

Justice Iain Ross
President Fair Work Commission
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Dear Justice Ross,

My name is Andrew Bretherton I run 88 Days and Counting,

88 Days and Counting an organisation campaigning to raise awareness around Working Holiday Makers' financial exploitation, emotional and sexual abuse caused by the mandatory Australian Federal Governments Working Holiday Visa Program. Our organisation has a member base of 28,100 working holiday makers and allies.

88 Days and Counting supports The Australian Workers' Union's application to vary clause 15.2 Pieceworker Rates in the Horticulture Award 2020 under section 158 of the Fair Work Act 2009.

Piece rate in its original form was meant to be 15% above the minimum award casual rate (or 20% more in the wine industry). However, what we are finding is that workers are in-fact not earning more than the award wage and instead many are earning well below this amount.

Fair Work Australia states that under the Horticulture Award, an agreed piecework rate must allow the 'average competent employee' to earn at least 15% more per hour than the relevant minimum hourly rate in the award for the employee's employment type and classification. Under the Wine Award, an agreed piecework rate must allow an employee of 'average capacity' to earn at least 20% more per hour than the relevant minimum hourly rate in the award for the employee's employment type and classification: [Pay & piecework rates - Horticulture Showcase - Fair Work Ombudsman](#)

Pay & piecework rates - Horticulture Showcase - Fair Work Ombudsman

Find information on pay and piecework rates in the horticulture industry.

It's sexist and discriminatory. Piece rates punish women and people with disabilities as they aren't able to earn as much as able bodied men (due to evolutionary sexual dimorphism). This can make it almost impossible for women and non able bodied people to earn equal pay as men. Workplace Relations **Act** 1996 contains strong provisions requiring that employers pay male and female employees **equal remuneration** for work of **equal** value. Currently there are no provisions to ensure this happens when it comes to piece rates.

It also punishes competent workers who are highly productive due to the competitive nature of piece rates. Employers can manipulate the picking rate, promoting favoritism among workers which benefits only a small minority of workers. █

If a majority of workers meet the picking standard set by the farmer, due to averaging the piece rate will then be lower even though the workers' productivity is now higher. This means that the "faster" more experienced worker will now earn much less, incentivising incompetence.

Piece rates are also not set and are at the discretion of farmers, meaning these rates can fluctuate from one farm to another and over the course of a day. For example workers can be told at the start of the day the piece rate is \$0.89 per bucket, then at lunch time they can be told they are being “too efficient” and the piece rate and advised that the rate will be reduced to 50c for the rest of the day.

Furthermore, “Collective piece rates” are also offered to workers who are paired up with another worker. Although piece rates are meant to be offered on an individual basis, what we are generally seeing happening on farms is workers are paired in groups. This means that faster workers are earning a lower wage and this means they are often less than the award wage. Also If a faster worker is paired with a slower worker or in a group that has more inexperienced workers that are undertaking training they can earn much more than their counterparts, while their colleagues are stuck earning much less unable to meet the more experienced workers picking rate.

Because of issues with extremely low pay we have seen incidents of workplace bullying, bucket stealing, sabotage. We also see farmers not adhering to minimum work safety standards and workers often take shortcuts in a desperate attempt to earn a living wage.

We strongly recommend the inquiry should seek to:

- Abolish the 88 days working holiday visa requirement for working holiday makers in Australia. It is currently used as an exploitive loophole to indenture working holiday visa holders into unfair work and modern slavery.
- The introduction of a minimum hourly wage for all workers
- Abolish piece rates
- Reform and implement new regulations, including a directory of best practice, and employer registry (so unscrupulous employers can be removed from access to whv holders) across the Working Holiday Visa Program.

Case study: Apsara (farm work December 1993 - February 1994)

Location: Greater Shepparton Area including Mooroopna, Tatura and Ardmona

Picking: Tomatoes & Plumes

My friend and I decided at the end of our first year at university to look for jobs that were posted on our university job board. The only jobs left were fruit picking in the greater Shepparton region. So we called one of the farms located in Tatura that was offering work and were offered tomato picking work straight away.

We were told that we would be paid \$60.00 per tonne of tomatoes. He also said that an average picker was able to pick at least 2 tonnes of tomatoes. We thought at that point that we would be able to do this and agreed to start work the following week. We also asked about transportation as neither of us drove or owned a car. He told us that if we stayed in a caravan park in Shepparton we would be able to get a lift to the farm. So we booked into the caravan park.

We arrived at the caravan park on the weekend prior to the week we were commencing work and made enquiries about the person who could give us a lift and met with him to

arrange to get a lift to our new work place the upcoming Monday. We were advised that we would need to pay the man \$5 each (the farmer never told us that we would need to pay this amount of money for a lift).

