

Submission to the Fair Work Commission to the AWU's application to vary clause 15.2 Pieceworker Rates in the Horticulture Award 2020 Sec. 158. AM2020/104

Prepared by Louise Ackland – 21st May 2021 Payne's Farm Contracting Pty Ltd. Colignan Vic 3494.

Fair for who?

The AWU's application to put a floor on piece rates is yet another play in their long-term agenda to gain significant control over the horticulture industry and the nation's supply chains.

To coincide with the AWUs campaign, starting with its submission to the National Agricultural Labour Advisory Committee calling for the cancellation of the WHP visa, has been the constant drip feeding of media reports, ably assisted by the ABC with curiously co-incidental reports such as this one <https://www.abc.net.au/news/2020-09-15/backpacker-farm-workers-speak-of-wage-exploitation/12545294?nw=0> detailing heinous treatment of workers and tales of woe from disgruntled backpackers. The submission to the HALAC culminates with suggestions that the AWU and associates become the arbiter for our sector through the Retail Supply Chain Alliance; promising 'fairness from the farm to your front gate'. The new Farming Police...

For the legitimate businesses and growers, the atmosphere of division and resentment this propaganda creates makes for increasing frustration.

Our business offers specialist pruning services to growers in Sunraysia and prior to Covid 19 we also worked in eastern Victoria, Southern NSW and SA.

The last few years have seen our company lose increasing business to competitors who undercut us substantially but misuse of the Piece Rate provision is not actually part of it. This is how they do it –

- The most popular method employed by our competitors is to classify their workers as 'part time' when in fact they are actually casual. This allows a significant reduction in the hourly rate charged. If the AWU is concerned about the incorrect use of Piece Rate then I would suggest that this is equally rife.
- Our competitors seem to have a much larger supply of workers than we've ever been able to attract even though our pay rates are higher. How is this? Their workers are either illegal or are (in one region a large community who arrive at the site with their whole extended families [including grandparents and small children] and pool their work, are already in receipt of welfare payments and are paid in cash for their work).
- Other competitors have a number of sub-contractors who dilute the takings at each stage and blur the lines of command, use illegal workers and again – pay in cash.
- The preference for cash of course means that there will be no paper trail and the contractor avoids the expense and admin associated with paying WorkCover, Superannuation, PAYG and GST – all of which take its toll on our company. And given that the government withholds 65% of superannuation paid to backpackers – who can blame them?

Where is Fair Work? ***Get enforcement into these areas and apply the existing laws*** before bringing in yet more regulation that increases the burdens and punishes the legitimate businesses. Changes to the Piece Rate arrangements will not improve the situation or effect those operating outside of the law.

I have detailed in numerous correspondence and through the media the larger issues that have led to this situation [Attachment 1&2]. At its heart lies the problem of the suitability of the workforce. The government very determinedly encouraged enormous growth in the horticulture sector through up front tax write offs and other incentives which have given rise to the massive presence now of corporate farms. Hedge Funds and Superannuation investments on behalf of the likes of the Canadian school teachers pension schemes now dominate our food production at the expense of family farming enterprises. As the farms have become increasingly larger, the investment substantial and the demand for workers higher, the model we are forced to work with has not kept pace. Add to this the genius policy of the backpacker tax and the plummeting number of workers due to Covid, the situation becomes more dire every week. And the AWU proposes that they have all the answers.

At the moment an unemployed Australian worker can access \$6000 in order to relocate to take up farm work. If they come to Victoria, they can access a \$2500 sign on payment. They can still retain a significant portion of their dole payment and keep what they earn. Unlike backpackers they get to retain all their superannuation earnings, are taxed at a lower rate and are not obliged to take out private health insurance as backpackers are required to do. And they still won't take up the jobs! So, let's just dispense with the argument that somehow removing piece rate will magically result in Australian's getting off the dole and flooding to the country to toil on farms. They won't and we all know it.

Due to the Government's refusal to provide ready access to sponsorship pathways or other programs to enable farmers to retain suitable and valued staff we have to contend with a cohort of workers who are often not suitable to the role. Each season we contend with yet another round of backpackers with no experience in farming, who are only there under sufferance to complete their 88 days and who are increasingly belligerent and entitled.

The numerous media reports of vulnerable workers who are kept in servitude to complete their 88 days does not stand up to scrutiny – especially those from Europe. In our experience a huge proportion of them are very well educated; completely aware of their 'rights'; speak fluent English; are prodigious experts in social media and are combative in their interactions. A large proportion of them (the girls particularly) leave the 88-day requirement far too late in their stay and then expect that everyone else owns the problem - when things aren't going their way, suddenly they're the victims.

Interestingly and in stark contrast to the narrative, horticulture disputes do not make up the bulk of the FWC complaints <https://www.weeklytimesnow.com.au/news/national/fair-work-ombudsman-horticulture-makes-up-less-than-1-per-cent-of-workload/news-story/65ceb2d42c3c1f40b606be1eaf8a565b> In fact, according to this article, disputes about pay and entitlements in the horticulture sector make up less than 1 per cent of the Fair Work Ombudsman's cases.

What recourse has there ever been to compensate farmers for the loss of production due to abandonment of workers; due to cheating and theft; due to the cost of incompetence?

