

10 June 2021

Justice Iain Ross
President
Fair Work Commission
E-mail: amod@fwc.gov.au

Dear Justice Ross,

I am writing on behalf of the Uniting Church in Australia, Synod of Victoria and Tasmania, in support of the Australian Workers Union (AWU) application to vary clause 15.2 in the Horticulture Award 2020 under section 158 of the *Fair Work Act 2009 (Cth)* [AM20/104].

Our rural congregations have experience providing material and social support to people working in the horticulture industry, especially those on the Commonwealth Government administered Seasonal Worker Program.

At our 2019 meeting of church representatives from our congregations across Victoria and Tasmania, the following resolution was adopted:

The Synod resolved by consensus:

(a) To acknowledge that the problem of high levels of unemployment in Pacific Island countries means that temporarily working overseas is a key pathway out of poverty for many;

(b) To call on the Commonwealth Government to increase the number of people from the Pacific able to work under the Seasonal Worker Program and the Pacific Labour Scheme, provided that adequate safeguards are in place to prevent exploitation of people on these schemes and to ensure their well-being;

(c) To call on the Commonwealth Government to use the Seasonal Worker Program and the Pacific Labour Scheme to provide people to work in rural Australia, in preference to;

(i) a new agricultural visa that lacks the safeguards of these schemes; and

(ii) providing further incentives for people on working holiday visas to put up with exploitation and abuse to obtain an extension to their visa;

(d) To inform the Prime Minister, the Leader of the Opposition and relevant Ministers and Shadow Ministers of this resolution.

Our experience has been that clause 15.2, as it stands, has been open to abuse by unethical growers and labour-hire businesses. We have experience of farms where no worker, no matter how hard they work, has been able to earn the average competent employee rate of 15 per cent more than the applicable minimum hourly rate under the award.

The use of piece rates under clause 15.2 has also, in our experience, encouraged growers to make greater use of Working Holiday Makers and undocumented workers, as it has facilitated the exploitation of people on these visas. For example, one group of undocumented workers in Robinvale told us they were paid \$2.25 per box of grapes picked on a particular farm, while those working legally were paid \$4.50 per box. Such arrangements point to the deliberate and systematic use of illegal underpayment by some growers.

One Working Holiday Maker in Maroopna told me, "We come to farms expecting to get ripped off. If we want to make good money, we stay in the cities and work in cafes." He indicated the only motivation to work on farms was to gain the second year stay on their visa by working the 88 days on the farms. Our congregation in Maroopna holds a free barbeque for temporary farmworkers on a Friday night over the summer harvest period. Our experience was that the situation of pay rates on farms improved after the introduction of the labour-hire business licensing system in Victoria. A far more significant proportion of Working Holiday Makers we had contact with were placed on hourly rates after the licensing system was introduced.

As further evidence of the unethical behaviour of some growers, we were invited to attend a meeting of people working on farms in the Robinvale area on the evening of 4 April 2019 organised by the United Workers Union. Several growers attempted to enter the meeting by lying to the union officials and claiming to be workers. When that did not work, a number tried to barge their way into the meeting physically. I regarded this behaviour as a violation of the rights of those working on the farms to engage freely with a trade union of their choice. Further, it is my opinion that the behaviour was an attempt to intimidate the workers and deter others from attending the meeting.

Case Study – 'Kylie' who was a Working Holiday Maker who shared her story with us (names have been changed for privacy purposes)

I arrived in Australia at the end of January 2016, already with the intention to complete my 88 days of farm work to extend my visa for a second year. I decided to do the farm work as soon as possible as then this would give me the opportunity to travel and explore Australia later.

I spent one month searching the internet, ringing various people, trying to find farm work, with no luck. Either it was the wrong season, or there was no work available. Eventually, I came across an advert on Gumtree for zucchini picking in Young. I rang the number, and a man answered and explained how it would be difficult work, but he will sign for my visa if I work for at least six weeks. In retrospect, I was naive to jump on this opportunity so quickly, but after one month of searching for a job, I was ready for anything. Little did I know what I was getting myself into. I packed up and left a few days later using my friend's car to drive to Young, a four-hour drive from Sydney. I was nervous and didn't know what to expect. I arrived, and instantly I felt odd. I met a man sitting in a big shed. Immediately, it felt sketchy. However, I was willing to give it a shot. I went around to our accommodation, which was somebody's backyard, where I set up my tent.

