requirement for the packing shed to be on the farm is incongruent with the bio security measures required to discharge effective risk management.
- 63.7 The current award regulation creates an absurdity. There can be employees doing the same work within kilometres of each other receiving different pay and conditions. Further, an employer can manipulate outcomes to have a shed on an orchard or change the way that the operation is conducted to ensure that work is principally horticulture.
- 63.8 The *Mitolo* decisions have created confusion, as there is potentially two awards that may apply.
- 63.9 The fundamental nature of the business is not storage or warehousing but work within the citrus industry. There are no storage facilities on site of a kind that are consistent with the traditional meaning of storage or warehouse facilities.
64. The proposed variation will make certain the arrangements that apply and rectify the anomalies to make it a level playing field. Specifically, the variation clarifies the meaning of horticulture industry and horticultural enterprise. This variation ensures that the work performed by the employees in the packing shed is covered by the Horticulture Award.
65. The proposed variation to the Horticulture Award is attached and marked as 'LT-8'.
66. Further, I have read the section 160 application submitted by *Mitolo*. I support this application, which would resolve the ambiguity concerning the Horticulture Award coverage.

  
Signature of Lynn Tensing

20 December 2016

Date

**IN THE FAIR WORK COMMISSION  
AT MELBOURNE  
AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

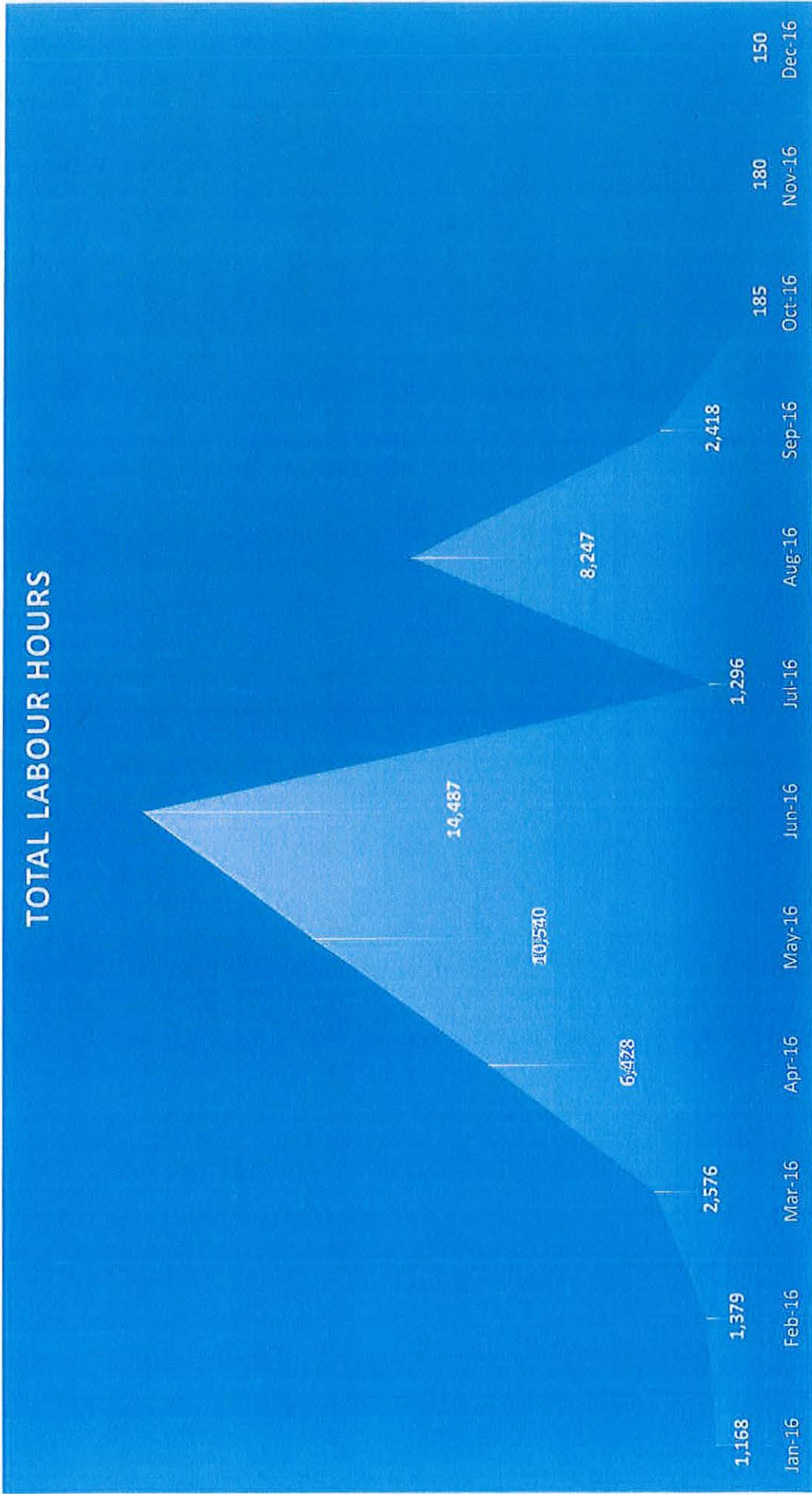
**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT OF LYNN TONSING – LT-1**

**Labour Hours**

**Attachment – LT-1**



**IN THE FAIR WORK COMMISSION  
AT MELBOURNE  
AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT OF LYNN TONSING – LT-2**

