

FAIR WORK COMMISSION

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

Matter No. AM2014/196 and AM2014/197

NATIONAL FARMERS' FEDERATION

SUBMISSION

Date: 16 August 2017

Introduction

1. The National Farmers' Federation (NFF) is the peak industry body representing Australian farmers and agribusiness across the supply chain, including all of Australia's major agricultural commodity groups.
2. This supplementary submission is filed in accordance with the Direction issued on 5 July 2017 and the subsequent extension granted for parties to file submissions and evidence by 5:00pm 16 August 2017.¹ It responds to the decision regarding ordinary hours of work and overtime for casual employees under the *Horticulture Award 2010*.
3. In the Decision of 5 July, the Full Bench sets out 5 propositions demonstrated by the evidence.

[749] We consider that evidence adduced by the NFF and ABI convincingly demonstrates at least the following propositions:

(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. Therefore any award variation which significantly increases labour costs would adversely affect profit margins and 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 which is lost on particular days must be made up in subsequent days, regardless of which day of the week it is.

(3) Casual employees who perform seasonal harvesting work are commonly on work or holiday visas. Their preference is (within reason) to work as many hours,

¹ 2017 FWCFB 3541.

and earn as much income, as they can within a short space of time and then move on.

(4) The most likely response of horticultural employers to the imposition of any onerous overtime penalty rate requirement will be to try to avoid its incidence. Most would try to achieve this by reducing the working hours of their casuals to a level which did not attract any overtime payments, and employ more casuals to cover the hours. However this could be counter-productive because it was likely that the 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.

4. The Full Bench then goes on to set out a number of provisional views and points for further information in relation to the following:
 - a. A 12 hour limit on the ordinary daily hours of casual employees;
 - b. A daily spread of hours for ordinary hours of work of 6:00am to 6:00pm;
 - c. 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;
 - d. 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.
5. Each of these points will be addressed.

Seasonal work in the horticulture industry

6. The horticulture industry covers a broad range of commodities. The growing seasons, harvest times, growing inputs and market demands vary crop by crop.
7. A typical peak season in the horticulture industry varies across commodities and business size.
8. This has been demonstrated by some of the evidence previously filed in this matter. For example:
 - a. Andreas Rehberger, a mango, pineapple, pumpkin and passionfruit grower from Bundaberg, Queensland indicates that his harvest season covers the majority of the year, approximately 40 weeks.²

²Exhibit 167, Witness Statement of Andreas Rehberger, undated.

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- b. Andrew Young, a vegetable grower from the Robinvale region of Victoria indicates he employs casuals for his season of approximately 25 weeks.³
- c. Brendan Miller, an apple and cherry grower from Northern Tasmania indicates that his busy harvest season runs from December through to May each year, a period of 5 months.⁴
- d. Kylie Collins, a mango and avocado grower from Dimbulah, North Queensland indicated that her harvest season is from December to January for Mangoes (1 months) and February to April for avocados (2 months).⁵
- e. Mick Dudgeon, a cherry grower in South East Tasmania indicated that he harvests cherries over a three week period and packs these cherries for a further 5 week period.⁶
- f. Rhonda Jurgens, a tomato grower from the Bowen region of Queensland indicated that tomatoes are picked and packed from May to November (7 months).⁷
- g. Ross Turnbull, the owner of a deciduous fruit growing business located in the Goulburn Valley region of Victoria indicated that his harvest season runs from November to May (7 months), while they also bring in casuals for pruning from early June until early October (4 months) and thinning from October to late January (3 months).⁸
- h. Susan Finger, an apple grower from the Yarra Valley in Victoria, indicates that her harvest period for apples is from February to May (3 months).⁹
- i. Clint Edwards, a Hops grower from Tasmania indicates that his busy time is from mid March to mid April (1 month). At this time his casuals may work up to 50 or 54 hours of the week.¹⁰

³ Exhibit 171, Witness Statement of Andrew Young, dated 22 February 2016.

⁴ Exhibit 164, Witness Statement of Brendan Miller, dated 22 February 2016.

