

CLOSING STATEMENT, 88 DAYS & COUNTING

INTRODUCTION

88 Days and Counting is making this closing submission as our organisation believes that the cross-examination of Mr. Nicholas King from Costa Group has raised more questions than answers. Furthermore, the initial non-compliance of Costa Group (Berry Division) to produce documents and records including; payslips and pay records, hours and days of work undertaken by pieceworkers, the average hourly earnings of pieceworkers and monitoring mechanisms means we would like to make the following closing statement.

1. PIECE RATES - COSTA GROUP, BERRY DIVISION

From Mr.King's submission to the Fair Work Commission on the behalf of Costa Group it is difficult to determine what the piece rates are for picking blueberries, raspberries, and strawberries. Also the summary documents submitted at a later date indicate the piece rates vary on a daily basis but there are no explanations for how this occurs. Furthermore, under cross-examination Mr.King stated that current and prospective pickers learn about pay rates when they arrive for work (at the start of the day) and also via Facebook. This does not allow for much forward financial planning for piece workers.

2. CALCULATION OF PIECE RATES BASED ON WORKER PROFICIENCY

In Mr.King's witness statement on p. 9 – 10, points 33, 34 & 35, he talks about four categories of pieceworkers, including **novice, competent, average competent and strong performer** pickers. However, it is difficult to ascertain the average quantity a person can pick per day in each category and how much they get paid. It is also difficult to determine what criteria is used by Costas to gauge the proficiency of workers and it seems from Mr.King's responses under cross-examination workers who are considered to be novices are paid below award wages. It is hard to calculate whether the other three categories of workers are paid above minimum award wage.

From Mr.King's written submission and cross-examination it is difficult to gain a clear understanding of what percentage of Costas workforce falls into each one of these four categories. Costas only records how many pickers are picking in a given day. Mr.King stated that these records are, "for each individual session on each individual batch on each individual task." However, from his response it is difficult to determine whether or not Costas maintains a comprehensive record of pickers, picking rates and competency level.

Furthermore, on p. 14, point. 35 Mr.King states, *at Costa, Pacific Islander workers are heavily represented in our top 30% of strong performers once they have attained two or three seasons' experience at picking.*" We were unable to determine why it takes workers so long to gain this level of proficiency and the breakdown of men and women who reach this level of proficiency. Also it is very difficult to determine Costa's picking workforce that are disabled or from a culturally diverse background.

	Novice Picker	Avg. Qty Picked Per Day	Avg. \$ Pay Per Day	Comp Picker	Avg. Qty Picked Per Day	Avg. \$ Pay Per Day	Avg. Comp Picker	Avg. Qty Picked Per Day	Avg. \$ Pay Per Day	Strong Perf	Avg. Qty Picked Per Day	Avg. \$ Pay Per Day
Berries	0 – 4 weeks			4 – 6 weeks			6 – 8 weeks					
Citrus & Avocados	0 – 2 weeks			2 – 4 weeks			4 – 6 weeks					

NB: All farm workers need to be earning a minimum of 15% above the casual award wage of \$24.80/hour (\$28.52/hour) under current laws pertaining to piece rates.

On p.11 - 14 of a later submission made by Mr.King on 22 July he provided payslips in November 2018 and February 2019 when the minimum award casual rate was \$23.66 per hour. This means that the minimum piece rates pickers need to be paid is \$27.14 per hour.

Based on these figures we can see that not all pickers were able to earn the minimum award casual rate and quite a few pickers were not able to earn the minimum hourly picking rate.

PAY SLIPS	BELOW \$23.60	BELOW \$27.14
78	4 (5.1%)	30 (38.5%)

3. WORKFORCE ATTRITION & TRAINING & DEVELOPMENT

On p.12, point 47. Mr. King states, *"I am informed by Costa's HR department that approximately 18% of Working Holiday Makers left our employment within the first 2 weeks of starting with us in 2019. Of the 4,249 total Working Holiday Makers employed with Costa throughout 2019, 2,345 employees (that is, around 55% of the workforce) left within the first eight weeks of employment:*

- a) *764 workers left in the first two weeks of employment, being 18%;*
- b) *629 workers left within the first two to four weeks of employment, being 15%;*
- c) *497 workers left within the first four to six weeks, being 12%; and*
- d) *455 workers left within the first six to eight weeks; being 11%."*

These figures are very high and troubling. We were unable to determine from the cross examination of Mr.King why these figures are high and whether Cotas Group records the reasons for high WHM turnover. Also, Mr. King did not provide a satisfactory response as to whether pay rates were a factor to this high attrition rate. When cross-examined by Mr.Gibian about whether Costas paid novice workers and those who are not competent, *"substantially below the hourly rate"* Mr.King agreed with this assertion.

