

FRUIT GROWERS TASMANIA'S RESPONSE TO THE AWU SUBMISSION TO FAIR WORK AUSTRALIA REGARDING THE VARIATION OF PIECEWORKER RATES IN THE HORTICULTURE AWARD

Fruit Growers Tasmania (FGT) is a not-for-profit association with over 80 grower members of all shapes and sizes across all three regions of the state, producing apples, berries, cherries, other stone fruit including apricots and pears.

FGT represents the interests of the Tasmanian fruit growers who produce some \$300 million of fruit per year, directly employ some 1,500 people in ongoing roles, and over 8,000 people in seasonal roles in the peak of the season.

The pieceworker rates in the Horticulture Award are used by almost all of these growers as the basis for remunerating the vast majority of these seasonal workers when picking fruit. Workers engaged in non-picking roles are paid on an hourly rate.

With this background FGT believes it is well placed to respond to the Australian Workers' Union's (AWU's) application to vary the modern award - Horticulture Award 2020 MA000028.

AWU Application:

The AWU seeks the following variations to the Horticulture Award 2020:

1. Delete the existing clause 15.2(i) and inserting the following:

15.2(i) A full-time, part-time or casual employee working under a piecework agreement must be paid for each hour of work performed at least the minimum rate payable for the employee's classification and type of employment under this award. The minimum rate payable includes the casual loading prescribed in clause 11.3(a)(ii) for a casual employee.
2. Insert the following as a new clause 15.2(k):

15.2(k) The employer must keep a record of all hours worked by a pieceworker as a time and wages record.

It is understood that the AWU's arguments in support of the application are:

- The current arrangements are impossible for employees (who are often foreign language speakers and new to the sector) to understand or know whether they are being properly applied.
- Piece rates without a 'floor' create a loophole in the 'safety net' which the modern award system is meant to establish.
- The majority of casual pieceworkers earn well below the minimum hourly rate.
- Australians would be attracted to work in horticulture if a 'floor' were set because they would be better remunerated for their work.
- The change would not affect productivity because:

"lawful business operations are already paying pieceworkers above minimum wage, and any additional regulatory burden (i.e. keeping records) would be minimal."

Fruit Growers Tasmania Response:

Why the pieceworker rates benefit both the worker and the employer/grower:

The high utilization of pieceworker rates under the Horticulture Award in the Tasmanian fruit industry is done for very good, logical and effective reasons.

1. Unlike many other industries, fruit picking is undertaken in a clearly definable and individual piece by piece manner, whether that piece be a punnet, a kilo, a tray, a lug (box) or a bin. Individual quantities picked by workers are readily identifiable and measurable and hence pieceworker rates can be readily set and applied.
2. This clarity allows workers to know before they start:
 - what they will be paid for a unit of productivity; and
 - what rate of hourly productivity they should aim for to earn their target remuneration rate, and/or the award rate (inclusive of loadings).

It also enables workers to identify and track throughout the course of the day whether they are on track to reach their target rate of remuneration.

3. At harvest, a high level of productivity is very important. Pieceworker rates drive productivity, and productivity is essential to fruit business sustainability for four key reasons.
 - Fruit sold fresh or sold as whole fruit for consumption with none to minimal modification or processing, must be picked within a very small window (hours or days) to ensure its market acceptability and shelf life. Accordingly, there must be no delays once the fruit is at its optimal maturity for harvest.
 - Given the time constraints and pure quantity of fruit that needs to be picked on commercial farms, a system must be in place that drives productivity. Pieceworker rates drive and reward this productivity, enabling more fruit to be picked more quickly and within the required maturity window.
 - Pieceworker rates give both the worker and the grower absolute clarity about the returns for higher productivity. Higher productivity equals higher pay and higher capacity to pay. Lower productivity equals the reverse. The return for results is clear for both worker and grower and instils a significant level of self-management and self-accountability for all involved. It is an efficient, rewarding, transparent and fair system.
 - Growers get paid for their fruit by the kilo. With the labour component representing well over 50% of the cost of fruit production, worker productivity is vital to the viability of the grower. The pieceworker rates by their nature drive productivity and cost-effectiveness, but in a fair and reasonable way. If changes are made that compromise the productivity of the workforce, or break the direct connection between productivity and cost, the viability of growing fruit is jeopardised.
4. Pieceworker rates provide essential flexibility and incentive for the worker.
 - Pieceworker rates provide flexibility for the worker to choose, or at the very least, significantly influence, the level of effort, focus and time they want to commit to fruit picking.

