

Submission

29 May 2009



Horticulture Australia Council

Submissions on Transitional Provisions – Horticulture Award 2010

Stage 2 of Award Modernisation:
Agricultural Group

Modern Horticulture Industry Award

HAC Submission

1 Introduction

These submissions are made on behalf of Horticulture Australia Council (**HAC**) and concern the Horticulture Award 2010 (the **Award**). Specifically, they respond to the Commission's invitation to make submissions in relation to whether transitional provisions ought to be included in the Award and if so the form of those provisions.

HAC has had an opportunity to review a draft of the submissions which it understands will be made by the NFF and the AIG. HAC endorses and adopts each of these submissions concerning both the very significant cost increases which would follow from the Awards application and the submission that the transitional provisions should be used to delay the operation of the key terms of the award until they can be subjected to a thorough and considered review after the two year period contemplated in the Fair Work (Transitional Provisions and consequential amendments) by 2009.

HAC's strong preference is to adopt this course for the reasons contained in this submission and in the submissions of the AIG and the NFF. In the event that this is not the course adopted, HAC has provided a suggested alternative clause and briefly canvassed some of the principles relating to such a clause.

2 Relevant instruments

The Award effectively consolidates 11 existing industrial instruments. They are:

- Hop Industry Award 2001 (Federal Award)
- Horticulture Industry (AWU) Award 2000 (Federal Award)
- Horticulture Industry (State) Award (NSW)
- Mushroom Industry Employees (State) Award (NSW)
- Farm Employees Award 1985 (Western Australia)
- Fruit and Vegetable Industry Award – State 2002 (Queensland)
- Tea Industry Award – State 2003 (Queensland)
- Pastoral Industry (SA) Award (South Australia)
- Dried Vine Fruits Industry Award, 1951 (Western Australia)
- Fruit Growing and Fruit Packing Industry Award (Western Australia)
- Farming and Fruit Growing Award (Tasmania)

Clearly, only 2 of the awards in the list are Federal awards. In HAC's submission dated 24 November 2008 significant attention was directed to the status of those Federal awards, and in particular the Horticulture Industry (AWU) Award 2000 (the **HIA**). In short, the effect of those submissions was that it would be erroneous to regard that award as a 'Principal Federal Award' in any relevant sense. Whilst the reasons for this submission are articulated in the 24 November 2008 submissions, prominent among them are that an analysis of the respondents to the HIA makes it abundantly clear that they are predominantly grouped in a small geographical area around the Murray River in the states of New South Wales, Victoria and South Australia. The HIA's terms have been fashioned having regard to the nature of the produce which is grown in this particular geographical area and the particular conditions which attach to work related to that produce.

The submission of 24 November 2008 went on to demonstrate that the great majority of the nation's horticulture output arises from activities in other geographical locations and so it is not, and has never been, subject to the HIA.

This issue was canvassed in some detail in the first consultations before Commission Lewin. When it became clear that the great majority of work performed in the horticulture sector is not performed pursuant to existing Federal awards, Commissioner Lewin suggested that the parties confer about further issues and in particular prepare tables for him setting out comparisons of the conditions in the relevant state instruments. He directed the parties to prepare detailed schedules dealing with ordinary hours of work and a range of matters associated with the working of those ordinary hours; a comparison of overtime rates and how they apply through those awards and a comparison of piece rate loadings. Those documents were provided to Commissioner Lewin and they are attached to this submission and marked Schedule 1, 2 and 3 for information.

It is submitted that the significance of this context when it comes to the consideration of transitional provisions is primarily that:

- 1 in this sector, the great majority of work has historically been subject to state based instruments; and
- 2 those state based instruments include an extremely wide variety of prescriptions on a whole range of matters which go far beyond wage rates.

Hence, it is submitted that this context gives rise to a pressing need to formulate transitional provisions which are easy to understand and which cushion, as much as possible, the impact of the very significant change which will confront the large majority of employers in the horticulture industry.

A primary driver of the necessity for such provisions is the economic impact of those changes which is dealt with below. This economic impact is so severe that HAC's primary position is that a transitional provision should be crafted which completely avoids the application of many significant terms of the Award until after the whole of the Award can be reviewed in some detail during the two year review contemplated in the transitional legislation. These submissions then canvass, strictly as an alternative, some issues of principle in relation to transitional provisions and suggest for the Commission's consideration a draft provision.

3 A significant impact on employer costs

In its submissions on the exposure draft Horticulture Award dated 13 February 2009 HAC submitted:

'HAC has significant concerns for its members if an award is made in the terms of the exposure draft. Its members report that an award in those terms will dramatically increase the cost of business, primarily because of the broad scale introduction of rigidities and the removal of important flexibilities.'

The submission recorded HAC's view that the additional cost impost for individual horticultural producers would be in the order of 15% and in some cases as high as 42%. These figures were based on the Exposure Draft of the Award.

It is important to note that this impact will be exacerbated as a consequence of the changes introduced within the final modern Award; including due to the changes to piece rates, hours of work and penalty rates.

The manner in which the award modernisation process has been conducted has not involved the adducing of evidence by interested parties that might have different views about the appropriate award prescriptions. Clearly this has led to a position where positions have not been able to be tested in the usual way and no factual findings have been made or recorded in relation to particular work being performed pursuant to an award, the conditions under which that work is being performed or the economic circumstances confronting the employer concerned. Whilst no criticism is here made of that process, it has led to a position where HAC has sought to inform the Commission about its concerns by reference to a small number of case studies or examples of the impact of what was proposed, and what is now being determined.

This observation is made simply to inform the Commission that HAC instructs that the increased costs evident in the case studies and examples it has provided are indicative and wide spread. That is, increases of this nature will affect many thousands of horticulture producers throughout the nation. These employers provide the fruit and vegetables enjoyed daily across the nation.

In HAC's submissions dated 13 February 2009 two specific case studies were outlined. They are referred at paragraph 7.2 of those submissions. The first involved a series of tables provided by a mushroom grower which illustrated a practical example of the impact of the exposure draft on his labour costs. That schedule demonstrates an increased cost of \$342.26 per week per employee for casual employees which amounts to a 42% increase. Furthermore, this cost increase was purely as a consequence of the calculation of the pieceworker loading (ie, the fact that the piece rate loading is calculated on top of the casual loading). The costs in this example will be even more increased as a result of the decision to increase the piece rate loading from 12.5% to 15% within the final Award.

Schedule 2 to those submissions included two further case studies provided by members of Growcom in Queensland (Growcom is a member of HAC). The schedule outlining those case studies provided detailed information about the increased costs for those employers. In relation to casual employees, the Lockyer Valley grower was confronted with a increase in costs in the order of 5% and the granite belt grower some 14.6%. Again, these costs would be further increased as a result of the changes to penalty rates adopted in the final version of the Award.

HAC notes that it is proposed that a review of transitional provisions is to occur within two years, provided that the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 passes in its current form. HAC intends to seek substantial variations to the Award during the course of this review.

HAC commissioned a survey of some 40 employers in this sector to elicit direct views as to the practical application of the award. The employers were selected as a representative group and were each interviewed for approximately 90 minutes. Schedule 5 is a document which collects together information gleaned from this survey. The following points come from direct views of these employers:

- Given that the horticulture industry is a 'price-taking market', increases in costs cannot be passed onto customer and cost increases will directly translate to a reduction in profit for growers (many of whom estimate losses).
- Under the Award, casual rates will be increased from between 2 to 25%. Given that the vast majority of employees in the horticulture industry are casual employees, this will result in a significant increase in costs for employers. For example, for a Queensland strawberry grower who was surveyed and employs up to 700 people during peak harvest period, increases in casual rates will alone result in an increased wage bill of approximately \$92,568 during a three month period.
- Changes in classification structures will significantly increase costs for employers. For example, in Western Australia, the change in classification

structure will result in an increase in casual weekly wages of between \$27.36 and \$148.58.

- Given the importance of daily picking and packing across much of the horticulture industry, adjustments in Saturday and Sunday penalty rates will produce a variety of negative outcomes for employers, including significantly increased costs, poor quality produce and reductions in hours for employees. As the appendices demonstrate, work on Saturdays and Sundays is an inherent feature of the industry and is necessary because of a range of external factors including matters such as the weather, ripening of product, transport and consumer demand.
- The removal of a true piece rate and its replacement with a base hourly rate supplemented by an incentive payment will devastate employment of various groups who have utilised piece rates in the past. These include 'grey nomads' and 'backpackers'.
- There are significant regulatory burdens associated with recording hourly rates of employees who were previously pieceworkers. Employers are simply not equipped to undertake this task.
- HAC endorses the submissions made by the NFF and the AIG regarding differential treatment of picking and packing employees in relation to span of hours. There is no warrant for this particularly when they are frequently the same employees.

Finally, to assist the Commission we have prepared another comparison table which looks more broadly across the relevant award provisions. It is attached the marked Schedule 6.

