



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Pristine Employment Solutions Pty Ltd

(ACN: 166 549 499)

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 Pristine Employment Solutions Pty Ltd (ACN: 166 549 499) (**Company**).

Commencement of Undertaking

2. This Undertaking comes into effect when:
 - a. the Undertaking is executed by the Company; and
 - b. the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, the Company undertakes to assume the obligations set out below.

Background

4. The Company trades as Flavours Fruit and Veg and operates a wholesale business supplying fresh fruit and vegetables to hotels and restaurants in Melbourne, Victoria.
5. The Company currently has a workforce of approximately 34 employees and is covered by the *Storage Services and Wholesale Award 2010* [MA000084] (**Storage and Wholesale Award**) in respect of its employees who perform duties commensurate with the classification definitions set out in Schedule B to the Storage and Wholesale Award.
6. On 19 August 2016, the FWO received a request for assistance (**RFA**) from the employee listed in Appendix A (**Employee**) alleging non-payment of payment in lieu of notice of termination and non-payment of annual leave on termination of employment. Following the commencement of a FWO investigation, the Employee made additional allegations of non-payment for all hours worked and non-payment of penalty rates and overtime entitlements.
7. The FWO found that the Employee commenced employment with the Company on 1 July 2014 and remained employed until she was terminated, by reason of redundancy, by the Company on 1 August 2016.
8. The FWO found that the Employee was engaged by the Company as follows:

Date	Employment Status	Classification Level
1 July 2014	Casual	Wholesale employee level 1, after 3 months
18 September 2014	Casual	Wholesale employee level 1, after 12 months
24 October 2014	Part-time	Wholesale employee level 1, after 12 months

9. The FWO has determined, and the Company admits, that the Company has contravened the following in relation to the Employee:
 - a. Section 44 of the FW Act which provides that an employer must not contravene a term of the National Employment Standards (**NES**). The contraventions of the NES are as follows:
 - i. Section 90(1) of the FW Act which provides for payment of annual leave;
 - ii. Section 90(2) of the FW Act which provides for payment of untaken

- annual leave upon termination of employment;
 - iii. Section 99 of the FW Act which provides for payment of personal/carer's leave;
 - iv. Section 116 of the FW Act which provides for payment for absence on a public holiday;
 - v. Section 117(1) of the FW Act which provides for written notice of termination;
 - vi. Section 117(2) of the FW Act which provides for notice of termination or payment in lieu of notice of termination; and
 - vii. Section 119 of the FW Act which provides for redundancy pay.
- b. Section 45 of the FW Act which provides that a person must not contravene a term of a Modern Award. The contraventions of the Storage and Wholesale Award are as follows:
 - i. Clause 11.3(c) which provides that an employer and part-time employee must agree on a regular pattern of work;
 - ii. Clauses 11.3(f), read in conjunction with clause 24.1 which provide for the payment of overtime;
 - iii. Clause 11.3(g), read in conjunction with clause 15 which provides for minimum rates of pay for part-time employees;
 - iv. Clause 11.4(b), read in conjunction with clause 15 which provides for the payment of casual loading;
 - v. Clause 20.3 which prescribes that on termination of employment, wages due to an employee must be paid on the day of termination or as soon as reasonably practicable within two working days after termination;
 - vi. Clause 25.4, read in conjunction with clause 15 which provides for the early morning shift allowance;
 - vii. Clause 24.5(b), read in conjunction with clause 15 which provides for Sunday penalty rates; and
 - viii. Clause 26.5(a) which provides for payment of annual leave loading.
- c. Section 535(1) of the FW Act which prescribes that an employer must make, and keep for 7 years, employee records of the kind prescribed by the *Fair Work Regulations 2009* (Cth) (**FW Regulations**).
- d. Section 535(2) of the FW Act which provides that employee records must include any information prescribed by the FW Regulations. The Company contravened section 535 of the FW Act by failing to keep records of hours worked by the Employee between 1 July 2014 and 11 March 2015, in accordance with regulation 3.33 of the FW Regulations.
- e. Section 536(2) of the FW Act which provides that pay slips must be in a form prescribed by the FW Regulations and include any information prescribed by the FW Regulations. The Company contravened section 536(2) of the FW Act by providing the Employee with a pay slip showing an incorrect payment amount and date.

