



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

Letusgrow Hydroponics Pty Ltd (ACN 109 979 535)

and

Mr Denis Perry (Director)

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by:
 - a. Letusgrow Hydroponics Pty Ltd (ACN 109 979 535) (the **Company**); and
 - b. Denis Perry (**Mr Perry**), Director of the Company;for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

BACKGROUND

2. The Company is in the Horticulture Industry and operates a hydroponic farm located at 63 Duranbah Road, Duranbah, New South Wales growing and processing lettuce and herbs for the commercial food and catering industry.
3. The Company was registered with the Australian Securities and Investments Commission on 09 July 2004. Mr Perry is the sole director of the Company.
4. Mr Perry admits and agrees that, at all material times, he was;
 - a. a Director of the Company since 09 July 2004;
 - b. ultimately responsible for the overall direction, management and supervision of operations at the Company in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment; and
 - c. by reasons of the matters set out above in subparagraphs a. and b. was responsible in a practical sense for ensuring the Company complied with its legal obligations.
5. Over the period from 24 November 2014 to 14 April 2016, the FWO received four requests for assistance alleging the Company had not paid wages for work performed.
6. In response to these allegations the FWO commenced an investigation. The investigation found:
 - a. from 1 January 2010 the Company was covered by the *Horticulture Award 2010* [MA000028] (**the MA**) and the FW Act;
 - b. during the period 3 July 2014 to 11 September 2014 (**Relevant Period**) the Company engaged at least four workers on a volunteer basis to perform horticultural work such as picking, packing and processing of lettuce and herbs;
 - c. the Company set systematic hours of work for the volunteer workers, being 06:30 am to 2:00 pm Monday to Friday (with a morning and lunch break) and 06:30 am to 12:00 pm on Saturday (with a morning break);

- d. the Company provided the workers with food, accommodation and, for the purpose of the Department of Immigration and Border Protection's subclass 417 working holiday visa program, endorsed that each worker had completed work for the Company;
- e. the Company paid two workers \$20 per hour for work performed outside of the hours of work set out above in subparagraph c. and, gave the workers a pay slip in relation to any paid work;
- f. the Company obtained a commercial benefit because of unpaid work performed by the workers;
- g. the workers (listed in **Attachment A**) were in fact employees of the Company for the Relevant Period and were entitled to be paid for all work performed for the Company during the Relevant Period (**Employees**) as set out in Attachment A;
- h. the Employee's entitlements under the MA were as follows:

Classification	Base Rate	Casual Loading	Public Holiday
Level 1	\$16.87 / hour	\$4.22 / hour	\$33.74 / hour

- i. the Company underpaid a total of \$37,781.33 gross to the Employees; and
- j. evidence has been received by the FWO that payments have been made to Employee 1 and Employee 2 (listed in Attachment A) in rectification of the amounts owed by the Company to them.

CONTRAVENTIONS

- 7. The FWO has determined, and the Company admits that the Company contravened section 45 of the FW Act by failing to comply with the following provisions of the MA;
 - a. clause 10.4(b) of the MA which provides that a casual employee will be paid no less than 1/38th of the minimum weekly rate of pay for an employee in that classification in clause 14 (Minimum wages), plus a casual loading of 25%;
 - b. clause 14.1 of the MA which prescribes the minimum hourly rate of pay for ordinary hours of work;
 - c. clause 28.3 of the MA which stipulates that all work performed on public holidays will be paid for at the rate of 200% of the applicable ordinary rate; and
 - d. clause 19.1 of the MA which requires that wages be paid by cash, cheque or electronic funds transfer into the employee's bank or other recognised financial institution account, on a weekly or fortnightly basis according to the actual ordinary hours worked each week or fortnight, or according to the applicable piece rate payment.

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

8. This Undertaking comes into effect when:
- a. it is executed by the Company and Mr Perry; and
 - b. the FWO accepts the Undertaking so executed.