4 The case for transitional provisions

Based on what has been submitted above, HAC contends there is a compelling case for the insertion of transitional provisions in the Award. The specific submissions of the AIG and the NFF on the particular award clauses are adopted by HAC and need not be repeated. HAC advances the following more general reasons:

- (a) The Award brings together a wide variety of disparate terms and conditions from many different instruments. The transition will be difficult for many employers in the sector and the insertion of transitional provisions will make it easier for them to properly appreciate the nature and content of the new provisions contained in the Award.
- (b) There will be a severe impact on employer costs as a result of the application of the Award. Those costs go beyond merely wage rates or other matters which

could be ameliorated over time. They involve structural matters such as ordinary hours of work penalty, and the removal of genuine piece rates. Employers in the horticulture industry have historically utilised these existing provisions within their businesses and structured their operations accordingly. It will take some time for these employers to adjust to the new provisions and modify their businesses accordingly.

- (c) Appropriate transitional provisions could remove the impact of these significantly increased costs until such time as a review of the Award is able to occur as proposed after a period of some two years.

5 Brief comments on some issues of principle

The following submissions are made as an alternative to HAC's primary position which is to support the position put by the AIG and the NFF to the effect that none of the Awards terms relating to hours of work, overtime, weekend penalty rates, piece work, casual loading and related provisions should come into operation until after the award can be completely and properly reviewed in the two year review provided for in the transitional legislation. The following observations are made as an alternative to and without prejudice to this position. They are made to assist the Commission only in the event that our initial position is not adopted.

5.1 Specific versus general

A question which arises at the level of principle is whether the Commission should look at each and every clause of the Award to decide whether a transitional provision is appropriate and then to draft a transitional provision specifically for that clause. The alternative, of course, is to craft a more general clause to be inserted in the Award which is capable of applying across a range of the Award's provisions.

Many of the positions urged by parties who have made submissions to date advocate a more general approach. The following examples are attractive to HAC:

- (a) the provision suggested at paragraph 64 of the submission of the Chamber of Commerce Industry of Western Australia. This submission is undated but is headed 'Health and Welfare Services (excluding social and community services) Industry'; and
- (b) submission of the Agribusiness Employers Federation dated 10 February 2009, specifically the clause outlined in Appendix B.

A related approach is urged by the Australian Industry Group in its submission concerning the Stage 2 Industries/Occupations dated 31 October 2008. Whilst what is urged in Schedule B of the AI Group's draft Horticulture Industry Award (contained in

those submissions) is a clause that deals separately with certain features of the Award, it is conveniently collected together in one clause in a Schedule to the Award.

HAC's position is that so far as possible, general provisions should be preferred. This is because they are more likely to be simple and easier to understand in a manner consistent with the Request but also because they are more able to be crafted to ensure that they "pick up" all relevant potential increases in cost. It seems likely that an approach which favours a general "all encompassing" style of clause is a simpler approach given the number of awards under consideration.

5.2 Current and future employees

In the range of submissions already made in relation to transitional provisions, some appear to promote clauses which expressly apply to employees engaged both before the making of the relevant award and afterwards during the transitional period. However, there are also some clauses which are ambiguous in this respect and still others which refer only to employees who had a particular right prior to the making of the award.

HAC submits as a matter of principle that an employer should have benefit of transitional provisions not only with respect to employees who are engaged at the time the Award comes into operation, but also at all future times up to the end of the transitional period.

There are a range of reasons for this view. Primary among them, however, are the following:

- Such an approach accords with the objects of the Request in that it leads to simple and easy to understand awards and it removes the need for an employer to apply different conditions to different employees.
- There is a question of fairness as between employees. There does not appear to be any compelling logical reason why employees engaged after the making of the award ought to have a safety net set at a different level to employees who were engaged before the making of the award in the case where they are performing the same work.
- There is a significant economic question here. As it has been stated earlier in these submissions, HAC relies in part upon the significant increased cost which the Award will impose as a justification for the granting of transitional provisions. The insertion of a transitional clause which applies only to existing employees would not properly or completely address those economic concerns.
- For there to be some ambiguity in relation to whether the transitional provision extends to employees engaged in the transitional period would add significant complexity to the application of the no-disadvantage test in the case of enterprise bargaining.

5.3 Current employers and future employers

The same issue arises in respect to the position of employers who may commence operations during the transitional period. If a transitional clause does not make it clear that new employers also have the benefit of the transitional provision then what is created is effectively a separate market. New employers will be at a distinct disadvantage as against incumbents. This will skew the labour market as employees are more attracted to work with those new employers because of the increased level of the safety net.

HAC submits that there is no reason in principle why a transitional provision should not extend to protect new employers, as well as existing employers from these increased costs.

5.4 A provision with complimentary benefits

There are at least two sources of concern which have been mentioned during the consideration which has occurred to date on transitional provisions in the parties' submissions and the Commission's statements. They are:

- (a) the statement of intention which is contained in the Request to the effect that the creation of modern awards is not intended to disadvantage employees nor to increase costs for employers; and
- (b) section 576T of the Workplace Relations Act which deals specifically with terms and conditions of employment that are determined by reference to State or Territory boundaries or do not have effect in each State or Territory. The provision contemplates that the Commission might include such terms in modern awards on a transitional basis for a period up to five years.

Clearly, each of those sources of concern apply equally to employers and employees. What is proposed by many employee representatives is that award provisions expressly provide, in an all encompassing way that no employee is to suffer any reduction in pay and/or terms and conditions of employment, as a result of the making of a modern award. HAC submits that equal attention should be paid to ensuring that relevant transitional provisions are cast so as to contain the same certainty for employers with respect to the matters to which they apply. It has endeavoured to craft its suggested clause to achieve this objective. There does not appear to be any reason in principle why this objective should not be pursued.

6 HAC's suggested clause

Having regard to the above matters, HAC proposes the following clause for the consideration of the Commission and the parties affected by the Award. We anticipate that the clause will be inserted as an appendix to the Award.

We await the opportunity to review what we anticipate will be a large number of other submissions from other affected parties. Upon reviewing those submissions HAC may amend this proposal to deal with any outstanding issues.

“X transitional arrangements

X.1. The introduction of this modern award shall not operate so as to disadvantage, on an overall basis, an employee whose employment would have been subject to an award or NAPSA but for the making of this award.

X2. Subject to sub-clauses X3 and X4, where the introduction of this modern award requires an employer to increase any part of an existing employee’s terms and conditions of employment, the employer may vary any over award payment to offset the additional cost, provided that:

(a) the employee is not disadvantaged on an overall basis compared to his or her terms and conditions prior to this award coming into operation; and

(b) prior to making any such variations, the employer shall consult with the employee regarding the changes.

X3. Where the terms of the modern award result in an increased entitlement in comparison to the award or NAPSA which it replaced, and which would otherwise apply, then the increase shall be phased in on the basis that one-fifth of the increase will take effect at the beginning of each year starting on 1 January 2010. For the avoidance of doubt, in this sub-paragraph “entitlement” shall mean any benefit that can be calculated in monetary terms and shall include wages, penalties, allowances, loadings or the like.

X4. No workplace arrangement, practice, flexibility or facilitative arrangement applied or available to an employer (as at the commencement date of operation of this award) will be reduced, removed or adversely impacted as a result of the making of this Award.

X5. Where there is a difference between the provisions of Sub-clauses 15.3, 15.4, 15.5 and 15.6 of this award, which deals with piece workers, and provisions of any instrument which this award replaced concerning pieceworkers, then the provisions of the instrument which this award replaced shall apply, in lieu of sub-clauses 15.3, 15.4, 15.5 and 15.6, until midnight on 31 December 2014.

X6. Other than sub-clause X2, the provisions of this clause shall cease to operate at midnight on 31 December 2014. Sub-paragraph X2 shall continue to operate after that date so as to permit the offsetting of any over award

payments then being paid against any of the conditions then provided for in this Award.

Comparison of ordinary hours of work

Horticulture sector award	Ordinary hours of work per week	Can the ordinary hours be averaged?	On what days can the ordinary hours be worked?	Between which hours can the ordinary hours be worked?	Is there a maximum number of ordinary hours which can be worked on a day?	Rate of pay for ordinary hours worked on weekends
<p><i>AP811240</i> - Hop Industry Award 2001 (Federal Award)</p>	<p>Clause 23.1.1 & 23.2 An average of 38 ordinary hours per week can be worked by weekly and casual employees.</p>	<p>Clause 23.1.3 & 23.2 The ordinary hours can be averaged over 28 days. Hence, 152 ordinary hours can be worked over 28 days.</p>	<p>Clause 23.1.1 Ordinary hours can be worked between Monday and Friday.</p>	<p>Clause 23.1.2 There is no limit on when the ordinary hours can be worked during Monday to Friday. This is to be agreed between the employer and the employee.</p>	<p>For permanent employees, there is no maximum number of ordinary hours which can be worked on one day. Clause 23.4 For casual employees, an employee can work up to 12 hours on a day subject to certain requirements being met.</p>	
<p><i>AP784867</i> - Horticulture Industry (AWU) Award 2000 (Federal Award)</p>	<p>Clause 26.1.1 & 26.1.2 (Schedule A Respondents) 40 ordinary hours per week can be worked by weekly employees. Clause 26.2.1 (Schedule B & C Respondents) An average of 38</p>	<p>Clause 26.2.1 (Schedule B & C Respondents) An average of 152 ordinary hours can be worked in a consecutive period of 4 weeks.</p>	<p>Clause 26.1.1 & 26.1.2 (Schedule A Respondents) Ordinary hours can be worked by employees on blocks on any five days of the week other than Sunday, except during February to May and where fruit picking is carried on, December</p>	<p>Clause 26.1.1 (Schedule A Respondents) There is no limit on when ordinary hours can be worked for employees on blocks. For packing house employees, ordinary hours can be worked between 6:00am and</p>	<p>Clause 26.1.1 & 26.1.2 (Schedule A Respondents) There is no limit on the maximum number of ordinary hours that can be worked for employees on blocks. A maximum number of 8 ordinary hours can be worked by packing</p>	