⁵ Exhibit 155, Witness Statement of Kylie Collins, dated 16 February 2016.

⁶ Exhibit 157, Witness Statement of Mick Dudgeon, dated 19 February 2016.

⁷ Exhibit 161, Witness Statement of Rhonda Jurgens, undated.

⁸ Exhibit 168, Witness Statement of Ross Turnbull, undated.

⁹ Exhibit 158, Witness Statement of Susan Finger, 16 February 2016.

¹⁰ Transcript PN815, 11 July

- j. James Terry, an asparagus grower from Victoria indicates that his harvest season runs for 6-7 months of the year.¹¹
 - k. Emma Germano, a mixed vegetable farmer from Gippsland, Victoria indicates that her harvest season runs for 8 months.¹²
 - l. Ken Mansell, a citrus grower from Victoria indicates that his harvest seasons can extend for up to 9 months of the year.¹³
9. Harvest is generally the busiest time of the year for most horticultural businesses and primarily involves the picking and packing of produce. It is also the time when labour demand is the highest and longer hours of work are required. However, many businesses also require seasonal labour for thinning and pruning activities. This can make the peak season longer as it occurs before or after harvest.¹⁴

An appropriate averaging period

10. Given that 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.
11. The NFF proposes an averaging of 38 hours per week over 6 months. This would amount to 988 hours over 26 weeks.
12. A 6 month period would capture the vast majority of peak harvest periods in the horticulture industry. While, as the evidence outlined at paragraph 8 demonstrates, there is a not insignificant number of horticultural businesses whose harvest seasons last more than 6 months, the majority have a harvest period that lasts for 6 months or less.
13. 6 months is also an appropriate averaging period when consideration is given to Australia's migration programs that the horticulture sector heavily relies on the fill the shortages in domestic labour supply.
14. The Working Holiday Maker visa program permits working holiday makers to work with a single employer in the same location for up to 6 months.¹⁵ In 2015-16, around

¹¹ Statement of James Terry, dated 16 August 2017.

¹² Statement of Emma Germano, dated 16 August 2017.

¹³ Statement of Ken Mansell, dated 16 August 2017.

¹⁴ See for example, supplementary statement of Sue Finger, dated 16 August 2017.

¹⁵ Australian Department of Immigration and Border Protection, *Working Holiday Visa (subclass 417)* <https://www.border.gov.au/Trav/Visa-1/417->.

93% of the second Working Holiday (subclass 417) visa applicants had engaged in agricultural work to acquire eligibility.¹⁶ This amounted to 33 666 second Working Holiday (subclass 417) visa applications granted to working holiday makers who had completed their 88 days of compulsory work in agriculture.¹⁷ In comparison, only 2598 working holiday makers completed their compulsory work in one of the other eligible industries of construction, mining and other.¹⁸

15. The working holiday maker visa program is primarily a cultural exchange program. Work on farms is a way for working holiday makers to acquire their second year visa, or make money during their travels. Most working holiday makers want to do as much work as they can to earn as much money as possible in a short period of time.¹⁹
16. The Seasonal Worker Program (subclass 403 visa), enables employers in the agriculture industry to access low and unskilled labour where they can't find enough local Australian workers to meet their needs.²⁰ 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. Workers from Kiribati, Nauru or Tuvalu can stay for a longer period of time of up to 9 months. These workers are permitted to return again each year for the same amount of time.
17. Given that Australia's migration programs recognise that 6-9 months is the period of time for which a seasonal worker may be required in Australian agriculture, the NFF's proposal for a 6 month averaging period is consistent with these programs and would accommodate for the harvest seasons of the majority of horticultural crops.
18. As has been established through the previous evidence adduced in these proceedings, and recognised by the Full Bench in its decision of 5 July, the low bargaining power of many horticultural growers means that they will have limited capacity to pay overtime to casual employees working lots of hours during the peak season. Consequently, they will be forced to limit the hours of employees and look for

¹⁶ Australian Government, Department of Immigration and Border Protection, *Working Holiday Maker visa programme report*, 30 June 2016.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ See eg Exhibit 155, witness statement of Kylie Collins dated 16 February 2016, paragraph 15.