ENFORCEABLE UNDERTAKING

9. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act the Company and Mr Perry undertake to do the following:

Rectify underpayments

- a. within 21 days of the execution of this Undertaking, rectify outstanding underpayments arising from the contraventions identified in subparagraph 7.a. to 7.c by paying Employee 3 and Employee 4 the amounts listed in Attachment A, and providing evidence to the FWO that the payments were made by the same date;
- b. if either of those Employees cannot be located, within 21 days of the execution of this Undertaking, make an application to the Commonwealth of Australia (through the FWO), in accordance with section 559 of the FW Act, to pay money into the Commonwealth Consolidated Revenue Fund. The Company will complete the required documents supplied by the FWO;

FWO My account registration

- c. within 21 days of the execution of this undertaking:
 - i. register with the FWO My account portal at www.fairwork.gov.au/register and fully complete the My account profile, including information about the business and award/agreement coverage, through this portal;
 - ii. using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My account; and
 - iii. provide to the FWO the My account Customer Registration Number (CRN);
- d. within 28 days of the execution of this Undertaking, at a mutually agreed time and location, demonstrate to an officer of the FWO knowledge of the use of My account, including saving information within My account from the website and relevant FWO online tools. You must also demonstrate how your use of this saved information will contribute toward compliance with workplace obligations including payment to employees of the correct minimum pay rates and public holiday penalty rates;
- e. within 28 days of the execution of this Undertaking, subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription
- f. the subscription to the FWO's 'Subscribe to email updates' function is available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to->

email-updates.To subscribe the following process should be followed:

- i. choose the relevant State/s and industry, selecting information updates on the following options:
 - 1. pay rates and entitlements;
 - 2. new products and resources;
 - 3. about us and our work;
 - 4. updates in my industry; and
 - 5. tailored information that's relevant to me;

Workplace relations systems and processes

- g. ensure they comply at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the MA;
- h. provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with subparagraph (g) above. Without limitation, such systems and processes will relate to:
 - i. ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - ii. issuing payslips to employees within 1 working day of payment; and
 - iii. keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

Workplace relations training

- i. within 120 days of the execution of this Undertaking , organise and ensure training is provided to all persons who have responsibility for human resource, recruitment or payroll functions (**Training**);
- j. ensure the Training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the MA;
- k. ensure the Training is conducted by a workplace trainer, such person or organisation to be approved by the FWO and paid for by the Company;
- l. 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. provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended);

Online Training

- n. ensure that all persons responsible for management, payroll and human resources

functions complete the educational activities on the FWO website; as set out in Attachment D;

- o. for each person required to complete the education activities, enter all of the required information in Attachment E and provide copies of the completed attachment to the FWO within 3 months of the execution of this Undertaking;
- p. for a period of 3 years from the execution of this Undertaking, ensure that the educational activities are completed by any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial, payroll and human resources functions responsibilities;
- q. For any persons taking on any of these functions, complete Attachment E and submit to the FWO within 28 days of taking responsibility for these functions.

Apology

- r. send a letter of apology (**Apology Letter**) to the Employees listed in Attachment A in the form of either Attachment C or D to this undertaking and provide copies to the FWO within 14 days of the execution of this undertaking;

Audit Activity

- s. cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of all employees as follows:
 - i. 21 days prior to the Audit, as specified below, provide for the FWO's approval, details of the methodology to be used to conduct the Audit;
 - ii. the Audit is to include four (4) separate full pay periods from the financial year relevant to the respective report dates in subparagraph iii. below of which at least one pay period must include a public holiday;
 - iii. the Audit is to be finalised and a report on the outcomes of the Audit provided to the FWO by 30 March 2018, 2019 & 2020;
- t. in the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of each of the finalisation dates specified above in subparagraph (s.iii), including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;
- u. if requested, provide the FWO with all records and documents used to conduct the audit, including any working documents, within 7 days of such a request;
- v. if any Employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified above in subparagraph (s.iii), make an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. The Company will complete the required documents supplied by the FWO;

Matters notified to the FWO

- w. where the FWO receives a request for assistance regarding non-compliance with a modern award or registered agreement by the Company, the Company and its officers undertake to fully co-operate with the FWO to ensure compliance. This includes:
 - i. providing all requested employment records and other documentation to the FWO relevant to the request for assistance;
 - ii. participating fully in any subsequent requests for information relevant to the request for assistance, including participation in any formal records of interview; and
 - iii. co-operation in FWO's processes employed to resolve the request for assistance.