10. The FWO recognises that the Company has:

- a. Made payments totalling \$23,537.62 (gross) to the Employee in rectification of the above contraventions.
- b. Initiated a review of current employee wage rates, classification levels and rostering arrangements to ensure compliance with the Storage and Wholesale Award.

Undertakings

11. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes the following:

Compliance Review

12. At its own expense, the Company will cause to have performed by an external professional with qualifications in accounting or workplace relations or an external professional otherwise approved by the FWO, a review of the Company's compliance with all Commonwealth workplace laws and instruments (**Review**), including but not limited to the Storage and Wholesale Award, relating to the pay and conditions of the Company's employees as follows:
- a. The Review will assess the employment conditions of all of the Company's employees, from the first pay period on or after 1 July 2014 to the date of execution of this Undertaking (**Review Period**);
 - b. The Review will assess the Company's compliance with wages and work related entitlements under applicable workplace laws, including any applicable industrial instrument(s) and the NES, according to each employee's classification, category of employment and hours of work during the Review Period; and
 - c. The Review will be finalised within 90 days of the execution of this Undertaking.
13. The Company will provide to the FWO within 14 days of the finalisation of the Review:
- a. A copy of the Review report which will include a statement of the methodology used to conduct the Review; and
 - b. Details of any contraventions identified in the Review.
14. If requested by the FWO, the Company will provide the FWO with all records and documents used to conduct the Review, including any working documents, within 7 days of such a request.
15. In the event that the Review identifies contraventions of Commonwealth workplace laws, the Company will rectify all such contraventions and provide evidence of rectification in accordance with timeframes to be agreed between the Company and the FWO and make full payment within 365 days of the execution of this Undertaking.
16. If any employee(s) identified as having underpayments owing to them cannot be located, within 365 days after the execution of this Undertaking the Company pay the amount(s) owing to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act.

Future Workplace Relations Compliance

17. Within 14 days of the execution of this Undertaking, the Company will:
- a. Register with the FWO My Account portal at www.fairwork.gov.au/register and fully complete the My Account profile, including information about the Company and industrial instrument coverage;
 - b. Using the FWO Pay and Conditions Tool (**PACT**), calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to the Company's My Account profile; and

- c. Provide to the FWO the My Account Customer Registration Number (CRN).
18. The Company will ensure that it complies at all times and in all respects with the FW Act, the FW Regulations, the Storage and Wholesale Award and any other Modern Award(s) applicable to its employees.
 19. Within 60 days of the execution of this Undertaking, the Company will provide to the FWO details of systems and processes already in place or to be implemented to comply with paragraph 18 above. Without limitation, such systems and processes will relate to:
 - a. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - b. Ensuring that the employment status of each employee (i.e. whether they are full-time, part-time or casual) is adequately communicated to each employee at the commencement of employment;
 - c. Ensuring that employees meet the definition of full-time, part-time and casual employees as outlined in clause 11 of the Storage and Wholesale Award; and
 - d. Ensuring employees have a direct line of communication with payroll and management to raise issues about their pay and other conditions of employment, such as via a dedicated email address or contact person.

Workplace Relations Training

20. Within 120 days of the execution of this Undertaking, the Company will:
 - a. At its own cost, organise and ensure training is provided to all persons who have responsibility for human resource, recruitment or payroll functions (**Training**);
 - b. Ensure that the Training relates to compliance with applicable workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Storage and Wholesale Award; and
 - c. Ensure that the Training is conducted by a person approved by the FWO.
21. Within 7 days of the delivery of the Training, the Company will provide to the FWO:
 - a. An outline of the content of the Training;
 - b. The name of the person or organisation who delivered the Training;
 - c. The method of delivery of the Training; and
 - d. Evidence of attendance at the Training, including the name and job title of all attendees and the date of attendance.
22. For a period of three years following the execution of this Undertaking, the Company will ensure that training is conducted in the manner prescribed in paragraph 20 in relation to any new or existing employees or contractors, who, after the commencement of this Undertaking acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Company.