Revised Bin Calculations

**Attachment - LT-2**

**Estimated - Comparison between Hort Award & Storage Award for 2017**

<u>Month</u>	<u>Hort</u>	<u>Storage</u>
Jan-17	27,371	29,049
Feb-17	35,630	37,866
Mar-17	61,133	65,324
Apr-17	150,606	167,997
May-17	240,988	282,043
Jun-17	322,284	384,787
Jul-17	92,931	99,709
Aug-17	196,150	227,837
Sep-17	58,114	62,157
Oct-17	6,413	6,776
Nov-17	6,988	7,400
Dec-17	6,988	7,400
<b><u>Production Wages</u></b>	<b>1,205,596</b>	<b>1,378,343</b>
<b><u>Super</u></b>	114,532	130,943
<b><u>WC</u></b>	36,168	41,350
<b><u>Payroll</u></b>	23,031	31,236
<b><u>Total Cost</u></b>	<b>1,379,326</b>	<b>1,581,872</b>
<b><u>Total Estimated Bins</u></b>	27,983	27,983
<b><u>Rate Per Bin</u></b>	<b>49</b>	<b>57</b>
<b><u>Increase in bin rate</u></b>		<b>7</b>
<b><u>Increase in Cost in Production Wages</u></b>		<b>202,546</b>

**Assumptions:**

Overtime is estimated based on fortnight worked, it does not take into account all overtime requirements, for e.g. Start & end time & limit on minimum hours paid (4 hours under Storage)

Increase of hourly pay rate in Jul 17 at 2.5%

Hours estimated (based on 2016)

I have entered the corresponding levels I have assigned to each job description- this is per my interpretation of storage award.

Hours worked based on a normal year - no hail, storm, flood or wind damage. If the region badly affected by any major weather event, the overtime hours will increase. Therefore this assumption is a best case scenario of overtime hours on estimated bins.

**IN THE FAIR WORK COMMISSION  
AT MELBOURNE  
AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

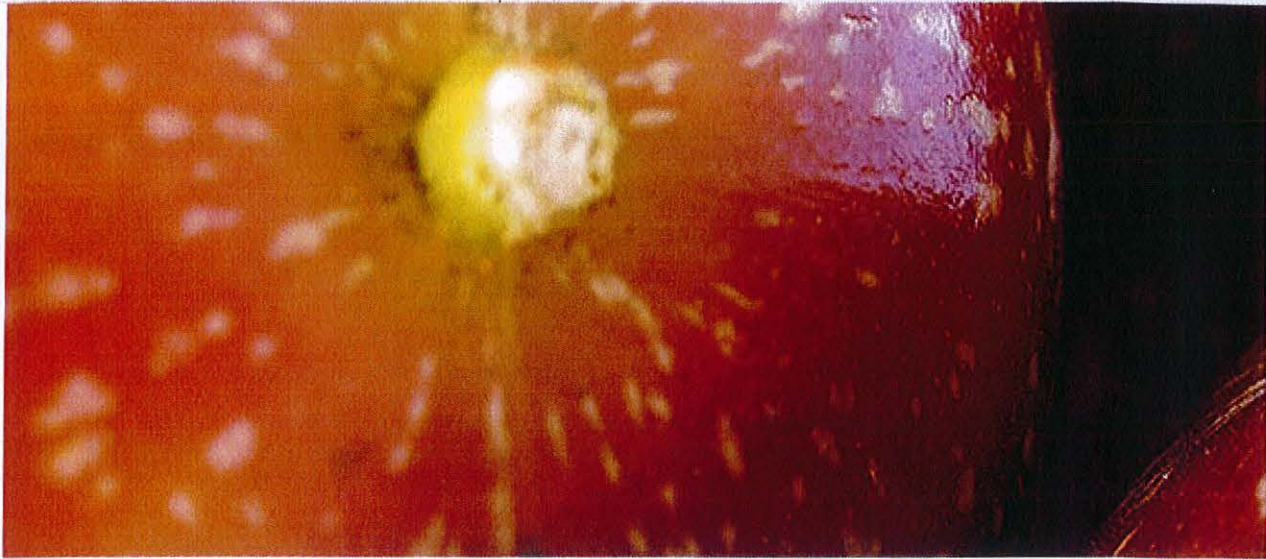
**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT OF LYNN TONSING – LT-3**

Information from Growcom





## Awards & Wages

Growcom's workplace relations team can provide you with information, interpretation, clarification and advice about employee wages and conditions, whether set out in the relevant Awards or in your own workplace agreement.

While the Horticulture Industry is governed by the Horticulture Award 2010, you may be covered by several awards, depending on what you grow and who you employ. If you run cattle, you may also need to understand the Pastoral Award; if you grow sugar cane, the Sugar Award, and if you employ administrative staff, the Private Sector Clerical Award.

The minimum wages for employees from 1 July 2016 – 30 June 2017, who are employed under the Horticulture Award 2010 are currently as follows:

Level	\$ Weekly	\$ Hourly	\$ Casual Hourly
-------	-----------	-----------	------------------

Level 1	672.70	17.70	22.13
Level 2	692.10	18.21 'standard rate'	22.76
Level 3	712.00	18.74	23.43
Level 4	738.90	19.44	24.30
Level 5	783.30	20.61	25.76

You may operate under your own Enterprise Agreement and this may have different provisions to the Award. To talk to the Growcom workplace relations team about your enterprise agreement, please give us a call.

## Contact us

To contact the Growcom IR team please call 07 3620 3844 or email your query to [wrteam@growcom.com.au](mailto:wrteam@growcom.com.au) (<mailto:wrteam@growcom.com.au>).

## Growcom Shop

Visit the **Growcom Shop** (<http://www.growcom.com.au/growcom-shop/>) – your first stop for Growcom workplace relations advice and products.

