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Sent: Friday, 18 August 2017 1:22 PM

To: AWR

Subject: Fairwork Submission - Horticulture Award - Four yearly review of modern awards – Casual employment and Part-time employment

Dear Sir/Madam,

I forward this late submission on behalf of the strawberry and raspberry producers who are keen to have their position on the overtime provisions recognised by the Commission.

Unfortunately this part of the Award consideration was overlooked in submissions and no responses were included from larger growers.

Therefore I apologise for the lateness of this submission

With thanks

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Four yearly review of modern awards – Casual employment and Part-time employment

Matter No. AM2014/196 and AM2014/197

**FRUIT GROWERS TASMANIA
SUBMISSION**

Date: 18 August 2017

Introduction

1. Fruit Growers Tasmania (FGT) is the peak industry body representing the State's apple, pear, summer fruit, cherry and berry producers.
2. FGT and its respective members are linked into Primary Employers Tasmania – a member organization of the National Farmers' Federation. FGT has one grower Board member on the Board of Primary Employers Tasmania.
3. However the concerns of the berry sector, predominantly the strawberry and raspberry sectors, are submitted for the Commission's concerns. These concerns have not been previously raised as part of the deliberations.
4. This submission is filed in accordance with the Direction issued on 5 July 2017, responding to the decision regarding ordinary hours of work and overtime for casual employees under the *Horticulture Award 2010*.
5. In 5 July Decision, FGT acknowledges the Full Bench setting out five propositions demonstrated by the previous evidence submitted which is supported by FGT – being:

(1) Horticultural businesses tend to be price takers for their product, meaning that they have little or no capacity to pass on any increase of significance in their labour costs. Award variations will significantly increase labour costs and adversely affect profit margins, potentially affect business viability, which ultimately might have adverse employment effects.

(2) Casual employees are used extensively to perform seasonal harvesting functions. These functions require extensive hours of

work to be performed in relatively short periods of time. Weather events may mean that harvesting time lost on particular days must be re-gained in subsequent days, regardless of which day of the week it is.

(3) Casual employees performing seasonal harvesting work are commonly on work or holiday visas. Their preference is (within reason) to work as many hours, and earn as much income, as they can within a short space of time and then follow the harvest trail.

(4) The most likely response of employers within the sector to any onerous overtime penalty rate requirement will be attempts to avoid its incidence. Most would try to achieve this by reducing the working hours of their casuals to a level not attracting any overtime payments, and employ more casuals to cover the hours. However this will be counter-productive resulting in lower incomes per worker. This would produce would reduce the supply of persons willing to work casually in the industry. The alternatives mentioned were to move to less labour intensive crops or reduce output.

6. It is noted the Commission sets out a number of provisional views and points for further information in relation to the following:
- A 12 hour limit on the ordinary daily hours of casual employees;
 - Ordinary daily hours limited to the period of 6:00am to 6:00pm;
 - The weekly ordinary hours for casuals as the lesser of an average of 38 hours per week or the hours required to be worked by the employer; and
 - Over what period may the 38 weekly ordinary hours of casuals be averaged and should overtime penalty rates be payable for work in excess of those hours.

Seasonal work in the Tasmanian horticulture industry

7. The fruit industry in Tasmania covers a broad range of commodities. The growing seasons, harvest times, growing inputs and market demands vary crop by crop.
8. A typical peak season in the horticulture industry varies across commodities and business size.
9. This has been demonstrated by grower evidence previously filed in this matter, including from Tasmanian cherry and apple growers.

10. Harvest is clearly identified as the busiest time of the year for most horticultural businesses. This is inclusive of the time when labour demand is the highest and longer hours of work are required. Many businesses also require seasonal labour for maintenance, pruning, re-planting and husbandry, making the peak season longer as it occurs generally after harvest.

An appropriate averaging period

11. Given the seasons and intensive labour needs of growers vary according to the farm business size and the commodity, the length of averaging period that would be most appropriate for each business could vary significantly.

12. FGT support previous submissions proposing an averaging of 38 hours per weeks but seeks consideration for a period of six – nine months to fit into the berry sector as outlined below.

13. While a six-month period captures the vast majority of peak harvest periods in the horticulture industry, there are elements of the industry such as strawberry and raspberry producers who operate under protected cropping.

