

# Australian Council of Social Service

30 March 2021

Hon Justice Ross  
President  
Fair Work Commission  
amod@fwc.gov.au

Dear Justice Ross,

**Re: Matter No. AM2020/104  
Application to vary clause 15.2 Pieceworker Rates in the Horticulture  
Award 2020**

I write in support of the application by the Australian Workers Union to vary the Horticulture Award to require piece rates under the Award to be set so that all employees earn at least the minimum wage prescribed in that award, including the casual loading where relevant.

Currently, employers paying piece rates under this Award are not required in all circumstances to pay at least the minimum hourly rate prescribed by the award. Instead they must:

*"enable the average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed in this award for the type of employment and the classification level of the employee."*

We are aware of substantial evidence, submitted by the applicants in this matter, that this rule has been applied so that horticultural workers are regularly paid well below the minimum hourly wage. This includes:

- Fair Work Ombudsman (2018), Harvest Trail Inquiry: A Report on Workplace Arrangements Along the Harvest Trail.
- Berg L & Farbenblum B (2017), Wage theft in Australia: Findings of the National Temporary Migrant Work Survey, Migrant Worker Justice Initiative.

While we do not directly represent employees or employers in this industry, ACOSS has an interest in the outcome, given our expertise in policies to alleviate poverty and inequality in Australia. We regularly make submissions to the Commission's Minimum Wage Review and are concerned that in this industry, minimum wages are often honoured in the breach.

Certain features of the labour market for horticultural work increase the risk that workers will be underpaid and unfairly treated. The work is temporary, people must usually travel long distances to commence, employment responsibilities are often delegated to labour hire firms (which are unregulated in NSW, the Northern Territory, WA, and Tasmania), and employers make widespread use of temporary migrant labour and undocumented workers.

Working holidaymakers are especially vulnerable to under-payment as they must provide evidence of a three months' employment in a regional area (usually in agriculture) in order to gain a second year on their visa, and these arrangements are poorly regulated. Unlike the Seasonal Worker Program, employers are not required to register in order to employ working holiday-makers. In a major survey of temporary migrants, 15% of horticulture workers stated that they earned \$5 per hour or less (Berg L & Farbenblum B 2017, *Wage theft in Australia*. Migrant Worker Justice Initiative, Sydney).

Since Australia's borders were closed to most entrants, the temporary migrant workforce has been depleted, giving rise to concerns from farmers that their crops will be wasted. In response, the Australian government has urged residents who are unemployed to take up horticultural work.

While this may seem on the face of it a good solution for all, people who are unemployed (especially those not living close to farms) face a number of challenges in pursuing these jobs. One quarter of people on Jobseeker payment have a disability and half are over 45 years old, making it hard to engage in heavy physical labour. Only a minority have a car, and most rent their accommodation. They therefore face transport difficulties and the risk that they may lose their accommodation, as well as having to find new lodgings near farms where affordable housing is often scarce. In return, there is no guarantee of ongoing employment.

In addition to the above concerns, we believe many potential horticultural workers are wary that, having taken considerable risks to follow the 'harvest trail', they will earn less than the minimum wage.

Under normal circumstances, employers would respond to labour shortages by lifting wages, but given the unusual features of employment in horticulture, there is no guarantee this will occur.

Rather than blame unemployed Australian residents for not taking up horticultural jobs, or revert to arrangements that allow widespread underpayment of temporary migrants, we believe the government, unions and employers should work together to find a fair, sustainable solution to the labour market problems in horticulture.

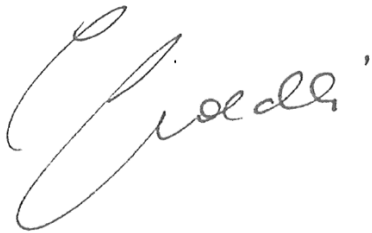
The recent report from the National Agricultural Labour Advisory Committee recommends improved regulation of agricultural employment through:

- registration of employers wishing to employ working holiday makers (as in the Seasonal Workers Program);
- prospective employees applying for an Australian tax file number and receiving in-person induction at a government agency before commencing employment;
- improved regulation of labour hire companies (National Agricultural Workforce Strategy 2020, Learning to Excel, Commonwealth of Australia).

Once under-payment of workers becomes widespread, it is hard to reverse. We believe that strict regulation of minimum hourly pay rates is an essential part of the solution, and that this and other key measures to reform the horticultural labour market would ideally be implemented in advance of the reopening of borders to temporary migrant workers.

Please contact Principal Advisor Dr Peter Davidson should you have any queries about this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Goldie'.

Dr Cassandra Goldie,

CEO  
ACOSS