Growcom Workplace Relations is proud to be partnered with:



(<http://bit.ly/AustSafe>)

## TWITTER

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🐦 Future Agro Challenge winner announced | North Queensland Register  
[http://www.northqueenslandregister.com.au/story/4340725/future-agro-challenge-winner-announced/?src=rss&utm\\_source=North+Queensland+Register+Newsletters&utm\\_campaign=6045743d52-newsletter&utm\\_medium=email&utm\\_term=0\\_e5741b05f1-6045743d52-114498833 ...](http://www.northqueenslandregister.com.au/story/4340725/future-agro-challenge-winner-announced/?src=rss&utm_source=North+Queensland+Register+Newsletters&utm_campaign=6045743d52-newsletter&utm_medium=email&utm_term=0_e5741b05f1-6045743d52-114498833...)  
(<https://t.co/fgaAAM24Mi>)

🐦 Consumers to pay more for mangoes this season | North Queensland Register  
[http://www.northqueenslandregister.com.au/story/4341193/consumers-to-pay-more-for-mangoes-this-season/?src=rss&utm\\_source=North+Queensland+Register+Newsletters&utm\\_campaign=6045743d52-newsletter&utm\\_medium=email&utm\\_term=0\\_e5741b05f1-6045743d52-114498833 ...](http://www.northqueenslandregister.com.au/story/4341193/consumers-to-pay-more-for-mangoes-this-season/?src=rss&utm_source=North+Queensland+Register+Newsletters&utm_campaign=6045743d52-newsletter&utm_medium=email&utm_term=0_e5741b05f1-6045743d52-114498833...)  
(<https://t.co/PwLKSBBRsz>)

## CONTACT US

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Primary Producers House  
Level 3, 183 North Quay  
Brisbane Qld 4000

PO Box 202  
Fortitude Valley Qld 4006

p: 07 3620 3844

f: 07 3620 3880

e: [growcom@growcom.com.au](mailto:growcom@growcom.com.au)

## FOLLOW US ON FACEBOOK

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**Growcom Australia** shared Hort360's video.  
23 hrs



136 Views

**Hort360**  
Yesterday at 21:05

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[yt \(http://youtube.com/growcomaustralia\)](http://youtube.com/growcomaustralia) [n \(http://news.growcom.com.au\)](http://news.growcom.com.au)

TOP

See amended Exhibit LT-4 dated 27 June 2017

**IN THE FAIR WORK COMMISSION**

**AT MELBOURNE**

**AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

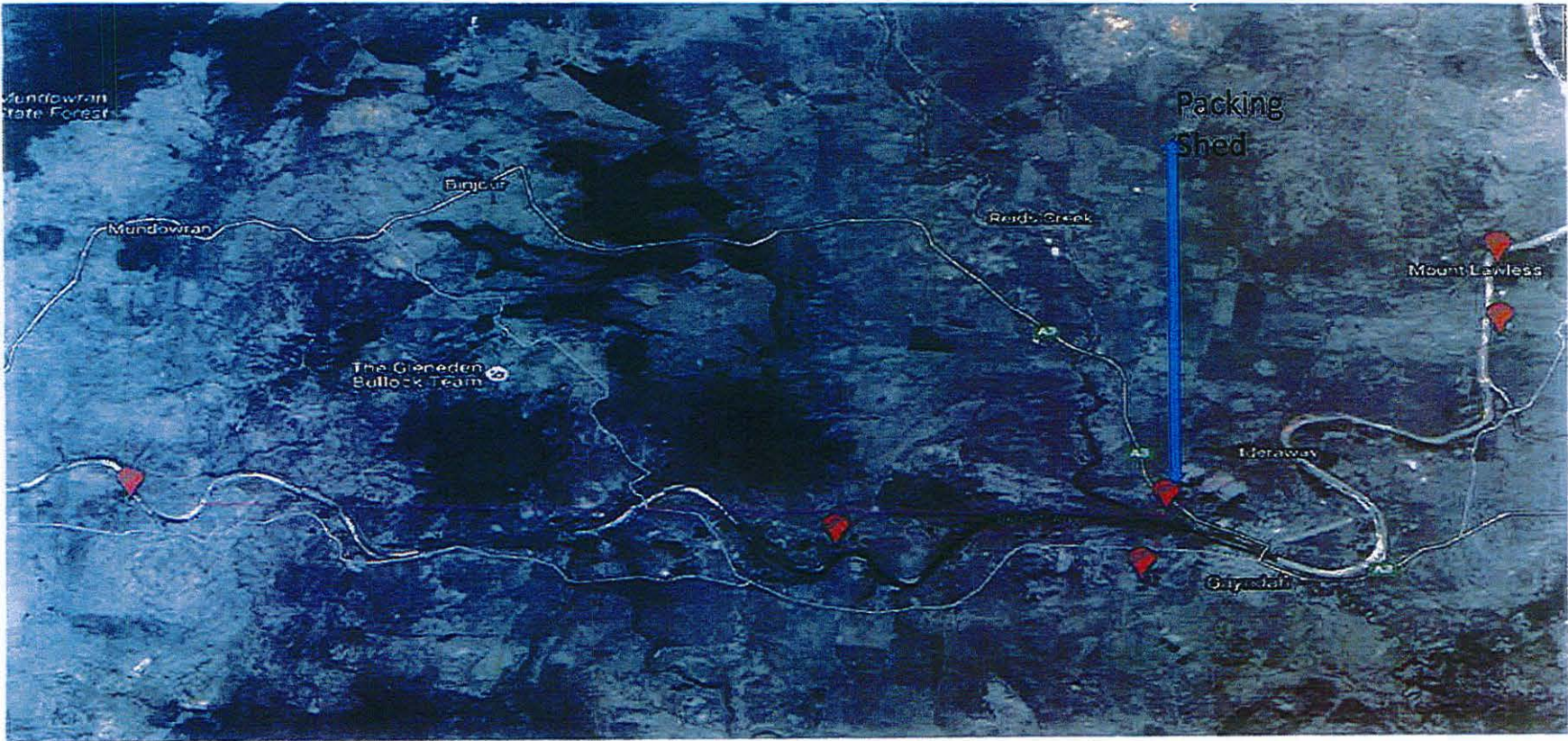
**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT OF LYNN TONSING – LT-4**

