

## To FairWork Commission

President Justice Ross

Vice President Catanzariti

Commissioner Riordan

Submission opposing fairwork determination

I am writing to you on behalf of the Industrial Committee (Representatives of Fruit Growers Victoria and Cobram and District Fruit Growers Association) in relation to the Fair Work decision to vary the Horticulture Award 2021. We are a bit dismayed by the fact this decision seems to have been made due to belief that the horticulture industry is in general underpaying pieceworkers. I have been in the industry for nearly 20 years now and do not find that to be common practice. The decision to vary the award has left many growers frustrated and worried in the current climate that the current work force will again be reduced. Many growers are finding it tough to find workers with covid restrictions hampering immigration and also domestic migration from state to state. Worker shortages are not just being felt in horticulture industry, but also hospitality, transport and the likes.

Every grower understands that it is incumbent on them to pay workers fairly and are not disputing this. The Industrial Committee was formed between FGV and CDFGA to help members with appropriate setting of piece rates amongst other duties. With the current award in place most growers relied on workers being productive, and in the majority most workers are more than productive and in fact earn well above the award wage on piece rates when set appropriately. Pieceworkers earning less than the award rate are of concern in the industry. These people are representative of a cohort of pickers who are under productive, yet are still out there having a go on their own volition. Some people have reasons for picking at a slower rate, such as supplementing governmental supports they are currently receiving. Others may be due to age, as in grey nomads, who are still travelling and participating in the work force.

Under the new Award, as it would stand to be amended, many of these workers would be either told they have to pick quicker or move on with proficiency targets being upgraded from acceptable standards. Indeed, some of these workers may be able to meet certain productivity targets but might choose not to due to the new regulations and requirements. Some people may not like being told they have to pick x number of bins in x amount of time or there is no job! We see this as a heavy-handed approach with no room for flexibility in employment arrangements between employee and employer as was allowed in the pieceworker arrangements. By reducing this cohort or pieceworkers the average productivity of the remaining pieceworkers would rise, however if suitable replacements cannot be sourced the overall production would be reduced.

Inexperienced pieceworkers will require more training than previously given to new employees to try and increase their productivity quicker. Potentially there should be a provision for inexperienced pickers, to be placed on a trial (training) period, otherwise growers may opt to try and avoid potential new pieceworkers who are underproductive in favour of competent and more experienced workers if they are indeed presented with a choice.

Picking fruit or, vegetables for that matter, can be hard work, especially on a ladder going up and down it all day long, out in the sun for long periods of the day too. Due to the arduous nature of the work many employers have flexible work arrangements with pickers, allowing them rest breaks as required, extended break times even the ability to start early mornings, or finish later in evenings. With more regulation on hours worked by pieceworkers the flexible arrangements for some will be lost due to the fact employers will need to more accurately record hours worked by pieceworkers.

The result of varying the award in this way is to reduce flexibility on both, the pieceworker and employers' part. Pieceworkers will still be able to earn above the award rate in many cases but including a minimum wage floor may demotivate certain workers. Some workers who are currently earning just above the award, on current pieceworker rates, may see value in reducing their productivity down to the minimum required level to retain their jobs. The attitude can prevail from one employee to another, 'if it's okay for them then it's okay for me' to pick just enough. In some circumstances some employers may even move to wage picking entirely reducing the ability of pickers to earn more than the award.

We agree that a substantial proportion of seasonal harvesting workforce is pooled from temporary migrant workers. However, we reject that this leaves them vulnerable to exploitation, with the number of audits and red tape employers are subjected to, it's in an employer's interest to do the right thing lest they be found to be in the wrong and lose the potential to sell their produce into the market. There is legislation safeguarding migrant workers from labour hire contractors exploiting them also. The need for migrant workers has been pushed by the lack of a steady workforce being sourced from the local job market itself with some "Australians" unwilling to come and work due to the stigma in some cases associated with fruit/vegetable picking. By making a minimum wage requirement we do not see this changing in a great way as there would be proficiency targets attached to the job that would discourage some of the potential local workforce from still trying.

Overall we find that in Varying the Horticulture Award in this manner

- Reduces flexibility for pieceworkers
- Potentially reduces work force
- Need for greater supervision in the paddock to monitor workers productivity, costing employers more
- Possibly higher productivity for remaining workers but lower production than previous
- May discourage some workers who pick just above award wage levels to get better and in fact some may regress and just get by depending on self motivational levels
- Potentially employers may move away from piece rates reducing the capacity for competent workers to earn above award wages
- No scope for a training period for new pieceworkers
- May or may not encourage inexperienced pieceworkers to join the workforce (will be seen over time)

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26/11/2021

We thank you for taking the time to read our submission and hope that we have raised some valid points that will be taken into consideration. Yours sincerely

Matthew Cornish Chairperson of the Industrial Committee (Director of RJCornish and co, and board member of Cobram and District Fruit Growers Association).