Schedule 1 Comparison of ordinary hours of work

Horticulture sector award	Ordinary hours of work per week	Can the ordinary hours be averaged?	On what days can the ordinary hours be worked?	Between which hours can the ordinary hours be worked?	Is there a maximum number of ordinary hours which can be worked on a day?	Rate of pay for ordinary hours worked on weekends
	ordinary hours per week can be worked by weekly employees		<p>to January, when ordinary hours can be worked on 5 ½ days on any day of the week.</p> <p>For packing house employees, ordinary hours can be worked on Monday to Friday.</p> <p>Clause 26.2.1 & 26.2.2 (Schedule B & C Respondents)</p> <p>Ordinary hours can be worked between Monday and Friday. Ordinary hours can include work on a Saturday if the employer and a majority of the employees in a section or sections of an enterprise or in respect of the whole enterprise agree.</p>	<p>6:00pm.</p> <p>Clause 26.2.1 (Schedule B and C Respondents)</p> <p>Ordinary hours can be worked between 6am - 6pm.</p> <p>Clause 26.2.2 provides that the spread of hours may be varied by mutual agreement between the employer and employee.</p>	<p>house employees.</p> <p>Clause 26.2.3 and 26.2.3(a) & (b) (Schedule B and C Respondents)</p> <p>A maximum of 8 ordinary hours can be worked on a day, or greater than 8 hours subject to an agreement of the employer and the employees in the plant or sections concerned.</p> <p>Subject to such an arrangement, ordinary hours greater than 10 but not exceeding 12 on any day may be worked so long as certain requirements are met.</p>	
<p>AP120247 - Horticulture Industry (State) Award (New South Wales)</p>	<p>Clause 2(1)(a)</p> <p>38 ordinary hours per week can be worked for permanent and casual employees</p>	<p>Clause 2(1)(b)</p> <p>The ordinary hours may be worked in any of the following ways –</p> <p>(i) Five equal days of five and one-half days per week (sic).</p> <p>(ii) 19 equal days in a</p>	<p>Clause 2(1)(a)</p> <p>Ordinary hours can be worked on any day of the week, Monday to Sunday.</p> <p>Cause 2(1)(d)</p> <p>Ordinary hours for Bunchy Top Detectors can be worked Monday</p>	<p>Clause 2(1)(a)</p> <p>Ordinary hours can be worked 5am - 8pm.</p> <p>Clause 2(1)(d) Ordinary hours for Bunchy Top Detectors can be worked between 7am – 5pm.</p>	<p>Clause 2(1)(a)</p> <p>A maximum of 10 ordinary hours can be worked on a day.</p>	<p>Saturdays: (Clause 9(a)) Ordinary time worked on a Saturday shall be paid at the rate of time and a quarter (or rate and a quarter for pieceworkers).</p> <p>Sundays: (Clause 9(b)) Ordinary time worked on a Sunday</p>

Schedule 1 Comparison of ordinary hours of work

Horticulture sector award	Ordinary hours of work per week	Can the ordinary hours be averaged?	On what days can the ordinary hours be worked?	Between which hours can the ordinary hours be worked?	Is there a maximum number of ordinary hours which can be worked on a day?	Rate of pay for ordinary hours worked on weekends
		<p>20 day cycle.</p> <p>(iii) Four equal days and one short day per week.</p> <p>(iv) No more than 20 days are worked in a 28 consecutive day period.</p>	to Friday.			shall be paid at the rate of time and a half (or rate and a half for pieceworkers).
<p><i>AN120357</i> -</p> <p>Mushroom Industry Employees (State) Award</p> <p>(New South Wales)</p>	<p>Clause 3(1)</p> <p>An average of 38 ordinary hours per week can be worked.</p>	<p>Clause 3(2)</p> <p>The ordinary hours may be worked in any of the following ways –</p> <p>(a) Five equal days or five and one-half days per week.</p> <p>(b) 19 equal days in a 20 day cycle.</p> <p>(c) Four equal days and one short day per week.</p> <p>(d) No more than 20 days are worked in a 28 consecutive day period.</p>	<p>Clause 3(1)</p> <p>Ordinary hours can be worked any day of the week, Monday to Sunday.</p>	<p>Clause 3(1)</p> <p>Ordinary hours can be worked between 5am – 8pm</p>	<p>Clause 3(1)</p> <p>A maximum number of 10 ordinary hours can be worked on a day.</p>	<p>Saturdays: (Clause 3(5)) Ordinary time worked on a Saturday is paid at the rate of time and a quarter (or rate and a quarter for pieceworkers).</p> <p>Sundays: (Clause 3(6)) Ordinary time worked on a Sunday is paid at the rate of time and a half (or rate and a half for pieceworkers).</p>
<p><i>AN160126</i> -</p> <p>Farm Employees' Award 1985</p> <p>(Western Australia)</p>	<p>Clause 7</p> <p>There is no limit on the number of ordinary hours that can be worked (by agreement).</p>	<p>Clause 7</p> <p>There is no limit on how ordinary hours can be worked (by agreement).</p>	<p>Clause 7</p> <p>Ordinary hours can be performed on any day by agreement, provided an employee is allowed one full day off per</p>	<p>Clause 7</p> <p>There is no limit on when ordinary hours can be worked (by agreement).</p>	<p>Clause 7</p> <p>There is no restriction on the maximum number of ordinary hours that can be worked on a day (by</p>	

Schedule 1 Comparison of ordinary hours of work

Horticulture sector award	Ordinary hours of work per week	Can the ordinary hours be averaged?	On what days can the ordinary hours be worked?	Between which hours can the ordinary hours be worked?	Is there a maximum number of ordinary hours which can be worked on a day?	Rate of pay for ordinary hours worked on weekends
			week subject to necessary attention to stock.		agreement).	
<i>AN140126</i> - Fruit and Vegetable Growing Industry Award- State 2002 (Queensland)	Clause 6.1 For all employees other than casuals: 40 ordinary hours can be worked per week.	No averaging provisions.	Clause 6.1 For all employees other than casuals: the ordinary hours can be worked on any five days out of seven, Monday to Sunday. At least two days allowed off each week.	Clause 6.1 There is no limit to the hours that can be worked.	Clause 6.1 For all employees other than casuals: a maximum of 8 ordinary hours can be worked on a day.	
<i>AN140295</i> - Tea Industry Award- State 2003 (Queensland)	Clause 6.1.1 For all employees 40 ordinary hours can be worked in any one week.	No averaging provisions.	Clause 6.1.1 The ordinary hours can be worked over any five consecutive days in each week.	Clause 6.1.1(a) Ordinary hours can be worked between 6am - 6pm or other times as agreed between the employer and the union.	Clause 6.1.1 A maximum of 8 ordinary hours can be worked on a day or other times as agreed between the employer and union.	Saturdays: (Clause 6.5.1(a)) Work performed on Saturday is paid at the rate of time and a half. Sundays: (Clause 6.5.1(b)) Work performed on Sunday is paid at the rate of double time.
<i>AN150104</i> - Pastoral Industry (SA) Award (South Australia)	Clause 57.1 38 hours per week can be worked by station hands. There is no limit on the number of ordinary hours for station cooks. Clause 25.12	Clause 57.1 For station hands, the ordinary hours can be averaged over a consecutive period of 4 weeks. Hence, 152 ordinary hours can be worked by station hands over 4	Clause 57.1.1 The ordinary hours of work for station hands can be worked (a) over five days in the week, Monday to Friday;	Clause 57.1 & 57.3 There are no limits on when ordinary hours can be worked for station hands and station cooks. Clause 25.1 Ordinary hours shall be	Clause 57.1 & 57.3 There are no limits on the number of ordinary hours that can be worked on a day for weekly station hands and station cooks. Clause 57.2	