14. The season of the two sectors runs to nine months 6 – 7 for harvest and two for re-planting, plant husbandry and general setting up for the next season. At the time of writing this submission, strawberry growers for a number of reasons across Australia were unaware of the Commission's focus on this section of the award and wished to ensure the industry's position is highlighted to the Commission during current deliberations.

15. It is noted six months were presented to the Commission previously as an appropriate averaging period when consideration was given to Australia's migration programs that cater for the seasonal agricultural workforce. The Working Holiday Maker visa program permits the itinerant workers (working holiday makers/backpackers) to work with a single employer in the same location for up to 6 months.

16. The Seasonal Worker Program (subclass 416 visa), enables employers in the agriculture industry to access labour where they can't find enough local Australian workers to meet industry needs. Workers from Pacific island countries and Timor-Leste can travel to Australia to work on a farm for up to six months before they must return to their home countries.

17. Fruit Growers Tasmania have strong links with Vanuatu, Timor Lest and Kiribati and a number of growers are currently engaged in the Pacific Seasonal Worker program.
18. Additionally the employment of locals including humanitarian entrants, migrants or refugees becomes limited by the proposed eight weeks. Six to nine months would ensure longevity in localized employment especially with the Federal Government's seasonal worker program that focuses on the unemployed transiting to casual seasonal work without penalty.
19. Given that Australia's migration programs recognize that 6-9 months is the period of time for which a seasonal worker may be required in Australian agriculture, the industry request for consideration for a 6 - 9 month averaging period is consistent with these programs and would accommodate for the harvest seasons particularly for the berry sector.
20. As previously established through evidence presented to the Commission in the 5 July decision, the low bargaining power of many horticultural growers means there is limited capacity to pay overtime to casual employees working during the peak season. Consequently, growers will be forced to limit the hours of employees, change employees at the time limitation expiration or simply not employ under programs such as Seasonal Worker Programs including Pacific workers. Alternatively, as an extreme outcome, they may be forced to leave produce unpicked, allowing it to spoil and become unfit for consumption.
21. For this reason, FGT endorses that a six – nine month averaging period will provide sufficient flexibility for horticultural businesses to avoid this unsatisfactory outcome.

Ordinary daily hours for casual employees

22. FGT notes that the averaging period outlined above will be subject to the ordinary hours of casual employees of no more than 12 hours per day and that overtime payments should be payable for work performed in excess of 12 hours, as outlined in the Commission decision of 5 July. As such, a limitation on daily hours provides additional protection for employees.

23. FGT strongly opposes any restrictions on the time of day or period in which required tasks are conducted as harvest related tasks are commonly performed outside of 6:00am-6:00pm during peak periods such as harvest for reasons as below:

- Because of heat (and increased UV index) during the middle of the day so employees may work at 4:00am or 5:00am and either finish before the hottest part of the day or rest during the hottest part of the day and do some more work when it cools down in the evening. This is applicable even in Tasmania where the UV index is considerably higher than the mainland at peak times during the summer harvest period, even on cloud-covered days.
- Outside heat events, forecast rain, hail and storms impacts on harvest. Therefore, employees will commence early to fit as much work in as they can before weather events affect harvest. Over a 6 -7 month harvest period, there are a considerable number of days which will impact on the required tasks.
- Market specifications may require a certain amount of fresh produce to be harvested and transported quickly to meet market demand. This is more applicable especially in Tasmania where time restrictions apply because of Bass Strait shipping requirements to reach major domestic markets.

24. FGT seeks Commission consideration of the hours of work outside of 6:00am-6:00pm.

Conclusion

25. FGT on behalf of the State's strawberry and raspberry growers seek a six - nine month averaging period as appropriate given that this would cover the vast majority of peak seasons in this sector of the horticulture industry.

26. Further, it is important that our berry growers retain flexibility in the period in which work can be performed, in order to avoid undesirable consequences. For example, employees working outside during the hottest part of the day.

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27. The other parts of the sector with apples, pears, summer fruits and cherries will fit soundly within with the six – nine months window when pruning and thinning is taken into account.

28. FGT seeks for the Commission to acknowledge the concerns of the berry producers during their deliberations and retain the levels of required flexibility required within the sector.

With appreciation,

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18 August 2017