

IN THE FAIR WORK COMMISSION

FILE NO: AM2016/25

APPLICATION
by **AUSTRALIAN INDUSTRY GROUP**
re **HORTICULTURE AWARD 2010**

WITNESS STATEMENT OF PAUL WHITE

General

1. I am an employee of Zerella Holdings Pty Ltd, trading as Zerella Fresh. I generally use the term 'Zerella' in this statement to refer to the business, rather than the incorporated company. I indicate where I use the phrase in a different way.

My Employment

2. I am Zerella's General Manager. I have held this position at all times since I joined the company in January 2008
3. I am Zerella's most senior operational employee. I report to Mr Mark Pye (Managing Director).

Business - Overview

4. Zerella currently grows and supplies potatoes, carrots and onions for the wholesale, export and domestic Australian markets:
 - a. Wholesale – markets in capital cities where produce is sold to fruit and vegetable stores together with independent supermarkets;
 - b. Supermarkets – direct sales to distribution centres operated by major supermarket chains;

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- c. Processors – direct sales to processors whom have varying input specifications depending upon their business needs and process configuration and
 - d. Export – mainly to Dubai and Malaysia.
5. The business structure relies upon farms and packing sheds plus a wholesale store in the South Australian Produce market
 6. The Zerella business was originally started by the Zerella family in about 1936 in the Virginia area on what is now the outskirts of the Adelaide metropolitan area. The Zerella family ceased their involvement in the business in 2009.
 7. Zerella is now a strategic supply partner of Woolworths, with rolling 12-month supply commitments. Zerella's partnership with Woolworths has grown to the extent that it now supplies it more carrots and onions nationally than any other supplier, and is the second-largest supplier of potatoes nationally.
 8. In addition to the Woolworths partnership, Zerella has commitments to supply potatoes to Coles pursuant to supply arrangements, and the business is an approved supplier to Aldi.
 9. Zerella operates in association with another business known as Parilla Premium Potatoes ('**Parilla**'). Parilla grows potatoes in the Murray Mallee region of South Australia. Ownership, control and management are all common between Zerella and Parilla.
 10. Parilla was previously a non-associated entity. It was the business established by Mr Mark Pye in about 1990 after he moved from New Zealand to start a new horticultural business. The name 'Parilla' comes from the location of the operations in the Murray Mallee region of South Australia around and near the regional town of Parilla. Those operations are now integrated with the broader Zerella operations. I refer to the facilities maintained in the Murray Mallee that were traditionally part of the distinct Parilla operations as '**the Mallee**'.



Operations

11. Zerella and Parilla operate together as one business. They are under common control and direction, but for historical reasons retain separate underlying corporate structures. I describe below the interrelated nature of the operations.

Zerella

12. The Zerella business is headquartered at its site on Johns Road, Virginia. This site was the location of the original horticulture enterprise established by the Zerella family. I refer generally to the land and facilities located at Johns Road, Virginia as '**Virginia**'. There are different components to the Virginia holdings. Potatoes, Carrots and Onions are grown at Virginia.
13. The business owns and leases the approximately 1200 acres of land that constitutes the Virginia location/region. All but a small part of that land are used to grow horticultural product on a rotating basis:
 - 13.1. At any one time, approximately 400 of the 1200 acres are under active horticultural cultivation.
 - 13.2. Zerella practices crop rotation – the remaining portion of the 1200 acre holding will either be in use for cereal cropping (with such crop sold to bulk grain enterprises after harvest) or under preparation e.g. by green manure treatment in order to return to horticultural service in the next or subsequent seasons.
14. The small portion of the Virginia holdings not in rotational horticultural use is that upon which the packing and administrative complex sits. The packing complex is a series of joined shed structures in which all produce operations take place. It occupies approximately 3 hectares. I refer to the complex as the **Virginia Packing Shed**. Part of the Virginia horticultural land abuts the Virginia Packing Shed – there are no roads or other form of separation. Farm workers and their families also live in company provided housing on the same site as the packing shed.
15. All potatoes and carrots grown at Virginia are separated from waste, washed, graded, sorted and packed in the Virginia Packing Shed. They are brought direct from crops harvested on site. Such produce is stored for up to a few hours while awaiting processing. Processed product is also stored short-term while awaiting transfer to trucks



for transfer to the applicable market destination. I estimate that 90%+ of produce is washed, packed and dispatched the same day

16. Since 2015, Onions grown at Virginia are not processed at the Virginia Packing Shed. They are transported to Zerella's Parilla packing shed in the Mallee for processing at the much more specialised facilities located there.
17. Our Parilla Packing Shed is also located on farm. But due to the regional location and variation in processing volumes, workers are more regularly rotated between farm and packing shed duties. This can be achieved easily because the role of grading on a table on a harvester on the farm is identical to the role of grading on a table in a packing shed.
18. Potatoes, carrots and onions are also grown in the Mallee. The Onions are then sent to the Parilla Packing shed for drying, grading and packing. The carrots and approximately 85 – 90% of the potatoes are transported for processing at the Virginia Packing Shed. The other 10-15% of the potatoes grown in the Mallee are sent to processors after some preliminary size and quality grading.
19. Neither Zerella nor Parilla shares any washing, packing, processing or storage facilities with any other enterprise or entity.
20. Zerella operates certain other farm sites in different climactic regions of South Australia so as to be able to maintain 12-month supplies of produce.