88 days equates to just three months. Three months out of the lives of young people who have all of the advantages of youth, energy, vitality and opportunity. During that time, they may work in places where they don't make a lot of money – most likely because they are inexperienced, unsuitable and don't want to be there. It's got nothing to do with not being fair – it is just that they don't like it. 88 days is the Government's requirement - not the farmers.

Every week, day or shift we are faced with a constant turnover of people who require yet more induction, supervision and training – who have absolutely no commitment, are demanding and insolent and drain our energy, patience and resources.

Vast amounts of our income is spent on the endless round of recruitment; induction; training and supervision. The costs and likelihood of injury or incident increases with every turnover – it saps resources and value at every stage. And our dodgy competitor merrily continues with his usual workforce putting the cash in his pocket without a care in the world.

Here’s what the figures look like in the real world! We experienced an approximately \$200,000 difference in income from the year 2018 to 2019. The 2019 income received was *dramatically* less than it was in 2018 but the wages bill was around \$10,000 higher! Same customers, similar area worked on. How do you account for the difference? It’s productivity! Plain and simple. It’s the difference between what can be earned with a reasonable group of workers compared to the following year with an intake of new, inexperienced and unsuitable staff. It’s a great way to go out backwards.

Take a look at the AWUs petition and page and note the last sentence! ‘Sign our petition to change the laws to make sure that farm workers receive a *guaranteed* minimum hourly rate *regardless* of what you pick”.



Farm workers, backpackers, seasonal workers and other migrant workers tell us they are commonly paid well below the minimum wage, due to unfair piece rates set by farmers and their labour hire companies

Many piece rate workers don't have a real say in the way piece rates are set and are forced to do unpaid work, overfill buckets and not paid for the additional fruit picked.

Farm workers deserve a fair piece rate system that guarantees them a minimum hourly base rate. This system already applies across a number of industries and works well while making it much harder for dodgy employers to exploit vulnerable workers.

Get on board with our fair piece rates for farm workers campaign – sign our petition to change the laws to make sure that farm workers receive a guaranteed minimum hourly rate regardless of what you pick.

[Sign our petition here.](#)

Sign the petition

Name: *
First Name Last Name
Email: *
example@example.com
Phone: *
Are you a member of the Australian Workers' Union (AWU)? *
 Yes
 No
Which state do you work in? *
Which industry do you work in? *
[Sign the petition.](#)

Don't worry – your details will remain confidential and we'll never share your info without your permission.

Removing piece rate, which is the one thing that keeps people accountable, only makes businesses like ours even less competitive.

The advantages of piece rate are numerous – everyone knows where they stand. The farmer can budget and doesn't get hit with vast overruns due to the lack of productivity of new workers - X number of trees @ X price - simple. Those that work harder get rewarded. If we're going to argue that piece rate disadvantages some, how do we reconcile this with an hourly rate which pays the harder/better workers the same as the worst ones?

Then there's the vexed issue of setting the rate, I have attached our induction material [Attachments 3 & 4] which details how we arrive at the rate per tree. Even then it is not completely compliant because the logistics of getting a new agreement signed every time the rate changes is utterly unworkable for us. We have a large number of customers, with numerous farms, 100s of different blocks/patches; numerous varieties, growth stages and growing techniques – the combination of all of these variables could result in literally thousands of rates! Note the lengths we went to in our requests from Fair Work for clarification around the definition of 'average and competent' (Slides 18 & 19). Absolutely no help what so ever. Additionally, this is material we had to develop ourselves – where is the support from either Fair Work, the VFF or the Unions in this area? Our material reflects years of experience in corporate farming, training and compliance – how is a small farmer without these skills expected to manage?

We don't use piece rate all the time but if it is removed and we are forced to pay only hourly then we will be looking very hard at the productivity of every worker going forward. **We will have no option but to mercilessly cull non performers.** Wait for the outpouring of grievance then.

The topic of piece rate is only one part of a far more complex situation and its removal will not solve the wider issues, and may in fact just create a whole new set of problems.

Thanks to vapid and lack-luster representation by our industry bodies who have previously taken the stance that they don't want to play these issues out in the media – the narrative has been completely dominated by those wishing to portray farmers as the villains. There is very little ever said to hear the other side of the story. Removing Piece Rate from the award, stopping working holiday visas and all the other demands will decimate an industry that should be a driver of our economy.

This needs to be seen for what it is.... Yet another flagrant example of a conflated crisis with all the associated melodrama and confected outrage forming part of a cynical and calculated campaign of rent seeking!

Unions don't grow anything, they don't make anything and they don't employ anybody, they profit by preying on the production of others. And the next time any newly signed members will see them is when they make a great show of being there to 'ensure the workers get their entitlements' when businesses start to shut down or sell their farms to foreign investors.

Our sector needs the regulator to examine this issue dispassionately – using empirical evidence of *proven* examples of misuse of piece rate (taking into account the other factors which contributed to the exploitative relationship ie. Was the worker in breach of their visa and taking payments in cash?) and comparing it statistically to the wider industry. The Fair Work Commission need to be far more proactive in pursuing cases of mistreatment and there needs to be far more support for growers – not only in setting the rate, but in accessing the suitable workers they need to run their businesses.