Schedule 1 Comparison of ordinary hours of work

Horticulture sector award	Ordinary hours of work per week	Can the ordinary hours be averaged?	On what days can the ordinary hours be worked?	Between which hours can the ordinary hours be worked?	Is there a maximum number of ordinary hours which can be worked on a day?	Rate of pay for ordinary hours worked on weekends
	Shearers, crutchers, shed hands and wool pressers can work 40 ordinary hours per week.	weeks.	OR (b) over five and a half days in the week, Monday to Saturday, where work is essential on Saturday morning for good husbandry or tending stock. Clause 57.2 Ordinary hours for casual station hands can be worked between Monday to Friday. Clause 25.1 & 25.2.2 Ordinary hours for shearers, crutchers, shed hands and wool pressers can be worked Monday to Friday.	worked by shearers and crutchers in two hour runs between the hours of 7:30am and 5:30pm, or other hours by agreement. Between May and August the employer may advance the clock by half an hour to ensure against failure of sufficient daylight to complete 8 hours of work. Shearing and crutching work may be extended at the option of the employer if on a Friday after 5:30pm the tail end of a mob of ewes remain(Clause 25.3.1) Clause 25.2 The ordinary hours of shed hands and wool pressers are the same as those of shearers and crutchers, plus an additional 30 minutes if required to clean up after work.	Casual station hands can work a maximum of 8 hours on a day Clause 25.1 5.11 A maximum of 8 ordinary hours can be worked per day by shearers, crutchers, shed hands and wool pressers, plus additional an 30 minutes if required to clean up after work for shed hands and wool pressers.	
<i>AN160101</i> - Dried Vine Fruits Industry Award,	Clause 17(1) 40 ordinary hours can	No averaging provisions.	Clause 17(1) The ordinary hours can be worked Monday to	Clause 17(3) The ordinary hours are to be worked between	Clause 17(3) A maximum of 8 ordinary hours can be	

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Horticulture sector award	Ordinary hours of work per week	Can the ordinary hours be averaged?	On what days can the ordinary hours be worked?	Between which hours can the ordinary hours be worked?	Is there a maximum number of ordinary hours which can be worked on a day?	Rate of pay for ordinary hours worked on weekends
1951, The (Western Australia)	be worked per week.		Friday.	7am – 6pm. There are no limits on when ordinary hours can be worked by cleaners.	worked on a day.	
<i>ANI60134 -</i> Fruit Growing and Fruit Packing Industry Award, The (Western Australia)	Clause 10(1) The ordinary hours of work for fruit packing and sorting employees are 40 hours per week. Clause 10(2) There is no limit on ordinary hours of work for fruit growing and fruit picking employees. However, these employees receive additional pay rates for hours worked in excess of 40 hours per week, and additional pay rates for hours worked in excess of 52 hours per week.	No averaging provisions.	Clause 10(1) The ordinary hours can be worked between Monday to Friday for fruit packers and sorters. Clause 10(2) There is no limit on the days on which the ordinary hours can be worked for fruit growing and fruit picking.	Clause 10(1) The ordinary hours for fruit packing and fruit sorting can be worked between 7am – 5pm, however the spread of hours can be varied by agreement between the employer and the worker(s) concerned. Clause 10(2) There is no limit on the span of hours during which ordinary hours can be worked on any day for fruit growing and fruit picking.	Clause 10(1) A maximum 8 ordinary hours are to be worked on any day for fruit packers and fruit sorters. Clause 10(2) There is no limit on the maximum number of ordinary hours that can be worked on any day for fruit growing and fruit picking	
<i>ANI70032 -</i> Farming and Fruit Growing Award (Tasmania)	Clause 19(a)(i) & (ii) 38 hours or an average of 38 hours can be worked per week with agreement. Clause 19(b)(i) & (ii) Dairy farm employees	Clause 19(a)(ii) & (b)(ii) Ordinary hours of work (including those of dairy farm employees) can be as follows - <ul style="list-style-type: none">• 38 hours within work	Clause 19(a)(i) The ordinary hours are to be worked between Monday and Friday. Clause 19(b)(i) The ordinary hours for dairy farm employees	Clause 19(a)(i) The ordinary hours are to be worked between 6am – 6pm. Clause 19(b)(ii) Dairy farm employees can work ordinary hours	Clause 19(a)(i) A maximum of 8 ordinary hours can be worked on a day or 10 hours by agreement. Clause 19(b)(i) Dairy farm employees	

Schedule 1 Comparison of ordinary hours of work

Horticulture sector award	Ordinary hours of work per week	Can the ordinary hours be averaged?	On what days can the ordinary hours be worked?	Between which hours can the ordinary hours be worked?	Is there a maximum number of ordinary hours which can be worked on a day?	Rate of pay for ordinary hours worked on weekends
	<p>can work 38 hours per week or an average of 38 hours can be worked per week with agreement</p>	<p>cycle not exceeding 5 days in seven consecutive days; OR</p> <ul style="list-style-type: none"> • 76 hours within work cycle not exceeding 10 days in fourteen consecutive days; OR • 114 hours in work cycle not exceeding 15 days in twenty-one consecutive days; OR • 152 hours in work cycle not exceeding 20 days in twenty-eight consecutive days; OR • Any other work cycle agreed by an employer and majority of employees during which 38 ordinary hours shall be worked over an agreed cycle. <p>any work cycle can be agreed upon by an employer and majority of employees affected during which a weekly average of 38 ordinary</p>	<p>are to be worked between Monday and Friday.</p>	<p>in two periods during a span of any hours, provided that during one period not less than three of those hours are worked between 6am – 8pm.</p>	<p>can work a maximum of 8 hours on a day or 12 hours by agreement.</p>	

Schedule 1 Comparison of ordinary hours of work

Horticulture sector award	Ordinary hours of work per week	Can the ordinary hours be averaged?	On what days can the ordinary hours be worked?	Between which hours can the ordinary hours be worked?	Is there a maximum number of ordinary hours which can be worked on a day?	Rate of pay for ordinary hours worked on weekends
		hours shall be worked over the agreed work cycle.				

Schedule 2

Comparison of overtime rates

Horticulture Sector Award	Saturday Work	Sunday Work	Public Holiday Work	Other Overtime Rates
<p>AP811240 - Hop Industry Award 2001 (Federal) (Federal Award)</p>	<p>Clauses 25.1. 25.2</p> <ul style="list-style-type: none"> • Time and a half for the first 2 hours and double time thereafter • Exception for harvest period: time and a half for the first 8 hours and double time thereafter • Applies to weekly and casual employees 	<p>Clauses 25.1. 25.2</p> <ul style="list-style-type: none"> • Double time • Casual employees entitled to minimum of 3 hours • Applies to weekly and casual employees 	<p>Clause 31.4</p> <ul style="list-style-type: none"> • Weekly employees entitled to double time and a half • Weekly employees entitled to minimum of 3 hours work 	<p>Clauses 25.1. 25.2</p> <ul style="list-style-type: none"> • Work performed in excess of ordinary hours: time and a half for the first 2 hours and double time thereafter • Exception for harvest period • Applies to weekly and casual employees
<p>AP784867 - Horticulture Industry (AWU) Award 2000 (Federal Award)</p>	<p>Clause 28.2.2 (Schedule B & C Respondents)</p> <ul style="list-style-type: none"> • Time and a half • If a majority of employees in an orchard or vineyard required to work on a Saturday elect to work on a Sunday instead, they will be paid at the rate prescribed for Saturday work. • Applies to weekly employees only <p>Schedule A Respondents</p>	<p>Clause 28.2.2 (Schedule B & C Respondents)</p> <ul style="list-style-type: none"> • Double time • Exception for harvest period: time & half for 1st 5 hrs, then double time • Paid for minimum of 3 hrs <p>Clause 28.1.6 (Schedule A Respondents)</p> <ul style="list-style-type: none"> • All pieceworkers (whether employed on a weekly basis or not) are paid at the ordinary piecework rates in addition to 	<p>Clause 33.3.8 (Schedule B Respondents)</p> <ul style="list-style-type: none"> • Double time (but can be time off in lieu by consent) <p>Clauses 28.1.6 and 33.1.4 (Schedule A Respondents)</p> <ul style="list-style-type: none"> • Weekly employees: ordinary rates. • Pieceworkers employed in packing sheds, cool stores and dehydrators (whether on a weekly basis or not) receive the ordinary weekly rate in addition to piece rate of pay for 	<p>Clause 28.2.1 (Schedule B & C Respondents)</p> <ul style="list-style-type: none"> • Employees allowed paid time off or pay • Applies to weekly employees only <p>Clause 28.1 (Schedule A Respondents)</p> <ul style="list-style-type: none"> • Employees on blocks: work done in excess of 40 hours per week paid at time and a half for the first 2 hours and then double time