- The reality is that the harvest crews are a highly mobile workforce who move between farms and regions. Money is at its heart a universal measure of value and value creation that can be compared across regions. Other forms of productivity motivators are much less measurable and transferable.
- A true piecework rate gives employers the ability to hire anyone for any period of time and have productivity immediately built into the employment contract regardless of the relationship. It naturally caters for those wanting, able and capable of committing more or less and provides the incentive to do so. More productive workers get paid more and pieceworker rates allow for this.
- Just as importantly, pieceworker rates allow the flexibility for less capable or able workers to still participate in fruit picking, but at a lower hourly rate. Under this system, workers are able to determine the intensity and productivity with which they pick fruit without pressure from the employer to attain a minimum productivity threshold. It allows a broad range of ages, levels of fitness and experience to work side by side with complete fairness in the reward system.
 - If they are comfortable with their financial return, less capable, able or incentivised workers have a system that not only allows but encourages their comfortable participation, without undue pressure or stress

Why the AWU's application will undermine the fairness and effectiveness of pieceworker rates, not enhance it, and why the AWU's arguments in support of their application are incorrect.

1. The AWU's argument that "the majority of casual pieceworkers earn well below the minimum hourly rate" is:
 - factually inconsistent with the regular audits of Fair Work Australia of Tasmanian fruit growers;
 - factually inconsistent with the actual earnings of Tasmanian season fruit pickers who consistently earn **WELL ABOVE** 15% more than the minimum hourly rate (as required by Clause 15.2(b) of the award);
 - inconsistent with the AWU's own stated claim that "*lawful business operations are already paying pieceworkers above minimum wage, and any additional regulatory burden (i.e. keeping records) would be minimal*"; and
 - not borne out by the many thousands of workers picking for Tasmanian growers without complaint and who indeed regularly return year after year to pick fruit for the same growers.
2. The AWU's argument that the current arrangements are impossible for employees (who are often foreign language speakers and new to the sector) to understand or know whether they are being properly applied is simply not borne out by the facts.
 - Many thousands of employees in the Tasmanian fruit industry happily work to the current arrangements, and consistently return to work year after year under the current arrangements, including Australians with English as a second language and foreign workers whether they be working holiday makers, international students or Seasonal Worker Program workers. Why would so many employees continue to do this if the current arrangements were so impossible to understand?

