

25 November 2021

Sunny Ridge
AUSTRALIA

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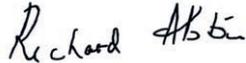
ATTENTION: COMMISSIONER
amod@fwc.gov.au

RE: SUBMISSION TO FAIR WORK COMMISSION RE PIECE RATES DECISION
AM2020/104

To whom it may concern,

Please find attached submission to the above.

Regards



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SUBMISSION TO FAIR WORK COMMISSION RE PIECE RATES DECISION

The role of Fair Work Australia is to ensure a fair and equitable balance between the interests of workers and their employers. This means not only taking account of the level of wages and income of workers but also the capacity of employers to afford any imposed wage increases. If they cannot, the future employment of all their workers is very much at risk.

Yet the Summary of Decision makes no mention of the balancing item of grower profitability, which is an essential matter of concern for employees in terms of ongoing job security. The sustainability of the horticulture industry dictates that growers must obtain sufficient revenue to cover all of their expenses (direct costs and overheads). They also need to be able to derive a reasonable rate of return in order to incentivise them to make capital improvements and remain in business. Traditionally in agriculture the risk/return model is unpredictable, being heavily influenced by climatic conditions and fluctuating commodity prices. As a result of the COVID induced worker shortage, in order to secure pickers growers have had to pay \$2,000 per overseas worker to seasonal work provider firms for quarantine expenses, as well as increased prices for packaging, freight and farm consumables.

Whilst Sunny Ridge and most growers have no issue with all workers receiving a national minimum wage, any reforms must take account of the need to maintain incentives through the piece rate system if productivity levels are to be maintained and hopefully improved. For a proportion of workers, especially backpackers, the imposition of a high minimum hourly rate removes any incentive for productivity. The simple solution would have been to mandate a modest indexed increased figure as a floor for piece workers, rather than the imposition, without any supporting logic, of a massive wage cost which indiscriminately also rewards underperforming pickers, who are presumably not “competent workers”.

Under the seasonal worker program there is always a requirement to train new workers yet, unlike in other industries, there appears to be an unrealistic time frame (2 weeks) in which they are deemed to be competent. This proposal acts as a disincentive for growers to engage seasonal workers as the training/upskilling period is not only a cost absorbed through lower yield/production (kilos picked per hour) but now an additional expense by ignoring the realistic timeframes required for a worker to reach competency. In our recent experience this period can be up to 6 weeks. Under the current proposal growers who have shown perseverance with training may have to release the worker at the end of the two week period based on financial necessity.

Growers will be faced with a very significant administrative and supervisory burden in recruiting, monitoring, recording and managing workers who may be inclined to exert little effort, safe in the knowledge that they will receive a generous guaranteed minimum wage, regardless of their level of productivity. For Sunny Ridge this represents up to 700 pickers in peak periods working across the sites at any point in time, therefore the level of supervision needed to ensure required productivity levels are met, together with the associated cost burden, will render this impossible.

The Draft Determination does not take account of the lack of labour supply or the inability of growers to find replacements for those workers who are incapable of picking the volume of fruit required for growers to remain viable. Indeed some growers may have no option but to cease business when the cost burden becomes critical, as seems highly likely, unless retailers pass the increased costs on to consumers. For the future sustainability of the affected industries, FWC should publicly encourage them to do so.

The Summary of Decision complains that there is widespread non-compliance with clause 15.2 of the Horticulture Award. There is no evidence to suggest that the larger firms are guilty of exploitation. They are regularly subject to inspection and audit and they cannot afford to cut corners. Sunny Ridge is one of the largest independent berry growers in Australia with 330 hectares of farmland on the Mornington Peninsula and the Yarra Valley in Victoria and the Sunshine Coast in Queensland, producing 4.2m kilos of fruit with a revenue of just over \$47m.

To the extent that there has been under payment it is not necessarily a conscious or deliberate decision by growers, especially smaller ones, many of whom cannot afford the luxury of seeking legal advice, which in any event could not be definitive. Workers who earn well above the base rate by virtue of their productivity performance are by definition not being exploited.

The Summary of Decision says that the characteristics of the industry render the seasonal harvesting workforce **vulnerable to exploitation** but it does not say that they have been exploited. Sunny Ridge has never received any complaints from its workforce or their representatives about the adequacy of wages. Until the current Covid-related supply shortage Sunny Ridge has never had any recruitment difficulties, as potential workers have been keen to pick, at current wage levels, in a safe work environment with a reliable availability of fruit.

Clause 15.2 (b) provides that "the piecework rate fixed by agreement must **enable** the average competent worker to earn at least 15% more per hour than the minimum hourly rate". The term "enable" certainly does not mean "require" but the ongoing lack of clarity and the confusing and very difficult-to-comply-with formula, has effectively outsourced the problem and left it up to workplaces to do the best they can.

The problem is compounded by the fact that the existing formula has now been left largely intact. The Draft Determination still fails to define the "average competent worker" or provide a formula for easily and clearly identifying same. This simply leaves growers at risk of unintentional non-compliance, through no fault of their own. Instead worker inefficiency is rewarded by lifting all remuneration up to the level of a competent worker. The Commission says the clause is not fit for purpose but has done nothing to fix it up.

The Summary of Decision recognises that crop growth in the horticultural industry is seasonal and therefore must be picked as soon as possible, without taking account of rest days. The decision to double the minimum rate on a public holiday is simply a gratuitous and unnecessary impost, which will inevitably result in many growers being unable to afford to pick their crops on these days.

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This momentous decision was taken without any notice to, or consultation with, major independent growers, including Sunny Ridge, who knew nothing about the issue of proceedings, let alone the extensive hearings involved and the nature of the evidence adduced. Thus a significant number of growers who are heavily impacted by the additional cost burden have had no opportunity to put the salient facts before the Commission.

Given the adjustment complexity, the very heavy increased cost burden about to be imposed on the industry and the need for growers to find a commercially viable pathway to the future, the new regime should not come into force until the end of the current picking season and industry has returned to normal and worker supply shortages rectified.