Audit Activity

23. The Company will cause to have performed by an external professional with qualifications in accounting or workplace relations or an external professional otherwise approved by the FWO, 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 the Company's employees as follows:
- a. The Audits will assess a sample of at least 25% of the Company's workforce at the relevant time, with the sample to be representative of the different work locations, classifications and types or categories of work that apply across the Company's business;
 - b. The Audits will be conducted for all full pay periods where part of the period falls within the following dates:
 - i. 1 June 2017 – 30 June 2017 - to be finalised by 30 August 2017;
 - ii. 1 June 2018 – 30 June 2018- to be finalised by 30 August 2018; and
 - iii. 1 June 2019 – 30 June 2019 - to be finalised by 30 August 2019.
 - c. The Audits will assess the Company's compliance with the following obligations according to each employees' classification of work, category of employment and hours worked during the Audit period:
 - i. Wages or work related entitlements under the applicable industrial instrument and the National Employment Standards; and
 - ii. Record keeping and pay slip obligations listed within Division 3 of Part 3 - 6 of the FW Act and within the FW Regulations.
24. In the event that an Audit identifies contraventions of Commonwealth workplace laws, the Company will rectify all such contraventions and provide evidence of such rectification to the FWO within 30 days of completion of the Audit.
25. The Company will provide to the FWO within 14 days of each of the finalisation dates specified in subclause 23(b):
- a. A copy of the Audit report which will include a statement of the methodology used to conduct the Audit; and
 - b. Details of any contraventions identified in the Audit.
26. If requested by the FWO, the Company will provide the FWO with all records and documents used to conduct the Audit, including any working documents, within 7 days of such a request.
27. If any employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause 23(b) above, the Company pay the amount(s) owing to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act.

Apology

28. Within 14 days of the execution of this Undertaking, the Company will send a letter of apology (**Apology Letter**) to the Employee in the form of Attachment B to this Undertaking and provide a copy to the FWO.

Website Notice

29. Within 14 days of the FWO publishing a Media Release on its website in respect to the Undertaking, the Company will post a notice on the Company's website at

<http://flavoursfruitandveg.com.au/> (**Website Notice**) with respect to this Undertaking and which:

- a. Is in the form of Attachment C;
- b. Is displayed in a prominent location on the homepage of the website in at least size 10 font;
- c. Is displayed for a period of 14 continuous days; and
- d. Contains an html link to the Undertaking.

Workplace Notice

30. Within 14 days of the execution of this Undertaking, the Company will:

- a. Display within all workplaces where work is performed by its employees a notice in the form of Attachment C to this Undertaking (**Workplace Notice**) and provide photographic evidence to the FWO of its display; and
- b. Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed;
 - i. In a location to which all employees of the Company have access;
 - ii. In a manner which is reasonably capable of drawing the attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard); and
 - iii. For a period of 14 continuous days.

Contribution Payment

31. Within 14 days of the execution of this Undertaking, the Company will:

- a. Make a donation of \$5000 to Jobwatch Inc. [ABN: 74 615 132 361] of 5/21 Victoria St, Melbourne Victoria 3000, with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the community; and
- b. Provide evidence of the donation to the FWO within seven days of payment.