Punishing the whole sector and making legitimate business even less competitive all for the apparent misdeeds of the few is lazy, incurious policy. This will evolve into another whole new set of problems and give oxygen to the unions who will be looking for every opportunity to engage in another round of demonization and mulctuary against farmers.

Attachment 1 – Opinion piece written by Louise Ackland and distributed to numerous stakeholders in 2020

UNION CALLS TO SCRAP WORKING HOLIDAY VISAS

The AWUs National and NSW Secretary Daniel Walton stated on Twitter a few days ago that *“The horticulture industry is essentially lawless, totally broken and run by cowboys”*.

Quite the statement.

An interesting position from which to start a relationship with Australia’s farmers and growers and from which to suggest that only they, the newly formed Retail Supply Chain Alliance, have the leadership; capacity; knowledge and reach to solve the problems that are allegedly so deeply ingrained in our Horticulture and Agriculture sector.

Rest assured their influence and reach will be extensive, right through the whole Australian food supply chain in fact. The Retail Supply Chain Alliance, is a coalition of the TWU, the AWU and the Shop Distributive and Allied Employees Union (SDA). They are the now self-appointed coalition of the willing it would seem. This alliance formed in 2019 is “an attempt to advance the cause for workers’ rights and reduce exploitation across the horticulture supply chain in Australia” – just so long as those workers are Union members of course.

The most significant recommendations of their recent submission to the National Agricultural Labour Advisory Committee are that government discontinue the Working Holiday Maker programme in its current form and deepen the scope of SWP to other pacific partner countries so that it can service the reduction in WHM visa holders. This should include return working rights and pathways to citizenship.

<https://www.awu.net.au/wp-content/uploads/2020/08/RSCA-AWS-Final.pdf>

The submission makes for entertaining reading with a list of 21 lofty recommendations. The report begins from the premise that “the reality is that being employed in horticulture in Australia – whether it be with a grower or labour hire contractor – will likely mean you are being exploited”. They propose the creation of “a supply-chain accreditation scheme – so that from the farm to the point of sale, dishonest employers are punished by their exclusion from the industry”

Through extensive auditing and intrusive monitoring, the RSCA will be the new farming police that will remodel Australia’s food production. The report includes proposals for the establishment of a national accommodation provider licencing scheme with minimum provisions and the removal of any prohibitions on allowing unions to exercise right of entry on accommodation; rules to allow unions enhanced right of entry provisions to check time and wages record for all workers on short notice to enforce compliance; suggestions to formalise the induction process with unions, employers and civil society (whatever that is!) report backs and departmental oversight. Not to mention a public register of all visa holders and where they work!

And of course, demands that the Federal government provide grants to unions that are capable and willing to ‘independently audit horticulture employers on their compliance with Australian workplace laws.

The solution they say, “must be multi-facetted and ensure that the supply of labour is at first local, literate, and legal”.

In their world as a result of Covid 19 there will be a ready workforce of willing jobseekers keen to give up their jobseeker allowance, relocate, take up temporary and seasonal positions and happily accept working on a piece rate that reflects their exertion of energy and drive. The rest of the vacancies will be filled by a necessarily, ‘highly regulated and targeted scheme’. This from a Union (AWU) who in 2017 had their offices raided by the Australian Federal Police to seize documents related to its investigation into the union’s donations.

This from a Union whose own officials Wilson and Blewitt, were the subject of an investigation into the misappropriation of members funds and who the Royal Commission into Trade Union Governance and Corruption identified as people they recommended be considered for charges of fraud.

In another hearing the commission investigated the matter of a former shop steward who said he couldn’t recall training taking place on a WA engineering project in the 1990s despite former Australian Workers Union (AWU) official Bruce Wilson invoicing his employer. Mr George Dean told the commission that during the time he worked on the Dawesville Channel Project, he was unaware of the existence or operation of the Workplace Reform Association established by the AWU.

That association was paid hundreds of thousands of dollars by construction company Thiess to provide training at the Dawesville site. The inquiry examined whether the association was a sham operation, submitting false invoices for work that was never done. At an earlier hearing, Mr Wilson admitted the association submitted false invoices to Thiess.

This from a Union (TWU) who The Royal Commission into Trade Union Governance and Corruption in 2015 found James McGiveron and Richard Burton, both former branch secretaries of the WA Transport Workers' Union, had benefited themselves at the cost of their union with luxury cars and generous redundancy payouts.

The same Union who in early 2018 was fined by the Registered Organisations Commission for including almost 21,000 non-financial members on its rolls and who's NSW branch had inflated membership numbers to auditors and the state Labor Party, potentially helping increase delegate numbers and voting power at ALP conferences.

In 2014 the Royal Commission into Trade Unions heard that the Transport Workers Union forced its members to join the industry superannuation fund which paid its directors, including senior union officials, \$200,000 in fees each year. The hearing was told that it was a requirement of enterprise bargaining agreements struck in 2011 and 2013 that TWU members join the fund - four of the nine directors of TWU Super were among the most senior officials of the union.

Oh dear. I could go on but you get the point.