²⁰ Australian Government, Seasonal Worker Program factsheet, https://docs.employment.gov.au/system/files/doc/other/seasonal_worker_programme_agriculture_factsheet_updated.pdf.

additional employees. Alternatively, they may be forced to leave produce unpicked, allowing it to spoil and become unfit for sale or consumption.

19. For this reason, the NFF considers that a six month averaging period will provide sufficient flexibility for horticultural businesses to avoid this unsatisfactory outcome.

Ordinary daily hours for casual employees

20. The NFF notes that the averaging period outlined above will be subject to a limitation on the ordinary hours of casual employees to be 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 Full Bench decision of 5 July 2017. As such, a limitation on the number of ordinary hours per day provides additional protection for employees.
21. The NFF strongly opposes any restrictions on the daily spread of hours in which ordinary hours may be worked.
22. Work is commonly performed outside of 6:00am-6:00pm during peak periods such as harvest for good reasons. For example:
- a. It may be very hot during the middle of the day so employees will start 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. Not only does work during the hot part of the day increase risk to the health and wellbeing of casual workers, but it also increases the risk of heat damage to produce as it is picked. The supplementary statement of Brock Sutton dated 16 August 2017, Statement of Emma Germano dated 16 August 2017, supplementary statement of Susan Finger dated 16 August 2017 and statement of Ken Mansell dated 16 August 2017 provide evidence of this.
 - b. Some varieties of produce cannot be harvested during day. As James Terry outlines in his statement dated 16 August 2017, asparagus is harvested in the dark and the cooler, early hours of the morning when there is still moisture in the air. This means that the crop will be harvested between midnight and 7am in summer and midnight and 9:00 or 10:00am in winter.
 - c. Rain may be forecast for the following afternoon so employees will start early in the morning to fit as much work in as they can before the rain starts or work

extended hours in the lead up to the weather event as outlined in the supplementary statement of Susan Finger dated 16 August 2017.

- d. Supermarket specifications may require a certain amount of fresh produce to be picked and trucked on the same day. For example, the supplementary witness statement of Brock Sutton dated 16 August 2017 shows that employees will start at 4:00am to have produce ready for trucks to pick up mid-morning and truck to Sydney.
 - e. Other farm activities such as the spreading of chemicals and shifting of bee hives may be performed early in the morning before bees become active, requiring flexibility in hours, as outlined by Susan Finger in her supplementary statement dated 16 August 2017.
 - f. Some farms have a second group of casual workers harvest in the evening when it cools down who will finish from 6:00pm onwards as outlined by Emma Germano in her statement dated 16 August 2017.
 - g. For citrus, dew in the morning may delay harvest until later in the day meaning that the packing of this fruit does not finish until 8:00 or 9:00pm as outlined by Ken Mansell in his statement dated 16 August 2017.
23. It is very important that there are no daily spread of hours restrictions beyond a 12 hour per day limitation. Such a restriction will have an extremely adverse impact on the ability of growers to harvest crops at the optimum time.
24. As the Commission may be aware, this is not the first occasion it or one of its predecessors has considered inserting a “spread of hours” requirement into an agricultural award. For example, in *the Graziers’ Association of New South Wales v The Australian Workers’ Union*²¹ Full Bench of the Australian Industrial Relations Commission (Kirby CJ, Moore J, Aird J, Brack C) rejected the inclusion of such a restriction in the Pastoral Industry Award. Following an arbitration which involved 15 days’, the Commission observed in their decision that:

"Mr Macken [for the AWU] strongly contended for a daily spread of hours because in his submission without a daily spread overtime was difficult to compute. We have given long consideration to this question because in industry generally what Mr Macken submitted is normally accepted. However we cannot find any way to provide a daily spread of hours which would not either be too long or would cause