Furthermore, on p. 10 & 11, point. 39 Mr.King said, *"as a result, there is a great variation between the productivity of different pickers. Again, this depends on the type of produce and type of worker. However, based on my experience, as a rough general guide, I would expect an increase in output in the order of 70% going from a novice to a competent worker, and another increase in the order of 40-100% going from a competent worker to a strong performer."*

Based on the above statement it may be inferred the high attrition rates of pickers early in their employment could be linked to the low take home pay for novice pickers. Furthermore, in Mr.King's submission he fails to mention whether further training and development is provided to pickers once they have been inducted at the commencement of employment. There is no mention of ongoing training and development.

4. DIVERSITY TRAINING & DEVELOPMENT OF MANAGEMENT

88 Days and Counting have concerns about what safeguards are in place for people from culturally and diverse backgrounds and what training do farmers have in this area to ensure that these workers have an avenue to be able to raise complaints such as underpayment, safety and harassment. Are farmers or managers aware of cultural or linguistic issues that may prevent workers coming forward or speaking out? How are incidents of underpayment, workplace bullying and harassment managed? What safeguards do Costa's have in place so employees aren't indentured to complete their 88 days or the full season?

5. PACIFIC ISLAND WORKERS

On p. 11, point. 44 Mr.King states that, *"backpacker cohorts and local employees have significantly higher attrition rates as compared with Pacific Islander workers. Pacific Islander workers demonstrate a greater understanding of the nature of the work they will be required to perform because they undertake some of their induction whilst they are in their home country and make a significant commitment to travel to Australia specifically to perform that work."*

Furthermore, on p. 8, point 26 of Mr.King's submission he states: *"In addition to engaging Pacific Islander workers through labour hire, the Costa Berry category has recently started employing them directly. In my experience as a manager at Costa, employing the Pacific Islander workers directly improves worker morale and cohesion. The workers have the security of direct employment. A high percentage of them return for multiple seasons. Their familiarity with the systems and procedures of our farms allows them to be competent on their return, enabling them to earn above the hourly rate from the start of each subsequent period of employment."*

Pacific Island Workers who come to Australia under the Seasonal Worker Program (SWP) are hired for a nine month period, so they are not able to easily walk off their jobs even if they are being exploited in their workplace. Howe et al (2019) argue that although SWP workers have access to a special hotline, they do not complain because they want to remain in Australia for the duration of the season, and do not want to be reprimanded, have their passport confiscated and many want to be able to return to Australia to work. Also, Mr.King does not really touch on the fact that these workers make many sacrifices when deciding to come and work in Australia, which including having to forgo work in their home countries, and many have dependents at home who are reliant on their remittance to cover living expenses including schooling, medical costs, etc.

6. LOCAL WORKERS WHO ARE ON UNEMPLOYMENT BENEFITS

In p. 11, point 46. (a) Mr.King states, *“in some cases, workers who are receiving unemployment benefits will come and try picking work and will decide that they are not able or prepared to perform the work and go back onto unemployment benefits.”*

When cross-examined by Mr. Bretherton on Friday 16 July Mr.King admitted one of the reasons why local workers opt out and return to receiving unemployment benefits is because the piece rates they earn are very low and therefore act as a disincentive for continuing their employment.He also admitted some people on Newstart can access government support while undertaking farm work. Our question is: Are wages so low on piece rates that ASX listed companies now need to seek out and utilise workers that are essentially being subsidised by centrelink to do these jobs? and why aren't these jobs able to lift jobseekers out of poverty and unemployment?

Under further cross-examination on 16 July Mr.King stated, *“as a company we do market research of our - you know, on our labour base, on our labour markets.”* However, very little insights were provided to back up his assertions. Furthermore, Mr. King did not explain how Costa Group is countering this by implementing training and development programs that enable local workers to improve their skills and advance within the organisation and industry.

7. WORK RELATED INJURY, SICKNESS AND DISABILITY

When asked (cross-examination on 16 July) *“Do you think it's fair that a person with disabilities' piece rate is determined by an able-bodied person's picking rate?”* Mr King responded: *“I'm not sure I'm the one to answer that question. I haven't had enough experience in that area.”*

Our concern is that without a floor rate, how are workers who are either injured, disabled, sick or impaired either from work on the job or from birth etc. Able to compete fairly with their able bodied counterparts? How would someone on restricted duties, the return to work program or disability employment services be able to earn a living wage on piece rates that do not calculate for these types of discrepancies? If a floor rate were introduced it minimises this type of discrimination and removes barriers for these workers.