There is only one reason these Unions have recently become interested in having a presence in our sector. They have 'waged and conditioned' many other industries out of existence and as a result of their lack of relevance and opportunism in the wake of the Covid crisis are seeking to rekindle their stronghold over Australia's workforces and crucial supply chains.

They are so keen on the Pacific Islander programs because they know that as soon as those workers get off the plane in Australia, they will be taken to a venue to be signed as Union members and undertake two days of indoctrination before they ever get to a farm.

There is no question that some sectors of our industry need to get their house in order and they'd better do it soon otherwise the case for Union dominance, further changes to our Award and the removal of piece work from the Award will be likely. It is up to us to get this sorted.

Our sector is critical to this Nation don't let it be at the mercy of these organisations. They don't make anything; they don't grow anything and they don't employ anyone – they profit by destabilizing and manipulating the work and endeavours of those who contribute to this nation's wealth and prosperity.

There are approximately 85,483 agricultural businesses in Australia, are we going to hand over control of our workplaces to this coalition?

Attachment 2 – Opinion piece written by Louise Ackland and distributed to numerous stakeholders in 2020

Stop the Rot!!

Hard working Australian farmers have been calling for years now for an overhaul of the visa system for working holiday makers and the introduction of a specific Ag visa.

All over the country at the moment there are increasing stories of farmers having to plough crops back in or having to leave valuable produce unpicked due to labour shortages.

Consumers can expect up to 25% increase in the cost of fresh produce as this crisis plays out.

Dan Andrew's has positively tripped over himself in the mean time to get tennis players in while delaying a response to all calls for essential workers.

Figures from Tennis Australia show last year's Australian Open contributed \$387.7 million to Victoria's economy, and created 1775 full-time equivalent jobs. Victoria's horticulture industry, in contrast, is worth \$3.1 billion in produce annually plus another \$5.4 billion from processing, making it the biggest horticulture producer in Australia. https://www.weeklytimesnow.com.au/news/victoria/australian-open-85-billion-in-fruit-and-veg-ignored-as-tennis-stars-arrive-in-melbourne/news-story/736e6ba18473123dea5f3f2c55fb4cf8?utm_source=The%20Weekly%20Times&utm_medium=email&utm_campaign=editorial

Meanwhile the Unions are circling to pick at the carcass of this industry with the introduction of the newly formed Retail Supply Chain Alliance which will be the new 'farming police' that will require intrusive oversight of the whole supply chain of Australian produce from farm to supermarket shelves. While they salivate at the prospect of this level of power and new membership, Christian Porter and the FWC begin to consider changes to the Horticulture Award which may bring an end to the provision of Piece Rate payments and ensure that all workers earn the base hourly rate of \$24.80 regardless of their productivity, skill or motivation.

"That sounds fair enough" you might think "after all aren't all horticulture workers being ripped off and exploited?"

Well, that's the narrative that the Unions have very successfully established, however consider their motivations for peddling this trope carefully - the opportunity they will have to disrupt the harvest and distribution of food throughout the country and the consequent power that will afford them.

How did we get here?

The topic of farm labour was of little interest to the Australian public until Joe Hockey introduced changes to the Backpacker Tax into parliament in 2015 which caused a flood of objections and opinion. As Joel Fitzgibbon stated at the time, after four attempts and with a 'special kind of genius' the government settled on taxing backpackers at a rate of 15% on an their first \$37000 (the original proposal was for 32.5%). So those farm workers don't get the benefit of a tax-free threshold in the same way an Australian worker would, but wait, it gets better! In order to retain some of the projected revenue this genius piece of policy promised, they tax departing backpackers a whopping 65% on any superannuation they've earned while in the country. Just a tax on farmers and employers then wouldn't you say?

Couple this with a relatively low hourly rate (because agriculture is so undervalued by Australian's), the high cost of getting here from Europe where most of the workers on 417 visas come from, the cost of living and the arduous nature of the work in our extreme climate the poor struggling backpacker is being slapped from every direction. **So, let's get this clear – the largest, the most systematic and the most orchestrated campaign of 'wage theft' and exploitation of backpackers is perpetrated by the Australian government.**

And to give Joel Fitzgibbon his due, he predicted everything that has transpired – check it out here

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22chamber/hansardr/b564519e-8c2b-4dbf-a1e8-8c9334a04537/0264%22>

As a consequence of these cost pressures there is a strong incentive for those involved to negotiate other arrangements, such as cash payments where everyone is better off. It may also have contributed to the huge demand for ABN number in 2017 (which is when the backpacker tax was starting to take effect), 180,000 ABNs were issued to people on tourist visas who aren't allowed to have one!

<https://www.vsure.com.au/ato-audit-20-million-visa-holders-data-matching-immigration/>

The tool of choice for dodgy employers to exploit workers is visa restrictions. Sitting behind this is a dark world of exploitation and modern-day slavery carried out by contractors and 'middle men' who've done a much better job of supplying the labour needed than legitimate operators. This system brings with it people smuggling, illegal practices such as money laundering and political infiltration. For more on this have a look at the Black Economy Taskforce Report. https://treasury.gov.au/sites/default/files/2019-03/Black-Economy-Taskforce_Final-Report.pdf

The Pacific Solution

Farmer's groups have been lobbying hard to open our borders to our near neighbours to get the Pacific Worker Program back in swing and for those farmers that can afford it, this is a desirable option. Most of these countries are virtually virus free after all. As usual however are the costs and logistics involved in order to quarantine workers at various points along the way. Just as with tennis players though it's a pretty hard sell to all of those stranded overseas and desperate to get home.