**Aerial of Gayndah district and other packing sheds**

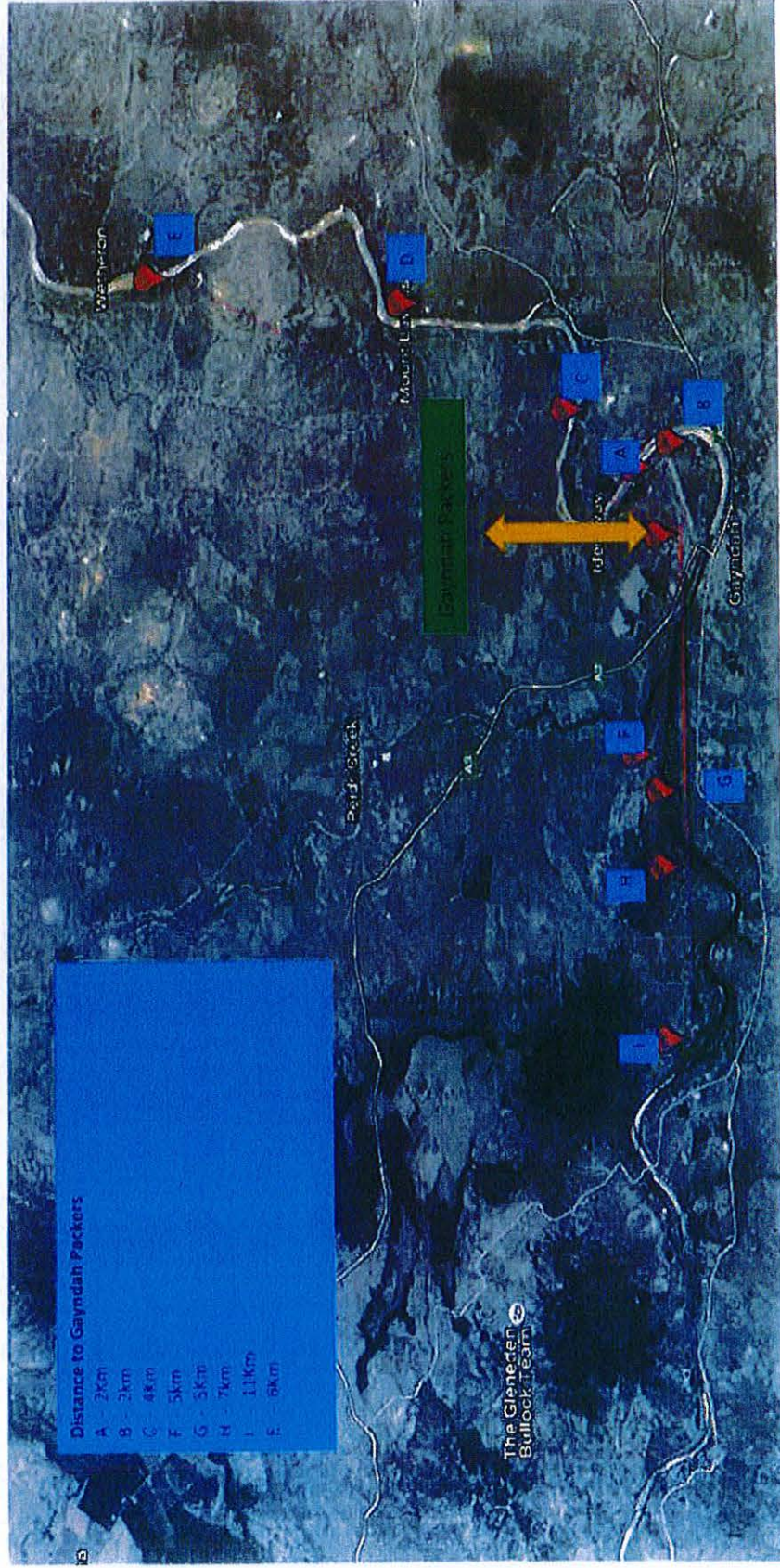
Example of Packing shed close to Gayndah Packers – showing location of the Farms/Growers which supply fruit to packing shed



Citrus Packing sheds around Gayndah Packers



# Gayndah Packers showing owners orchards





**IN THE FAIR WORK COMMISSION  
AT MELBOURNE  
AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT OF LYNN TONSING – LT-5**

Position Descriptions

**Gayndah Packers**  
**Forklift Operator-Receiptal Position Description**



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**Position Title:**        **FORKLIFT OPERATOR**  
**Position Type:**        Casual  
**Department:**         Production  
**Reports To:**            Production Co-ordinator  
**Prepared By:**         Quality Administrator  
**Approved By:**         Shed Manager

---

**DUTIES and RESPONSIBILITIES**

This position requires the operator to be capable of driving a forklift safely, with precision for the full shift, as well as, sweeping, shovelling, and occasionally heavy lifting. The following are the major duties for this position:

- Feeding the grader, ensuring that the machine does not run out of fruit, and ensuring the fruit is presented in order for processing, according to directions from the Production Co-ordinator.
- Performing daily / weekly operational servicing to ensure the forklift is serviceable and safe to drive at all times.
- Looking after juice bins and overflows.
- Cleaning the in-feed area during the shift and at the end of production. This involves sweeping shovelling debris, and cleaning the in-feed strainers.

**The secondary duties for this position are as follows:**

- Assisting other Receiptals forklift drivers with unloading trucks and storing the full/empty field bins.
- Washing the outgoing field bins, if required.
- If working on the 6 Lane grader, removing the fruit overflow bin in boxes, and re introducing the fruit to the in-feed at the pre-sort table.
- Delivering cartons from the carton store to the box making machines.
- General cleaning.
- May be required to assist with full carton stacking and "Pattern Packing".
- Delivering reject fruit or other rubbish to the refuse facility.

**Gayndah Packers**  
**Forklift Operator-Receiveal Position Description**



- Other duties as may be delegated from time to time by the Production Co-ordinator or the Shift Supervisor.
- There are no supervisory responsibilities attached to this position.