Acknowledgements

32. The Company acknowledges that:

- a. The FWO may make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO website at www.fairwork.gov.au;
- b. The FWO may 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);
- c. The FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to this Undertaking (and any of the Attachments hereto) and its terms;
- d. The FWO may rely upon the admissions made by the Company set out in paragraph 9 above in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations;

- 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 herein;
- f. Consistent with section 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- g. If the Company contravenes any of the terms of this 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 Undertaking may be provided to the Court as evidence of the admissions made by the Company in paragraph 9 above, and also in respect of the question of costs.

No Inconsistent Statements

33. The Company:

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

Executed as an undertaking

EXECUTED by Pristine Employment Solutions Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

PETER CANNARO

(Name of director)

17/5/17

(Date)



(Signature of director/company secretary)


GASSANE ELBOR

(Name of director/company secretary)

17/5/17

(Date)

in the presence of:




(Signature of witness)

CRAG CANNARO

(Name of witness)

in the presence of:



(Signature of witness)

CRAG CANNARO

(Name of witness)

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



Steve Ronson
Executive Director Dispute Resolution and
Compliance

25 MAY 2017

(Date)



(Signature of witness)

LISA-MARIE OLIVER

(Name of Witness)

Attachment A – Employee

- [REDACTED]

Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Pristine Employment Solutions Pty Ltd trading as Flavours Fruit and Veg (**Company**) for non-compliance with Commonwealth workplace relations laws.

A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that your employment with the Company was covered by the [Storage Services and Wholesale Award 2010 \[MA000084\]](#) and that the Company had contravened the *Fair Work Act 2009* (Cth) and the *Storage Services and Wholesale Award 2010* by:

- Failing to make an agreement with you as to a regular pattern of part-time work at the commencement of part-time employment
- Failing to provide you with written notice of termination
- Failing to give you notice of termination or payment in lieu of notice of termination
- Failing to pay you redundancy pay
- Failing to pay you minimum rates of pay
- Failing to pay you casual loading during your period of casual employment
- Failing to pay you wages on the day of termination or as soon as reasonably practicable within two working days after termination
- Failing to pay you overtime rates
- Failing to pay you Sunday penalty rates
- Failing to pay you early morning shift allowance
- Failing to pay you for periods of annual leave taken during your employment
- Failing to pay you annual leave loading for periods of annual leave taken during your employment
- Failing to pay you annual leave and annual leave loading on termination
- Failing to pay you for periods of personal/carer's leave taken during your employment
- Failing to pay you for ordinary hours on public holidays
- Failing to keep records of hours worked by you during your period of casual employment
- Providing you with a pay slip showing an incorrect payment date and amount

The Company has taken steps to remedy the contraventions, including providing back payment and making a donation of \$5000 to fund education about workplace rights and entitlements.

The Company 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 we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

The Company expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Mr Gassane Elbob, Director at [REDACTED].

Yours sincerely

Mr Gassane Elbob

Attachment C – Form of Website and Workplace Notice

Contraventions of *Fair Work Act 2009* (Cth) by Pristine Employment Solutions Pty Ltd trading as Flavours Fruit and Veg

Pristine Employment Solutions Pty Ltd trading as Flavours Fruit and Veg (**Company**) employs approximately 34 employees.

As a result of a review of our wage records, the Company has identified circumstances in which it failed to provide the correct entitlements to an employee between July 2014 and July 2016. These underpayments amount to contraventions of the *Fair Work Act 2009* (Cth) and the [Storage Services and Wholesale Award 2010 \[MA000084\]](#).

The Company has formally admitted to the Fair Work Ombudsman (**FWO**) that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (which will be available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including:

- Rectifying underpayments to employees resulting from the contraventions;
- Making a donation of \$5000 to fund education about workplace rights and entitlements; and
- Providing training and conducting future audits, to ensure employees are paid correct rates of pay.

The Company expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, the Company gives a commitment to ensuring future compliance with Commonwealth workplace relations laws.

If you are a current or former employee of the Company and you have questions regarding this notice, please contact us via [REDACTED].

If you have general questions regarding conditions of employment, please refer to the FWO website at www.fairwork.gov.au or call the Infoline on 13 13 94.