

**From:** Kylie Dunn [<mailto:kdunn@dmawlawyers.com.au>]  
**Sent:** Wednesday, 17 May 2017 5:27 PM  
**To:** AMOD  
**Cc:** Paul Dugan; LUBY, Catherine; EYIZ, Sezen  
**Subject:** AM2014/231 & AM2016/25 - Application to vary a modern award - Horticulture Award

Dear Sir/Madam

We act for Mitolo Group Pty Ltd and Maranello Trading Pty Ltd.

We enclose for lodgment a witness statement in reply in accordance with orders made by Vice President Catanzariti on 3 May 2017.

If you wish to discuss this matter, please do not hesitate to contact us.

Kind regards,

[Evolve:9c374905-711e-4c81-a6c6-fe45774d2543]

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**IN THE FAIR WORK COMMISSION**

**Matter No. AM2014/231 / AM2016/25**

**Mitolo Group Pty Ltd**

First Applicant

**Australian Industry Group**

Second Applicant

**Maranello Trading Pty Ltd**

Third Applicant

**APPLICATION TO VARY A MODERN AWARD - HORTICULTURE AWARD 2010**

**WITNESS STATEMENT IN REPLY OF PAULA COLQUHOUN**

I, Paula Colquhoun, of 1304 Angle Vale Road, Virginia in the State of South Australia, Group Human Resources Manager for the Mitolo Group of Companies, state as follows:

**Introduction**

1. I refer to my previous witness statement dated 23 December 2016.
2. I make this statement in reply in support of the application filed on 18 November 2016 and the amended application filed on 1 December 2016 by Mitolo Group Pty Ltd (**Mitolo**), Australian Industry Group and Maranello Trading Pty Ltd seeking an order pursuant to section 160 of the *Fair Work Act 2009* (Cth) (**FW Act**) varying the coverage clause of the *Horticulture Award 2010* (**Horticulture Award**). Mitolo also seeks a variation of the Horticulture Award under section 156 of the FW Act.

**Changes to minimum wages for relevant employees**

3. I refer to paragraph [103] of my previous statement where I stated that on 29 April 2015, Mitolo increased base rates of pay for all employees who perform the relevant work at the Mitolo Group's site situated at Angle Vale Road, Virginia, South Australia

**Lodged by:**

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(**Angle Vale Road Site**), being work comprising sorting, grading, washing, treating, packing and forwarding of horticultural crops (**SGWTPF Activities**). Rates of pay were increased in line with the minimum rates of pay set out in the proposed new enterprise agreement. Those rates of pay exceeded the minimum rates of pay prescribed by the Horticulture Award.

4. On 30 January 2017, Mitolo further increased base rates of pay in respect of all classifications of employees who perform SGWTPF Activities at the Angle Vale Road Site.
5. Mitolo decided to increase base rates of pay for its employees engaged in SGWTPF Activities in order to remain competitive with rates payable by its competitors in the Virginia area which had negotiated enterprise agreements based on, and with rates underpinned by but exceeding, the Horticulture Award.
6. I refer to the statement of Mr Paul White dated 20 December 2016 filed in these proceedings. At paragraphs [29] to [33] of Mr White's statement he refers to negotiations for a new enterprise agreement for employees of Zerella Holdings Pty Ltd. At the time that Mitolo decided to increase rates of pay I was aware from my enquiries with the Fair Work Commission regarding the status of the Zerella agreement that that agreement was underpinned by the Horticulture Award and that the National Union of Workers had indicated its approval of the agreement.
7. The base rates currently paid to Mitolo permanent employees are as follows:

Classification level		Minimum weekly rate	Minimum hourly rate	Minimum hourly rate prior to 30/1/2017
Level 1		\$712.50	\$18.75	\$17.97
Level 2(a)	Under 12 months experience	\$733.78	\$19.31	\$18.49
Level 2(b)	Over 12 months experience	\$741.38	\$19.51	\$18.69
Level 3(a)	Under 12 months experience	\$755.82	\$19.89	\$19.02
Level 3(b)	Over 12 months experience	\$763.42	\$20.09	\$19.22
Level 3(c)	Forklift drivers	\$808.73	\$21.28	\$20.37
Level 4(a)	Under 12 months experience	\$784.32	\$20.64	\$19.74
Level 4(b)	Over 12 months experience	\$791.92	\$20.84	\$19.94

Classification level		Minimum weekly rate	Minimum hourly rate	Minimum hourly rate prior to 30/1/2017
Level 5(a)	Under 12 months experience	\$830.68	\$21.86	\$20.92
Level 5(b)	Over 12 months experience	\$838.28	\$22.06	\$21.12

8. The current base rates of pay referred to above exceed the minimum rates of pay prescribed by the Horticulture Award.
9. Mitolo Group does not intend to reduce current rates of pay or conditions, regardless of the outcome of these proceedings.

