

IN THE FAIR WORK COMMISSION

AM2015/2 Family Friendly Work Arrangements

WITNESS STATEMENT OF BENJAMIN NORMAN

I, Benjamin Norman of 120 Carlton Parade, Torrensville SA 5031, do solemnly and sincerely declare and state the following:

Employment History

1. I am the Director of Human Resources for the Glencore Agriculture businesses in Australia and New Zealand. This includes Viterra Operations Pty Limited (**Viterra**) and Glencore Agriculture Pty Ltd (**Glencore Agriculture**). I was appointed to this position in November 2011. Glencore Agriculture and Viterra are subsidiaries of Glencore Agriculture BV. Glencore Agriculture BV is jointly owned by Glencore plc and the Canada Pension Plan Investment Board and the British Colombia Investment Management Corporation.
2. In my role, I am responsible for all human resources, safety, payroll, employment and industrial matters.
3. I have been employed by Viterra since January 2009, when I was appointed to the position of Industrial Relations Manager.

Viterra's Operations

4. Viterra operates a grain storage and handling network across South Australia and western Victoria. The network has a total storage capacity of more than 10 million tonnes, consisting of more than 80 country grain receival sites (based on the sites open during the 2016/2017 harvest) and six grain port terminals located in the major grain growing areas. At these grain port terminals, Viterra provides assembly, freight, port storage, throughput and ship loading services.
5. Viterra operates grain packing and processing facilities providing containerised export options in New South Wales, Victoria and South Australia. Viterra's packing and processing facilities are the largest in Australia and service the grain industry with a large range of containerised export options. These facilities

receive grains, lentils and pulses from Viterra's customer. The commodity is unloaded, fumigated, cleaned, subject to quality control, and stored until it is loaded into shipping containers for export.

6. Viterra's storage and handling system consists of 'push' and 'pull' logistics.
7. The push system refers to the receiving of grain and other commodities from growers. Viterra's receival system enables growers to deliver grain to Viterra's storage locations during harvest. The timing and volume of commodity received from growers cannot always be accurately planned in advance. Therefore, the speed at which commodities can be received during harvest, and the days and times that the storage locations are open during harvest are major issues for Viterra.
8. Harvest is Viterra's peak employment period. Harvest generally continues for 10 – 12 weeks during October – January. The precise commencement and duration of harvest is contingent upon the weather. The harvest period is the busiest time of the year. During that time, Viterra's workforce can more than double in size.
9. The impact of weather conditions makes short term and long term planning difficult. In particular, the push system is greatly influenced by the weather, which can impact upon a growers' ability to produce grain and on Viterra's ability to operate.
10. The pull system is the system delivering grain to exporters. Decisions about when to sell the grain are made by grain marketers, based on various factors including global demand and fluctuations in market prices. These decisions are not made by Viterra.
11. The pull system is designed to enable global traders to ship grain when the market demands it. Demand can vary throughout the year and from year to year. Exporters are price sensitive and have the ability to ship out of other ports, states and countries. This makes it vital for Viterra to provide exporters with the ability to export when required while also maintaining a competitive supply chain.

12. Viterra's operations also rely heavily on and are affected by the operation of shipping lines and rail transport providers. It is not uncommon for shipping vessels to arrive outside their scheduled windows or fail survey, or for trains to be cancelled or delayed. This impacts upon Viterra's pull system and requires it to remain flexible in its working arrangements.
13. Thus, Viterra provides growers and commercial customers with a range of services including receipt, quality assessment, storage, warehousing, grain assembly, freight, port storage and ship loading services to meet the requirements of domestic and international end users.
14. Viterra's operations are both seasonal in nature and highly unpredictable.