Corporate Structure

21. The business operations I describe above are carried out primarily by Zerella Holdings Pty Ltd.

Zerella Holdings Pty Ltd

22. Zerella Holdings Pty Ltd (ACN 007 857 534) is an Australian Proprietary Company limited by shares first registered on 24 February 1978. It was the company through which the Zerella family conducted its horticulture business until Mr Mark Pye's incremental purchase and acquisition of the company was complete. The company currently has two directors: Mr Mark Pye (Managing Director) and Mr Alan Pye.



23. The company is the direct employer of all packinghouse employees at Virginia and Parilla. The Company is also the direct employer of most of the growing and associated staff at the Mallee sites plus all of the growing and associated staff at Virginia.

Parilla Premium Potatoes Pty Ltd

24. Parilla Premium Potatoes Pty Ltd (ACN 008 292 484) is an Australian Proprietary Company limited by shares first registered on 18 June 1990. The company was established by Mr Mark Pye for the purpose of conducting the new horticultural operations he was developing in the Mallee.

25. As with Zerella Holdings Pty Ltd, Parilla Premium Potatoes Pty Ltd currently has two directors: Mr Mark Pye and Mr Alan Pye.

26. This company is the direct employer of farming employees in the Mallee.

27. The two business names of Zerella and Parilla remain in use largely on account of the market recognition and goodwill associated with each.

28. The integrated two businesses employs approximately 450 people in total.

Industrial Environment

Zerella - Packing Sheds

29. Virginia and Parilla Packing Shed operations are presently subject to the *Zerella Holdings Pty Ltd Packinghouse Employee Collective Agreement 2009 (2009 Packing Shed Agreement)*. That instrument expired in 2014 but continues in operation pursuant to the *Fair Work Act 2009 (the Act)* and its transitional arrangements.

30. Zerella believes that the *Horticulture Award 2010 (Horticulture Award)* applies to its operations.

31. Zerella is currently in the advanced stages of bargaining with the National Union of Workers (**the Union** or **NUW**) for an enterprise agreement that will replace the 2009 Agreement.

32. There is also currently an application on foot lodged by the National Union of Workers to terminate the 2009 Agreement – FWC matter number AG2016/4817. That matter is



being managed by Deputy President Sams, and is presently adjourned to a directions hearing on 31 January 2017 pending the likely finalisation of the new agreement.

33. Negotiations for and preparation of the new agreement to replace the 2009 Virginia Packing Shed Agreement have assumed that the Horticulture Award is the correct reference instrument for the purposes of the Better Off Overall Test.

Virginia - Growing Operations

34. Growing operations conducted at Virginia are subject to the *Zerella Holdings Pty Ltd Gardening Employee Collective Agreement 2009*. That instrument also passed its nominal expiry date in 2014, but continues in operation.

Mallee – Growing Operations

35. Most of the employees working in the Mallee growing sites are employees of Zerella and are also covered by the *Zerella Holdings Pty Ltd Gardening Employee Collective Agreement 2009*.
36. Those employees working in the Mallee operations who are employed directly by Parilla are subject to the *Parilla Premium Potatoes Pty Ltd Maintenance & Farming Employees Enterprise Agreement 2009*.

Market Conditions

37. Zerella is not in a position to pass on increasing costs to our Australian customers or pass on any increases in production costs to our export customers. Australian-grown produce could not compete with imported produce unless companies such as Zerella can retain cost-competitiveness.
38. I note in this respect that horticultural produce currently sells for lower wholesale prices than it did five years ago. Despite the drop in prices, a number of key inputs have steadily increased, including:
 - a. Electricity costs;
 - b. Local government rates and charges;



- c. Fertiliser; and
- d. Labour costs (by means of yearly increases through the Commission's yearly wage review process).

39. Zerella operates in a very competitive industry which keeps prices low. The growth of discount supermarket chains like Aldi and Costco has increased the downward pressure on prices. The impact is declining prices (and margins) year on year with growers/packers forced to absorb increases in costs including electricity and labour.

Award Coverage

40. Zerella's firm view is that the *Horticulture Award 2010* should apply to its operations. I note the following matters having regard to the current Clause 4 ('Coverage'):

40.1. In relation to subclause 4.1, Zerella considers itself to operate within the 'horticulture industry'.

40.2. Having regard to the definition of 'horticulture' industry in subclause 4.2(a):

40.2.1. Zerella owns and operates 'agricultural holdings' that specifically concern and facilitate the sowing, planting, raising, cultivation, harvesting and picking of horticultural crops;

40.2.2. Zerella's Virginia packing shed attends to the waste separation, washing, packing, grading and post harvest treatment of those produce crops grown on Zerella's own agricultural holdings (both at Virginia itself and at other locations including the Mallee)