**QUALIFICATIONS**

Current and valid Forklift Operator Licence

**EDUCATION and/or EXPERIENCE**

Basic mathematics - multiplication, addition, subtraction. Must be able to read, write and speak English clearly.

**PHYSICAL DEMANDS**

Constant sitting and working lower legs to operate forklift. Occasional heavy lifting is required. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

**Back-up Position**

- In case of absence of the Forklift Operator Receiveal Position, The Shed Manager will be responsible to oversee all related tasks/duties, a nominated trained personal may be allocated to temporary fill this position.

**Gayndah Packers**  
**Sorter/Pre-Sorter Position Description**



---

**Position Title:** SORTER/PRE-SORTER  
**Position Type:** Part Time, Casual  
**Department:** Quality  
**Reports To:** Shift Supervisor, In-Line Quality Inspector or Quality/Shed Manager  
**Prepared By:** Shed Manager

---

### **SUMMARY**

The position requires ability to sort and grade citrus fruit in a team environment. It is essential to understand quality specifications and apply them to each task.

### **ESSENTIAL DUTIES AND RESPONSIBILITIES**

- Sort different citrus fruits into specified grade categories as per the Quality specifications.
- Accept instruction and report product quality problems to the In-Line Quality Inspector, Shift Supervisor or Quality/Shed Manager
- Other duties may be assigned.
- There are no supervisory responsibilities attached to this position.

### **QUALIFICATIONS**

- Training will be in-house.
- Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

### **ENGLISH LANGUAGE SKILLS**

- Ability to comprehend simple instructions.
- Ability to effectively present information one-on-one to other employees.

### **PHYSICAL DEMANDS**

The employee is regularly required to stand for periods of time. Specific vision abilities required by this job include close vision, colour vision, and ability to adjust focus.

### **WORK ENVIRONMENT**

Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions. A sorter is regularly exposed to moving mechanical parts. The noise level in the work environment is usually constant.

**Gayndah Packers**  
**Sorter/Pre-Sorter Position Description**



**Back-up Position**

- In case of absence of the Sorter/Pre-Sorter Position, The Shed Manager will be responsible to oversee all related tasks/duties; a nominated trained personal may be allocated to temporary fill this position.

**Gayndah Packers**  
**Pallet Stacker Position Description**

---



**Position Title:** PALLET STACKER  
**Position Type:** Part Time, Casual  
**Department:** Production  
**Reports To:** Shift Supervisor  
**Prepared By:** Quality Administrator  
**Approved By:** Shed Manager

---

### **SUMMARY**

Ensure that final packed product is correctly labelled and stacked. The person needs an adequate level of fitness as the position requires constant heavy lifting.

### **ESSENTIAL DUTIES and RESPONSIBILITIES**

- Ensure all produce is stacked on pallets in accordance with shed requirements.
- Check, report, or remedy any faults with regard to packaging and sealing procedures and/or quality of products.
- Other duties may be assigned.
- There are no supervisory responsibilities attached to this position.

### **EDUCATION and/or EXPERIENCE**

Previous experience is not essential. In-house training will be provided.

### **PHYSICAL DEMANDS**

The position is physically demanding and requires the employee to regularly lift and/or move up to 20kg.

### **WORK ENVIRONMENT**

The noise level in the work environment is usually constant. Hearing protection is recommended.

**Gayndah Packers  
Pallet Stacker Position Description**



**Back-up Position**

- In case of absence of the Pallet Position, The Shed Manager will be responsible to oversee all related tasks/duties, a nominated trained personal may be allocated to temporary fill this position.

**Gayndah Packers**  
**Quality End Product Personnel Position Description**



---

**Position Title:**      **QUALITY END PRODUCT PERSONNEL**  
**Position Type:**     Part Time, Casual  
**Department:**        Quality  
**Reports To:**         Shift Supervisor or Production Co-ordinator  
**Prepared By:**        Quality Administrator  
**Approved By:**        Shed Manager

---

### **RESPONSIBILITIES AND DUTIES**

The following are the responsibilities and duties of Quality End Product Personnel:

- Monitoring and recording the quality of packed product. This includes electronic record keeping.
- Liaise with the Quality Inline Personnel, Shift Supervisor/ Production Co-ordinator, and Quality/Shed Manager on matters in relation to fruit quality.
- Feedback to Quality Inline Personnel and Shift Supervisor in relation to fruit quality.
- Juice fruit quality assessments will be carried out by a quality Staff Member as assigned by the Shift Supervisor.
- Other duties may be assigned from time to time by the Shift Supervisor / Production Co-ordinator, or the Quality/Shed Manager.
- There are no supervisory responsibilities.

### **QUALIFICATIONS AND EXPERIENCE**

The following are the qualifications and experiences required by the Quality End Product personnel:

Thorough knowledge of citrus fruit defects, pests and diseases

- Experience in packing shed operations- competent sorter and packer
- Demonstrated decision making and people skills
- Demonstrated team work experience
- Computer and software operation skills



**Gayndah Packers**  
**Quality End Product Personnel Position Description**



**Back-up Position**

- In case of absence of the Quality End Product Personnel Position, The Shed Manager will be responsible to oversee all related tasks/duties, a nominated trained personal may be allocated to temporary fill this position.

**IN THE FAIR WORK COMMISSION**

**AT MELBOURNE**

**AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT OF LYNN TONSING – LT-6**

**FWO Pay Information**



Australian Government

Fair Work  
OMBUDSMAN

## Pay Guide - Horticulture Award 2010

[MA000028]

Published 28 June 2016

Pay rates change from 1 July each year, the rates in this guide apply from 01 July 2016.

Information about the definition and operation of allowances, penalties and overtime can be found in the [award](#) and the [Pay and Conditions Tool](#).

The best way to get general pay and conditions advice is to register for [My account](#) on our website. Once you have registered you can ask questions and save replies, view tailored information relevant to you and save pages, pay rates and awards.