The kitchen facilities were appalling. There was one pot for ten people, a couple of plates, and a few pieces of cutlery. The kitchen was infested with cockroaches and flies, as no one had removed the overflowing bin. The bathroom was a room with a shower as a dribble and no hot water, which luckily didn't matter as it was 40-degree heat. But for washing dishes, this was not hygienic, especially with the amount of insects. The loo was disgusting, no loo roll, paint peeling off the walls and not much of a flush! Anyway, I set up camp and spoke to a few people who had been there for three weeks or a few days, which didn't fill me with much hope.

The following day, I set out at 6:45 am. The employer showed me how to pick the zucchinis. Each bucket I picked was \$2.00 each. All the zucchinis were different sizes, and the employer insisted on a specific size, so picking one bucket took time! I picked six buckets in six hours of work, which is a measly \$2.00 per hour. We rang the employer after we had picked all the correct size zucchini's and asked him to move us to a different field. However, he said no, we had to stay on that same field and pick all the overgrown zucchini's as they were taking all the water and nutrients. Essentially, we did this work for free as we were not putting the zucchinis in the bucket. By 1 pm I had had enough. I felt disappointed and exploited. There was no way that I could make any money and also no way that I could respect the people employing me. On top of this, they did not give out payslips, and it was cash in hand with no tax. This was dodgy! Too dodgy to seem legitimate for the second year visa. I had been lied to.

We have seen both labour-hire businesses and growers work on models of high levels of exploitation through the use of piece rates combined with a high turnover in pickers. Even though a Working Holiday Maker may only work a few days or a week with the exploitative employer, these businesses relied on a large pool of people to be exploited. As one person quits due to the exploitation, another would be hired to replace them. Few would make a complaint to the Fair Work Ombudsman as each person was illegally underpaid amounts less than a few hundred dollars. Even if they made such a complaint, the small amount owing would likely result in the Fair Work Ombudsman not taking up the case given the volume of worse cases of illegal exploitation the FWO must deal with. Such a model of exploitation has not been able to work during the COVID-19 pandemic when the closure of international borders has stemmed the flow of Working Holiday Makers and undocumented workers.

In practice, the setting of piece rates under clause 15.2 has failed to ensure fair pay is provided in a substantial number of cases in our experience. The flexibility provided to employers under clause 15.2 also makes it very hard for the Fair Work Ombudsman to challenge the piece rates set, even when any reasonable person would conclude they have been set unfairly low in breach of the requirements.

Our experience of working with people from the Pacific Islands on the Seasonal Worker Program has also been many of them do not understand piece rates. The piece rates are set out in their contracts. They are required to tick a box on the contract saying they have read and understand the contract. Coming from oral cultures and where piece rate pay is not the norm, those coming for the first time often tick the box with no understanding of how the contract will actually work when they get to Australia.

Adopting the AWU application will encourage growers to use more experienced people and invest more in training people to be more efficient in their work. Even now, there is no shortage of workers willing to come to Australia on the Seasonal Worker Program and work on Australian farms. The safeguards in the Seasonal Worker Program limit the opportunities for exploitation of people on the Program. We are increasingly seeing workers on the Program paid an hourly rate rather than piece rates resulting in fairer outcomes for both the workers and the employers.

We note that the submission by the Fruit Growers Tasmania's response to the AWU application agrees with us that the application would result in growers seeking to attract experienced and motivated pickers. However, contrary to their position, we see such an outcome as desirable. At the same time, the adoption of the AWU application would encourage more people to seek work on farms, as they would be more confident of a fair rate of pay.

We have spoken with Working Holiday Makers who have felt deceived into going out to farms and then receiving piece rates that mean they can barely cover the costs of the accommodation and living expenses. Sometimes the accommodation is provided at inflated rates by the employer or an entity associated with the employer. Creating a minimum wage rate will discourage employers from luring people out to farms where they will struggle to make even a living wage.

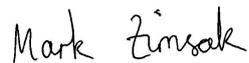
The AWU application would continue to provide an incentive to people working in horticulture to increase their productivity in order to earn more than the minimum hourly rate. It would incentivise employers to set fair piece rates so that employees can see that additional labour and productivity will result in rewards greater than the minimum hourly rate. Under the current arrangements, people working on farms can feel discouraged by unfair piece rates that result in abysmal levels of pay regardless of how hard the person works.

We strongly support the AWU proposal for a new clause 15.2 (k) to be inserted into the award to require:

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

Proper record keeping will also reduce the prevalence of exploitation and misuse of piece rates.

Yours sincerely,



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