

SUTTON FARMS

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Sutton Farms Submission for Fair Work Summary of Decision on Piecework Provisions

Sutton Farms is a fruit and vegetable business, growing in the Lockyer Valley and Stanthorpe regions. Main crops grown include cherry tomatoes, spring onions, lettuce, wombok and kohlrabi. This is grown on approximately 1,000 acres of land and through a mix of field, hydroponic and protected cropping growing styles. Sutton Farms employs approximately 150 people directly and indirectly (through Labour Hire Companies). The majority of Sutton Farms' employees, both direct and indirect, are Australian permanent residents, with a significant portion of refugee permanent visa holders. Local employees are a fundamental part of our business and make up approximately 60% of our direct workforce. Holiday visa holders and student visa holders make up approximately 25% of our direct workforce.

Sutton Farms accepts and has always accepted that employees deserve to be paid a fair wage for work they have provided. Sutton Farms has always conformed and adhered to any regulation put forward by the Fair Work Commission, and any government or regulatory body. We have a good relationship with governing bodies, where over the past 5 years, we have invited Fair Work to come and do yearly progressive inspections of our rates, policies and pay structures, to ensure compliance.

Sutton Farms also acknowledges that there are instances of flagrant disregard of the award mechanisms in the industry by a minority of employers, which Sutton Farms would champion the regulatory bodies to find, punish and remove from our industry.

The decision by the Fair Work Commission to apply a minimum rate component to piece rate payments will be effective only if it is policed and monitored correctly and fully. Current safeguards are not effective, not because of the policy itself, but because of the lack of monitoring and policing.

In Sutton Farms' experience, there are a significant number of small to medium growing and employing businesses throughout Australia that are unpoliced and never conform to the rules because they have never been contacted or audited. For other growers and employers, such as Sutton Farms and other larger or more visible organisations, we are usually targeted for audits, checkups or unannounced visits from Immigration, Fair Work, Workplace Health and Safety, among other government and regulatory bodies. The systemic abuse that has been reported of the employment regulations and rules is not usually found in these businesses. Usually these businesses are also those with key accounts such as chain stores, export markets and large customer accounts that already require quality systems adherence, audited ethical sourcing policies, environmental policies and a general high level of compliance requirement to conduct

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their business. Sutton Farms experiences this first hand. For instance, chain stores are now requiring ethical sourcing audits above and beyond the international standards and regulatory bodies that are currently in place. Not only is the cost of compliance high, the time and resources attributed to these audits is also not insignificant.

However, Australia still has a significant portion of producing businesses in horticulture that have no quality assurance systems, have no ethical sourcing policies, have no requirements or self regulation around maximum residue limits and spray operations to keep food safe for people to consume. In short, there is a percentage of the Australian horticultural growing industry that is completely unregulated, unaudited and unpoliced. It would not surprise Sutton Farms if the issues being heard by the AWU and Fair Work would be coming from the same businesses that take management and food safety shortcuts. These same businesses are competition for businesses that are doing the right thing by their management practices, including paying their employees fairly and correctly.

Similarly, these businesses that are currently breaking the law and not paying their employees correctly or fairly, will also be the businesses that continue to find loopholes or blatantly cheat, lie and disregard the rules being proposed. These businesses will simply find a new way to break the rules and carry on cheating employees and ruining the industry for both the employees in the industry, as well as creating an impossible level of competition for those businesses acting appropriately and lawfully. Adding records of start and finish times is only appropriate if the correct times are recorded. This would be easily manipulated by those that wish to, and therefore would not have the expected or anticipated effect on fixing the issues within the industry. Similarly, a disgruntled employee, or one that hasn't entered the workforce with the required motivation or intentions, would be able to create situations and disputes over start times, finish times, breaks and productivity levels, without reproach, leaving the liability and responsibility on the employer to defend their integrity from a point of guilty until proven innocent. Bad actors on both sides will continue to manipulate the measures being proposed and it will not fix the issue at hand.