**Rates of pay**  
**Adult**  
**Full-time & part-time**

**Table 1 of 2**

<b>Classification</b>	<b>Weekly pay rate</b>	<b>Hourly pay rate</b>	<b>Public holiday</b>	<b>Afternoon shift - Monday to Friday</b>	<b>Night shift - Monday to Friday</b>
Level 1	\$672.70	\$17.70	\$35.40	\$20.36	\$20.36
Level 2	\$692.10	\$18.21	\$36.42	\$20.94	\$20.94
Level 3	\$712.00	\$18.74	\$37.48	\$21.55	\$21.55
Level 4	\$738.90	\$19.44	\$38.88	\$22.36	\$22.36
Level 5	\$783.30	\$20.61	\$41.22	\$23.70	\$23.70

**Table 2 of 2**

<b>Classification</b>	<b>Overtime - Monday to Saturday</b>	<b>Overtime - Sunday (outside harvest period)</b>	<b>Overtime - Sunday - harvest period - first 5 hours within first 8 hours of overtime per week</b>	<b>Overtime - Sunday - harvest period - after 8 hours overtime in a week or after 5 hours work</b>	<b>Working through a meal break</b>
Level 1	\$26.55	\$35.40	\$26.55	\$35.40	\$35.40
Level 2	\$27.32	\$36.42	\$27.32	\$36.42	\$36.42
Level 3	\$28.11	\$37.48	\$28.11	\$37.48	\$37.48
Level 4	\$29.16	\$38.88	\$29.16	\$38.88	\$38.88
Level 5	\$30.92	\$41.22	\$30.92	\$41.22	\$41.22

**Casual**

<b>Classification</b>	<b>Hourly pay rate</b>	<b>Public holiday</b>	<b>Working through a meal break</b>
Level 1	\$22.13	\$39.83	\$39.83
Level 2	\$22.76	\$40.97	\$40.97
Level 3	\$23.43	\$42.17	\$42.17
Level 4	\$24.30	\$43.74	\$43.74
Level 5	\$25.76	\$46.37	\$46.37

## Junior - Full-time & part-time - Under 16 years

Table 1 of 2

Classification	Hourly pay rate	Public holiday	Afternoon shift - Monday to Friday	Night shift - Monday to Friday	Overtime - Monday to Saturday
Level 1	\$8.85	\$17.70	\$10.18	\$10.18	\$13.28
Level 2	\$9.11	\$18.22	\$10.48	\$10.48	\$13.67
Level 3	\$9.37	\$18.74	\$10.78	\$10.78	\$14.06
Level 4	\$9.72	\$19.44	\$11.18	\$11.18	\$14.58
Level 5	\$10.31	\$20.62	\$11.86	\$11.86	\$15.47

Table 2 of 2

Classification	Overtime - Sunday (outside harvest period)	Overtime - Sunday - harvest period - first 5 hours within first 8 hours of overtime per week	Overtime - Sunday - harvest period - after 8 hours overtime in a week or after 5 hours work	Working through a meal break
Level 1	\$17.70	\$13.28	\$17.70	\$17.70
Level 2	\$18.22	\$13.67	\$18.22	\$18.22
Level 3	\$18.74	\$14.06	\$18.74	\$18.74
Level 4	\$19.44	\$14.58	\$19.44	\$19.44
Level 5	\$20.62	\$15.47	\$20.62	\$20.62

## Junior - Casual - Under 16 years

Classification	Hourly pay rate	Public holiday	Working through a meal break
Level 1	\$11.06	\$19.91	\$19.91
Level 2	\$11.39	\$20.50	\$20.50
Level 3	\$11.71	\$21.08	\$21.08
Level 4	\$12.15	\$21.87	\$21.87
Level 5	\$12.89	\$23.20	\$23.20

## Junior - Full-time & part-time - 16 years

Table 1 of 2

Classification	Hourly pay rate	Public holiday	Afternoon shift - Monday to Friday	Night shift - Monday to Friday	Overtime - Monday to Saturday
Level 1	\$10.62	\$21.24	\$12.21	\$12.21	\$15.93
Level 2	\$10.93	\$21.86	\$12.57	\$12.57	\$16.40
Level 3	\$11.24	\$22.48	\$12.93	\$12.93	\$16.86
Level 4	\$11.66	\$23.32	\$13.41	\$13.41	\$17.49
Level 5	\$12.37	\$24.74	\$14.23	\$14.23	\$18.56

Table 2 of 2

Classification	Overtime - Sunday (outside harvest period)	Overtime - Sunday - harvest period - first 5 hours within first 8 hours of overtime per week	Overtime - Sunday - harvest period - after 8 hours overtime in a week or after 5 hours work	Working through a meal break
Level 1	\$21.24	\$15.93	\$21.24	\$21.24
Level 2	\$21.86	\$16.40	\$21.86	\$21.86
Level 3	\$22.48	\$16.86	\$22.48	\$22.48
Level 4	\$23.32	\$17.49	\$23.32	\$23.32
Level 5	\$24.74	\$18.56	\$24.74	\$24.74

## Junior - Casual - 16 years

Classification	Hourly pay rate	Public holiday	Working through a meal break
Level 1	\$13.28	\$23.90	\$23.90
Level 2	\$13.66	\$24.59	\$24.59
Level 3	\$14.05	\$25.29	\$25.29
Level 4	\$14.58	\$26.24	\$26.24
Level 5	\$15.46	\$27.83	\$27.83

## Junior - Full-time & part-time - 17 years

Table 1 of 2

Classification	Hourly pay rate	Public holiday	Afternoon shift - Monday to Friday	Night shift - Monday to Friday	Overtime - Monday to Saturday
Level 1	\$12.39	\$24.78	\$14.25	\$14.25	\$18.59
Level 2	\$12.75	\$25.50	\$14.66	\$14.66	\$19.13
Level 3	\$13.12	\$26.24	\$15.09	\$15.09	\$19.68
Level 4	\$13.61	\$27.22	\$15.65	\$15.65	\$20.42
Level 5	\$14.43	\$28.86	\$16.59	\$16.59	\$21.65