For small farmers however the Pacific Worker Program is an expensive lottery and many are suspicious of the government's dedication to this option. Some of us might wonder if the provision of much needed labour is secondary to the foreign aid the program supplies; the stabilising of relations with these countries in order to shore up detention centres; prevention of Chinese expansion and possible military bases being built; assuaging Pacific leaders' claims that their countries are sinking as a consequence of climate change or penance for corrupt treaty negotiations such as the scandal around Timor Leste. Here's an amusing version of those events. <https://www.facebook.com/thejuicemedia/videos/honest-government-ad-visit-timor-leste/1932258636864119/> Why are Australian farmers expected to bear the cost of these issues?

But shouldn't we be using Australians?

As much as it will offend many to hear this, Australian's are not favoured by farmers due to their unreliability and their aversion to hard physical labour. Meanwhile just 253 Australians have signed up to take advantage of \$6000 worth of incentives and assistance to take up regional farm work, as well as Centrelink concessions that allow them to earn and retain Jobseeker payments at the same time.

Yeah, but the pays not good enough!

No one seriously suggests that all farm work is well paid. However, farmers have not done a very good job of defending how piece rate works. It's easy – you get paid for as many bins/lugs/boxes of fruit/produce you pick/harvest. The harder you work, the more you earn. Most of us are not born fruit pickers so there is every chance we're not going to earn much until we get far more experience. Many suggest that everyone should be able to make the same amount as being paid on wages – this is not the case. Interestingly many recent stories covered by mainstream media outlets which detailed examples of workers not being paid enough coincided with the Union's submission to the National Agricultural Labour Advisory Committee which demands that government discontinue the Working Holiday Maker programme in its current form and deepen the scope of SWP. <https://www.awu.net.au/wp-content/uploads/2020/08/RSCA-AWS-Final.pdf>

How do we fix it?

- The most urgent priority is to retain as many backpackers in the country as we're able to. Similar to the requirements for completing 88 days of work in regional areas, the dwindling number of backpackers still here could be offered the opportunity to extend their visas again if they take up work in Agriculture.
- The Horticulture Industry Labour Agreement became available early last year and thus far has had very little success – possibly due to its poor promotion and lack of support to navigate the burdensome qualifying process. Not to mention the cost and the levy added at the end of \$1000s to go towards the Skilling Australia Fund (another piece of special genius – this time Peter Dutton's), but that's a story for another day.

The Government could assist enormously if they *worked with farmers* to open this pathway and reward those workers who individual employers would like to invest in and retain.

One of the most value sapping features of the current labour supply model is the drain of high turnover of staff, the cost and lack of productivity of constantly starting with new workers every day/week/shift. This turnover also leads to increased likelihood of injuries and many of the stories of so-called exploitation as workers find that in their first few weeks, they struggle to make much money. It creates a culture of frustration and disappointment on both sides that is pitting worker against employer and providing the perfect breeding ground for division and resentment.

- Accommodation options are crucial in many regional areas, in Victoria farmers are prevented from providing housing on farm which means that workers have to rely on hostels or worse still, set themselves up in dangerous 'share house' arrangements. Further exacerbating this issue is the lack of public transport to the areas where the farms are and so the cycle continues. Instead of preventing farmers offering accommodation why not *work with them* to enable this option. In many rural areas the problem of zoning is preventing investment in accommodation.
- Dodgy contractors! The various Labour Hire Licensing schemes ostensibly introduced to squash this issue have had absolutely no effect. In fact, during 2020 the Victorian Labour Hire Licensing Authority announced that it wouldn't be doing any physical enforcement operations 'due to COVID-19 19'. You can imagine the field day conditions that created as a result. One of Victoria's largest horticulture areas surrounds the town of Mildura, yet the nearest office of Fair Work is in Bendigo! *Get the enforcement teams up to this area for as long as needed to get this sorted out!* Under the present conditions the only operators who have a reliable supply of workers are those who had illegals all along.
- *Work with farmers* to address their needs instead of imposing regulation over the top of them.

A final word

Farming is not the only sector experiencing labour and skill shortages at the moment and it is certainly not the only sector where worker exploitation, wage theft or mistreatment occur. The retail; maritime; hospitality; beauty; transport; cleaning; security; aged care; sex; abattoir and warehousing industries are also areas which have a heavy reliance on overseas workers and where allegations of this kind of culture are rife. Why are farmers singled out?

So, while we all battle to keep our businesses and farms in operation and get food to the Australian consumers – *let the hunger games begin...*

Attachment 3 – Piece Work Presentation for new staff to Payne’s Farm Contracting Pty Ltd

Payne's Farm Contracting & Colignan Contracting

Piece Work Agreements



What is Pruning and what makes a good pruner?

