



Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by B&E Poultry Holdings Pty Ltd (ACN: 137 454 678) (**B&E**) for the purposes of section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**).

Commencement of Undertaking

2. This Undertaking comes into effect (**the Commencement Date**) when:
 - (a) the Undertaking is executed by B&E; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, B&E undertakes to assume the obligations set out below.

Background

4. B&E operates several businesses within the meat products processing industry. It is particularly known for operating poultry processing facilities and providing labour hire services to other entities within this industry.
5. B&E directly engages workers to perform duties within B&E owned and operated processing facilities in both Queensland and New South Wales. In addition, other B&E employees are contracted out to perform work for third parties within either the meat or poultry processing industries.
6. Workers employed at B&E-owned facilities are generally employed as Processing Employees on either a casual or ongoing basis. Their duties include the processing, preparation, and packing of uncooked poultry, poultry products and poultry by-products.
7. B&E operates its own facilities over a rotating roster. The hours of operation are spread between approximately 3 am and 10 pm on any day of the cycle. Workers are generally rostered to perform a combination of shifts across the operating hours.

Employees

8. B&E employed the following workers on a casual basis at its facility in Ormeau, Queensland:
 - (a) [REDACTED] (employed from 11 February 2013 to 5 June 2013);
 - (b) [REDACTED] (employed from 24 May 2013 to 29 August 2013); and

(c) [REDACTED] (employed from 5 March 2013 to 1 August 2013),
(collectively, the Employees).

9. At all material times, the *Poultry Processing Award 2010 (Modern Award)* applied to B&E in respect of each of the Employees. B&E was required to pay the Employees the phased rates of pay in Schedule A to the Modern Award, calculated by reference to the applicable transitional instruments, namely the notional agreement preserving the *Poultry Processing Award – State 2003 (NAPSA)* and the Australian Pay and Classification Scale derived from the NAPSA.
10. Each Employee was employed as a Poultry Processing Employee, performing duties of the kind referred to in paragraph 6 above. Each of the Employees was properly classified as a "Level 1 Process Employee" under the Modern Award.
11. The Employees worked a rotating roster across the operating hours referred to in paragraph 7 above. [REDACTED] and [REDACTED] worked hours on Saturdays, and each also worked overtime for the purposes of the Modern Award.
12. B&E underpaid the Employees for their work by failing to pay the following entitlements in the Modern Award:
 - (a) minimum hourly rates of pay;
 - (b) casual loadings;
 - (c) shift penalties;
 - (d) overtime rates; and
 - (e) weekend penalties.
13. The underpayments arose as a result of B&E paying flat rates of pay for all hours worked, including work performed at weekends.
14. B&E underpaid the Employees an aggregate total of **\$25,563.70 gross**.
15. B&E also failed to provide pay slips to each Employee as required by the FW Act.
16. As at the Commencement Date, B&E has rectified the underpayments to each of the Employees.

Contraventions

17. The FWO has determined, and B&E admits, the factual matters set out above. B&E also admits that on the basis of those matters B&E contravened:

Wages

- (a) section 45 of the FW Act by failing to pay the Employees their correct minimum hourly rate of pay in accordance with clause 16 and Schedule A of the Modern Award;

Casual Loading

- (b) section 45 of the FW Act by failing to pay the Employees a casual loading in accordance with clause 13.2 and Schedule A of the Modern Award;



Overtime

- (c) section 45 of the FW Act by failing to pay the Employees overtime rates in accordance with clause 26 of the Modern Award;

Shift Penalty Rates

- (d) section 45 of the FW Act by failing to pay the Employees shift penalty rates in accordance with clause 24.4 and Schedule A of the Modern Award;

Saturday Penalty Rates

- (e) section 45 of the FW Act by failing to pay the Employees penalty rates for ordinary time worked on Saturdays in accordance with clause 24.5(a) and Schedule A of the Award;

Pay Slips

- (f) subsection 536(1) of the FW Act by failing to give each of the Employees a pay slip within one (1) day of paying wages,

(collectively, the **Contraventions**)

18. As a result of the Contraventions, the Employees were underpaid as follows:

- (a) [REDACTED] - \$5,513.95 gross;
(b) [REDACTED] - \$12,347.34 gross;
(c) [REDACTED] - \$7,702.41 gross.

