

26 November 2021



Submission of Fruit Growers Victoria Limited regards the draft variation determination in [2021] FWCFB 5554

To the Fair Work Commission – by email: amod@fwc.gov.au

Fruit Growers Victoria Limited (FGV), make this submission in response to the Draft Determination of the Full Bench of the Fair Work Commission set out at Attachment D to the decision of 3 November 2021 (Decision), in accordance with the directions given in paragraph [586] thereof.

FGV supports the principle of a fair day's pay for a fair day's work and understands this is the aim of the Commission in its draft determination. However, FGV is concerned about the implications for Victoria's (and Australia's) fruit growing businesses, and their employees, if the proposed model of Pieceworker rates and minimum hourly rates is introduced before July 2022.

The introduction of a minimum floor for pieceworker rates will have an impact on horticulture beyond the simple cost of labour and the industry needs time to prepare for this.

Currently, growers pay workers either on a piece rate or an hourly rate and record either hours worked, or bins picked. The draft determination at clause 15.2(f) states that "a pieceworker must be paid no less than the amount they would have received if paid for each hour worked at the hourly rate for the pieceworker." For employers to pay employees at either an hourly rate or a piece rate is a great deal more complicated than the payment systems currently used. The draft determination does not state over what period the calculations must be made, so best-case scenario is per pay period and worst-case scenario is per hour. Both options require much more sophisticated payroll operations than growers currently use. To source, implement and train payroll staff in these systems will take time.

FGV has consulted extensively with its membership and an opinion often expressed is that these changes will disincentivize growers from taking on workers new to harvest work. Piece rates are predicated on a productive workers output after two weeks of work. Workers who are non-productive self-select to leave this work when they find it is not financially viable for them on pieceworker rates.



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In the 20/21 season, FGV tracked 141 Australian domestic and eligible visa workers new to seasonal work. There were 141 prospective workers who were given 2 hours on farm training before they began work. Of these 141 workers

- 86 presented to their employers for their first day of work.
- 18 of these workers left their work after the first day.
- A further 25 left by the end of the first week.
- Another 4 by the end of the 2nd week.

In two weeks, 47 workers or 55% of the workers had self-selected to leave harvest work.

The draft determination has no provision for training rates. Growers will need to determine a worker's productivity potential quickly and keep on or dismiss workers based on their decision, maybe after only two (2) hours of work. More supervisory staff will be required on orchards to ensure workers are productive. It takes time to train a supervisor and there are limited options for training of this type in regional areas.

People who were happily employed using pieceworker rates which totaled less than the hourly rate in the past will not be offered work. This could include workers who are on a Working Holiday Visa and wish to extend their visa through harvest work but pick slowly, and grey nomads who work to augment their income and help Aussie farmers.

A recent development in apple and pear harvest is a mechanical harvest platform that takes pickers along trees rather than using ladders. Robotic picking is being developed, but there are no prototypes ready for commercialization. Mechanisation of harvest procedure is a reasonable way to ensure productive workers. Older styled, vase-shaped trees are not conducive to mechanical picking. Trees need to be grown on trellis. Apples planted now will produce a small crop in four (4) years. Pears take longer to reach harvest maturity. To change to mechanical assisted harvesting means a grower needs time to assess the business and access capital, time for machinery to be produced and delivered, and time for old styled orchards to be replaced.

A survey conducted by FGV found that around 50% of workers for this season's harvest are expected to come from Contractors, and the Seasonal Worker Program or the Pacific Labour Scheme (collectively PALM). Negotiations with several countries have stalled as contractors and workers await the outcome of this draft determination to ensure they will contract their workers to current pay conditions when they arrive in Australia. Once the determination is finalized, negotiations will restart. From that date, it will be at least 8 weeks until these workers will arrive in Australia. The peak harvest season for apples and pears in Victoria begins in mid-January. Growers need time to allow these workers to arrive.

FGV requests the Fair Work Commission to ensure there is a reasonable period to implement the changes in the draft determination. We believe an appropriate time is to implement any changes from 1 July 2022.





FGV further requests that the period over which it must be determined if a worker is paid pieceworker rates or hourly rates for work done provides fairness to both the worker and the employer.

