

## FWO files special leave application in Marland Mushrooms case

19 September 2019

On 13 September 2019, the Fair Work Ombudsman filed an application in the High Court of Australia seeking special leave to appeal against the split decision of the Full Federal Court in *Fair Work Ombudsman v Hu* [2019] FCAFC 133.

The matter concerns the operation of the pieceworker provisions in the Horticulture Award 2010, as well as accessorial liability under section 550 of the Fair Work Act 2009 for underpayments to pieceworkers.

In September 2016, the Fair Work Ombudsman commenced proceedings in the Federal Court of Australia regarding alleged underpayments of nearly \$650,000 to 386 casual mushroom pickers employed by HRS Country Pty Ltd (in liquidation) (HRS).

The employees picked mushrooms at a farm operated by Marland Mushrooms Qld Pty Ltd (Marland Mushrooms) and were paid piecework rates.

Following HRS entering liquidation, the Fair Work Ombudsman brought proceedings against HRS's director, Tao Hu, Marland Mushrooms and its director, Troy Marland, as accessories to the alleged underpayments under section 550 of the Fair Work Act 2009.



In July 2018, the Federal Court issued a judgment that accepted the employees had been underpaid, but rejected some submissions made by the Fair Work Ombudsman in relation to the operation of the pieceworker provisions in the award (including how to calculate underpayments).

The Federal Court also dismissed the Fair Work Ombudsman's allegations that Marland Mushrooms and Mr Troy Marland were involved as accessories in the underpayments.

The Fair Work Ombudsman appealed the July 2018 judgment and this was the subject of a split decision of the Full Federal Court of Australia on 16 August 2019.

The special leave application seeks to have the High Court consider legal questions regarding how to compensate an employee paid a pieceworker rate if an inadequate rate is paid (e.g. whether they fall back to the minimum hourly rates under the award), and also clarify whether an accessory needs to have knowledge of the legal employment status of an employee (e.g. permanent or casual) to be liable under section 550 of the Fair Work Act 2009.

The Fair Work Ombudsman made the decision to seek special leave to appeal to the High Court due to the public importance and the potential impact this matter has for the protections of vulnerable pieceworkers, as well as significant legal questions regarding accessorial liability.

Follow the Fair Work Ombudsman [@fairwork\\_gov\\_au](https://twitter.com/fairwork_gov_au)  ([http://twitter.com/fairwork\\_gov\\_au](http://twitter.com/fairwork_gov_au)) or find us on Facebook [www.facebook.com/fairwork.gov.au](https://www.facebook.com/fairwork.gov.au)  (<http://www.facebook.com/fairwork.gov.au>) .

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at [www.fairwork.gov.au/mediareleases](http://www.fairwork.gov.au/mediareleases) ([www.fairwork.gov.au/mediareleases](http://www.fairwork.gov.au/mediareleases)) .

Media inquiries:

Michael Anderson, Assistant Media Director

Mobile: 0409 120 830

[michael.anderson@fwo.gov.au](mailto:michael.anderson@fwo.gov.au) (<mailto:michael.anderson@fwo.gov.au>)

## Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

---

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.