Schedule 2 Comparison of ordinary hours of work

Horticulture Sector Award	Saturday Work	Sunday Work	Public Holiday Work	Other Overtime Rates
	<ul style="list-style-type: none"> No penalty rate applies 	<p>the appropriate time-work rate if employed on the Friday preceding and the Monday following the Sunday.</p>	<p>work performed on a public holiday. Does not apply if the pieceworker is absent one day before or after the holiday.</p> <ul style="list-style-type: none"> Pieceworkers employed on an orchard or vineyard paid one day's pay at ordinary weekly rate plus piece rate of pay for each public holiday (provided the employee remains employed for a specified period). Does not apply if the pieceworker is absent one day before or after the holiday. Non pieceworkers in packing houses: time and a half (but can agree to time off in lieu). Non pieceworkers on blocks: double time for employees (but can agree to time off in lieu). 	<ul style="list-style-type: none"> Packing house employees: time worked in excess of 8 hours per day is paid at time and a half for the first 2 hours and then double time
<p><i>AP120247</i> - Horticulture Industry (State) Award (New South Wales)</p>	<p>No overtime penalty rate applies (but penalty rate applies for ordinary hours worked).</p>	<p>Clause 2(2)(b)</p> <ul style="list-style-type: none"> Bunchy Top Detectors: Double time (or double rates for pieceworkers). Can agree to time off in lieu Minimum of 4 hours 	<p>Clause 10(c)</p> <ul style="list-style-type: none"> Double time & a half Minimum of 4 hrs No payment if absence without leave on day before or after 	<p>Clause 2(2)(a)</p> <ul style="list-style-type: none"> Excess of ordinary hours: time and a half for first 2 hours, then double time Can take time off in lieu at ordinary time rate.
<p><i>AN120357</i> - Mushroom Industry Employees (State) Award (New South Wales)</p>	<p>No overtime penalty rate applies (but penalty rate applies for ordinary hours worked).</p>	<p>Clause 7(1)</p> <ul style="list-style-type: none"> Time worked in excess of ordinary hours on a Sunday: double time 	<p>Clause 9(3)</p> <ul style="list-style-type: none"> Double time and a half Minimum of four hours 	<p>Clause 7(1)</p> <ul style="list-style-type: none"> Time worked in excess of ordinary hours: time and a half for the first 2 hours and double time thereafter
<p><i>AN160126</i> - Farm Employees' Award 1985</p>	<p>No overtime penalty rates apply.</p>	<p>No overtime penalty rates apply.</p>	<p>Clause 8 No overtime penalty rates apply</p>	<p>No overtime penalty rates apply.</p>

Schedule 2 Comparison of ordinary hours of work

Horticulture Sector Award	Saturday Work	Sunday Work	Public Holiday Work	Other Overtime Rates
(Western Australia)			(ordinary rates are paid).	
AN140126 - Fruit and Vegetable Growing Industry Award- State 2002 (Queensland)	No overtime penalty rates apply.	No overtime penalty rates apply.	Clause 7.6.1 <ul style="list-style-type: none"> • Double time and a half • Minimum of 4 hours 	Clause 6.4.2 <ul style="list-style-type: none"> • Employees other than casuals who work more than 8 hours per day or 40 hours per week: time and a half for the first 3 hours and double time thereafter. • Casuals who work more than 40 hours in any 7 days: time and a half for the first 3 hours and double time thereafter.
AN140295 - Tea Industry Award-State 2003 (Queensland)	Clause 6.4.2 <ul style="list-style-type: none"> • Time worked in excess of ordinary hours or before start or after end times on Saturday: Time and a half for the first 3 hours and double time thereafter • Minimum of 3 hours 	Clause 6.4.2 <ul style="list-style-type: none"> • Time worked in excess of ordinary hours or before start or after end times on Sunday: Double time • Minimum of 3 hrs 	Clause 7.6.1 <ul style="list-style-type: none"> • Double time and a half • Minimum of 4 hours 	Clause 6.4.1 <ul style="list-style-type: none"> • Time worked in excess of ordinary hours or before start or after end times on Monday to Friday: time and a half for the first 3 hours and double time thereafter • Minimum of 3 hours work
AN150104 - Pastoral Industry (SA) Award (South Australia)	Clause 57.2.4 <ul style="list-style-type: none"> • Casual station hands: Work on a Saturday paid at time and a half. 	Clause 57.1.3 <ul style="list-style-type: none"> • Station hands engaged by the week (other than station cooks): Work performed in excess of ordinary time on a Sunday: Time off in lieu or payment of time and a half (unless in the case of feedings, milking or watering the stock which is paid at time and a half). Clause 57.2.4 <ul style="list-style-type: none"> • Casual station hands: Work on a Sunday paid at time and a 	Clause 57.2.4 <ul style="list-style-type: none"> • Casual station hands: Work on a public holiday paid at time and a half. 	Clause 25.2.3, 25.2.4 <ul style="list-style-type: none"> • Shed hands and wool pressers: Where required to work more than 30 minutes on one day: paid at time and a half. Clause 57.1.3 <ul style="list-style-type: none"> • Station hands engaged by the week (other than station cooks): Work performed in excess of ordinary time (other than on a Sunday): Time off in lieu or payment of time and a half.

Schedule 2 Comparison of ordinary hours of work

Horticulture Sector Award	Saturday Work	Sunday Work	Public Holiday Work	Other Overtime Rates
		half.		<p>Clause 57.2.4</p> <ul style="list-style-type: none"> Casual station hands: Work in excess of 8 hours per day Monday to Friday paid at time and a half. <p>Clause 57.3</p> <ul style="list-style-type: none"> A station cook who is required to work more than 5.5 days in any week is entitled to additional penalty rates (depending on whether the cook works 6, 6.5 or 7 days).
<p><i>AN160101</i> - Dried Vine Fruits Industry Award, 1951, The (Western Australia)</p>	<p>Clause 19(2)(a)</p> <ul style="list-style-type: none"> Work performed before usual start time or after usual end time or before 12 noon on Saturday: Time and a half for the first 2 hours and double time thereafter Work performed after 12 noon on a Saturday: double time Workers required to work on Saturdays can agree with the employer to work on a Sunday instead, in which case they will be paid time and a half for the first two hours prior to 12 noon and double time thereafter. 	<p>Clause 19(2)(a)</p> <ul style="list-style-type: none"> Double time 	<p>Clause 19(2)(b)</p> <ul style="list-style-type: none"> Double time and a half 	<p>Clause 19(1)</p> <ul style="list-style-type: none"> Work performed before usual start time or after usual end time Monday to Friday: Time and a half for the first 2 hours and double time thereafter
<p><i>AN160134</i> - Fruit Growing and Fruit Packing Industry Award, The (Western Australia)</p>	<p>Clause 11(2)</p> <ul style="list-style-type: none"> Time worked in excess of ordinary hours on a Saturday before 12 noon: time and a half for the first 2 hours and double time thereafter. Time worked in excess of 	<p>Clause 11(2)</p> <ul style="list-style-type: none"> Time worked in excess of ordinary hours on a Sunday: double time. Time off can be taken in lieu (hour for hour). 	<p>Clause 11(3)</p> <ul style="list-style-type: none"> Double time and a half Time off can be taken in lieu (hour for hour). Applies to fruit packing employees only (i.e. no 	<p>Clause 11(1)</p> <ul style="list-style-type: none"> Time worked in excess of ordinary hours Monday to Friday: Time and a half for the first 2 hours and double time thereafter Applies to fruit packing

Schedule 2 Comparison of ordinary hours of work

Horticulture Sector Award	Saturday Work	Sunday Work	Public Holiday Work	Other Overtime Rates
	<p>ordinary hours on a Saturday after 12 noon: double time.</p> <ul style="list-style-type: none"> Time off can be taken in lieu (hour for hour). Applies to fruit packing employees only (i.e. no overtime for other employees). 	<ul style="list-style-type: none"> Applies to fruit packing employees only (i.e. no overtime for other employees). 	<p>overtime for other employees).</p>	<p>employees only (i.e. no overtime for other employees).</p>
<p>AN170032 - Farming and Fruit Growing Award (T70 Tasmania)</p>	<p>Clause 18(c)(i)</p> <ul style="list-style-type: none"> Casual employees other than dairy farmers: Time and a half for the first 3 hours and double ordinary time thereafter. Full-time dairy farmers: Time and a quarter for first 4 hours and time and a half thereafter (unless averaging agreement reached). Casual dairy farmers: Ordinary time for the first 4 hours and time and a half thereafter. 	<p>Clause 18(c)(ii)</p> <ul style="list-style-type: none"> Casual employees other than dairy farmers: Double time. Full-time dairy farmers: Time and a half for the first 4 hours and double time thereafter. Casual dairy farmers: Time and a half for the first 4 hours and double time thereafter. 	<p>Clause 18(a)</p> <ul style="list-style-type: none"> Double time and a half. Minimum engagement of 3 hours. 	<p>Clause 18(3)</p> <p><u>Full-time employees (other than dairy farmers)</u></p> <ul style="list-style-type: none"> Work performed in excess of maximum ordinary hours or outside span of hours or in excess of 8 hours per day: Time and a half for first 3 hours and double time thereafter. Can take time off in lieu (at ordinary rates). <p><u>Casual employees (other than dairy farmers)</u></p> <ul style="list-style-type: none"> Work performed in excess of 8 hours a day or outside of ordinary span of hours: Time and a half for the first 3 hours and double ordinary time thereafter. <p><u>Full-time dairy farmers</u></p> <ul style="list-style-type: none"> Work in excess of maximum ordinary hours or outside span of hours or in excess of 8 hours per day: Time and a half for first 3 hours and double time thereafter.

Schedule 2 Comparison of ordinary hours of work

Horticulture Sector Award	Saturday Work	Sunday Work	Public Holiday Work	Other Overtime Rates
				<u>Casual dairy farmers</u> <ul style="list-style-type: none"> • Work in excess of 8 hours per day or prior to or following the ordinary span of hours: time and a half for the first 3 hours and double time thereafter.