Workplace Notice

- x. within 7 days of the execution of this Undertaking, cause to be displayed within the workplace/s controlled by the Company a notice in the form of Attachment B to this Undertaking (**Workplace Notice**) and provide photographic evidence to the FWO of its display and the location of the notice in the workplace:
 - i. ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
 - 1. in a location to which all employees who work at the Company have access;
 - 2. in a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard;
 - 3. for a period of 28 continuous days.
 - ii. at the end of the period of 28 days provide confirmation to the FWO that the Workplace Notice has been continuously displayed for the required period;

Record Keeping

- y. within 14 days of the execution of this Undertaking, provide to the FWO a copy of time and wage records and payslips for one employee for the first full pay period following the execution of this undertaking. Such records are to comply with Commonwealth workplace laws; and

Broader Community workplace relations education

- z. within 3 months of the execution of this Undertaking, make a donation of \$20,000.00 to Justice Connect ABN 54 206 789 276 PO Box 436 Darlinghurst NSW 1300 with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the community, and provide evidence of the donation to FWO.

No Inconsistent Statements

10. The Company and Mr Perry:

- a. must not; and
- b. must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

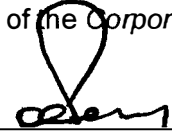
ACKNOWLEDGEMENTS

11. The Company and Mr Perry acknowledges that:

- a. the FWO may;
 - i. make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - ii. release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - iii. issue a media release in relation to this Undertaking;
 - iv. from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
 - v. rely upon the admissions made by the Company set out in paragraphs 7.a. to 7.d. above in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations.
- b. 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 herein;
- c. consistent with section 715(3) of the FW Act, the Company and Mr Perry may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d. if the Company or Mr Perry contravenes any of the terms of this Enforceable Undertaking:
 - i. 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; and
 - ii. this Enforceable Undertaking may be provided to the Court as evidence of the above admissions made by the Company in subparagraphs 7.a. to 7.d., and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by LETUSGROW HYDROPONICS PTY LTD in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

(Signature of director/company secretary)

Denis George Perry

(Name of director)

(Name of director/company secretary)

30/10/17

(Date)

(Date)

in the presence of:



(Signature of witness)

in the presence of:

(Signature of witness)

Andrew Procter

(Name of witness)

(Name of witness)

EXECUTED by Denis Perry



Denis Perry

30/10/17

(Date)

in the presence of:



(Signature of witness)

Andrew Procter

(Name of witness)

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



Michael Campbell

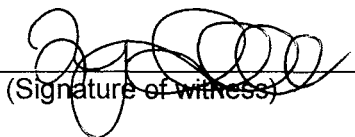
13 November 2017

(Date)

Deputy Fair Work Ombudsman Operations

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:




(Signature of witness)

Lynda McAlary Smith

(Name of Witness)

Attachment A – Underpayments

Ordinary Rates						Casual Loading				Public Holiday Rates				Total
Name	Period of Employment	Hours	Owed	Paid	Underpaid	Hours	Owed	Paid	Underpaid	Hours	Owed	Paid	Underpaid	
	3/07/2014 to 11/09/2014	396.20	\$6,683.89	\$0.00	\$6,683.89	396.20	\$1,671.96	\$0.00	\$1,671.96	0.00	\$0.00	\$0.00	\$0.00	\$8,355.85
	3/07/2014 to 11/09/2014	396.20	\$6,683.89	\$0.00	\$6,683.89	396.20	\$1,671.96	\$0.00	\$1,671.96	0.00	\$0.00	\$0.00	\$0.00	\$8,355.85
	27/08/2014 to 22/08/14	509.00	\$8,586.83	\$190	\$8,396.83	515.92	\$2,177.18	\$0.00	\$2,177.18	6.92	\$233.48	\$0.00	\$233.48	\$10,807.49
	27/08/2014 to 22/08/14	478.40	\$8070.61	\$90.00	\$7,980.61	485.32	\$2,048.05	\$0.00	\$2,048.05	6.92	\$233.48	\$0.00	\$233.48	\$10,262.14

Attachment B – Form of Workplace Notice

Contraventions of the *Horticulture Award 2010* [MA000028] by LETUSGROW HYDROPONICS PTY LTD

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that LETUSGROW HYDROPONICS PTY LTD contravened the *Horticulture Award 2010* [MA000028] by:

- Failing to pay four employees the base hourly rate for ordinary time worked;
- Failing to pay four employees 25% casual loading;
- Failing to pay two employees penalty rates for work performed on a public holiday; and
- Failing to pay four employees wages for work performed.