Viterra's Employees

15. Viterra employs approximately 900 employees outside of harvest. This includes full-time, part-time and casual employees:
16. As at 31 July 2017, Viterra employs 915 employees, as follows:

	Male	Female	Total
Full-time	364	98	462
Part-time	158	68	226
Casual	176	51	227
Total	698	217	915

17. Approximately 94% of those employees have been employed by Viterra for at least six months.
18. During the harvest period, Viterra employs approximately 2400 employees. The additional 1500 employees are engaged as casual employees. A small proportion of these are employed by Viterra for over six months. The exact proportion varies from year to year depending on the size of the harvest.
19. My understanding of the industrial instruments that Viterra applies to its employees is set out below.
20. In December 2015, the Fair Work Commission (**Commission**) granted Viterra Limited's application for a modern enterprise award. It is titled the *Viterra Bulk*

Handling and Storage of Grains, Pulses and Minerals Award 2015 (Enterprise Award). It replaces the *Bulk Handling of Grain Award*.

21. There are approximately 480 employees covered by the Enterprise Award on an ongoing basis. It applies to the majority of operational employees engaged in South Australia who are not covered by the *Stevedoring Industry Award 2010 (Stevedoring Award)*. This represents approximately 53% of Viterra's workforce and 77% during harvest.
22. The *Viterra Ltd Country General Hands Agreement 2014*, *Viterra Operations Pty Ltd Adelaide Ports Agreement 2015*, *Viterra Operations Pty Ltd Port Giles Agreement 2017*, *Viterra Ardrossan Enterprise Agreement 2015*, *Viterra Wallaroo Enterprise Agreement 2015*, *Viterra Ltd Thevenard Terminal Enterprise Agreement 2014* and the *Viterra Ltd – Port Lincoln Enterprise Agreement 2012* are applied to the employees covered by the Enterprise Award.
23. The remaining employees employed by Viterra are covered by the following modern awards:
 - The *Storage Services and Wholesale Award 2010 (Storage Award)*;
 - The *Clerks – Private Sector Award 2010 (Clerks Award)*;
 - The Stevedoring Award;
 - The *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)*;
 - The *Professional Employees Award 2010 (Professional Employees Award)*; and
 - The *Miscellaneous Award 2010 (Miscellaneous Award)*.
24. The Storage Award covers Viterra's employees employed in container operations and grain storage operations who are not covered by the Enterprise Award. The following enterprise agreements, underpinned by the Storage Award, are applied to operational employees employed at these sites:

- The *Viterra Ltd Narrabri Agreement 2016*;
 - The *Laverton Agreement 2016*;
 - The *Viterra Dooen Agreement 2016*; and
 - The *Viterra Operations Pty Ltd Two Wells Agreement 2016*.
25. The Clerks Award is applied to staff wholly or principally engaged in clerical work at operational and non-operational sites. There is no enterprise agreement that is applied to these employees.
 26. The Stevedoring Award covers employees wholly engaged to complete stevedoring activities such as ship loading and unloading. The *Viterra Ltd Bulk Loading Plants Enterprise Agreement 2012* is applied to these employees.
 27. The Miscellaneous Award is applied to Viterra's laboratory staff engaged in roles that do not require tertiary level qualifications. There is no enterprise agreement applying to these employees.
 28. The Professional Employees Award is applied to laboratory staff engaged in roles that require tertiary level qualifications. There is no enterprise agreement applying to these employees.
 29. The Manufacturing Award covers Viterra's tradespeople.

Viterra's Casual Employees

30. Viterra relies very heavily on casual labour. This is because of the inherently unpredictable and seasonal nature of its operations.
31. Harvest is the busiest time of the year. The additional work that needs to be performed at this time is undertaken by casual employees. During harvest, Viterra engages 1200 – 2000 additional casual employees. This work takes place across Viterra's storage and handling network, and at the packing and processing facilities. It is primarily focussed on our push system. Harvest also brings with it additional work for our clerical employees and laboratory staff.

