

# What the Latest Fair Work Report Means for Berry Growers

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The Fair Work Ombudsman (FWO) has just released a landmark report examining compliance in the horticulture industry, based on 360 site inspections and over 500 investigations across 15 high-risk regions. While many growers are making genuine efforts to comply with workplace laws, the findings reveal systemic issues, particularly around labour hire practices and record keeping, that pose serious risks not just to workers, but to the integrity and reputation of the entire berry sector.

Berries Australia has welcomed the Fair Work Ombudsman's report and its ongoing commitment to monitor and enforce workplace laws across the horticulture sector. We strongly support continued and increased government investment in the FWO's monitoring and enforcement capabilities.

Importantly, the report does not reflect the state of the entire horticulture industry. As clearly stated, the investigations targeted employers already suspected of non-compliance in regions historically known for poor practices. These findings should not be interpreted as representative of the broader industry, where many employers are doing the right thing.

The report reaffirms a long-held industry concern that labour hire providers are responsible for the vast majority of non-compliance. In fact, 91% of all infringement notices issued by the FWO were directed at labour hire companies, highlighting the urgent need for reform in this space.

Berries Australia continues to advocate for the introduction of a national labour hire licensing regime, noting that Queensland - where such a regime is already in place - had the highest levels of compliance. The report also acknowledged the significant role Berries Australia has played in educating growers and supporting compliance efforts.

As an industry, there is a firm commitment to identifying and removing unscrupulous operators. Berries Australia looks forward to continued collaboration with the FWO to drive improvements and promote greater adherence to workplace laws across the sector.

This article summarises the key findings that matter most to berry growers and outlines the practical steps you can take to ensure your business is on the right side of the law.

## 1. Labour Hire is a Major Compliance Risk

Across all inspected regions, 91% of infringement notices were issued to labour hire providers. In regions with extreme or very high non-compliance rates such as Coffs Harbour and Grafton (61%) and the Mornington Peninsula/Yarra Valley (83%) labour hire arrangements were the common denominator.

Under section 550 of the *Fair Work Act*, growers can be held liable for contraventions committed by their labour hire providers if they're "involved" in the breach (e.g. knowingly turning a blind eye). "I didn't know" is not a valid defence.

### What you need to do:

- Only engage labour hire providers that are licensed (in states with licensing laws)
- Keep a record of who you're contracting and verify that their business details are current and legitimate
- Ask for sample pay slips, employment agreements and evidence of tax and super payments
- Include clear clauses in contracts about compliance with Fair Work laws and follow up to ensure these are being met

## 2. Record Keeping and Pay Slips Are the Most Common Breaches

Over 60% of all breaches related to basic obligations such as failing to:

- Keep proper employee records
- Issue pay slips
- Use correct pay slip formats

These are non-negotiable legal requirements. Without them, workers can't verify who employs them or what they're being paid and Fair Work can't confirm whether entitlements are being met.

### What you need to do:

- Maintain clear records for each worker with hours worked, rates paid, and deductions made
- Issue compliant pay slips every payday. Include ABN, hours worked, gross/net pay, tax withheld, super details, and pay rate
- Avoid cash payments. If cash is unavoidable, ensure you keep a paper trail (with signatures) and disclose this in your bookkeeping

## 3. Piece Rates Are Still Being Misused

Both growers and labour hire providers were found to be paying pieceworkers without:

- Disclosing the piece rate in writing
- Paying at least the minimum hourly rate
- Keeping records of hours worked

In some cases, workers earned as little as \$10/hour which is far below the legal minimum.

### What you need to do:

- If using piece rates, ensure workers are paid at least the hourly floor rate as per the Horticulture Award
- Provide each pieceworker a written agreement that outlines the rate and their minimum entitlements
- Record hours worked daily as this is now a legal requirement

## 4. Some Growers Still Operate Under 'Zombie' Agreements

A small number of growers were still using pre-2010 collective agreements that avoided key entitlements like overtime. These expired automatically on 7 December 2023 unless formally extended.