40.2.3. Zerella's Parilla packing shed attends to the waste separation, drying, packing, grading and post harvest treatment of produce from crops grown on Zerella's own agricultural holdings in the Mallee and Virginia

40.2.4. Zerella's Parilla packing shed also grades and packs significant volumes of potato seed to be used on its own farms



- 40.3. With regard to the definition of 'horticulture industry' in subclause 4.2(b), a significant part of Zerella's operations involve the treatment and management of land for the production of its own horticultural crops.
41. Negotiations for the new packing shed agreement have been predicated entirely upon the application of the Horticulture Award as the applicable 'reference' instrument, e.g. for purposes associated with the Better Off Overall Test.
- 41.1. Accordingly, my firm belief is that Zerella is not in the 'industry' of 'storage services' and 'wholesale'. This is with the exception of our own wholesale store, where the storage services award does apply. At this wholesale store and at others like it around Australia, produce is received in a saleable form. The wholesale store is the first available farm gate.

The Full Bench decision in *Mitolo Group Pty Ltd v National Union of Workers*

42. I am familiar with the Full Bench's decision in the matter of *Mitolo Group Pty Ltd v National Union of Workers (Mitolo)*. I was involved in those proceedings on Zerella's behalf as an intervenor.
43. My understanding of those proceedings and the Full Bench's decision are as follows:
- 43.1. Deputy President Bartel had refused to approve an enterprise agreement made between Mitolo and its workforce.
- 43.2. Crucial to that decision was a finding that the (**Storage Services Award**) was the relevant modern award, rather than the **Horticulture Award**.
- 43.3. The full bench appeal was largely concerned with whether that finding was correct.
- 43.4. Both of the Awards in question covered the employees in question.
- 43.5. The full bench upheld Deputy President Bartel's decision that it was the Storage Services Award that applied.
- 43.6. The location of work performed was found to be a critical element in the coverage of the Horticulture Award:



44. In Zerella's case, approximately 90% of all processing Zerella undertakes is of its own product grown on agricultural holdings the company itself owns and/or operates. The remaining 10% is from sharefarmers where we provide seed, equipment, some labour and agronomic support. It offers no such services to third parties. I cannot accept that Zerella is in the 'industry' of storage services and wholesale, yet this is not clear, nor simple, for employers in this industry of horticulture to determine.
45. It is my belief that all lands Zerella and Parilla use for growing of produce are 'agricultural holdings' – the processing of produce is therefore one aspect of a vertically integrated business preparing horticultural produce for sale.

The effect of the Mitolo full bench decision.

46. Based on my knowledge of the horticulture industry, the various enterprises with whom Zerella competes carry out their operations in subtly different ways. Different business models are in use with regards land holdings, automation, growing methods and production scheduling. There are also natural differences brought about by the cultivation of different horticultural crops in South Australia.
47. The matters emphasised and relied upon by Deputy President Bartel at first instance and the Full Bench on appeal may lead to inconsistent award coverage patterns within what is one distinct industry in South Australia (and, by extension, the rest of Australia). If that were to be the case, the modern Award objective would be frustrated.
48. The application brought by the Australian Industry Group would remedy what would be an unfair, confusing and unacceptable situation and would give certainty to both employers and employees in the industry. The proposed amendments to subclause 3.1 of the Horticulture Award would ensure and clarify that business such as Zerella which exist to grow and sell large quantities of horticulture produce using their own agricultural holdings are covered by that Award.

Summary

49. I maintain my position that Zerella's packing sheds (located at Virginia and Parilla) should continue to be covered by the Horticulture Award. My reasons are summarized as:




- 49.1. Both packing sheds are physically located on farm sites, although the scale of operations including 12 months production necessitates that we also operate other farm sites that also supply to these packing sheds;
- 49.2. Both packing sheds have operating hours that are integrated with farm harvesting to ensure optimum freshness;
- 49.3. The produce received at both packing sheds is not in a form fit for sale other than to other packing sheds. The onions need to be dried. Onions, carrots and potatoes need to be separated from vegetable matter, rocks and dirt. Rotten produce needs to be removed. The resulting saleable produce then needs to be washed (not onions), post harvest treated, graded and packed;
- 49.4. The saleable product is then dispatched generally on the same day to wholesale stores and other customers;
- 49.5. The grading performed within the packing shed is the same duty as performed on a harvester on farm;
- 49.6. The packing shed workers, particularly in remote locations are regularly rotated between farm and packing shed to meet business needs;
- 49.7. Our Parilla Packing Shed and workers also grade and pack significant volumes of own grown potato seed; and
- 49.8. The Zerella operations are fully integrated within one company with common processes, systems, shared services, employee rotations and career paths.

50. It would be a nonsense to reach a different conclusion for one packing shed versus another within the same company. Similarly it would be a nonsense to have a different conclusion reached for different packing sheds within the Australian horticulture industry.

51. This is why we need a Horticulture award that recognizes the need for flexibility and other special industry needs, ensures an equitable level of competitiveness within Australia, plus the best chance of competing internationally.

Conclusion

52. The matters in this statement are all true to the best of my knowledge.

SIGNED:  DATE: 20/12/16