



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Penelope Dureau & Robert Edward Dureau Trading as Lindisfarne Village Gourmet Meats

(ABN 28 060 337 202)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (FWO) by:
 - (a) Penelope Dureau & Robert Edward Dureau trading as Lindisfarne Village Gourmet Meats (Employer)
(ABN 28060337202)
 - (b) for the purposes of section 715 of the *Fair Work Act 2009* (FW Act).

Background

2. Penelope Dureau & Robert Edward Dureau are the owners and operators of the business known as Lindisfarne Village Gourmet Meats.
3. Lindisfarne Village Gourmet Meats (the Business) is a retail butchery located at 5 Franklin Street Lindisfarne Tasmania 7015.
4. In May 2016 the FWO commenced an investigation of Lindisfarne Village Gourmet Meats following the receipt of a Request for Assistance from a former employee of Lindisfarne Village Gourmet Meats, listed in Attachment A (the Employee).
5. The Employee was employed by Lindisfarne Village Gourmet Meats between 9th March 2015 and 5th April 2016.
6. The Employee was employed as an Apprentice Butcher 1st year.
7. The terms and conditions of the Employee's employment were governed by the *Meat Industry Award 2010* (the Award) and the FW Act.
8. As a result of the investigation, the FWO determined that the Employer had contravened provisions of the FW Act and the Award by failing to pay the minimum entitlements as required by the Award. The contraventions resulted in the Employee being underpaid a total of \$19,840.60. The Employer has agreed to rectify the underpayment.

Contraventions

9. The FWO has determined, and the Employer admits, that they contravened section 45 of the FW Act by failing to comply with the following provisions of the Award:
 - (a) Clause 21.2 (a) by failing to pay the minimum wage Monday to Friday
 - (b) Clause 36.1 by failing to pay overtime rates
 - (c) Clause 37.5 by failing to pay correct annual leave on termination
 - (d) Clause 37.4 by failing to pay Annual Leave Loading.

Commencement of Undertaking

10. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by the Employer; and
 - (b) the FWO accepts the Undertaking so executed.

Upon the commencement of this Undertaking, the Employer undertakes to assume the obligations set out below.

Undertakings

11. For the purposes of section 715 of the FW Act, Penelope Dureau & Robert Edward Dureau make the following undertakings:

Rectify Underpayments

- (a) The Employer undertakes to:
 - (i) pay the amount of \$19,840.60 less taxation to the Employee (being the underpayment arising from the Contraventions) within 12 months of the Commencement Date of this Undertaking. Payments to be as per the plan shown in Attachment B of this Undertaking.
 - (ii) Within 7 days from the end of each calendar month after the commencement date of this Undertaking, provide to FWO evidence of payments made to the employee during the preceding month.
- (b) Where contacted by current or former employees not included in this Undertaking alleging that their lawful entitlements have not been met, the Employer agrees to:
 - (i) notify the FWO within 7 days of receiving the allegation detailing the nature and content of the allegation;
 - (ii) within 28 days of receiving the allegation, take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act has occurred, and where such contraventions are found, rectify those contraventions within 60 days after receipt of the allegation;
 - (iii) within 7 days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other allegations identified have been resolved; and
 - (iv) should an allegation not be resolved, notify the FWO why the allegation could not be resolved within 28 days of receipt of the allegation.

FWO My Account Registration

- (c) the Employer undertakes to:
 - (i) within 7 days of the commencement date of this Undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options; and
 - (ii) within 14 days of the commencement date of this Undertaking, provide to the FWO the 'My Account' registration number.
- (d) The Employer undertakes to:
 - (i) within 7 days of the commencement date of this Undertaking:
 - i. subscribe to receive "general information" email alerts from the FWO relating to regarding the Award and Tasmania (alert subscription available at www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates);
 - ii. subscribe to FWO's employer newsletter for the relevant State and industry (subscription available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>), selecting at least the following options:
 - a. pay updates;
 - b. award updates;
 - c. holiday entitlements;

- d. working hours and breaks; and
 - e. annual leave / sick leave;
- (ii) within 14 days of the commencement date of this Undertaking, provide to the FWO evidence of the above subscriptions, including advising the FWO of the email address used to register;

Future Workplace Relations Compliance

- (e) The Employer undertakes to:
- (i) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Award, in respect of the Business and any future businesses operated by the Penelope Dureau and/or Robert Edward Dureau (whether as a sole trader, a director of a company or by way of any other business structure).
- (f) 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 paragraph (e) above. Without limitation, such systems and processes relating to:
- (ii) Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - (iii) Keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