32. Viterro also engages casual employees to perform work throughout the year in almost all areas of the business. The hours worked by those casual employees can vary significantly over the course of their engagement. This work relates to both the pull and push systems.
33. Casual employees employed at Viterro's grain storage operations are responsible for the out-turning of crop during and outside harvest. This includes weighing and organising commodity, fumigation and loading commodity into containers and onto trucks or trains, cleaning storage facilities as well as receiving commodity from growers or other storage facilities.
34. The number of employees required on any given day varies significantly. It is largely contingent upon the orders made for export. Viterro has little control over when this work is to be performed and there is virtually no consistency or pattern. It is determined entirely by the activity of exporters and is not confined to the harvest period.
35. There is also considerable uncertainty associated with the delivery of commodity by rail and the arrival of ships. Unexpected delays in either instance are common and require Viterro to respond promptly by re-arranging labour. Further, there may be days or weeks at a time during which there is no work for Viterro's casual employees to perform. This might be because few loads of commodity have been received or because there are fewer orders for export. The result is that Viterro is not in a position to publish a roster for its employees even a week in advance.
36. Viterro also employs casual employees under the Clerks Award. They perform various administrative duties. This involves large quantities of paperwork and customer queries. These employees are located at specific sites and at Viterro's head office.
37. The workload for our clerical employees fluctuates in tandem with the flow of commodity. This is because it is their responsibility to support the workflow through other parts of the business.

38. The Miscellaneous Award applies to Viterra's laboratory staff engaged in roles that do not require tertiary level qualifications. During harvest, Viterra engages up to 18 additional employees under the Miscellaneous Award.
39. As storage facilities are filled, samples of commodity are sent to Viterra's laboratories for testing (partition samples are sent approximately every 2,000 tonnes). The volume of work to be performed by laboratory employees during harvest and its timing is contingent upon when Viterra receives commodity. Viterra does not have any control over this. As a result, the hours worked by these employees can vary.
40. The Stevedoring Award covers employees, including casual employees, who perform work at Viterra's bulk loading plants. These employees are responsible for ensuring that the commodity is loaded onto ships correctly. The *Viterra Ltd Bulk Loading Plants Enterprise Agreement 2012* is applied to them.
41. The time at which work is performed by these employees depends entirely on the movement of ships in and out of the grain terminals. This is not determined by Viterra. The length of the shipping stem and the timing of ships coming into the port is primarily determined by grain traders and exporters.
42. Weather conditions also have a significant impact on how and when ships can be loaded. For instance, gusty winds or the wrong tide may unexpectedly delay a ship coming into the terminal. This causes a consequential delay for when the ship can be loaded and thus, when we require employees to perform work.

Viterra's Part-time Employees

43. Viterra's operations require an ability to vary part-time employees' hours of work day to day, week to week.
44. The inconsistency in the number of hours that are required to be worked by Viterra's part-time employees is reflected in Viterra's Enterprise Award and some enterprise agreements, which contain flexible part-time provisions. Rather than require that a predetermined number of hours be worked each week, part-time employees are guaranteed a minimum annual income. This provides Viterra with

the ability to vary a part-time employee's hours of work day to day, week to week, depending upon its operational requirements.

45. For example, the *Viterra Ltd Country General Hands Agreement 2014*, which applies to employees who work in South Australia at Viterra's storage operations, provides part-time employees with a minimum annual guaranteed income and does not require that the employees' hours be fixed. The hours worked by these part-time employees can vary significantly day to day, week to week, based on various factors that are beyond Viterra's control. This is also true of each of the enterprise agreements listed at paragraph 22 of my statement.
46. Further, the *Viterra Ltd Bulk Loading Plants Enterprise Agreement 2012* applies to employees who work at Viterra's bulk loading plants. It contains part-time provisions that are of a similar nature to the *Viterra Ltd Country General Hands Agreement 2014*. The enterprise agreement also contains other clauses that give Viterra a high degree of flexibility as to when employees are required to work, such as a wide span of hours.
47. This flexibility is essential for Viterra because its operations involve a complex web that is contingent upon many factors that are outside its control. For instance, the times at which employees covered by the *Viterra Ltd Bulk Loading Plants Enterprise Agreement 2012* are required to perform work will depend on numerous factors including:
 - Whether the train from which the commodity is to be unloaded arrives at the port on time. It is not uncommon for a train to arrive late or to be cancelled altogether, which will have an obvious impact on when it can be unloaded. Delays in unloading the train can have an impact on remaining deliveries by rail for the day. The end result may be a delay in the loading of ships; leading to unpredictable hours for bulk loading plant employees.
 - Factors associated with the weather and the tide, which can impact upon when the ship to be loaded arrives at the port.
 - Whether the ship passes survey.