19. B&E rectified the underpayments to the Employees on 17 February 2014.

Undertakings

20. For the purposes of section 715 of the FW Act, B&E gives the following undertakings:

Apology

- (a) within 14 days of the Commencement Date, to send an apology to each of the Employees in the terms set out in Attachment A, signed on behalf of B&E (**Apology**);
(b) to provide a copy of each Apology to the FWO within 7 days of sending such Apology;

Workplace Notice

- (c) within 28 days of the Commencement Date, to place a notice (**Workplace Notice**) within all workplaces controlled by B&E in the terms set out in Attachment B and to:
(i) ensure the Workplace Notice is printed in at least A4 size and clearly displayed along with a copy of this EU for a period of at least 30 days;
(ii) ensure the Workplace Notice is displayed in a manner which is reasonably capable of drawing the Workplace Notice and this EU to the general attention of all staff (for example, by placement on a staff noticeboard); and
(iii) provide a copy of the Workplace Notice and evidence of its display to the FWO within 7 days of the display of the notice;



- (d) to send a copy of the Workplace Notice, within 28 days of the Commencement Date, to all current B&E employees performing work at workplaces other than those controlled by B&E.

Future Workplace Relations Compliance

- (e) to ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and FW Act, by developing systems and processes to ensure ongoing compliance with those requirements, including without limitation:
 - (i) systems to ensure ongoing compliance with minimum rates of pay, overtime rates and applicable loadings and penalties; and
 - (ii) systems to ensure the issuance of pay slips to each of B&E's employees within 1 day of payment;
- (f) within 28 days of the Commencement Date, to provide to the FWO details of systems and processes already in place or to be implemented by B&E to ensure ongoing compliance with Commonwealth workplace laws and instruments;

Self-audits and Reporting

- (g) to have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at B&E's own expense, audits of its compliance with Commonwealth workplace laws. Specifically:
 - (i) audits will be conducted on a 6-monthly basis for 2 years following the Commencement Date;
 - (ii) B&E must demonstrate compliance with applicable Commonwealth workplace laws and industrial instruments in relation to the wages and entitlements of each of its employees;
 - (iii) each audit is to include the first full single pay period at the commencement of each quarter; and
 - (iv) B&E must provide a copy of each audit report to the FWO within 7 days of its completion;
- (h) In the event that any audit discloses contraventions by B&E of Commonwealth workplace laws, to rectify all such contraventions within 28 days of the completion of the relevant audit (including, where relevant, by rectifying any and all underpayments arising from such contraventions) and to provide to the FWO evidence of such rectification within 7 days of taking the relevant action;

Workplace Relations Training

- (i) within 90 days of the Commencement Date, to organise and ensure delivery of a training program so that all persons responsible, either directly or indirectly, for the management of B&E's human resources, recruitment and payroll functions are made aware of B&E's



- obligations under the *Fair Work Act 2009* and its regulations and instruments in relation to the employee's entitlements.
- (j) to ensure that the Training covers, and that participants are provided with training material on:
 - (i) compliance with the FW Act, the *Fair Work Regulations 2009* and the Modern Award;
 - (ii) employer obligations in respect to employee record keeping and pay slips;
 - (iii) options available to persons to make complaints and FWO contact information; and
 - (iv) how to access FWO resources, including resources to calculate rates of pay;
 - (k) to ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by B&E;
 - (l) to provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted;
 - (m) within 7 days of the Training being conducted, to provide the FWO with evidence of attendance at the Training (including the name and position of all attendees and the date on which the Training was attended);
 - (n) for a period of 2 years following the Commencement Date, to ensure that training is conducted in the manner prescribed by paragraphs 20(i)-(m) above in relation to any persons who acquire managerial responsibilities that include human resource, recruitment or payroll functions for or on behalf of B&E;