On Monday we arrived at the farm at 5:30 am for an induction and were shown where we were picking, the types of tomatoes to pick and how to pick the tomatoes.

This work was back breaking, and soon the sun would rise and we would pick throughout the day till 3:00 pm/4:00 pm under the sun. Temperatures would soar and on many days it would get up to 38 degrees. Also we soon discovered that neither were able to pick more than a tonne of tomatoes a day. This meant that the maximum each of us earned picking tomatoes was \$60 per day.

The same happened when we were offered work picking plums. While the farmer claimed that we would be able to pick a minimum of two tonnes per day, the reality was that neither of us were able to pick more than a tonne.

We were then offered work clearing greenhouses for \$100 per day. My friend and I were excited because we were getting a pay rise. However, we were never warned by the farmer that the work would be very dangerous and that there would be snakes in the greenhouses. On arrival at the farm we were given gumboots and advised that we needed to stomp around so that snakes would clear away. The only protection we had were gumboots.

The work across these farms was backbreaking, highly exploitative, at times dangerous and itinerant in nature. Often we would get to the end of a day only to be informed by the farmer that there was no more work. This meant we would have to scramble to find work for the upcoming days.

This meant that on all the farms that my friend and I worked on we were often the only Australians. It seemed that the farmers had a preference for younger, less experienced workers, as well as backpackers and migrant workers. This work experience over eight weeks made me realise why many locals did not want to do this work and I also noticed a reluctance by the farmers to offer work to locals as well. They would make disparaging comments about locals but looking back I realise this is because locals knew their work rights and they were more likely to exert them.

When we finished up in February 1994 my friend and I were so excited to be getting off the farms and back to our lives in Melbourne. I never really looked back and often felt I was lucky as I did not have a single mishap on the job.

However, in January 2021 a number of Medevac refugees were released by the Australian government without any financial support after nearly 8 years of onshore and offshore detention. So they desperately needed to find work. I was told there was a lot of farm work picking pears and apples in regional Victoria.

When I made enquiries on the behalf of the refugees I was advised that picking rates were between \$38 - 42 for 460 kg of apples or pears. I was shocked as nearly 30 years had passed since my time picking to find that pay rates had not improved much in this period.

When I expressed my concern to the organiser, he said that good pickers can pick 5 - 6 bins per day (2.3 - 2.7 tonnes). I know from my own personal experience that most people would not be able to do this.

Furthermore, even if someone is able to pick up to 5 bins per day they would be earning less than the daily minimum wage for casual work which currently is \$198 per day (for an eight hour shift).

Case study: Tag (farm work January 2019 - current)

Location: Mildura, Bendigo

Picking: figs, grapes, oranges/mandarins

Trimming: Grapes

I arrived in Melbourne, Australia on a Working Holiday Visa in January 2019 and started my first farm job picking figs in Mildura 2 weeks later. It took me almost 6 months to complete my 88 days, and a full year to complete my 6 months to get a third-year Working holiday Visa- working at a piece rate.

About the wages: When I was in Mildura it was really bad, because of piece rate work. The Australian government and the law will always legitimise the fact you are working 8 hours for \$50... I worked for \$0.40 for a box of figs, \$20-\$30 for a bin of oranges, \$1.14 for a box of Table grapes trimmed.

We never knew what the piece rate would be before two hours into our shift. The rate would fluctuate throughout the day. During my first months in Mildura I was promised that my work would count towards my 88 days but at the end of the day it turned out to be a cash in hand job. The farmers and the contractors I was working for were dishonest and were taking advantage of us workers.

I don't feel like I've been treated as sh*t but I have to admit I feel that way because I know where I am. I'm a black person born in Africa who grew up in France. Being a foreigner, racism, doing the job locals don't wanna do, I know it. The sh*tty salary, the sh*tty accommodations, the sh*tty supervisor, the sh*tty farmer, I expected it. I had no problem with that.

What makes me feel really sh*tty is to know that even the law isn't on my side. It makes me feel sick that the Australian government knows the backpackers' situation during the 88 days, but they close their eyes. It makes me feel insignificant to know that Fair Work can not help me when I have trouble with my piece rate.

I spent months gathering evidence of wage theft which I then submitted to Fair Work regarding a fig farm near Mildura dealing with some bad contractors and cheap piece work wages. I provided Fair Work with the evidence they need to spot a bad farm/contractor. After months of phone calls and email exchanges, they said my case cannot be investigated at the moment because of Covid-19 so they had to close it. I then asked them to investigate the farm after Covid-19 restrictions were lifted to which they answered: "That's not how it works. We have to close a case if we can't investigate immediately because that allows us to open a new one."

Sincerely

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