- The results of quality testing of the commodity which is undertaken near the port before the ship is loaded. For example, the commodity is checked for insect infestations.
 - Seasonal factors and as a result, the size of the load of the commodity.
48. The ships upon which the commodity will be exported must be loaded within a specified period of time, which is not decided by Viterra. If there is a delay and the ship is not loaded within that time period, a financial penalty is incurred by the party chartering the vessel. The amount depends on the daily hire rate for a vessel. It is currently \$12,500 USD per day.
49. Delays in loading a vessel can result in an allegation that Viterra has failed to meet its contractual obligations regarding the provision of loading services to the exporter. Further, I consider that such delays cause reputational damage to Viterra and cause it to be regarded as an inefficient and ineffective part of the supply chain. I am aware that customers have ceased using the services of some of our competitors because they experienced such delays.
50. A delay in loading one ship may have a flow on impact on other ships that are to be loaded subsequently and cause them to also be late.
51. Viterra's container operation enterprise agreements operating outside of South Australia, do not contain part-time employment provisions. It is my understanding that those agreements are underpinned by the Storage Award, which contains part-time employment provisions that do not provide Viterra with sufficient flexibility. This is because they require that the employer and part-time employee must agree on fixed days and hours of work, which can only be changed with the employee's agreement. It is my understanding that if a part-time employee works in excess of those agreed hours, Viterra would have to pay overtime rates. Viterra's operational requirements are such that it cannot employ part-time employees in accordance with such rigid provisions.
52. In one instance (the *Viterra Dooen Agreement 2013*), Viterra provided an undertaking to the Commission that it would not employ any part-time employees covered by that agreement. I explained to the Commission that Viterra would

instead use other available methods (most likely casual employees) in order to retain the flexibility required by Viterra.

53. Because of the concerns raised by the Commission when our previous agreements were approved, and the fact that as a result there are no part-time employees working at the relevant sites, Viterra decided not to include part-time employment provisions in the *Viterra Dooen Enterprise Agreement 2016*, the *Laverton Agreement 2016* and the *Viterra Ltd Narrabri Agreement 2016*.

Glencore Agriculture's Operations

54. Glencore Agriculture is a buyer and exporter of wheat, barley, canola, pulses, sorghum and cotton in Australia. Commodities are purchased directly from growers and either sold domestically or exported, in bulk or packed in containers.
55. Glencore Agriculture does not own or operate storage, transport or export facilities within Australia, but utilises the services of other supply chain companies such as bulk handlers, container packing facilities and export terminals. As such Glencore Agriculture is subjected to many similar factors as Viterra in regards to the unpredictable nature of road, rail and sea transport. It also needs to coordinate access to product stored at multiple sites and facilities operated by third parties.

The ACTU's Claims

56. I understand that that the ACTU is seeking a new clause in virtually all modern awards that would enable some employees with parenting and/or caring responsibilities a right to decide their days of work and starting/finishing times, without any ability for Viterra / Glencore Agriculture to refuse or modify their decision. The employee's position, status, location and remuneration would have to remain the same as what it was before their working hours were changed.
57. I also understand that the proposed clause would give such employees the right to revert back to their former working hours within certain timeframes.