Comparison of key clauses within existing awards and NAPSA's within the mushroom industry

Jurisdiction	Federal	New South Wales	Queensland	Western Australia	Tasmania	South Australia	Victoria (Enterprise Award)
Award/NAPSA Name	Horticultural Industry (AWU) Award 2000	Mushroom Industry Employees (State Award)	Fruit and Vegetable Growing Industry Award State 2002	Farm Employees Award 1985	Farming and Fruit Growing Award	Pastoral Industry (SA) Award	Mushroom Industry (Victorian) AWU Award 2002
Piece Rate clauses	<p>4 DEFINITIONS</p> <p>4.6 <i>Piecoworker means a casual employee engaged and paid as such and/or paid by results under 15.5 or 18.4 of this award.</i></p> <p>18.4 PIECEWORK</p> <p><i>Piecowork rates may be fixed by an employer and the employee at such rates as will enable the average employee working the ordinary hours prescribed by this</i></p>	<p>5. PIECEWORK</p> <p><i>Piecowork rates may be fixed by agreement between the employer and employee at such rates as will enable the average competent employee working the ordinary hours prescribed by this award to earn at least 15 per cent above the prescribed time work rate. Such piecowork rates shall, when fixed, be paid in lieu of the said time work rates.</i></p>	<p>4.5 PIECEWORK</p> <p>4.5.1 <i>Agreements for piecowork may be entered into between employers and their employees subject to the piecowork rate being fixed and reviewed as necessary from time to time so as to enable the average competent employee to earn during ordinary working hours not less than 20% above the hourly rate for the class of work performed, such hourly rate to be ascertained by</i></p>	<p>1B. - MINIMUM ADULT AWARD WAGE</p> <p><i>(4) Unless otherwise provided in this clause adults employed as casuals, part time employees or piecoworkers or employees who are remunerated wholly on the basis of payment by result shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.</i></p>	<p>5. PIECE WORK</p> <p><i>(a) Full-time employees (as defined) and/or casual employees (as defined) may be required by the employer to work on piece-work rates.</i></p> <p>PROVIDED that where an employer so requires an employee to work on piece-work rates then that employee shall earn at least 12 ½% more than the hourly equivalent for an employee classified as Farm and/or</p>	Not specified	<p>4 DEFINITIONS</p> <p>4.8 <i>Ordinary pay means the remuneration for the employee's ordinary working hours calculated at the ordinary time rate of pay and including any piece rates or production bonuses. Where no ordinary time rate of pay is fixed, for the purpose of calculating an entitlement, the ordinary time rate of pay will be deemed to be the average weekly rate earned during the period in</i></p>

Schedule 3 Comparison of ordinary hours of work

Jurisdiction	Federal	New South Wales	Queensland	Western Australia	Tasmania	South Australia	Victoria (Enterprise Award)
Award/NAPSA Name	Horticultural Industry (AWU) Award 2000	Mushroom Industry Employees (State Award)	Fruit and Vegetable Growing Industry Award State 2002	Farm Employees Award 1985	Farming and Fruit Growing Award	Pastoral Industry (SA) Award	Mushroom Industry (Victorian) AWU Award 2002
	<p>award to earn at least 12.5% above the prescribed time rate. Such rate will, when fixed, be paid in lieu of the said time rate.</p> <p>24.2.4 PIECE RATE</p> <p>Piecework rates may be fixed by an employer and the employee at such rates as will enable the average employee working the ordinary hours prescribed by this award to earn at least 12.5% above the prescribed full-time rate. Such rates will, when fixed, be paid in lieu of the time rate for all hours worked until amended by mutual agreement.</p>		<p>dividing the weekly rate prescribed in clause 5.1 by 40.</p> <p>4.5.2 In no case shall a full-time employee be paid less than the minimum weekly rate prescribed in clause 5.1:</p> <p>Provided that this provision shall also apply pro rata to part-time and casual employees.</p> <p>4.5.3 Where the minimum remuneration of a pieceworker falls below the minimum earnings prescribed by clause 4.5.1 for more than 3 consecutive ordinary working days, the piecework agreement may be terminated by either party. If neither party so elects,</p>		<p>Orchard Hand Level 2 (as defined).</p> <p>(b) Where the employer and employee agree to work on piece-work rates then the rate may be fixed by agreement.</p>		<p>respect of which the right to annual leave accrues.</p> <p>15. PIECEWORK RATES</p> <p>15.1 Determining piecework rates</p> <p>Piecework rates for harvesting of vegetables will enable an experienced pieceworker to earn at least 12.5% more than the weekly wage appropriate to the employee's classification. The actual rate will be fixed by agreement between the employer and the majority of affected employees.</p> <p>15.2 Piecework rates</p> <p>An employee engaged in the harvesting of</p>

Schedule 3 Comparison of ordinary hours of work

Jurisdiction	Federal	New South Wales	Queensland	Western Australia	Tasmania	South Australia	Victoria (Enterprise Award)
Award/NAPSA Name	Horticultural Industry (AWU) Award 2000	Mushroom Industry Employees (State Award)	Fruit and Vegetable Growing Industry Award State 2002	Farm Employees Award 1985	Farming and Fruit Growing Award	Pastoral Industry (SA) Award	Mushroom Industry (Victorian) AWU Award 2002
			<p><i>however, the piecework rate as originally fixed shall, notwithstanding anything contained in clause 4.5.1, be deemed to be such as will enable the average competent employee to earn not less than 20% above the hourly rate as prescribed by clause 4.5.</i></p> <p><i>4.5.4 Every agreement to work piecework shall be in writing in the form prescribed in Schedule A to this Award.</i></p> <p>SCHEDULE A: FORM OF AGREEMENT FOR PIECEWORK</p> <p>...</p>				<p><i>mushrooms will be paid a piecework rate of \$2.61 for each box picked per hour in excess of 3.9603 boxes calculated on the basis of 4 kg boxes ("the box rate"). Where the pieceworker works outside the ordinary hours or on weekends or public holidays the appropriate penalty rate will be applied to the box rate.</i></p>

Schedule 3 Comparison of ordinary hours of work

Jurisdiction	Federal	New South Wales	Queensland	Western Australia	Tasmania	South Australia	Victoria (Enterprise Award)
Award/NAPSA Name	Horticultural Industry (AWU) Award 2000	Mushroom Industry Employees (State Award)	Fruit and Vegetable Growing Industry Award State 2002	Farm Employees Award 1985	Farming and Fruit Growing Award	Pastoral Industry (SA) Award	Mushroom Industry (Victorian) AWU Award 2002
			<i>Provided however that if neither party so elects to terminate the agreement, the agreement shall remain in force and the piecework rate as fixed by paragraph (1) of this agreement shall, notwithstanding anything contained in clause 4.5 of the Award, be deemed to conform to the requirements of the Award.</i>				
Casual loading	CLAUSE 15.4.5 25%	CLAUSE 4(4) 15%	CLAUSE 4.4.2 23%	CLAUSE 14(3) 20%	CLAUSE 14(c)(iv) 20%	CLAUSE 57.2.2 22.5%	CLAUSE 14.2.1 17.5%

Comparison of piece rate loadings

Horticulture Sector Award	Piece Rate Loading
AP811240 - Hop Industry Award 2001 (Federal) (Federal Award)	Clause 17 Enables the average employee to earn at least 20% above the prescribed time rate.
AP784867 - Horticulture Industry (AWU) Award 2000 (Federal Award)	Clause 18.4 Enables the average employee to earn at least 12.5% above the prescribed time rate.
AP120247 - Horticulture Industry (State) Award (New South Wales)	Clause 7 Enables the average competent employee to earn at least 15% above the prescribed time work rate.
AN120357 - Mushroom Industry Employees (State) Award (New South Wales)	Clause 5 Enables the average competent employee to earn at least 15% above the prescribed time work rate.
AN160126 - Farm Employees' Award 1985 (Western Australia)	No piece rate clause.
AN140126 - Fruit and Vegetable Growing Industry Award- State 2002 (Queensland)	Clause 4.5.1 Enables the average competent employee to earn not less than 20% above the hourly rate for the class of work performed.
AN140295 - Tea Industry Award-State 2003 (Queensland)	Clause 4.2 Enables the average competent employee to earn 30% over the minimum wage fixed by the Award.

Schedule 4 Comparison of piece rate loadings

<p><i>AN150104</i> - Pastoral Industry (SA) Award (South Australia)</p>	<p>Piece rate clauses only apply to employees who are not station hand employees.</p>
<p><i>AN160101</i> - Dried Vine Fruits Industry Award, 1951, The (Western Australia)</p>	<p>Clause 23(2) No loading applies (pieceworkers to be paid at least the time rate of pay).</p>
<p><i>AN160134</i> - Fruit Growing and Fruit Packing Industry Award, The (Western Australia)</p>	<p>Clause 25(1) Enables the average competent employee to earn not less than 15% above the hourly rate of the class of work performed.</p>
<p><i>AN170032</i> - Farming and Fruit Growing Award (Tasmania)</p>	<p>Clause 5(a) Employee shall earn at least 12.5% more than the hourly equivalent for an employee classified as Farm and/or Orchard Hand Level 2 (as defined).</p>

Schedule 5

Award modernisation Horticulture Grower Survey

Respondents: 40 from Queensland, Tasmania, Victoria, South Australia, Northern Territory, and Western Australia

Commodities:

Tomatoes, strawberries, apples, stonefruit, herbs, lettuce, mango, beetroot, pines, onions, melons, cherries and berries, carrots, figs.