Kind regards



Mitchell McNab
Chairman



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Introduction

On behalf of the members of Fruit Growers Victoria Ltd (FGVL), we thank you for the opportunity to provide our input on the draft determination to vary the Horticulture Award 2020 regards Pieceworker rates and minimum hourly rate.

Fruit Growers Victoria Ltd (FGVL) is a member-based organisation representing the interests of 90 Victorian fruit growers, which supports 300 fruit growing, packing and exporting businesses across the state. Production in Victoria encompasses 50% of Australia's apples, 75% of Australia's stone fruit industries and 90% of Australia's pears. Our industry has a gross value of production more than \$1 billion and is a cornerstone for business and employment in regional Victoria.

We are very concerned about the implications for Victoria's fruit growing businesses, and their employees, if the proposed model of Pieceworker rates and minimum hourly rates is introduced before July 2022. The growers listed below have expressed their support for this submission and ask that it is considered.

Farm systems changes

Fruit growers will need to implement new systems to record both the hours worked and bins picked for any pieceworkers. As there is no training time allowed within the new rates, growers will need to employ and train supervisors to ensure pieceworkers are productive. These systems will represent an additional cost to production.

Typical harvest period

The harvest period for different fruits varies by the type of fruit and its region. There is fruit harvested all year round in Australia, but individual fruit harvest seasons can vary from 2 weeks for some stone fruit to 4 months for varying apple and pear varieties. Harvest labour for the coming season is expected to be in short supply as domestic labour participation in fruit harvest was low in the 2021 season, backpackers (a traditional large workforce) will only just be re-

entering the country after border restrictions, and Seasonal Worker Program and Pacific Labour Scheme (jointly PALM) numbers are limited, and the AgVisa is yet to be finalised.

Workers' interests

The proposed changes to the pieceworker rates to include a floor does not necessarily represent the best interests of workers in the industry.

New entrants to seasonal harvest work are not immediately productive. It can take the average worker about two weeks of picking to reach a state where their piecework rate exceeds their hourly rate, which is the formula whereby pieceworker rates are set. However, harvest periods are short for many fruits and an employer cannot afford to pay a worker at hourly rates when the season for that fruit may be 3 weeks long (for instance cherries). Employers will seek out productive workers: and FGVL anticipates many of these will be PALM or AgVisa workers. New domestic entries to the horticulture industry will be at a disadvantage. Backpackers will also have difficulty entering this industry. Traditionally many backpackers were doing harvest work for the visa extension opportunities. As new entrants to the industry, they will also be at a disadvantage.

Increased labour cost also improves the investment case for mechanisation and robotic harvesting within the industry, which is ultimately counterproductive to the interests of seasonal workers.

Global competitiveness

Unfortunately, the economics of fruit production in Australia is very sensitive to additional labour costs, as we compete in global markets where harvest labour is significantly less expensive than ours.

Increasing the cost of production via this change will make us less competitive in export markets and reduce future work opportunities for seasonal workers in the industry.

Visa labour

Current negotiations with a number of countries that plan to supply Seasonal Worker Program and Pacific Labour Scheme workers are stalled awaiting the outcome of this draft determination. Once the determination is finalised, there is an eight (8) week lead time from the finalisation of negotiations to workers arriving on farm. FGVL expects that labour under the PALM programs and the AgVisa program will supply at least 50% of workers for the fruit harvest. Additionally, if a PALM worker is unproductive at an hourly rate, they could find themselves being sent home after a day.

Alternative arrangements

FGVL recommends the implementation of the pieceworker minimum floor rates be introduced from 1 July 2022. This gives the horticulture industry the opportunity to prepare itself for this radical change to the way harvest occurs. Farm systems can be changed, training of supervisory staff undertaken, mechanisation can be implemented, agreements can be finalised with PALM and AgVisa supply countries, and customer supply agreements can reflect the changes.

Conclusion

FGVL firmly believes in a fair day's pay for a fair day's work. We believe that the context of seasonal fruit picking needs to be considered when taking this decision. By necessity, fruit harvest requires up to 11 ½ months of inputs to ensure Australian fruit is of the high quality enabled by our best practice management practices and environmental conditions. The implementation of a change to employee remuneration arrangements should recognise this reality, giving growers the opportunity to manage their business inputs with changes coming in a reasonable time.

Thank you for considering our submission and we look forward to the Fair Work Commission reaching a balanced finding on this matter.

Presented for and supported by:

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