

FAIR WORK COMMISSION

Matter No: AM2020/104

Horticulture Award 2020

UNITED WORKERS UNION: AIDE MEMOIRE

1. This aide memoire is filed pursuant to the orders of the Full Bench made on 16 July 2021 that parties identify the evidence on which each party will rely during the course of oral closing submissions.
2. In addition to the evidence referred to in its written closing submissions, the UWU will refer to the following evidence:
 - (a) The FWO *Harvest Trail* Report, at CB 1010.
 - (b) *Submission of the National Union of Workers to the Joint Standing Committee on Migration Inquiry Into the Seasonal Worker Programme*, at CB 2370–2.
 - (c) *Towards a Durable Future*, at CB 2566.
 - (d) ABARES, Labour use in Australian Agriculture, at CB 511 (generally) and at CB 514.
 - (e) The witness statements of Fetui (CB 3018) and Uata (CB 3083).
 - (f) The witness statements of King at [12]–[14], Gaeta at [5]; Reardon at [6]; Kelly at [7] and [10]; McClintock at [7]; Silverstein at [12]; Mentham at [8]; Trewin at [7].
 - (g) Transcript references at PN 827–36; PN 886–96.

Lodged by: United Workers Union
Address for Service:
833 Bourke Street,
DOCKLANDS VIC 3008

Telephone:
Email:

0423 598 124

lyndal.ablett@unitedworkers.org.au

Response to questions in the Background Paper

3. The UWU provides the following responses to certain questions in the Background Paper:

FWC Question	UWU Position
Q1: Is it common ground that neither the Horticulture Award nor the Act and Regulations require an employer to keep a record of hours worked by a pieceworker?	Yes.
Q2: Are any of the observations at [9] to [14] contested?	No.
Q3: Does any party contest the proposition at [16]?	No.
Q4: What does the AWU say about the AFPA submission regarding <i>National Retail Association v FWC</i> (2014) 225 FCR 154?	N/A.
Q5: If the minimum wage objective is enlivened by the Application what do the parties say about the matters set out at s 284(1)(a) to (e)?	The UWU will address this question in oral closing submissions.
Q6: Does any party contest the UWU’s submission regarding the key principles to draw from <i>Hu (No 2)</i> and the <i>Hu</i> Appeal (set out at [57] and [58] above)?	N/A.
Q7: Does any party contest the summary at [60] and [61]?	No.
Q8: Interested parties are invited to confirm that the summary of their submission is accurate, or, if not, to identify any correction or additions.	The summary of the UWU’s submissions, excluding the closing submissions, is accurate.
Q9: What do the other employer organisations say about the AFPA’s alternate proposal?	N/A.
Q10: Are any of the observations at [155]-[157] contested?	No.
Q11: Does any party contest the proposition at [160]?	No.
Q12: Does any party contest the proposition at [171]?	<p>The focus of s 134(1)(c) is not so narrow as to be confined only to obtaining employment. Social inclusion may also be promoted by assisting employees to remain in employment: <i>Re Four Yearly Review of Modern Awards – Family and Domestic Violence Leave</i> (2018) 276 IR 1, [282].</p> <p>Further, ‘social inclusion’ requires more than simply being employed: a job with inadequate pay can create social exclusion if the income level limits the employee’s capacity to engage in social, cultural, economic, and political life: <i>Annual Wage Review 2015–2016</i> [2016] FWCFB 3500, [467].</p>
Q13: Are any of the observations at [184] contested?	No.
Q14: Are the observations at [191] – [197] contested?	<p>The UWU will address [191] in oral closing submissions (as part of its submissions regarding the minimum wage objective generally).</p> <p>The observations at [192]–[197] are not contested.</p>

FWC Question	UWU Position
Q15: Are there any corrections or additions to the summary of the party submissions in respect of the s 134 considerations at [161] to [217] above?	No corrections. The UWU will otherwise address the s 134(1) considerations in oral closing submissions.

29 July 2021

Kate Burke