Farm Size: A wide range of property size was canvassed to investigate whether differentials existed for differing size business.

Less than 20 hectares		7
20 to 50 hectares	6	
50 to 100 hectares	6	
100-300 hectares	9	
More than 300 hectares	4	
<i>Not noted</i>		8

Turnover: Again, this question sought to gather information about the impacts of the new HIA across a range of business types and sizes. The majority of survey respondents have an annual turnover of \leq \$5m. While there may be economies of scale for larger operations, the increases to wage costs with the new HIA are higher and this impacts significantly on the bottom line.

Less than \$500k p/a		5
\$501k - \$1m		5
\$1m - \$5m		15
\$5m - \$10m		2
\$10m - \$20m		2
\$20m +	1	
<i>Not noted</i>		10

Packing Sheds: 30 respondents reported having packing sheds on site. All but 1 respondent had dual operations - picking and packing - on a daily basis, whereby employees may harvest the produce in the morning and work in the packing shed in the afternoon. There is a lack of clarity about what constitutes a “packing shed” – for example, in some cases, produce was packed in the field by the pickers.

The impact of this will be increased record keeping due to two separate hours of work provisions. Frequently picking and packing work is performed by the same employees.

Planting, Harvest Seasons

The length of planting and harvest seasons is determined by the produce. However, most growers grow several different crops to ensure production across the year and consistency of income.

Planting Season: Less than 3 months	8
3 – 6 months	4
6 – 9 months	2
9 – 12 months	7 21
Harvest Season: Less than 3 months	2
3 – 6 months	10
6 – 9 months	6
9 – 12 months	11

Produce to Market:	Every Day	Mon-Fri	No resp
	11	11	11

This was a huge concern for growers. Most growers depend on regular, established transport runs on set days – including in many cases 7 days per week – to ensure their produce gets to market when required. Monday morning market is a key market time, and in most cases this necessarily requires work to be done on Sundays. It was obvious when speaking with growers, that there is little concept of a Monday to Friday week in horticulture – by employers or employees. Those working in the industry understand that farming is a 7 day a week job and provided people had access to their 2 days off (whether utilised or not), the majority reported that 200% Sunday penalty rates would seriously impact on their returns. Also, it is either not possible or impractical to send less to market as trucks require a full load and won't attend for less than that. In remote areas, this is a major concern.

Employee Numbers

The **40** growers surveyed reported that they employed 618 permanent, contract and casual employees during non-harvest season, and around 1800 picking and packing staff during peak harvest season. The majority (almost 90%) of these are casual employees, with a significant proportion of those working holiday-makers ('backpackers').

Picking 'ee Numbers:	Permanent	Contract	Casual
<i>Non-harvest</i>		119	43
<i>Harvest</i>	119	245	970

Packhouse 'ees:	Permanent	Contract	Casual
	47		70
			360

Overtime Required:	Yes	No	Sometimes
	11	14	7

Around one-third of growers surveyed indicated that they regularly require overtime to be worked. Clearly growers see these rates as a major impediment to providing the hours that employees demand.

Hours Required:	Saturday	Sunday	Both Saturday & Sunday
	7		17

Approximately half of the respondents reported that they worked on Saturdays and Sundays. This simply reflects the specific circumstances of horticulture, where the employer cannot stop production to avoid penalty rates. A 200% Sunday rate is seen as particularly harsh given this harvest-critical nature.

Public Holidays Required:	Yes	No	Sometimes
		6	13
			4

The majority of respondents reported that they tried to avoid working on public holidays, but again, produce does not recognise these days as such. The biggest reported problem was with Easter, with Public Holidays on the Friday, Saturday and Monday. With the new award providing 200% on Sundays, the entire 4 day Easter weekend will have to be paid at 200% - this is peak harvest time for a number of commodities (eg asparagus, broccoli, zucchini, tomatoes, melons, berries, kiwi, strawberries, mango, stonefruit). Some flexibility is imperative here beyond the capacity to substitute a day (see below) – it would be difficult to substitute 4 days.

Do you substitute PH?	Yes	No
	13	6

TRANSITIONAL ISSUES: key impacts of new award

Queensland

- Increase casual rate by 2% to 25%
 - **Increase of .29c per hour;**
 - **\$11.02 per employee per 38 hr week**
 - ❖ *One strawberry grower reported employing up to 700 people during peak harvest periods over 3+ months. \$11.02 x 700 employees x 12 weeks = increase to wage bill for the season **\$92,568**. This cost will not be recouped at market*
 - Increased rates due to penalty rates on Sunday [all employees] and outside span of hours [packing sheds]:
 - **+ 50% & 100% outside M-F 6am - 6pm;**
 - **+ 200% Sunday**
 - ❖ *Current [non-penalty] federal casual rate from \$16.46 per hour to **\$17.89** depending on pre-reform instrument.*
 - ❖ *HIA Sunday casual rates: **\$35.78per hour** at Level 1 and **\$41.96** per hour at Level 5*
- An increase of up to \$25.50 per hour**
- Increased rates due to 5 level class structure:
 - ❖ *increase from .44c to \$2.47 per hour = **\$16.72 to \$93.86** per employee per 38 hr week*
 - Increased Leading Hand Allowances:
 - ❖ *Increases of between **\$2.96 to \$21.40** per week per employee*

Northern Territory

- Currently award-free and operating under AFPCS
- Increases significant across all aspects of new award
 - Increase casual rate by 5%
 - ❖ **+ .72c per hour \$27.36 per employee per 38 hr week**

- Increased rates due to Sunday penalty rates and penalties outside span of hours for packing sheds
 - ❖ +50% & 100% outside M-F 6am - pm;
 - ❖ 200% Sunday
- Increased rates due to 200% Sunday rate
 - ❖ **Level 1 \$28.62 perm to \$35.78 casual**
- Increased rates due to 5 level class structure
 - ❖ **increase from .44c to \$2.47 per hour = \$16.72 to \$93.86 per employee per 38 hr week, higher for casuals**
- Increased Leading Hand Allowance
 - ❖ **Increase from \$16.96 to \$35.40 per week**

NSW

- Increase casual rate by 10%
 - ❖ *\$1.43c per hour \$54.34 per employee per 38 hr week*
- Increase of 50% to the Sunday penalty
 - ❖ *increase of \$7.16 p/h [perm] to \$11.09 p/h [casual]*
- Lost 3 hours of ordinary time in packing house due to change of span
 - ❖ *3 hours @150% = increase of \$21.45 [perm] to \$26.83 [cas] per employee for those hours*
- Mushroom Award:
 - ❖ **increase casual rates by 10% or \$1.43 per hr, \$54.34 per week per employee**

Victoria Mushroom Award

- Increase casual rate by 7.5%
 - ❖ *+\$1.08c per hour \$41.04 per employee per 38 hr week*

- ❖ *Removal of 'true' piecework rate; introduction of 'casual' piecework rate;*
- ❖ *Increase piecework rate by 2.5%*
- ❖ *Increases due to new classification and Leading Hand structure and allowances*

Western Australia

- Increased rates due to 5 level class structure
 - ❖ *increase of .72c per hr to \$3.91 per hour = \$27.36 to \$148.58 per casual employee per 38 hr week*
- Increased Leading Hand Allowance

South Australia

- Increased Leading Hand Allowance

Tasmania

- Increase casual rate by 5%
 - ❖ *+.72c per hour \$27.36 per employee per 38 hr week*

Grower comments from survey:

Reduce Profit:

- “We are a family-owned/run farm, and have no places to recover those savings, as they are price takers not price makers on their produce.
- This will reduce our profitability and basically put us at a point where we are working and staying open for the employees. Everything goes up wages, petrol etc but fruit & veg stays at the same price where we are constantly at a loss
- Family will put in extra work if needed *FOR FREE*
- Loss in product quality, can't afford to pay for Saturdays or Sundays. Picking/Packing Poor product quality on Mondays
- Will not be able to reduce the amount of staff when it is picking season.
- Will reduce profit significantly that we will be thinking of having staff from process worker to work on farm.
- Will be a great loss in profit as wages would increase yet our sale price will remain the same.
- Quality would decrease as we couldn't pay for our workers to work on Sat or Sun leaving produce waiting for a week day to be harvested or dispatched (it may have to wait in storage)”

Increase Costs:

- “Wage costs are \$950k. Costs will increase by approx \$150k (**16% increase** in wages)
- Sunday wages **are expected at \$100k increase** or more p/a
- reduce profitability - all up we will be **paying \$250k - \$300k more** in wages. They will end up paying more just to maintain the resources they have now.
- Working Sundays in peak season is unavoidable – 200% unreasonable
- Increase to the casual loading from 23%- 25% is an issue. The casuals are only employed for harvesting (6 months) at a cost of about \$350k. This would **add another \$7000k to the bill.**
- the new award, will mean **an extra \$139k, or 22.48% to wage costs**
- **Wage costs will be up by 28%**
- \$5mil turnover - \$1.6mil wages - **15% increase to wage bill**
- Calculations on impact - Sun work est @ \$120,000 - Sat work est \$73,000 - *not* incl super, w/comp - est **approx \$220,000 (per w/end)**
- This will be a huge problem for me as Saturday and Sundays are a 2 main working days for our company - paying my employees at 200% of the rate is something I cannot afford.
- wages are 50% of turnover currently \$1.5mil farm; \$450k for Packhouse – will take wages closer to **55-60% of input costs**
- **reduce work force by X employees** – can't run any longer on Sunday
- **The cost of this will be more than our profit**
- Can't absorb costs due to being **price takers** not price makers
- If business decides no work on Sundays to stop 200% time, then impacts business where tomatoes have extra day of ripening, **lose \$\$\$ per carton at markets due to poorer quality**
- trucks get loaded **from 5am-6pm** generally for markets – span of hours = added costs

Restructure the Business

- The plan will be to downsize operations by up to half.
- We have no control when trucks come to take the produce, as we farm in a remote area, so loading of the trucks (and ensuring product is ready for loading) means start and stop times may not be able to keep within span of hours - can't alter days, it is based on the fruit and trucks, so going to have to wear significant cost increase
- Will look into reducing manual labour and introducing new technology (such as sorting machines) to save on extra labour costs.
- We would think about laying off staff and figuring out a way we can replace them with machines
- Small operations will quit/close could pack Saturday but **have to pick it when it needs to be picked** (this is something we don't have control over)
- New award will make business unmanageable, no choice but to close down
- everyone does pick/pack - no differential, paid same rate – new differentials = dissatisfied workforce; increased administration burden with 2 systems
- Would have to downsize business, change practices, look at more workers doing less hours etc
- had an investment plan close to \$100k for next year that they have to throw in the bin due to uncertainty next year.

Impacts on Staffing

- Will still have to work on Saturdays as the operations must run for a minimum of 6 days of the week
- Will be likely to work in 2 shifts - will have to hire more employees - fewer hours for employees = less income for longtime loyal employees
- increase the workforce working shorter hours
- will have to decrease hrs span therefore decrease hrs per staff - staff would leave if cuts made to what they're used to
- Would have to downsize, look at more workers doing less hours etc
- will not have a choice but to employ more staff, to minimise OT/200% time
- thought they may have to hire more people to help cover the existing work load

Award comparison table

AWARD	BASE RATE	CASUAL PIECEWORK LOADING	OVERTIME	SAT PENALTY	SUN PENALTY	PUBLIC HOL PEN	SPAN OF HOURS	ORDINARY HOURS	CLASS LEVELS
Modern HIA 2010	14.31	<i>Cas: 25%</i> <i>Piecework: 15%</i>	<i>Picking: 150% ≤3 hrs</i> <i>200% >3 hrs</i> <i>Packing: 150% ≤2 hrs</i> <i>200% >2 hrs</i>		200%	200%	<i>Picking: Nil</i> <i>Packing: Mon-Fri 6-6</i>	38	5
HIA [AWU] 2000 Coverage: Victoria NSW S.A.	14.31	<i>Cas: 25%</i>	<i>On blocks: >40 hrs</i> <i>150% ≤2 hrs</i> <i>200% >2 hrs</i> <i>Packing: >8 hrs day</i> <i>150% ≤2 hrs</i>	<i>Sched B/C: can agree to work Sat</i>	200% <i>Casuals less their 25% loading</i>	200% or TOIL	<i>Sched A: 40/5 days</i> <i>or 5½ Dec-May</i> <i>Sched B/C: 152/4wks,</i> <i>M-F, 6-6</i>	40	5

			200% >2 hrs						
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Qld Fruit & Veg Award 2002	14.31	Cas: 23% +2%	150% ≤3 hrs 200% > 3 hrs Packing Sheds 1 hour	N/A	N/A	250% <50%	N/A Packing outside span	40 +2	n/a + 4 new rates
NSW Horticultural Industry Award 2002	1: 14.86 2: 15.42 3: 15.95 4: 16.17 5: 16.78 6: 16.94	Cas: 15% +10% <i>Piecework:</i> 15% [can be both with both loadings]	150% ≤2 hrs then 20% +130%>2hrs Sun 200%	125%	150% +50%	250% -50%	Mon-Sun 5am-8pm -3 hrs ord time packing	38	
W.A. Fruit Growing & Packing Industry Award		Cas: 20% <i>Piecework:</i> 20% Cas + 5% Piecework -5%	<i>Packing:</i> +Outside span 150% ≤2 hrs 200% >2 hrs	150% am 200% pm	200%	250% -50%	<i>Picking:</i> No span <i>Packing</i> Mon-Fri 7am-5pm + 2 ord hrs	38	
Tasmanian Farming and Fruit Growing	Farm Hand:	Cas: 20% +5%	150% ≤3 hrs 200% >3 hrs	125% ≤4 hrs, then	200%	250%	Mon-Fri 6-6	38 Can average	

Award	1: 14.31	<i>Piecework:</i> 12.5% +2.5%	<i>(except on work cycle > 20 days)</i> Lose flex on workcycle	200%		-50%		over 4 wks	
	2: 14.97			+25%					
	3: 15.63								
	4: 15.78								
	Mech								
	Op 1:								
	15.63								
	2: 16.17								

Northern Territory AFPCS	14.31	20% +5%	n/a + all penalty rates 150% & 200%	n/a	n/a +100%	+100%	n/a + penalties o/side span for packing	38	n/a
NSW Mushroom Award	14.31	15% +10%	+ Outside span 150% ≤2 hrs 200% >2 hrs Picking +1 hr	125% Pickers: -25% > 12n Packers + 50% & 100% for hrs	150%	250% -50%	M-Sun 5-8 Flexible up to 28 days -3 hrs ord time	38	n/a
W.A. Dried Fruits Award	14.31	20% +5%	+ Outside span 150% ≤2 hrs 200% >2 hrs Pickers +1 hr	after noon 200% Pickers: - 100% for ½ day Packers -50% first 2 hrs	200%	250% -50%	M-F 7-6 Packing: +1 hr	38	
Hop Industry Award 2001 (respondents)	14.31	Piecework: 20% Shift: 15%	25.2.1 Except during a harvest period in excess of ord hours on each of the	150% first 2 hrs 200% after	200%	250%	averaged over 28 days Mon-Fri	38 per week 12 hrs per day*	

Tas & Vic)			days* Monday to Friday and on Saturday 150% 1 st 2 hours and 200% after						
Farm Employees Award WA	14.31	Casual 20% +5%	Ordinary + ≤3 hrs @ 150% & > 3 hrs @ 200%	ordinary	Ordinary + 100%	Ordinary +100%	By agreement With 1 day off per week +Restrictive span	By agreement With 1 day off per week	4 levels
Tea Industry Award (Qld)		Cas: 23% Piecework: 30% -5%	M – F outside hours 3 @ 150% & 200% thereafter	150%	200%	250%	Any 5 out of 7 6am-6pm	38 per week 8 per day	Tea Blender: 4 levels Tea Picking: 3 levels
Pastoral Industry Award SA <i>???? inclusion of this? HIA applied</i>	Station Hand 1: 14.31 Station Hand 2: 14.47	Cas: 22% +3%	≤3 hrs @ 150% > 3 hrs @ 200%		150% +50%	200%	5 or 5½ days Restrictive span	152 over 4 weeks	

AWARD	RESP ALLOW	GENERAL FLEXIB	OTHER
HIA 2010	1: 2-6 \$16.96 2: 7-10 \$19.76 3: 11-20 \$28.17 4: 20+ \$35.40	Standard MA flexibility clause	
HIA [AWU] 2000	1: 2-6 \$18.50 2: 7-10 \$19.80 3: 11-20 \$30.30 4: +20 \$40.10 - app \$\$3-4	Flexibility re hrs by mutual agreement	
Qld Fruit & Veg Award 2002	14.10 per week + \$2.85 - \$21.30wk	Cert agmt only	
NSW Horticultural Industry Award 2002	2-10 'ees: \$25.15 wk >10 'ees: \$35.70 wk	Up to 20 days but with weekend penalty rates	
Tasmanian Farming and Fruit Growing Award	2-6 \$17.10 7-10 \$19.40	152 over 4 wks – no sat penalty w'in cycle	

	11-19 \$24.00 >20 \$31.60		
Victorian Mushroom Award	2-6 \$16.50 7-10 \$18.40 11-19 \$30.05 >20 \$38.15		
NSW Mushroom Award	n/a		Shift penalty 15%
W.A. Dried Fruits Award		.27c per day	Shift Allow \$5.25 per shift
Hop Industry Award 2001			Wet work Allowance Protective Clothing Travel Allowance First Aid Allowance Paid crib break for shift workers
Farm Employees Award WA			
Tea Industry Award Qld			District Allowances Shift Allowance: Afternoon: 12.5% Night: 15%
Pastoral Industry Award SA			