- From the perspective of these workers, piecework rates are very basic, easy to understand. Rates are provided up front and in writing, reviewed and adjusted in-season in line with picking conditions to ensure continuing compliance with requirements.
- 3. Piece rates without a ‘floor’ **DO NOT** create a loophole in the ‘safety net’ which the modern award system is meant to establish.
 - The safety net exists within the current pieceworker rates in the Clause 15.2(b) which states that “The piecework rate fixed by agreement between the employer and the employee must enable the average competent employee to earn at least **15%** more per hour than the minimum hourly rate prescribed in this award for the type of employment and the classification level of the employee”.
 - Tasmanian fruit growers set their pieceworker rates to comply with this requirement and Fair Work Australia have regularly audited growers to ensure this compliance.
 - As CEO of FGT, I am not aware of **ANY** Tasmanian growers who have failed to meet this obligation when audited by Fair Work Australia.
 - The safety net established by the modern award system is present, applied and regularly tested within the pieceworker rate system used by Tasmanian fruit growers. FGT would welcome any evidence to the contrary that could be presented and would happily support correction of any mis-application of pieceworker rates.
 - Just because some workers earn lower “effective” hourly rates does not in itself imply a loophole in any ‘safety net’, without further investigation and justification.
- 4. The introduction of a minimum hourly rate as a floor for pieceworker rates without any question breaks the current direct relationship between productivity and rate of pay.
 - A minimum hourly rate means workers picking at all levels of productivity at or below comparable pieceworker rates earn the same amount and the direct link to productivity is lost and broken. To argue otherwise is illogical and unsupportable.
 - The presence of such a floor also means the efforts by the worker to improve productivity is no-longer rewarded and is functionally irrelevant unless they can exceed the threshold level of productivity.
- 5. Opposite to the arguments of the AWU, if a floor was introduced to pieceworker rates, the system would become less productive.
 - The current system of pieceworker rates drives productivity outcomes through the incentive that the more workers pick the more they are paid. There is no confusion and complete clarity. The system is essentially self-managed towards more productive outcomes.
 - If a floor (hourly rate) was introduced, any worker that would normally have earned a pieceworker rate below the floor, but now instead earns the floor, would cause the system to be less productive. The incentive to incrementally increase productivity is removed for workers who would otherwise earn below the floor rate, as there would be no recognition or remuneration for that additional productivity.

- If a floor was introduced, substantial additional supervisory and managerial time, effort and cost would be required to assess and ensure the productivity of all workers at least met the floor rate. This will cause a loss in overall business productivity.
6. To address ongoing lower productivity/'over-paid' workers, employers will be incentivised to not retain less productive workers and instead seek to recruit new workers who will be sufficiently productive. This will lead to more cost and lower overall business productivity, greater turnover of workers, and reduced employment security. Accordingly, growers will focus even more heavily on attracting experienced, returning and motivated more productive pickers. Unfortunately, history has shown that these types of workers tend to be more often international workers. This is because they tend to be more motivated to earn more money in any given amount of time because they are:
- Seasonal Worker Program workers who have travelled significant distances, living away from home and families for extended periods of time at not insignificant expense, for the precise reason of earning better money than they would be able to in their home countries;
 - international full-fee paying students, funding educations, who are motivated to earn money during breaks between study semesters to support their living and education expenses;
 - working holiday makers who want to work for short but profitable periods of time to fund their holidays.
7. Contrary to the arguments put forward by AWU, employers would be strongly encouraged to source more motivated workers if a floor was introduced to pieceworker rates. These workers would most likely be international workers who are more focused to work more productively and on pieceworker rates at a higher level than the suggested floor rate.
- During the 2020-21 harvest season every effort was made to attract and engage local workers, leading to local worker participation being as much as doubled (to be confirmed by upcoming survey work). However, this additional participation was characterised by lower productivity, reliability and retention, despite increased unemployment and underemployment due to the COVID-19 pandemic.
 - FGT's comprehensive survey of Tasmanian fruit growers in 2020 identified that of the 8,000 seasonal harvest worker positions planned to be engaged at the peak of the 2020-21 harvest season, it was expected that:
 - 26% were expected to come from local workers;
 - 19% were expected to come from Seasonal Worker program workers;
 - 43% were expected to come from working holiday makers; and
 - 12% were expected to come from international students.
 - The net result (reinforced by the 2020-21 season) is that if growers were encouraged to focus on worker cohorts that were more likely to be more productive through the introduction of a floor, that focus would largely be directed away from Australian residents and towards international workers.