- Pruning in our company usually means the practice of selective removal of certain parts of a tree. Reasons to prune include: deadwood removal; shaping and training to establish the desired frame work of a tree; improving yield; orchard hygiene; allowing light and air penetration; aiding harvest; improving or sustaining health; reducing risk from falling branches.
- The practice entails targeted removal of diseased, damaged, dead, non-productive, structurally unsound, or otherwise unwanted parts of the tree.

What are the skills and attributes of a good pruner?

Ideally the skills and attributes we are looking for in our staff are as follows:

- Tall, strong and fit; able to work in extreme conditions; willing to travel; able to change from one style of pruning to another frequently; sound safety and manual handling knowledge
- Good co-ordination and concentration
- Some knowledge of the growth habits of different tree types and requirements for maximising yield and quality
- Prior experience and training in pruning techniques

What are the skills and attributes of a good pruner?

Realistically given the nature of our industry many people who work for us do not possess all of these characteristics.

Should you choose to work with us Payne's Farm Contracting will endeavour to give you the best opportunity to earn money by providing the best equipment available on the market and the required training and support, while balancing productivity with the needs and expectations of our customers

What are the skills and attributes of a good pruner?

- Many of you won't be highly skilled pruners but have opted to continue working with us anyway. This is an informed choice you must make.
- Payne's Farm Contracting will endeavour to support you where possible by placing you in the job that best matches your skills, attributes and ability and by teaming you with more experienced staff to help you. However this is not always possible nor is it fair on the more skilled pruners to be slowed down assisting you.
- Please understand that sometimes your ability to earn will not match the ability of others and that piece rates are not targeted at the lowest workers.

Working with Us



- Payne's Farm Contracting conducts pruning tasks for both hourly rate and piece rates.
- Piece rate is often preferred by our more experienced staff as they often earn more this way.
- Each job is different, it is expected that for the first few days your focus should be on understanding the tasks and doing them safely. Rushing increases your risk of injury and often results in poor quality work which will have to be fixed- sometimes at your expense.
- As you get used to the work and more experienced, your earnings will increase. If you don't like this structure then perhaps pruning is not the job for you.



Fair Work



- Fair Work Legislation
- The Fair Work Act 2009 and the Fair Work Regulations 2009 are the main legislation relating to workplace relations.
- They govern the employee / employer relationship in Australia. They provide a safety net of minimum entitlements, enable flexible working arrangements and fairness at work and prevent discrimination against employees.



Fair Work



- The National Employment Standards
- The Fair Work Act 2009 provides you with a safety net of minimum terms and conditions of employment through the National Employment Standards (NES).
- A complete copy of the NES can be accessed at www.fairwork.gov.au. Please note that some conditions or limitations may apply to your entitlement to the NES. For instance, there are some exclusions for casual employees.



Immigration And Visas

- Payne's Farm Contracting will only employ people eligible to work in Australia.
- Why would we risk fines of 10s of thousands of dollars to do individuals favours???????




Working with us

- When working for us each job will be offered on its own terms. The terms of one job (including basis of pay, rate of pay, days of work, hours and length of Assignment) are no indication of the terms of another Assignment.
- Payne's Farm Contracting may alter the terms of an Assignment at any time having regard to the needs of the Client. Without limitation, this includes altering the length of the Assignment, the start or finish dates of the Assignment or the days on which the Assignment is to be performed.



Working with us

- Our customer's needs determine the type and length of each job; therefore your assignment may last for a few hours, one week, one month or be for an extended period. Payne's Farm Contracting **does not**
 - Guarantee the existence of any work assignment;
 - Guarantee the duration of any work assignment;
 - Provide sick, annual, long service, parental or any other form of leave;
 - Provide you any details of the reasons for the cessation of any temporary assignment undertaken by you.
- Payne's Farm Contracting will determine if you have the attitude and skills we require for each job.



A Word About Piece Rates

- A pieceworker isn't guaranteed a minimum hourly or weekly rate that applies to the type of work they do, or the national minimum wage.
- The piecework rate has to allow the average competent employee to earn at least 15% more per hour than the relevant minimum hourly rate in the award.
- There are many factors that affect what an average competent employee is. There's no standard across the horticulture industry.
- You may not be the 'average, competent employee'.



How we set the Piece Work Rates -

- Quoting – Payne's Farm Contracting take a great deal of time and effort to get our charge rates right in order to be fair to the staff as well as the growers.
- This involves taking a number of staff of varying abilities to site to conduct trials for a day to determine what the job entails, how many cuts, how hard the cuts are, how hard it is to get the wood out, what the orchard conditions are and finally how many trees can be reasonably pruned in an hour.

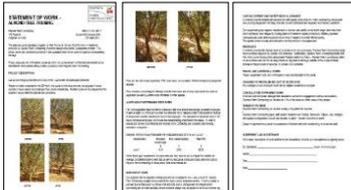


Then we send a detailed quote -

- Which includes a Statement of Work describing the job and showing some before and after pictures.



The Statement is signed -



As well as the quote section -



Our interpretation of the phrase 'average, competent person' -

We define **average** as the total trees pruned divided by the number of workers, based on trials conducted by a group of workers of varying abilities.