8. COSTA GROUP OPERATION & OVERSIGHT

On p.1, point 3 Mr.King's submission, he states that Costa Group is the, *“largest fresh produce supplier to major food retailers.”* and *it works with partner growers that produce and market avocados, bananas, berries, citrus, grapes, mushrooms and tomatoes.*

However, it is not clear what kind of oversight has been instituted by Costas Group to ensure partner growers are compliant and adequately paying workers engaged in picking their fruit and vegetables?

9. CONCLUDING STATEMENT

The submissions made to Fair Work Australia demonstrates the need for nationwide regulation in the form of a base hourly rate for piece workers and for hours worked to be recorded by employers. There also needs to be adequate oversight and monitoring if we are to minimize future exploitation of workers in the horticulture sector.

When giving evidence to the senate inquire into modern slavery in 2018 I brought forward the witness statement below. Unfortunately since then not much has changed and my statement is as relevant now as it was then. If we are serious about abolishing modern slavery we need to remove the barriers and mechanisms that are currently in place like piece rates that enables this type of exploitation. The fact that even an ASX listed company cannot or is unwilling to provide evidence, answer questions or have any safeguards to protect all their workers (which include all genders, people with disabilities, centrelink recipients and people from culturally and diverse backgrounds) clearly shows how systemic this issue is.

MODERN SLAVERY WITNESS STATEMENT – ANDREW BRETHERTON (88 DAYS AND COUNTING)

“My partner is currently working on a farm for her second year visa. She's Chinese. When we were discussing her coming here, I told her that Australia has workplace and safety laws that can protect her. Even utilising and knowing these services and procedures myself, it has been extremely hard to get her fair pay and conditions, and my partner is currently still being exploited. I would love to tell you more, but my partner and her workmates are petrified that if I speak to you today not only will they lose their opportunity to stay in Australia but they'll also be at risk of physical harm. (For context queenas room was knocked on late at night and they were demanding which backpackers boyfriend called the farm and company and got the union involved) What was said earlier about Asian workers versus European workers being harder or better is just cultural exploitation. Farmers, hostels and contractors are taking advantage of backpackers of Asian backgrounds. There's a saying in China that the nail that sticks out gets hammered down, so traditionally it is not part of their culture to speak out against their employer. When I spoke to my partner about coming to Australia, she was surprised by all our working and safety rights that we have here, as they do not exist in her country, (china) unlike in Australia and Europe.

I'd also like to address some other issues with you today, the first being piece rates. Piece rates are being used as a legal loophole to exploit women and backpackers out of decent pay conditions. At the moment, backpackers' employers decide what the average competent worker is and then off this decide what the rate of pay will be. I would call for this to be abolished or at the very least government regulated rather than farm regulated, as it is currently in other working sectors. In Australia we regard ourselves as giving equal pay to women, but with piece rates, women are consistently earning less than men. I understand that this is because of the physical nature of the work, but keep in mind these women are working the same hours and same conditions as the men on the farms.

The other issue I'd like to bring up is the myth Australians don't want to work on farms or are too lazy for farm work. When looking for work for my partner's second year visa, which took almost six months, I also believed this myth that farmers are desperate for Australian workers, so I would call these farms myself as an Australian looking for work, and then the farmer or contractor would say that there is no work available. My partner would then call the same place after me this time as a backpacker asking for the same work, and automatically she was offered the job! But well under the award wages. At the community meeting yesterday I also spoke to a local resident who also had trouble obtaining work here in the area (Mildura) . He believes he was turned down for the same reason, and I believe he's still looking for work.

There are two avenues to find farm work in Australia. One is legitimate sources like the government harvest trail website, Seek and the other job networks online. These seem to have very few regional farming jobs available, but then there are the unregulated social media or apps, in which there are literally hundreds of farming jobs available (for backpackers). Australia regards itself as the land of the fair go, but, having personally experienced what my partner is going through, and through working with Rosie, I can honestly say I no longer believe this to be true.”

REFERENCE LIST

Howe, J., Clibborn, S., Reiley, A., van den Broek, D & Wright, C.F 2019, Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry, *The University of Adelaide*, Date Accessed: 25 July 2021, Retrieved: <https://www.sydney.edu.au/content/dam/corporate/documents/business-school/research/work-and-organisational-studies/towards-a-durable-future-report.pdf>