



Tim Pallas MP

Treasurer  
Minister for Economic Development  
Minister for Industrial Relations

1 Treasury Place,  
Melbourne, VIC 3002

B21/1028

Justice Iain Ross  
President  
Fair Work Commission

chambers.ross.j@fwc.gov.au

Dear Justice Ross,

The Victorian Government refers to the application by the Australian Workers Union (AWU) to vary clause 15.2 in the Horticulture Award 2020 (award) under section 158 of the *Fair Work Act 2009* (Cth) (the application) [AM20/104].

We would like to express the Victorian Government's strong support for the AWU application and the provision of a safety net of fair and safe work practices and pay.

There are significant numbers of employees in the horticulture industry who are paid based on the results of their work, through piece rates. Various this depends upon having picked a certain volume or weight of product or having completed work within a certain area or patch. Rates will vary according to the produce being harvested and the type of pick being undertaken, such as whether the fruit is being harvested for high quality markets.

Clause 15.2 (b) of the award requires that the piece work rate is set by reference to the minimum hourly rate, providing that the rate must enable the average competent employee to earn at least 15 per cent more than the relevant minimum hourly rate under the award.

However, in practice, this approach has failed to ensure fair pay is delivered. This method of payment can result in very low wage rates for workers in the industry, when calculated over the period worked, at significantly less than minimum award rates. This evidence is regularly provided in public commentary and other inquiries.

Previous research and evidence presented to the Victorian Inquiry into the Labour Hire Industry and Insecure Work (Inquiry) pointed to widespread non-compliance with this provision<sup>1</sup>. Evidence presented to the Inquiry suggested that piece rate workers almost universally have little or no say in determining whether they would be paid piece rates or what the rate would be.

The Inquiry found that piece rates in the horticulture industry undermine the minimum safety net intended to be established by minimum hourly rates and that the safeguards which attach to piece rate systems do not appear to be effective. Further, the use of piece rates in that

---

<sup>1</sup> <https://engage.vic.gov.au/inquiry-labour-hire-industry-and-insecure-work>

industry contributes to a level of subjectivity and uncertainty regarding what rate is payable to an employee, and produces a number of problematic outcomes.

The Victorian Government is also of the view that existing protections in the award at clause 15.2 (b) are not effective. Clause 15.2 (b) gives rise to uncertainty and subjectivity about the appropriate rate of pay and therefore undermines the safety net intended to be established by minimum rates.

Further, the circumstances experienced by many horticulture workers mean that most piece rates are not the product of genuine agreement. This renders null any other protection offered by clause 15.2 (f), which aims to address coercion and duress. The variation in rates and lack of transparency further diminishes workers' ability to negotiate a fair rate.

Additional protections are required to ensure that, for piece workers in the horticulture industry, the modern award objectives are met. This is especially the case in so far as the modern award objectives require a safety net that takes account of the living standards and needs of the low paid.

This season in particular has highlighted just how vital the seasonal workforce is to the horticulture industry and it is important that we continue discussions around what is sustainable for both businesses and workers when it comes to wages. We support farms and businesses that ensure workers are paid appropriately and according to the Fair Work Commission's applicable awards.

We know thousands of farm business and labour hire companies across the state value the contribution made by their seasonal workforce and manage their workplaces to ensure employees are safe and paid appropriately. However, the Victorian Government supports greater transparency in the horticulture industry, particularly when it comes to wages and workplace conditions. While most businesses in agriculture understand the value of their workers, we know there are unscrupulous operators in this industry. Exploitation of workers is unacceptable and will not be tolerated by this Government.

The Victorian Government supports insertion of clauses proposed by the AWU to provide a clear safety net minimum wage floor for piece workers under the Horticulture Award. This support is consistent with the Victorian Government's commitment to addressing inequality in the workplace. It also aligns with our policy support for a fair and relevant safety net of workplace conditions for businesses and workers alike.

We thank you for the opportunity to provide the Victorian Government's views on this matter.

Yours sincerely



**Tim Pallas MP**  
Minister for Industrial Relations

11/4/21



**Mary Anne Thomas MP**  
Minister for Agriculture

07/04/2021