Glencore Agriculture / Viterra's Approach to Requests for Flexible Working Arrangements

58. I am aware that Glencore Agriculture and Viterra have received requests from its employees for flexible working arrangements. I am aware that some requests were granted, some requests were refused and in some cases, a compromise was reached between the company and the employee.
59. My understanding of the manner in which Glencore Agriculture and Viterra deal with requests for flexible work arrangements generally, and the approach that I take to such requests, is as follows:
- In some instances, the request is received by the HR team directly from the employee. In other instances, the employee first speaks to their manager or supervisor, after which that manager or supervisor contacts the HR team. Either way, a request for flexible working arrangements is ultimately dealt with by the HR team.
 - Most requests are initially made informally (i.e. without reference to the *Fair Work Act 2009* or any other instrument) and are made verbally. The employee is requested by Glencore Agriculture / Viterra to put their request in writing, including precisely the arrangement they are seeking. This facilitates the company's consideration of the request.
 - Glencore Agriculture / Viterra considers the request. This includes a discussion between the HR team and the employee's manager/supervisor about whether the request can be accommodated from an operational perspective.
 - Glencore Agriculture / Viterra responds to the request in writing within 21 days. Where the request cannot be granted, the HR team engages in discussion with the employee in order to ascertain whether an alternate arrangement can be put in place, which is mutually acceptable to the company and the employee.
60. Glencore Agriculture / Viterra endeavours to accommodate requests for flexible working arrangements wherever possible. This is because the companies

understand that these arrangements can benefit both the individual and the business. There are limited employees / potential employees who are skilled and available to perform the requisite roles in some areas in which we operate (especially in regional areas), so it is in our best interests to retain employees, particularly where the company has invested in training and developing them. Glencore Agriculture / Viterra also understand that the *Fair Work Act 2009* requires them to consider and accommodate requests for flexible working arrangements unless there are reasonable business grounds for refusing.

61. I give the following examples of circumstances in which Glencore Agriculture / Viterra has received requests for flexible working arrangements from its employees, and explain how it dealt with the request.
62. Viterra received a request from a part-time employee in 2015 to reduce her hours of work from 32 hours a week to 26 hours a week. It is my understanding that she made this request due to caring responsibilities for her child. She requested to work 9am – 3pm. Her requested was granted.
63. The employee's duties were administrative in nature. It is my understanding that she would have been covered by the Clerks Award.
64. In 2017, Viterra received a request from a full-time employee to vary her hours of work. It is my understanding that this was to enable her to collect her child from school. She asked to work in the office until 3.15pm at which point she would leave for 45 minutes and then return to the office to work from 4pm – 5pm. She was an Administrator based at a regional office which closes at 4.30pm.
65. The employee's duties include administrative tasks, supporting senior Viterra personnel and also some external-facing duties as a receptionist. This includes taking telephone calls and greeting people who come to the office. Viterra could not accommodate her request to work after 4.30pm when the office would be closed and required her to be present during the office's core hours given the nature of her duties.

66. Viterra discussed the issue with the employee and presented her with other options. Ultimately, she presented a third option, which was accommodated by Viterra. It did not involve working after the office closed.
67. Viterra received another request from an Administrator in 2015 who worked at a terminal. Her role was closely linked to Viterra's operations at that terminal. Because of this, it was necessary for the employee to be in attendance at the office during its opening hours. When returning from parental leave, she requested to work 35 hours a week. This could not be accommodated by Viterra because it would have resulted in the office being unattended at certain times.
68. Viterra advised the employee of the reasons as to why it was unable to grant her request. During the course of these discussions, the employee proposed another alternative which was accommodated by Viterra. It ensured that she was at work until the office closed, which was essential for operational reasons.

The Impact of the ACTU's Claim

69. There are circumstances in which a request made for flexible working arrangements can be accommodated by Glencore Agriculture / Viterra. However, based on my experience of dealing with such requests and my understanding of Glencore Agriculture / Viterra's operational requirements, if Glencore Agriculture / Viterra was not able to refuse any requests because of legitimate business reasons, I consider that this would be extremely problematic.
70. If an employee is able to dictate their days and hours of work, this can result in circumstances where the employee wants to work at a time that there is in fact no work for them to perform. I understand that Glencore Agriculture / Viterra would have an obligation to pay the employee for that time, even though there is no work for them to undertake. It also gives rise to safety concerns. This is because, for example, that employee could be the only employee at the jetty or on site that day, resulting in a safety risk.
71. Earlier in my statement, I have explained the uncertainty associated with the times at which casual employees are required to work at our grain receival sites.