Our interpretation of the phrase 'competent person' -

We have requested clarification from the FWC on their definition of **'competent'**, their response is shown below:

Hi Louisa, Thanks for your enquiry. If you are referring to clause 3.2.2 of the award, there is no specific definition of what a 'competent employee' is. It is most likely that this is because 'competent' is a benchmark that is set by the individual employer, so it is related to the ability of an employee to meet or exceed the average amount of work in a set sector. Where a term is not defined in the award, the FWC will usually deem it as a 'reasonable person' interpretation. In this situation, as the pricing relies on the ability of an employee or piece work rates to meet a rate of pay when to meet the minimum hourly rate of pay - 10.54 per hour it means that you as an employer would have to work out what you believe is a 'reasonable' rate of pay for the piece work rate. For example, the award hourly rate of pay is currently \$22.29 per hour. If an employee/competent employee is expected to do 40 hours per hour, the piece rate per hour would have to be at least \$2.24 to enable an employee who meets that output to receive the minimum of \$22.29 per hour if they are performing competently.

Enquiry No. 0989/752

Our interpretation of the phrase 'competent person' -

We feel that the FWC's definition of **competent** is vague so in the mean time we have defaulted to the following

EXPLANATORY STATEMENT Select Legislative Instrument 2011 No. 242
Work Health and Safety Act 2011

The term **'competent person'** is used throughout the Regulations to define a person who has acquired through **training, qualification or experience the knowledge and skills** to carry out specific tasks.

!!! You may not be the 'average, competent' person and may never reach this level compared to some of the other staff- you need to decide whether pruning is the right job for you

<http://www.legislation.gov.au/Details/2011/0266/Explanatory/208/annotatedText>

TEST CASE – Fair Work vs Marland Mushrooms Pty Ltd

- Interestingly, the Federal Court decision establishes that employees who are not competent (i.e. with little experience) should not be considered in the equation. In other words, firstly exclude incompetent employees from your calculations, then look at the remaining competent group to ensure that at least 50% or 60% earned equal to or more than the piece rate target."

<http://www.fairwork.gov.au/publications/marlandmushroomscase>

Piece rate prices for 2019- onwards

- You have been provided with a copy of our Piece Work Agreement, please read the front pages carefully and discuss with you colleagues and supervisors anything you do not understand.
- If you are **satisfied** with the provisions of this agreement please sign and return.

***Please note that some of this material is out of date and some slides have been removed for privacy reasons.**

Attachment 4 – Piece Rate Agreement Form for Payne’s Farm Contracting * 2021 rates have not been determined yet



Piecework Agreement – PAYNE'S FARM CONTRACTING

Important notes:

- The piecework rate/s must enable an 'average competent employee' to earn at least 15% more per hour than the minimum hourly rate in the Award for their type of employment and classification level.¹
- The piecework rate for an 'average competent employee' may change from day-to-day depending upon variables like weather conditions; opening process; type of bin; type of picking (e.g. selective or stripping); pruning or packing; size of trees/plants; density of trees/plants. The Agreement can include a number of piecework rates for these variable situations or you can agree to vary the Agreement or make a new Agreement for each change.
- The piecework rate/s should be reviewed in light of any changes in the Award rate.
- If the piecework rate/s is varied, it must be agreed between the Employee and Employer, put in writing and signed by both.
- The piecework rate/s must be paid for all work performed in accordance with the Agreement. The piecework rate/s will be paid instead of the hourly or weekly wages specified in clause 14 of the Award.²
- A casual employee must also be paid the casual loading. The casual loading is paid based on the base weekly or hourly rate of pay, not on the calculated piecework rate.
- The following clauses of the Horticulture Award do not apply to an employee on a piecework rate:
(a) Clause 22—Ordinary hours of work and rostering;
(b) Clause 24—Overtime; and
(c) Clause 24.3—Meal allowance
- The Employee's earnings will depend on their productivity. The Agreement does not guarantee that the Employee will earn at least the minimum weekly or hourly wage in the Award for the type of employment and the classification level of the Employee.
- The Employer must give the Employee a copy of the piecework agreement and the Employer must keep it as an employment record.
- The Employer should keep a record of how they calculated the piecework rates.

Know what you should be paid

For picking fruit or vegetables, or pruning, you should be paid at least **\$14.90** per hour if you're working on a casual hourly basis.

If you're on a piece work agreement your pay rate has to allow the average competent employee to earn at least 15% more per hour than the relevant minimum hourly rate in the award, which works out to be **\$24.12** for a casual employee.

You may get paid less if you work slowly or are still learning.

Visit the [Piece rates page](#) and select the Horticulture award from the filter to find out how to calculate piece work rates.

<https://www.fairwork.gov.au/how-we-will-help/helping-the-community/campaigns/national-campaigns/harvest-trial-campaign>

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this template is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 24 or speak with a union, industry association or a workplace relations professional.