²¹ (1970) 139 C.A.R 212

pastoralists, particularly in the dry hot parts of the pastoral zone, becoming involved in the payment of overtime although less than eight hours might in fact be worked on a particular day. In the pastoral zone on hot days, men may start at a very early hour in the morning, work until 9 or 10am and then rest until late in the afternoon when they would resume their work, particularly the droving of stock. Given a spread of even 12 hours, such station hands might work overtime although the time actually worked on the day might be only seven or eight hours. We even contemplated having a spread of hours from sun up to sun down but considered such a provision would be more fruitful of dispute than having no spread. Accordingly, we make no provision for a daily spread of hours."²²

25. In the draft determination attached to these submissions the NFF has inserted the proviso to the proposed clause 22.3 “unless otherwise agreed between the parties”. This is to accommodate circumstances where an employee wishes to work beyond the 12 hour limit and the employer does not have capacity to enable this due to additional cost imposed by overtime pay rates.

Rate of Pay for Overtime

26. Given that the hours of work of casual employees do not differ according to the day of the week, a standard rate of pay for overtime is most appropriate for time worked outside of ordinary hours. This rate should be time and a half (150%) for all time worked outside of ordinary hours, regardless of when that time is worked. We note that this would be inclusive of 25% casual loading.

The Modern Award Objective

27. The NFF’s submissions are consistent with the modern awards objective and a fair and relevant minimum safety net of terms and conditions and in particular the following criteria.

Section 134(1)(a) – relative living standards and the needs of the low paid

28. The horticulture industry, as a price taking industry, is unable to absorb excessive labour costs. Therefore, horticultural businesses will be forced to limit the hours of employees to avoid overtime costs. This will have a negative impact on seasonal casual employees who are seeking as much work as possible over a short period of time.

²² Ibid at 216

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Section 134(1)(c) - the need to promote social inclusion through increased workforce participation

29. Increased flexibility in the time of day and hours in which work can be performed is facilitative to workforce participation. Enabling employees to work more hours during peak seasons will open up workforce participation for those who have other responsibilities and wish to work as much as they can during shorter periods of the year.

Section 134(1)(d) – the need to promote flexible modern work practices and the efficient and productive performance of work

30. Enabling employees to work longer hours and averaging them over part of the year will permit the efficient and productive performance of work. It will mean that produce is not wasted due to it being not cost effective to harvest it where overtime rates are payable. Instead, what is grown may be harvested. Further, by limiting hours of work to 12 ordinary hours per day, but not setting a daily spread of hours in which this work can be performed will facilitate structuring of work to avoid circumstances such as working in the hottest part of the day.

Section 134(1)(da) – the need to provide additional remuneration

31. The Full Bench decision sets a restriction on ordinary hours of work for casuals to 12 hours per day and provides for overtime to be payable when an average of 38 hours over a determined period of time is exceeded. The NFF submits that this provides additional remuneration in recognition of the hours worked by employees while also accommodating the needs of business. A 26 week/six month averaging period and the absence of any daily spread of hours restrictions would be most appropriate to ensure that a balance is achieved between the needs of growers, and the provision of additional remuneration for employees.

Section 134(1)(f) – the likely impact of any exercise of modern award powers on businesses including on productivity, employment costs and the regulatory burden

32. Excessive overtime entitlements will impact the productivity of farm businesses and force them to limit the hours of employees to avoid overtime, potentially rendering it not cost effective for produce to be picked, instead meaning that it is left to spoil and rot. For this reason, an averaging period of 26 weeks and the absence of any

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restrictions on the time period in which hours are worked will avoid excessive employment costs.

Section 134(1)(h) – the impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

33. If farmers are unable to arrange labour in the most efficient and productive manner, they will lose produce by permitting it to rot and spoil, reducing the contribution of horticulture to the national economy.

Conclusion

34. The NFF's proposed amendment below captures our submissions. A 26 week averaging period is appropriate given that this would cover the vast majority of peak seasons in the horticulture industry. Further, it is important that growers retain flexibility in the period in which work can be performed to avoid undesirable consequences such as employees working outside during the hottest part of the day or produce perishing in the heat while it is being harvested.