The real solution is to remove the employers that do not comply with the current regulations and make food safety, ethical sourcing and related management practices and benchmarks mandatory, before a business can produce. Then these should be monitored and policed properly and fully, which is currently not happening while businesses can continue to operate without a base level of compliance, auditing and regulatory requirement to be adhered to.

Sutton Farms believes that if the true goal is to make the horticulture and growing industry free from bad agents and poor practices, policing of the current policies and creating mandatory requirements around farming practices (such as a licence to farm fruit and vegetables) should be implemented. The most important part of cleaning up the horticulture industry however, starts with visiting and compliance checking of the farming and employing businesses that are currently operating but have never been checked before.

It also needs to be stated that the supply of the workforce, and a large portion of the workforce that might be experiencing issues with being able to make money on piece rates are not engaged in employment through the horticultural industry for genuine purposes. The concept of forcing holiday makers to work in our industry to continue their holiday visa for another year is one that is inherently flawed. These people are on a holiday. They do not enter the workforce with intent, motivation,

enthusiasm or a genuine desire to work productively and to standard. Admittedly, this is a generalisation, but no worse a generalisation than the one that is being labelled upon the horticulture industry. Sutton Farms has many fantastic working holiday visa holders employed with us that work productively and well. These are valued employees that are working with us for the right intentions and with the correct attitude. It is also true that we have had many working holiday visa holders that have been employed for a short amount of time (sometimes only hours before they quit, or don't even show up for a first day's work) that are not applying for work or working in the Australian horticulture industry for genuine reasons. These people have no intention of adhering to our policies or productivity requirements. Quite conversely, we have had instances where these type of employees have acted in completely bad faith and have been destructive to our business' product, integrity, and profitability. There have been instances of employees working in the same field, under the same conditions and with the same equipment, tools, and availability to work productively, where a number of committed and motivated employees earned over \$40/hr equivalent on piece rates, while a small number made slightly under minimum wage casual equivalent. The majority of pickers in this example made well above award wage and well within the regulations and requirements. This is a clear occurrence of a lack of motivation, self discipline, or ability to perform at the required, reasonably expected rate.

The inherent issue of forcing people into the horticulture industry to work for any purpose is always going to lead to bad actors on both sides (employer and employee). The move to a specific agricultural visa, the Seasonal Worker Programme, and the Pacific Labour Scheme are examples of extremely positive steps to improve the workforce supply in the horticulture industry without coercion of entry to the workforce. These are strong and positive changes that will also help in "cleaning up the industry" naturally. Sutton Farms is eager to be part of some or all these initiatives and see them as the way forward in our industry for employment of seasonal, casual workers. Without these options being available in the past, and the lack of a domestic supply of workforce for these jobs, our industry was put in a position where our only option was to use a workforce where a significant percentage of employees were not interested in working in the horticulture industry. The pressure this placed on the industry to comply and to maintain compliance with regulations cannot be understated.

Furthermore, most of the pickers Sutton Farms employs directly and indirectly are refugees on permanent visas. These people are largely of a different culture and the "Australian ways" are not understood. Most are unskilled and I struggle to think in what other industry these people may be suited to work. We have tried to enforce start and finish times, however the majority continue to arrive and leave and have breaks (which may be frequent or extended) when it suits them. Whilst it would be more easily manageable to have everyone working exactly the same time, it is not always practical or foreseeable. We see these new piece rate regulations having a negative impact on these people, and consequently their communities and our business. To allow these workers to continue their current working conditions there would need to be stringent monitoring of individual start, breaks and finish times. We have attempted to do this in the past however it proved too difficult to manage. A regimented program would force these people out from our workplace and most likely out of the workforce onto welfare, which could potentially negatively impact communities and most certainly our business. Local people or working holiday visa people will not do this work, and we have proved this in the past. And with the current shortage of workers in our industry we would struggle to replace these people.

Should you require further discussion on any of the above please contact me on [REDACTED], or via email, brock@suttonfarms.com.au.

KIND REGARDS

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Brock Sutton

Manager