8. The AWU's argument that many Australians would be attracted to work in horticulture if a 'floor' were set because they would be better remunerated for their work is essentially irrelevant.
 - There are already many, many opportunities within horticulture that are remunerated on hourly rates, with a significant proportion of these not pursued by Australians and hence not filled by Australians.
 - Pieceworker's rates within the Horticulture Award already provide the incentive for Australians or any eligible worker to earn well above the casualised rate for the highest classification under the Horticulture Award, let alone an arbitrary hourly floor set on the casualised rate of the lowest classification under the award. In fact, the application of pieceworker rates under Clause 15.2(b) of the award requires that "The piecework rate fixed by agreement between the employer and the employee must enable the average competent employee to earn at least **15%** more per hour than the minimum hourly rate prescribed in this award for the type of employment and the classification level of the employee".
 - The last year has demonstrated very clearly that on the whole, Australians do not want to pick fruit or vegetables, regardless of the pay, incentives and conditions offered by employers. The reality is that seasonal harvest work is short term, seasonal work, and making a career in harvest requires workers to regularly move between employers and between regions to ensure a degree of work continuity, and the overwhelming majority of Australians are uninterested in the insecurity and itinerant lifestyle associated with seasonal work.
9. **Of perhaps most concern to Tasmanian fruit growers is that the application of the AWU, if approved, would effectively deny the opportunity of many young, young at heart people, and other workers who currently participate happily and freely in fruit picking work at pieceworker rates lower than the suggested floor.**
 - Contrary to the arguments of the AWU, if a floor was introduced to pieceworker rates, the system would become less open to Australian workers. Pieceworker rates encourage, rather than discourage, workers of many different skill, physical capability and commitment levels. The system naturally provides an opportunity for each of them to participate according to their preference or capability. Currently under the pieceworker rate system all persons undertaking the same work are rewarded equally, with productivity being the sole factor determining remuneration rate.
 - Fruit picking and harvest work is physically strenuous work which is not suitable for everyone; not everyone can, or choose to pick at the level of the average competent picker. But that is ok – the pieceworker rate system caters for this.
 - Across all industries, young people are often less productive than more experienced workers. If a floor was introduced as proposed, less productive young workers would effectively be excluded from participating despite being ready, willing and able to participate in harvest work. Growers could not afford to pay the equivalent of higher per-unit costs for workers whose productivity is less than the floor price.
 - If a floor rate was introduced, would young people aged 19 and below then earn the same percentage of the floor as required by the award?

- The same situation applies for those ‘young at heart’ (older) workers who are not capable or no longer interested in working at the same productivity levels as younger workers. Introduction of the proposed floor would see many older workers being effectively excluded from participating in harvest activities despite being ready, willing and able. Growers could not afford to pay the equivalent of higher per-unit costs for workers whose productivity is less than the floor price.
- This same argument applies to workers of any age who fall into this category through impaired capability and/or aptitude.

Concluding remarks:

Labor Prime Minister Julia Gillard recognised the need for pieceworker rates to continue without a floor when she introduced the modern award system.

She stated that introducing a floor rate “*would have a major impact upon the composition of the seasonal casual workforce that works in harvest periods*”.

Ms Gillard accepted that “*the change would make it unviable for the industry to employ some people (such as inexperienced young people, older people and people whose position in the labour force is tenuous) who currently engage in occasional casual work in the sector.*”

The AWU is wrongly conflating the very serious issue of the underpayment of workers with merits of a legitimate payment system. Underpayment of workers is not simply a pieceworker rate issue.

Fruit Growers Tasmania and our growers are very strongly of the view that the AWU’s proposal to introduce a floor into pieceworker rates is ill-informed, unfair, and will cause far more harm to those it purports to help, than it will good.

Tasmanian growers value their workers, want them to succeed and recognize the costs involved in lower productivity and higher worker turnover. Tasmanian growers not only value their workers as people, but value them as future ambassadors, consumers and influencers about their companies and the fruit they grow.

We request that Fair Work Australia reject the application of the AWU to alter the Horticulture Award.

Peter Cornish
Chief Executive Officer
Fruit Growers Tasmania Inc.