Subsidiary Companies & Transferees

- (o) to take all reasonable steps to:
 - (i) ensure that all Associated Entities of B&E conducting poultry processing business (within the meaning of section 50AAA of the *Corporations Act 2001* (Cth)) comply at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and the FW Act;
 - (ii) monitor the compliance by its Associated Entities with applicable Commonwealth workplace laws and instruments and take all reasonable steps to ensure that any identified contraventions of such laws or instruments are rectified by the relevant Associated Entity;
- (p) on a 6-monthly basis for a period of 2 years following the Commencement Date, to report to the FWO in writing of the steps taken by B&E to comply with the obligations in subparagraphs 20(o)(i)-(o)(ii) above;
- (q) in the event that B&E sells or otherwise transfers some or all of its business to another entity (**Transferee**) (whether an Associated Entity or otherwise) within 2 years of the Commencement Date, to:
 - (i) provide a copy of this EU to the Transferee prior to the sale or transfer; and



- (ii) provide to the FWO, within 7 days of the sale or transfer of business details of the sale or transfer, including the identity of the Transferee and the business functions or operations that have been sold or transferred.

Acknowledgements

21. B&E acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fwo.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by B&E;
- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (f) if the FWO considers that B&E has contravened any of the terms of this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
- (g) consistent with section 715(3) of the FW Act, B&E may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;
- (h) the FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against B&E in relation to any future contraventions of Commonwealth workplace laws;
- (i) B&E must not, and must ensure that its officers, agents and employees do not, make any statements, orally or in writing or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with the admissions and acknowledgements contained in this Undertaking.



Executed as an undertaking

EXECUTED by B&E Poultry Holdings Pty Ltd (ACN: 137 454 678) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

Xu Chun Dong

(Name of director)

28 July 2014

(Date)

In the presence of:

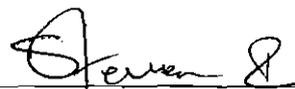


(Signature of witness)

ALAN WONG

(Name of witness)

ACCEPTED by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* on:



Steven Ronson
Executive Director
Dispute Resolution and Compliance

1 August 2014

(Date)

as delegate for the Fair Work Ombudsman subject to the instrument of delegation made pursuant to section 683 of the FW Act and executed by Natalie James on 30 January 2013.

in the presence of:



(Signature of witness)

Crishna Brodd

(Name of Witness)

Attachment A – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of B&E Poultry Holdings Pty Ltd (B&E) for its non-compliance with Commonwealth workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that B&E contravened the *Fair Work Act 2009* and the *Poultry Processing Award 2010* by:

- failing to pay employees correct minimum hourly rates of pay;
- failing to pay a casual loading for all hours worked;
- failing to pay overtime rates
- failing to pay penalty rates for time worked on weekends; and
- failing to provide pay slips.

Regrettably, the investigation determined that you were affected by the above contraventions. B&E is taking steps to remedy the contraventions, including by rectifying the money that you have been underpaid and changing workplace practices.

You received this payment on [Insert date] and [will be]/[have been] provided with payment advice (payslip) regarding the payment.

B&E has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking, B&E has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

B&E expresses its sincere regret and apologises to you for failing to comply with its lawful obligations.

Should you have any questions, please contact *****.

Yours sincerely

Director, B&E Poultry Holdings Pty Ltd



Attachment B - Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Poultry Processing Award 2010* by

B&E Poultry Holdings Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that B&E Poultry Holdings Pty Ltd (B&E) contravened the *Fair Work Act 2009* and the *Poultry Processing Award 2010*.

B&E operates businesses within the meat products processing industry. It is particularly known for operating poultry processing facilities and providing labour hire services to other entities within this industry

The FWO found that B&E contravened the *Fair Work Act 2009* and the *Poultry Processing Award 2010* by:

- failing to pay employees correct minimum hourly rates of pay;
- failing to pay employees a casual loading for all hours worked;
- failing to pay employees overtime rates
- failing to pay employees penalty rates for time worked on weekends; and
- failing to give employees a pay slip within one (1) day of payment of wages.

B&E has formally admitted that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fwo.gov.au) committing to a number of measures to remedy the contraventions, including by apologising to the employees affected by the contraventions and changing workplace practices.

B&E expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, B&E gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you work or previously worked for B&E and have queries or questions relating to your employment, please contact [redacted] on in the first instance on [redacted] if you are in New South Wales or [redacted] on [redacted] if you are in Queensland. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