Ben Rogers
General Manager, Workplace Relations & Legal Affairs
16 August 2017

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 yearly review of modern awards

4 yearly review of modern awards – common issue

AM2014/196 and AM2014/197 – Horticulture Award 2010

FULL BENCH

SYDNEY, XXXXXXXXXXXXXXXX

A. Further to the decision on _____, and pursuant to s. 156 of the *Fair Work Act 2009*, the *Horticulture Award 2010* is varied as follows:

1. Insert a new clause 22.3 as follows:

“**22.3 (a)** The ordinary hours of work for a casual employee will:

- (i) not exceed 988 hours over a 26 week period;
- (ii) be worked between Monday and Sunday; and
- (iii) not exceed 12 hours on any day, unless otherwise agreed by the parties.

(b) All time worked in excess of the ordinary hours will be deemed overtime.”

2. Amend clause 24.2 as follows:

“**24.2 Payment of overtime – full-time and part-time employees**

(a) The rate of pay for overtime will be 150%, except for overtime worked on a Sunday.

(b) The rate of pay for overtime worked on a Sunday, except during harvest period, will be 200%.

(c) Should employees be required to work on a Saturday and the majority of such employees elect not to work on the Saturday but rather on the Sunday

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then such work performed on that Sunday will be paid for at the rate prescribed for Saturday work.

(d) During harvest period, the first eight hours of overtime in a week may include five hours work on a Sunday at the rate of 150% but all Sunday work in excess of the eighth overtime hour worked in the week, or in excess of five hours on a Sunday, will be paid at the rate of 200%.

(e) All employees required to work on a Sunday will be paid for a minimum of three hours.”

3. Insert a new clause 24.3 as follows:

“24.3 Payment for overtime – casual employees

The rate of pay for overtime for a casual employee will be 150%. This rate includes the 25% casual loading.”

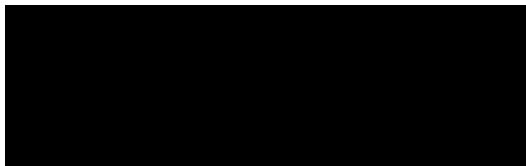
IN THE FAIR WORK COMMISSION

Matter No.: AM2014/196 and 197

Re Application by: National Farmers' Federation

Statement of Emma Germano

1. I am President of the Victorian Farmers' Federation Horticulture Group and a vegetable grower from Gippsland Victoria. We grow cauliflower and potatoes as well as tomatoes, zucchini, cucumber and pumpkins.
2. We employ approximately 12 additional seasonal casual employees each year. Our peak seasons are Nov-July. We primarily employ casuals for the harvest work however they will sometimes do other work such as picking and packing.
3. During the peak season our casuals will work up to 60 hours each week.
4. Start and finish times can vary. They are usually 5.30am to 3pm. On days that are forecast to be very hot however, our casuals will start earlier at 4am or 5am. This means that they can finish the work before the hottest part of the day.
5. It is better for both our employees and the produce to be out of the fields during high temperatures. Once the produce is picked, it begins to spoil much faster and must be cool stored as soon as possible to prevent it over-ripening and becoming unfit for sale. The hotter the temperature in the fields, the more risk there is that produce will be damaged during the transition from picking to packing and cool storing. Further, staff productivity is much lower during hot periods and there is an adverse risk to their health and wellbeing.
6. IN some instances, where required, we may run a second harvest shift of workers, though they are new workers on the same day, they are required to work from 6pm onwards when the weather has cooled off.
7. If we were required to pay overtime to our seasonal workers for the hours that they do outside of 6:00am and 6:00pm we would be reluctant to allow work to be performed outside of this time period.



