

Fruit Growers Tasmania Inc

Horticulture Award Changes 2022

What you need to know



Peter Cornish - Chief Executive Officer

fruitgrowerstas.org.au

What we are going to talk about

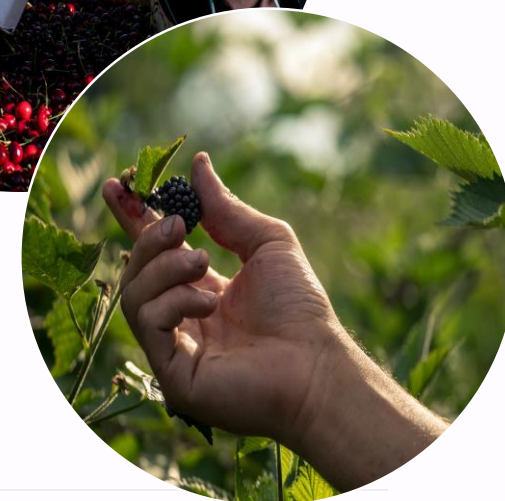
- Why the award has been changed
- What has changed
- What hasn't changed



Why the award has been changed

Compliance with existing piecework provisions

- No transparency on how piece rates were being set and how they related to hourly wage equivalents
- Often poor record keeping by employers
- These structural issues made identifying and prosecuting non-compliance very difficult.
- Too many examples of underpayment
- **The new provisions aim to tighten up on these issues**



What has changed?

1. Employer recordkeeping requirements have been tightened
 - Employers are required to track the number of hours worked.
 - Requirements to store and share employment records with workers have also increased.
2. A minimum daily wage guarantee was introduced to limit underpayment and increase transparency
3. The definition of worker competence has been clarified.
4. Piece rates are required to articulate clearly to an equivalent hourly rate.



What has changed?

1. Employer Record keeping

- Employees are required to be issued with a written piecework record signed by the employer **before** they begin any piecework tasks.
- Piecework records represent a formal agreement between the employer and employee that specifies the included activities and remuneration rates for piecework.



What has changed?

1. Employer Record keeping

- Once issued, the piecework record remains in effect until terminated or changed by the employer.
 - If a pieceworker does any work which is not included in a piecework record, the pieceworker must be paid for that additional work at the hourly rate for the pieceworker.
 - **The piecework record must include the relevant hourly rate that is applicable for that worker.**
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What has changed?

1. Employer Record keeping

- Employers are permitted to set and change piece work rates unilaterally without prior negotiation or agreement with employees.
 - This recognises most piecework arrangements are a “take it or leave it” arrangement
 - There is no requirement for employees to sign piece work agreements
- Once issued, the terms of the piecework record can only be changed by issuing a new written piecework record.



What has changed?

1. Employer Record keeping

- Employers are also required to track and record the hours worked by pieceworker employees.
 - Start times, finish times, breaks.
- Pieceworkers are also entitled to meal breaks in line with other employees, and penalty rates apply if employees work more than 5 hours without taking a meal break of 30-60 minutes duration.



What has changed?

1. Employer Record keeping

- Employers must keep copies of the following records:
 - A copy of every piece work record issued
 - A record of daily work productivity
 - A record of all hours worked and applicable piecework rates
 - A copy of every pay slip issued
- Employers are also required to make copies of these documents available to current and past workers upon request.

What has changed?

2. Minimum wage guarantee introduced to limit underpayment

- Piecework provisions within the Hort award now contain a minimum wage guarantee.
- This guarantee requires employers to supplement the income of workers for any day that their **daily** piecework earnings would be less than their equivalent minimum hourly rate.



What has changed?

2. Minimum wage guarantee introduced to limit underpayment

- Employers are required to perform the following calculation for **each day** worked within the pay period.
 1. Calculate piecework earnings
= (piece rate) × (total daily productivity)
 2. Calculate equivalent hourly earnings
= (daily hours worked) × (relevant minimum hourly rate)
This is \$26.73 / hour for casual employees aged 20 years & over at Level 1
 3. Employers are required to pay the larger of the two amounts – **every day!**

What has changed?

2. Minimum wage guarantee introduced to limit underpayment

- In introducing a minimum wage guarantee, the Fair Work Commission has noted that it expects employers to actively manage the productivity of their workers.
- This management includes any of the following
 - Increased selectivity within recruitment practices
 - Provision of mentoring and/or on-the-job training
 - Termination of non-productive workers
- Casual workers do not require notice or redundancy, but are entitled to a minimum of 2 hours pay (in a row) for any day of work.

What has changed?

3. Definition of competent workers

- Under the new provisions, a competent pieceworker is “a pieceworker who has at least 76 hours’ experience performing the task (for example, picking apples, picking strawberries, pruning grape vines)”
 - This experience can be accrued within your business, or with previous employers. Employee records can be used as evidence of previous experience
- Worker competency is only used for assessing what the average productivity of your competent workers is and what the average hourly rate being paid for competent workers is

What has changed?

4. Piece rates

- The new provisions provide greater clarity on the process of setting minimum piece rates. These are
 1. Estimate the average productivity of competent pieceworkers within your workforce (based on your crop and their productivity)
 2. Identify the equivalent minimum hourly rate, including 15% uplift clause.
 3. Calculate the minimum piece rate that will achieve at least the minimum average hourly rate $(\$ \text{ equivalent hourly rate} / \text{ expected productivity})$
- Remember this is the **minimum**. As a business, you can pay on or above this rate, but you can't be below it.

What has changed?

4. Piece rates

Identifying the minimum hourly rate equivalent

- The new provisions specifies that the employer must fix the piece rate at a level such that a pieceworker working at the average productivity of your competent pieceworkers will earn at least 15% more per hour than the hourly rate for the pieceworker.
- The current minimum hourly rate for Level 1 pieceworker, 20 years or older, is \$21.38 for full and/or part time workers, and \$26.73 for casual workers.
- This means casual adult employees working at the average rate of productivity earn at least \$30.73 per hour (15% more than \$26.73)

What has changed?

4. Piece rates

- The Fair Work Ombudsman has provided guidance that employers using piece rates must be able to demonstrate and justify how they calculated their piece rates.
- Employers are expected to set a realistic piece rate at the start of each season, and review this estimate regularly throughout the season.
- Piece rates must be reviewed regularly.



What has changed?

4. Piece rates

- Compliance with the Award is an ongoing process and may be required to be demonstrated across each pay period.
- **The onus is on the employer to demonstrate to the Fair Work Ombudsman that you have complied with the Award, not for the Ombudsman to prove that you haven't!**
- Fruit Growers Tasmania suggests employers
 - undertake a review at the end of each pay period using the recorded actual productivity of your competent pieceworkers and their actual average hourly rate of pay
 - keep a record of the methodology and calculations used each time when setting / reviewing a piece rate

What hasn't changed?

- Most award provisions still apply for pieceworkers under the new piecework provisions. This includes:
 - Breaks
 - Public holiday penalty rates
 - Other allowances
- The following provisions also continue to not apply to pieceworkers.
 - No restrictions on ordinary hours of work
 - No restrictions around rostering arrangements
 - No entitlement to overtime or meal allowance

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Its over to you!



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