Table 2 of 2

Classification	Overtime - Sunday (outside harvest period)	Overtime - Sunday - harvest period - first 5 hours within first 8 hours of overtime per week	Overtime - Sunday - harvest period - after 8 hours overtime in a week or after 5 hours work	Working through a meal break
Level 1	\$24.78	\$18.59	\$24.78	\$24.78
Level 2	\$25.50	\$19.13	\$25.50	\$25.50
Level 3	\$26.24	\$19.68	\$26.24	\$26.24
Level 4	\$27.22	\$20.42	\$27.22	\$27.22
Level 5	\$28.86	\$21.65	\$28.86	\$28.86

## Junior - Casual - 17 years

Classification	Hourly pay rate	Public holiday	Working through a meal break
Level 1	\$15.49	\$27.88	\$27.88
Level 2	\$15.94	\$28.69	\$28.69
Level 3	\$16.40	\$29.52	\$29.52
Level 4	\$17.01	\$30.62	\$30.62
Level 5	\$18.04	\$32.47	\$32.47

## Junior - Full-time & part-time - 18 years

Table 1 of 2

Classification	Hourly pay rate	Public holiday	Afternoon shift - Monday to Friday	Night shift - Monday to Friday	Overtime - Monday to Saturday
Level 1	\$14.16	\$28.32	\$16.28	\$16.28	\$21.24
Level 2	\$14.57	\$29.14	\$16.76	\$16.76	\$21.86
Level 3	\$14.99	\$29.98	\$17.24	\$17.24	\$22.49
Level 4	\$15.55	\$31.10	\$17.88	\$17.88	\$23.33
Level 5	\$16.49	\$32.98	\$18.96	\$18.96	\$24.74

Table 2 of 2

Classification	Overtime - Sunday (outside harvest period)	Overtime - Sunday - harvest period - first 5 hours within first 8 hours of overtime per week	Overtime - Sunday - harvest period - after 8 hours overtime in a week or after 5 hours work	Working through a meal break
Level 1	\$28.32	\$21.24	\$28.32	\$28.32
Level 2	\$29.14	\$21.86	\$29.14	\$29.14
Level 3	\$29.98	\$22.49	\$29.98	\$29.98
Level 4	\$31.10	\$23.33	\$31.10	\$31.10
Level 5	\$32.98	\$24.74	\$32.98	\$32.98

## Junior - Casual - 18 years

Classification	Hourly pay rate	Public holiday	Working through a meal break
Level 1	\$17.70	\$31.86	\$31.86
Level 2	\$18.21	\$32.78	\$32.78
Level 3	\$18.74	\$33.73	\$33.73
Level 4	\$19.44	\$34.99	\$34.99
Level 5	\$20.61	\$37.10	\$37.10



## Junior - Full-time & part-time - 19 years

Table 1 of 2

Classification	Hourly pay rate	Public holiday	Afternoon shift - Monday to Friday	Night shift - Monday to Friday	Overtime - Monday to Saturday
Level 1	\$15.93	\$31.86	\$18.32	\$18.32	\$23.90
Level 2	\$16.39	\$32.78	\$18.85	\$18.85	\$24.59
Level 3	\$16.87	\$33.74	\$19.40	\$19.40	\$25.31
Level 4	\$17.50	\$35.00	\$20.13	\$20.13	\$26.25
Level 5	\$18.55	\$37.10	\$21.33	\$21.33	\$27.83

Table 2 of 2

Classification	Overtime - Sunday (outside harvest period)	Overtime - Sunday - harvest period - first 5 hours within first 8 hours of overtime per week	Overtime - Sunday - harvest period - after 8 hours overtime in a week or after 5 hours work	Working through a meal break
Level 1	\$31.86	\$23.90	\$31.86	\$31.86
Level 2	\$32.78	\$24.59	\$32.78	\$32.78
Level 3	\$33.74	\$25.31	\$33.74	\$33.74
Level 4	\$35.00	\$26.25	\$35.00	\$35.00
Level 5	\$37.10	\$27.83	\$37.10	\$37.10

## Junior - Casual - 19 years

Classification	Hourly pay rate	Public holiday	Working through a meal break
Level 1	\$19.91	\$35.84	\$35.84
Level 2	\$20.49	\$36.88	\$36.88
Level 3	\$21.09	\$37.96	\$37.96
Level 4	\$21.88	\$39.38	\$39.38
Level 5	\$23.19	\$41.74	\$41.74

## Allowances

If any all purpose allowances apply (marked \*), they should be added to the minimum rate before penalties and overtime are calculated.

<b>Allowances</b>	<b>Rate</b>
Accommodation reimbursement	reimbursement for the demonstrable cost of suitable accommodation
* First aid allowance	\$0.24 per hour
* Leading hand allowance - in charge of 2 to 6 employees	\$0.55 per hour
* Leading hand allowance - in charge of 7 to 10 employees	\$0.64 per hour
* Leading hand allowance - in charge of 11 to 20 employees	\$0.92 per hour
* Leading hand allowance - in charge of more than 20 employees	\$1.15 per hour
Meal allowance	\$12.05 per meal
Tool and equipment reimbursement	reimbursement of the cost of the tools and equipment
Travelling time allowance	payment at the appropriate rate for time spent travelling
* Wet work allowance	\$1.82 per hour

## Disclaimer

The Fair Work Ombudsman is committed to providing advice that you can rely on.

The information contained in this guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional.