Emma Germano

16 Aug 2017

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Date

Lodged by National Farmers' Federation
Address for service:
14-16 Brisbane Avenue, Barton ACT 2604

Telephone: 02 6269 5666
Fax: 02 6273 2331
Email: brogers@nff.org.au

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/196 and 197

Re Application by: National Farmers' Federation

Statement of James Terry

1. I am President of the Australian Asparagus Industry Council and an asparagus grower from the Koo-Wee-Rup region of Victoria.
2. The Australian Asparagus Industry Council represents approximately 95% of asparagus grown in Australia.
3. Asparagus is harvested from August to February/March each year. The busiest time is from September to November when the maximum amount of produce is harvested. Seasonal casual labour is required for approximately 6-7 months each year.
4. Asparagus is particularly susceptible to moisture loss and dehydration when it is picked. If the asparagus suffers dehydration it becomes unsaleable.
5. The majority of Australian asparagus is grown in the Koo-Wee-Rup area on black/dark grey soils which radiate the sun and increase the risk of dehydration.
6. To avoid significant loss of produce to dehydration, asparagus is harvested in the dark and early hours of the morning while it is cool and there is moisture in the air. We aim to have all produce to be harvested that day in the packing shed before the sun rises and weather warms up. Beyond this point there is a high risk of dehydration.
7. In the summer harvesting months, we must be finished picking by approximately 7am. Beyond this time it is too warm and dry to harvest the asparagus.
8. During the winter months we are able to pick for a couple of extra hours but must be finished around 9-10am.
9. To enable us to pick the asparagus and finish before it becomes too warm and dry we start picking around midnight or 1am in the morning.
10. Any restrictions on the time period in which casual employees can work ordinary hours would have serious implications for the capacity of the asparagus industry to harvest.

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James Terry

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17 / 8 / 17
Date

Lodged by National Farmers' Federation

Telephone: 02 6269 5666

Address for service:

Fax: 02 6273 2331

14-16 Brisbane Avenue, Barton ACT 2604

Email: brogers@nff.org.au

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/196 and 197

Re Application by: National Farmers' Federation

Statement of Ken Mansell

1. I farm a variety of citrus in North West Victoria including mandarins, navel oranges, valencias, grapefruit and lemons.
2. The business is family owned and operated and employs up to 40-50 casuals each year to assist in harvesting and packing of fruit for both the domestic and export market.
3. Harvest commences in late June/early July with mandarins and navels and continues in most seasons (dependent on seasonal conditions) until February or March of the following year, which can total up to 9 months of harvesting. As our business is predicated on the fresh market, a majority of fruit will continue to be packed during this time, requiring the employment of casual labour to ensure fruit arrives into the market as fresh as possible.
4. We rely on casual labour to assist with both harvest and packing of fruit. Flexibility around work hours is crucial in horticulture generally and certainty is paramount for our business to remain in operation. We often rotate workers throughout the day during peak seasons to enable us to pick and pack fruit up to 16 hours in a day.
5. Hours of work vary and are dependent on seasonal conditions. For example, if the fruit is wet from dew we can't start picking until later in the day. This may mean that we don't finish packing fruit for market until 8:00pm or 9:00pm. We would be very concerned about any proposal for a daily spread of ordinary hours between 6:00am and 6:00pm.
6. Harvest periods are not the same for each horticultural sector. The citrus harvest can be quite extensive across the year, requiring casual labour for up to 9 months or sometimes longer if early season navels are also harvested. Without any limitation on overtime, we would be able to offer employees up to 60 hours per week during the citrus harvest.
7. If we were required to pay overtime we would limit our employees to 38 hours per week, reducing the overall amount of pay in comparison to what they can currently earn with the hours available.

[Redacted Signature]

16 August 2017

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.....