Self-audits and Reporting

- (g) The Employer undertakes to:
- (i) have completed by an external accounting professional (e.g. Certified Practicing Accountant), audit specialist or employment law specialist, at their expense, audits (**Audits**) of compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Award, in respect of pay rates, conditions, payslips and record keeping in relation to all of employees of the Business during the relevant audit period, according to the following schedule:
 - i. an Audit of the first complete pay cycle following 1 January 2017, which is to be finalised within 28 days of the last day of the pay cycle;
 - ii. an Audit of the first complete pay cycle following 1 July 2018, which is to be finalised within 28 days of the last day of the pay cycle;
 - (ii) without limiting paragraph 11(g)(i) above, ensure that each Audit examines the Employer's compliance with any wage rate, penalty or allowance increases flowing from the Fair Work Commission's Annual Wage Reviews;
 - (iii) within 7 days of the Audit finalisation dates contained in paragraph 13(g)(i), provide the FWO with details of the methodology used to conduct the Audit and a copy of the certified audit report;
 - (iv) upon request by FWO, provide within 7 days of receiving such request a copy of all documents provided to the auditor for the purpose of undertaking an Audit;
 - (v) in the event that an Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, rectify all such contraventions within 14 days of receipt of the Audit results; and
 - (vi) provide evidence of rectification of all contraventions disclosed by an Audit to the FWO within 14 days of rectification.

Workplace Notice

- (h) The Employer undertakes to:
 - (vii) within 28 days of the commencement date of this Undertaking, place a notice (**Workplace Notice**) within the premises operated by the Employer in a location which is accessible to all persons employed in the business Employer in the terms set out in Attachment C, such notice to remain in place for a total period of 7 consecutive days; and
 - (viii) provide a copy of the Workplace Notice and photographic or digital image as evidence of its display to the FWO within 7 days of the display of the notice.

No Inconsistent Statements

12. Penelope Dureau & Robert Edward Dureau:

- 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

13. Penelope Dureau & Robert Edward Dureau acknowledge that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its [website](http://www.fairwork.gov.au) at www.fairwork.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 Penelope Dureau & Robert Edward Dureau;
- (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 the Employer 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, the Employer may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an Undertaking

EXECUTED by Penelope Dureau & Robert Edward Dureau:



Robert Edward Dureau

25-10-16
(Date)

in the presence of:



(Signature of witness)

BENJAMIN ABEY
(Name of witness)


Penelope Dureau


18.10.16
(Date)

in the presence of:


(Signature of witness)

BENJAMIN ABEY
(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

8 NOVEMBER 2016
(Date)

Delegate for the FAIR WORK OMBUDSMAN


in the presence of:


(Signature of witness)

LISA-MARIE OLIVER
(Name of Witness)

Attachment A

Affected Employee

Employee Name	Classification	Underpayment
	Apprentice Butcher 1 st year	\$19,840.60

Attachment B – Payment Plan

Payments to be made to the Employee in consecutive monthly payments each of \$1653.39 (Gross).

The first payment to be made within 14 days following the date of Execution of this Undertaking.

Attachment C – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Meat Industry Award 2010* by P Dureau & R.E Dureau

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Penelope Dureau & Robert Edward Dureau contravened the *Fair Work Act 2009* and the *Meat Industry Award 2010* (the **Modern Award**) in respect of Lindisfarne Village Gourmet Meats (the **Business**).

The FWO has found that Penelope Dureau & Robert Edward Dureau contravened the *Fair Work Act 2009* and the *Meat Industry Award 2010* by:

- (a) failing to pay the minimum wage Monday to Friday
- (b) failing to pay overtime rates
- (c) failing to pay correct annual leave on termination
- (d) failing to pay Annual Leave Loading.

Penelope Dureau & Robert Edward Dureau have formally admitted to the 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 by rectifying the underpayments to the employee affected by the contraventions and changing workplace practices.

Penelope Dureau & Robert Edward Dureau express their sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Penelope Dureau & Robert Edward Dureau give a commitment that such conduct will not occur again and that they will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you work in the Business and have queries or questions relating to your employment, please contact Robert Dureau in the first instance on telephone [insert contact phone number] or by email at [insert email address].

Anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94 to check their rates of pay and Restaurant Award terms and conditions.

Penelope Dureau & Robert Edward Dureau

Owners – Lindisfarne Village Gourmet Meats