**IN THE FAIR WORK COMMISSION  
AT MELBOURNE  
AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT OF LYNN TONSING – LT-7**

**Costing Translation to the Storage Award**

**Attachment - LT-7**

**Costing translation from Horticulture award to Storage Award**

<b>Approx. #of Staff</b>	<b>Title of Position</b>	<b>Description of Work</b>	<b>Horticulture Classification &amp; rate</b>	<b>Storage Classification &amp; Rate</b>
20	<b>Pallet Stacker</b>	Stacks all packed produce on pallets in accordance with shed requirements	Level 1 - \$22.13 Sat Rate - \$22.13 OT Rate - N/A OT Rate - N/A	Storeworker Grade 1 - \$23.64 Sat Rate - \$33.09 OT Rate - \$33.09 (1st 2hrs) OT Rate - \$42.55
10	<b>Shed Hand</b>	General duties in packing shed, leveling of cartons in lanes, moving cartons along, hand pack fruit for export	Level 1 - \$22.13 Sat Rate - \$22.13 OT Rate - N/A OT Rate - N/A	Storeworker Grade 1 - \$23.64 Sat Rate - \$33.09 OT Rate - \$33.09 (1st 2hrs) OT Rate - \$42.55
20	<b>Sorter/Pre-Sorter</b>	Sort various varieties into specific grade categories as per the Quality specifications	Level 2 - \$22.77 Sat Rate - \$22.77 OT Rate - N/A OT Rate - N/A	Grade 3 - \$25.16 Sat Rate - \$35.23 OT Rate - \$35.23 (1st 2hrs) OT Rate - \$45.29
6	<b>Forklift Operator</b>	Forklift duties within shed	Level 4 - \$24.31 Sat Rate - \$24.31 OT Rate - N/A OT Rate - N/A	Grade 2 - \$24.45 Sat Rate - \$34.23 OT Rate - \$34.23 (1st 2hrs) OT Rate - \$44.01
5	<b>Quality Personnel</b>	Monitoring & recording quality of packed produce. Received QA - records quality of produce received In-Line QA - records quality of produce during packing process End Product - records quality of packed product	Based on level 3 Level 3+ - \$23.95 Level 3+ - \$23.95 Level 3++ - \$24.47 Sat Rate - \$23.95/24.47 OT Rate - N/A OT Rate - N/A	Grade 3 - \$25.16 Sat Rate - \$35.23 OT Rate - \$35.23 (1st 2hrs) OT Rate - \$45.29 Grade 4 - \$25.90 Sat Rate - \$36.26 OT Rate - \$36.26 (1st 2hrs) OT Rate - \$46.62

**IN THE FAIR WORK COMMISSION**

**AT MELBOURNE**

**AM2016/25 – 4 yearly modern award review**

**BETWEEN:**

**GAYNDAH PACKERS PTY LIMITED**

**Applicant**

**WITNESS STATEMENT OF LYNN TONSING – LT-8**

Proposed Variation to Coverage

**IN THE FAIR WORK COMMISSION**

**MATTER: AM2016/25 HORTICULTURE AWARD 2010 (MA4028)**

**4 Yearly Review of Modern Awards**


Email: amod@fwc.gov.au

**SUBMISSION IN RESPONSE TO DIRECTIONS**

1. Macpherson Kelley act on behalf of Gayndah Packers Pty Ltd (**Gayndah Packers**).
2. Gayndah Packers Pty Ltd carries on a business which packs and sorts fresh produce from related entities and other horticultural entities.
3. On 12 September 2016, the Fair Work Commission issued Directions inviting any interested party to file a draft determination specifying the terms of the variations (or the variations) sought by close of business on 21 October 2016 (**Directions**).
4. The terms of the variation we propose are set out at **Attachment 1**.
5. The variation proposed is limited to Clause 4 Coverage of the Horticulture Award.
6. The affect of the changes set out at Attachment 1 would confirm that a packing shed which operates as a separate but related legal entity would be covered by the Horticulture Award.
7. Gayndah Packers intends to provide further submissions to support the basis for the variation as required by paragraph 2 of the Directions.

Please contact the writer should further details be required.

Yours faithfully

  
**Macpherson Kelley**  
CHRIS MOSSMAN  
Principal



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Encl.

## Attachment 1

*horticultural crops includes all vegetables, fruits, grains, seeds, hops, nuts, fungi, olives, flowers, or other specialised crops. ~~unless they are specifically named as a broadacre field crop in the Pastoral Award 2010~~*

### 4.3 Horticulture industry does not mean:

- (a) the wine industry;
- (b) silviculture and afforestation;
- (c) sugar farming or sugar cane growing, sugar milling, sugar refining, sugar distilleries and/or sugar terminals;
- (d) any work in or in connection with cotton growing or harvesting; cotton ginneries and associated depots; cotton oil mills and the extraction of oil from seed;
- (e) plant nurseries; ~~or~~
- (f) ~~a broadacre mixed farming enterprise as defined in the Pastoral Award 2010~~ a broadacre mixed farming enterprise which combines the growing of crops and the management, breeding, rearing or grazing of livestock.

### 4.2 Horticulture industry means:

- (a) ~~agricultural holdings, flower or vegetable market gardens in connection with the sowing, planting, raising, cultivation, harvesting, picking, washing, packing, storing, grading, forwarding or treating of horticultural crops, including fruit and vegetables upon farms, orchards and/or plantations in connection with a horticultural enterprise; or~~
- (b) clearing, fencing, trenching, draining or otherwise preparing or treating land or property in connection with the activities listed at 4.2(a) for the sowing, raising, harvesting or treating of horticultural crops, including fruit and vegetables.

### Proposed new definitions:

*Enterprise means a business, activity, project or undertaking, and includes:*

- An employer that is engaged with others in a joint venture or common enterprise; or
- Employers that are related bodies corporate within the meaning of s50 of the Corporations Act 2001 (Cth) or associated entities within the meaning of s50AAA of the Corporations Act 2001 (Cth).

*Horticultural enterprise means an enterprise which as an important part of its enterprise engages in the raising of horticultural crops.*

*Liability limited by a scheme approved under the Professional Standards Legislation*