LETUSGROW HYDROPONICS PTY LTD has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including rectifying the underpayments to the employee's affected by the contraventions and making a donation of \$20,000.00 to fund education about workplace rights.

LETUSGROW HYDROPONICS PTY LTD expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, LETUSGROW HYDROPONICS PTY LTD 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 worked for LETUSGROW HYDROPONICS PTY LTD and have queries or questions relating to your employment, please contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment C – Letter of Apology to [REDACTED]

Date>

<Employee Name & Address>

Dear <Employee Name>

I am writing to apologise on behalf of LETUSGROW HYDROPONICS PTY LTD for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that LETUSGROW HYDROPONICS PTY LTD contravened the Fair Work Act 2009 by failing to pay you the following entitlements under the Horticulture Award 2010 [MA000028]:

- failing to pay you the base hourly rate for ordinary time worked;
- failing to pay you the 25% casual loading; and
- failing to pay an employee wages for work performed.

LETUSGROW HYDROPONICS PTY LTD has taken steps to remedy the contraventions, including by:

- paying the amount that you have been underpaid (\$XXXX Gross); and
- committing to future compliance.

LETUSGROW HYDROPONICS PTY LTD 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, LETUSGROW HYDROPONICS PTY LTD has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

LETUSGROW HYDROPONICS PTY LTD expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Denis Perry on XXXX

Yours sincerely

[Director/Officer]

LETUSGROW HYDROPONICS PTY LTD

Attachment D – Letter of Apology to [REDACTED]

Date>

<Employee Name & Address>

Dear <Employee Name>

I am writing to apologise on behalf of LETUSGROW HYDROPONICS PTY LTD for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that LETUSGROW HYDROPONICS PTY LTD contravened the Fair Work Act 2009 by failing to pay you the following entitlements under the Horticulture Award 2010 [MA000028]:

- failing to pay you the base hourly rate for ordinary time worked;
- failing to pay you the 25% casual loading;
- failing to pay you penalty rates for work performed on a public holiday; and
- failing to pay you wages for work performed.

LETUSGROW HYDROPONICS PTY LTD has taken steps to remedy the contraventions, including by:

- paying the amount that you have been underpaid (\$XXXX Gross); and
- committing to future compliance.

LETUSGROW HYDROPONICS PTY LTD 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, LETUSGROW HYDROPONICS PTY LTD has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

LETUSGROW HYDROPONICS PTY LTD expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Denis Perry on XXXX

Yours sincerely

[Director/Officer]

LETUSGROW HYDROPONICS PTY LTD

Attachment E

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ (Enter name and position in the organisation)

have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date completed: _____
- Hiring employees date completed: _____
- Managing performance date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Introduction to the Pay and Conditions Tool date completed: _____
- PACT – Award classifications date completed: _____
- PACT – Pay summary date completed: _____
- PACT – Penalty rates date completed: _____
- PACT – Allowances date completed: _____
- PACT – Award Coverage date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Contractors and employees – what's the difference? date completed: _____

Read information on the following:

- **Pay Overview**
- Minimum wages Page Ref No. _____ date completed: _____

○ Penalty rates & allowances Page Ref No. _____ date completed: _____

• ***Leave Overview***

○ Annual leave Page Ref No. _____ date completed: _____

○ Sick & carer's leave Page Ref No. _____ date completed: _____

• ***Ending Employment Overview***

○ Notice & final pay Page Ref No. _____ date completed: _____

○ Unfair dismissal Page Ref No. _____ date completed: _____

• ***Employee Entitlements Overview***

○ Types of employees Page Ref No. _____ date completed: _____

○ National Employment Standards Page Ref No. _____ date completed: _____

• ***Awards & Agreements Overview***

○ Awards Page Ref No. _____ date completed: _____

• Date and signature: _____