#### **Changes to use of land by Mitolo Group**

10. I refer to paragraphs [34] to [39] of my previous statement where I describe the various parcels of land in the Virginia area owned and utilised by the Mitolo Group.
11. As stated in paragraph [38], the piece of land acquired by the Mitolo Group from Pogas Produce Pty Ltd has been used for conducting seed trials since April 2015.
12. There are currently no seed or variety trials being conducted on this parcel of land due to the requirement of land rotation. I discuss this requirement at paragraph [58] of my previous statement. Going forward it is likely that a cover crop will be planted or alternatively the land will remain unused during the rotation.
13. As stated at paragraph [36] of my previous statement, the Angle Vale Road Site comprises a number of large dams. Recently the Mitolo Group constructed 3 additional dams on this parcel of land.

#### **Response to witness statement of Kay Rault**

14. I refer to the witness statement of Kay Rault dated 21 April 2017.
15. At paragraph 2 of Ms Rault's statement she refers to Mitolo's centralised facility located in Virginia, South Australia as a "*packing and storage facility*". Throughout her statement she makes references to produce being stored at the facility.
16. As set out in my previous statement, the centralised facility at the Angle Vale Road Site is not confined to packing and storage of produce. Produce undergoes an

extensive process involving the removal of waste, sorting and grading, washing, treating and packing before being forwarded to customers. As stated at paragraph [78] of my previous statement, produce is nearly always dispatched the same day as it undertakes this process. Occasionally it is stored in the cool room for one or two days.

17. At paragraph 2 of Ms Rault's statement she states that "*nothing is grown on the site*". This is incorrect. As stated at paragraphs [36] and [44] of my previous statement, seed and variety trials are performed at the Angle Vale Road Site (as well as at other sites). The Angle Vale Road Site is also used for other purposes, as set out at paragraph [36] of my previous statement, including:

17.1 dams;

17.2 chemical storage;

17.3 water filtration;

17.4 farm waste depot.

18. I refer to paragraph 8 of Ms Rault's statement where she refers to small loads of produce coming in from local growers. As stated in my previous statement at paragraph [55], produce from external growers accounts for less than 5% of total produce that arrives at the facility at the Angle Vale Road Site.

19. I refer to paragraph 9 of Ms Rault's statement where she describes the process after produce arrives from the growing sites. I describe this process in greater detail at paragraphs [68] to [79] of my previous statement.

20. At paragraph 11 of Ms Rault's statement she identifies a number of roles performed by employees in connection with the operation of the centralised facility at the Angle Vale Road Site. One further role, not referred to in Ms Rault's statement, is that of Primary Produce Inspector. That role:

20.1 is employed by Maranello Trading Pty Ltd;

20.2 has the following specific duties:

20.2.1 inspection of the product on delivery;

- 20.2.2 collection and assessment of samples of unwashed product (which requires the removal of soil, waste and debris) and reporting of non-conformances back to the various growing sites and to the production quality team;
- 20.2.3 manual inspection and washing of dug samples from each pivot and reporting on waste percentages and quality issues prior to the product being harvested.
21. At paragraph 14 of Ms Rault's statement she refers to the production process undertaken in respect of C shed. The produce that goes through C shed has already undergone a wash and grading process in the main facility before being transported in bins to C shed.
22. I refer to paragraph 15 of Ms Rault's statement. Seed is treated and graded as described at paragraphs [46] to [48] of my previous statement. Currently there are 3 employees who undertake seed development work in the seed shed. In addition, some employees who perform grading duties in the centralised facility are rostered to the seed shed from time to time.
23. I refer to paragraph 18 of Ms Rault's statement. As stated above and in my previous statement, seed and variety trials are conducted on the Angle Vale Road Site.
24. I refer to paragraph 20 of Ms Rault's statement. As stated at paragraph [62] of my previous statement, a number of employees of Mitolo who work in the facility also on occasions perform duties on Mitolo growing sites.
25. At paragraph 22 of Ms Rault's statement she states that "*Mitolo does not want to negotiate for a new collective agreement to replace [the existing one]*". I refer to paragraphs [96] to [101] of my previous statement in which I describe the proposed new enterprise agreement prepared by Ai Group in respect of Mitolo employees who perform the SGWTPF Activities at the Angle Vale Road Site. This agreement was approved by the majority of employees to whom it would have applied but was not approved by the Fair Work Commission. It has been, and remains, Mitolo's intention to negotiate and enter into a new enterprise agreement with relevant employees.
26. I refer to paragraph 23 of Ms Rault's statement where she refers to the possibility of base rates of pay being reduced to those which apply under the Horticulture Award. As stated at paragraphs [8] and [9] above, Mitolo is currently paying base rates of

pay which exceed the minimum rates prescribed by the Horticulture Award and does not intend to reduce those rates.

27. At paragraph 23 Ms Rault also states that "*Mitolo wants to class us as farm workers*". Mitolo considers, and has always considered, that the work being performed by Ms Rault (and other employees who perform the SGWTPF Activities at the Angle Vale Road Site) falls within the scope of work covered by the Horticulture Award, being work in connection with the packing, storing, grading, forwarding or treating of horticultural crops. This is consistent with my experience as the Human Resources Manager of the Mitolo Group and in the horticulture industry generally where other fresh produce businesses who operate a centralised facility in the same region as the Mitolo Group, including those in or around the Virginia area, consider their workers to be under the Horticulture Award and classify and pay them accordingly.

Paula Colquhoun

17 May 2017