

AFPA Statement on the variation of the Horticulture Award 2021

5 November 2021

The Fair Work Commission has handed down a decision to vary the Horticulture Award to ensure that all pieceworkers must be paid a minimum hourly rate in accordance with the employee's classification and type of employment. The Commission's decision has set a clear and enforceable standard for employers in the industry.

The Commission's decision relies on evidence of non-compliance with the current Award as a basis for making this variation. It is the employers that are at the heart of this evidence and ongoing media reporting that must be subject to enforcement following the implementation of this variation. For too long, employers who willingly and actively participate in third-party audited employment schemes, engage openly with Unions and participate in industry discussions on workplace conditions are the employers that are the subjects and targets of enforcement – which does nothing to address non-compliance.

This separation of good and compliant employers from poor, non-compliant employers must now be addressed. Regulators, like the Fair Work Ombudsman must be well resourced to provide education materials on how to implement the Commission's decision and enforce it. The implementation of this decision from the Fair Work Commission is critical to addressing the uneven playing field non-compliant employers have benefited from for far too long.

Evidence, and reports made of underpayment must be rigorously pursued by well-resourced regulators and must focus on those employers that hide in the supply chain, that will not credential themselves with industry standards and third-party audits and that refuse to believe the rules apply to them. It is these poor practices that the Commission's decision is based upon, and it is these employers that need to become compliant or simply exit the industry.

While enforcement from regulators is a key component of implementing the Commission's decision, success at levelling the playing field in the sector will only come when the fresh produce supply chain refuses to purchase from, support or advocate for employers who are wilfully non-compliant.

Retail, wholesale and food service buyers of fresh produce must acknowledge the same evidence that the Commission has considered, that is, there are a number of employers who are not compliant with conditions stipulated in the Horticulture Award. Whether purchasing directly, or indirectly, buyers must not ignore this and need to ensure that their supply chains are only made up of employers that are ready, willing and able to meet the new standards set in the Award. Non-compliance can no longer be rewarded.

Members of the AFPA are committed to developing a productive and returning workforce. Increases in the number of Australians and Pacific visa holders employed, a rigorous new Agriculture Visa, and now a commitment to enforcement from the Commission through this decision are all key in assisting industry to develop this workforce.

The Commission's decision must be used by all fresh produce stakeholders to level the playing field among growers and reward only those who are committed to ethical, sustainable and productive employment.