### What you need to do:

- If you previously operated under a pre-2010 agreement, ensure you're now using the Horticulture Award or a registered agreement
- Seek advice if you're unsure whether your agreement remains valid

## 5. Good Governance Sets Compliant Growers Apart

Regions with higher compliance like Wide Bay and Moreton Bay in Queensland shared common features:

- Direct employment of workers
- Ongoing collaboration with Fair Work
- Use of electronic systems to track hours and productivity
- Participation in programs like Fair Farms

### What you need to do:

- Invest in reliable systems to track hours and ensure minimum rates are paid
- Conduct spot audits of your own records and labour hire providers
- Use the Fair Farms certification or similar programs to build confidence with buyers and regulators
- Educate your supervisors and team leaders on compliance responsibilities

### What to Expect Next

The FWO has flagged more coordinated action, including:

- Targeting growers who use suspect labour hire providers
- Sharing information with the ATO, ASIC, ABF and state labour hire regulators
- Working with supermarkets and supply chain stakeholders to weed out non-compliance

From January 2025, intentional wage theft became a criminal offence under the Fair Work Act. While this won't apply to honest mistakes, it puts further pressure on employers to get it right.

These new laws introduced under the **Closing Loopholes Act** mean **intentional underpayment of wages** is now a criminal offence. Penalties may include:

- **Fines of up to \$7.8 million for companies**
- **Fines of up to \$1.56 million for individuals**
- **Potential jail time** (up to 10 years for individuals in the most serious cases)

These apply only to *deliberate* underpayments—not honest mistakes.

This isn't just about avoiding fines, though the penalties for non-compliance are now more serious than ever. It's about doing right by your workers, protecting your business from legal and reputational damage, and contributing to the long-term success and sustainability of the Australian berry industry.

The era of "handshake deals," unlicensed labour hire, and not knowing who's actually working in your fields is over. With the Fair Work Ombudsman now actively targeting non-compliance, and new criminal penalties in effect from 2025, growers can no longer afford to be complacent or unaware.

If you're already following the rules, this report is a strong validation of your practices. It shows that legitimate, ethical businesses can and do operate successfully in horticulture. But if you're unsure—if you don't know exactly who your workers are, how much they're being paid, or whether the labour hire provider you use is properly licensed—then now is the time to take action.

By taking proactive steps now, you're helping to create a more transparent, fair, and sustainable berry industry. One that attracts and retains skilled workers, reassures customers and supply chain partners, and stands up to scrutiny from regulators and the public. Let's make sure the berries we grow are something we can all be proud of all the way from paddock to pay slip.

### Resources available to assist growers

There are a wide range of free resources available directly to growers to help you make sure you are doing the right thing with your workers:

| Resource                                                                                                           | Where you'll find...                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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| <b>Horticulture Showcase</b><br><a href="http://horticulture.fairwork.gov.au">horticulture.fairwork.gov.au</a>     | Pay Slip and other Templates, Information Sheets, Self-Audit Checklist, Online Learning, Videos, Labour Hire Guides, Translated Resources, Record-keeping Guidelines                                                                                                                                                                                                                                                                                                                |
| <b>Small Business Showcase</b><br><a href="http://smallbusiness.fairwork.gov.au">smallbusiness.fairwork.gov.au</a> | Help for Small Business Hub, Self-Audit Checklist, Guidance on deductions, overpayments, tax and super obligations, Templates and guidance for job ads, telephone screening, and reference checking, 25-minute online training for hiring staff, Best practice guide on performance management and warning letters with an online training session, Employer Advisory Service (EAS) which offers one-on-one specialist support for small businesses, Library & Best Practice Guides |
| <b>Pay and Conditions Tool (PACT)</b><br><a href="http://calculate.fairwork.gov.au">calculate.fairwork.gov.au</a>  | The Fair Work Ombudsman's Pay and Conditions Tool (PACT). It provides an interactive calculator to help employers and employees work out Pay Rates, Overtime rates, Leave Entitlements, Notice & Redundancy and Shift Work Calculations                                                                                                                                                                                                                                             |