During harvest, Viterra operates 24 hours a day at some of those sites, six or seven days a week.

72. Viterra's demand for labour varies from day to day based on the orders made for export and the delivery of commodity. There are days upon which there is a very high volume of work to perform and then other days on which there is no work to perform. The result is that Viterra is not in a position to publish a roster for its employees even a week in advance.
73. The hours of work required to be performed by part-time and casual employees in other parts of the business can also vary significantly. I have explained why that is the case earlier in my statement.
74. If despite this uncertainty, some employees are able to decide their days and hours of work, it may mean that Viterra has an insufficient number of employees to perform work at certain times and at other times, when no labour is required, it would nonetheless have to pay such employees.
75. This can have a direct bearing on Viterra's bottom line. For example, if Viterra does not have enough employees to receive grain as it is delivered from its customers, this can lead to a long queue of trucks lined up at Viterra's facilities, waiting for significant periods of time. In such circumstances, truck drivers sometimes drive to a nearby site operated by another grain handler and deliver the grain there instead because it is inefficient for them to wait. This particularly occurs at Viterra's Dooen site where there are several facilities nearby that are operated by Viterra's competitors.
76. In some cases, it is unworkable to have two people sharing a job. There are roles in both Glencore Agriculture and Viterra that require continuity from one day to the next. For example, in the coordination of export shipments, employees need to work with internal and external parties in relation to the arrival, loading and departure of a particular vessel. At any given time, an employee will have responsibility for coordinating the process from start to finish in relation to several vessels.

77. Where a role like this was previously shared, it caused various inefficiencies. For example, it resulted in matters being overlooked and specific tasks were not completed on time.
78. Also in some cases, such an employee must, for example, complete certain essential paperwork within limited timeframes (e.g. before a ship departs). If an employee is allowed to dictate their hours of work, this could result in the employee completing their shift without completing such tasks. Another employee would then have to complete it. In a team that is already working to full capacity, this would potentially result in longer hours for someone else.
79. Skills shortages make it difficult for Glencore Agriculture / Viterra to fill vacancies. For example, Viterra employs front end loader drivers. In remote locations, where Viterra operates over 80 storage, packing and processing facilities, it is difficult to find employees who are skilled to perform such work. It is also difficult to find skilled maintenance employees and employees for supervisory roles in such areas.
80. Due to the nature of its operations, Viterra provides significant amounts of training to all new employees. This includes training necessary to ensure that the employee can perform their role as well as mandatory safety training. The latter is very important because a lot of the work performed by Viterra's employees is inherently dangerous and includes working at heights, in hot areas, confined spaces and near grain dust, which is potentially explosive. The training provided to new employees comes at a cost to Viterra and it impacts productivity and efficiency.
81. Costs and productivity loss are incurred throughout the on-boarding process including:
- advertising the role;
 - medical checks;
 - time spent by the HR team and the relevant managers during the recruitment process;

- time spent by other staff training the new employee (in the case of an operational employee, this can occur over up to four weeks);
- external training for certain roles such as the driver of a truck, front-end loader or forklift; and
- time spent by the HR team preparing the necessary paperwork etc.

82. In addition, it has been my experience that generally up to the first four weeks, Viterra is exposed to lower productive work from a new employee.

83. In my experience, the terms of an award serve as the basis for enterprise bargaining. I am concerned that if the ACTU's case is successful, Viterra will be faced with claims from unions to include clauses like the one that the ACTU is seeking in this case to be included in the next round of enterprise agreements.

84. It is my understanding that the operations of GrainCorp and the CBH Group are very similar to Viterra. I am aware that the work undertaken by their employees is in many respects similar to Viterra's employees.



Benjamin Norman

Date: 24/10/2017