Piecework agreement

Agreement between:

Payne's Farm Contracting

Coilgnan Victoria 3494

(Employer)

and

(Employee)

The Employer and the Employee agree to enter into this Piecework Agreement (**Agreement**) under clause 15 (Pieceworkers) of the *Horticulture Award 2010 [MA000028]* (**Award**). The Employer and Employee mutually agree as follows:

1. The work to be performed under this Agreement is as described below (**Work**):

Pruning, picking, de-suckering, disbudding, removing covers

2. The minimum piecework rate/s which must be paid by the Employer to the Employee for performing the Work is as specified in **Schedule A** to the Agreement.

3. As an employee of Payne's Farm Contracting I have completed an induction session specifically on the topic of Piece Rate Agreements where I was given an opportunity to ask questions and seek clarification about how the rates are set. I understand that each piece rate varies with the tree type, the variety, the growth stage, the size, the required task defined by the customer and a range of other factors. I understand that the piece rates are different for different properties, type of job, patch, and can vary from day to day. I understand that I am paid per tree and that if I am working in a pair then that tree is divided by two. I understand that Payne's Farm Contracting endeavours to be fair and devotes considerable care to setting and communicating the rates but that sometimes I may not earn as much money on some jobs as others. I understand that the rate is not set for the worst performing member of the crew and that it may take some time for me to achieve competency. I understand that Payne's Farm Contracting pay per hour when a piece rate is not practicable or desirable and endeavours to arrange the groups so that I have the best likelihood of success but that I may still not be able to achieve the average of the rest of the group. I understand that under these conditions I am welcome to stay but that I won't always make the same amount of money each week.

4. The Employee is employed as a casual / ~~part-time~~ / ~~full-time~~ employee.

5. The date this agreement is for the 2021 pruning season.

Employer signature:

Employee signature:

Print name:

Alan Payne – Owner/Manager

Print name:

Date: Season 2021

Date:

SCHEDULE A - Piecework rates: Starting date: Season 2021

Property names:

Below you will find some of the rates that Payne’s Farm Contracting and it’s employees have agreed upon for season 2016 – 2017 and 2018. The 2019 season featured very little work done on piece rate – most was hourly work so the 2019 figures have not been included here. 2020 pruning season may contain a mixture of hourly and piece rate work. Piece Work rates are explained in more detail in our PFC Induction session for this topic.

PIECE RATES (HISTORICAL FOR 2016 + 2017 and 2018)

TASK	2016			2017			2018			2016			2017			2018		
Disbudding	\$0.82			\$0.45			\$0.18			TBA	TBA		TBA	TBA		TBA	TBA	
Tree Training	\$0.64									TBA	TBA					TBA	TBA	
Cleaning out dead wood	\$1.50									TBA	TBA					TBA	TBA	
Opening up tree	\$1.00									TBA	TBA					TBA	TBA	
Cutting suckers	\$1.50			\$0.30						TBA	TBA					TBA	TBA	
Skirting	\$1.00			\$0.58			\$0.88			TBA	TBA					TBA	TBA	
Light pruning	\$1.00									TBA	TBA					TBA	TBA	
Disbudding low branches	\$0.47									TBA	TBA					TBA	TBA	
Removing weeds	\$0.90									TBA	TBA					TBA	TBA	
Removing old branches	\$0.60									TBA	TBA					TBA	TBA	
Pruning centres	\$0.90									TBA	TBA					TBA	TBA	
Cutting holes/windows	\$0.90									TBA	TBA					TBA	TBA	
Pruning valencias	\$1.20									TBA	TBA					TBA	TBA	
Pruning vines				\$0.50	\$0.12		\$1.90	\$1.51		TBA	TBA					TBA	TBA	
Width reduction				\$0.35						TBA	TBA					TBA	TBA	
Vine training				\$0.25						TBA	TBA					TBA	TBA	
Pruning Almonds										TBA	TBA	\$1.75	\$1.30	\$4.20	\$1.20	\$0.40, \$0.45,	TBA	TBA
Pruning citrus	\$1.00	\$1.16	\$1.70	\$1.54	\$0.40	\$1.50	\$1.40	\$1.60	\$1.70	\$2.00	\$0.60, \$0.70				\$0.35	TBA	TBA	
		\$1.84	\$2.52	\$1.45	\$1.20	\$0.80	\$2.30	\$1.20	\$1.80	\$1.00								
		\$2.30	\$1.80	\$1.05	\$2.20	\$0.75	\$1.25	\$1.10	\$1.75	\$1.40								
		\$1.80	\$1.60	\$1.20	\$2.25	\$1.80	\$1.30	\$1.50	\$0.90	\$1.30								
		\$1.50	\$1.10	\$1.35	\$2.00	\$0.35		\$1.88	\$2.10	\$2.30								
		\$0.74	\$1.30	\$1.25				\$2.50	\$2.65	\$1.90								
								\$1.25	\$0.80	\$3.10								
								\$0.25	\$0.85	\$1.35								

*Denotes payment has been hourly rate

* Denotes rates so far for season 2018

* List the variables considered in arriving at the piecework rate. Variables can include things like weather conditions; ripening process; difficulty of pruning, type of crop, time of year, age of tree, type of bin; type of picking (e.g. selective or stripping), packing or pruning; size of trees/plants; density of trees/plants.

The prices for season 2021 will vary in accordance with the scope of work dictated by the grower and the variable as described in the paragraph above. Very little work done on piece rate during 2019 and 2020.