Ken Mansell

Date

Lodged by National Farmers' Federation
Address for service:
14-16 Brisbane Avenue, Barton ACT 2604

Telephone: 02 6269 5666
Fax: 02 6273 2331
Email: brogers@nff.org.au

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/196 and 197

Re Application by: National Farmers' Federation

Supplementary Statement of Brock Sutton

1. I farm cherry tomatoes, gourmet tomatoes, eschallots, leafy vegetables and broccolini in the Lockyer Valley region.
2. We harvest all year round and have up to 200 casual workers on farm. Winter is our busiest time of the year, peaking from April to August when all crops are being harvested at the same time and we are also planting the new crops for the following season. In summer, tomatoes and eschallots are harvested and due to the labour requirements of harvesting these particular types of crops, we still require up to 200 workers.
3. Approximately 46% of our seasonal casual workers are visa holders, most of whom are working holiday makers (subclass 417 visa holders). Most of our seasonal casual workers are interested in working for as many hours of possible in a short period of time. Our seasonal casual workers generally remain employed with us for a maximum of 6-8 months (subclass 147 visa holders are unable to work for us for longer than 6 months due to their visa restrictions while domestic casuals may have a longer tenure.)
4. The weekly hours of our casual employees can be up to 50 hours per week.
5. We receive supermarket orders on very short notice, and therefore have a team of casual workers who start work at 4am all year round to service overnight orders from supermarkets that require produce to be picked and trucked on the same day. The trucks that arrive to pick up these orders and take the produce to Sydney usually arrive between 9 and 11am. Workers who commence at 4am will pick the produce to fill these orders for next day delivery. They will then finish work around midday.
6. All workers during summer start work at 5am as this allows them to finish work around midday and means that they can avoid working in the heat. Temperatures can reach above 40 Degrees Celsius during the hottest part of the day in summer. Sutton Farms takes the wellbeing of our workers extremely seriously, especially with the outdoor nature of our work and the harsh conditions that can occur.
7. It is the preference of our workers to start and finish early in the summer months.
8. In winter, all other employees will commence work between 6:00am and 6:30am and finish at 2 or 3pm. All starting times for work take in a number of considerations, including daylight hours (i.e. starting slightly after sunrise), temperature for the day, work required, deadlines imposed due to freight requirements and orders, etc.
9. If we were required to pay overtime rates for all employees when they commence work before 6:00am, we would be forced to require employees to start work at 6:00am and work longer into the hotter part of the day. This would be undesirable and impact on the comfort and welfare of our employees.

[Redacted Signature]

Brock Sutton

16/08/2017

Date

Lodged by National Farmers' Federation

Address for service:

14-16 Brisbane Avenue, Barton ACT 2604

Telephone: 02 6269 5666

Fax: 02 6273 2331

Email: brogers@nff.org.au

IN THE FAIR WORK COMMISSION

Matter No.: AM2014/196 and 197

Re Application by: National Farmers' Federation

Supplementary Statement of Susan Finger

1. I am a Yarra Valley apple orchardist.
2. Apples are harvested from February to May. We also require seasonal labour for pruning from May to July and hand thinning from November to December. During the harvest months we require the highest number of workers.
3. During the most recent harvest we employed 14 casual workers. The majority of these were subclass 403 (seasonal worker program) visa holders (12 employees). We also employed 2 harvest trail workers. Occasionally we have employed local workers who are looking for short term work.
4. We have closed our packhouse and those workers have been deployed to field operations. Our casual workers are generally employed for 4 months.
5. Our casual workers usually start work at 8:00am and finish around 4:30pm. However, during they may start earlier in the morning or work late into the evening on some occasions. Start time and finish times for harvest activities are sunlight dependent in our orchard, whereas shifting hives and chemical applications can be attended to in low light or darkness.
6. Flexibility is required on the spread of hours for casuals due to variables such as:
 - a. Pollination: we will shift bee hives on the property before hives become active. We also spread any crop chemicals early in the morning before bees become active.
 - b. Temperature: on hot days we will start harvest early to allow workers to harvest in cooler conditions and work more hours before temperatures become excessive. This also allows us to cool the crops using overhead watering or sprinklers to minimise heat damage and not affect productivity as workers are no longer in the field.
 - c. We may extend hours into the lead up to a weather event to get as much produce harvested as possible before the weather event arrives and damages the crop.

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Susan Finger

16.8.2017
.....
Date

Lodged by National Farmers' Federation

Address for service:

14-16 Brisbane Avenue, Barton ACT 2604

Telephone: 02 6269 5666

Fax: 02 6273 2331

Email: brogers@nff.org.au