



Australian Government

# Fair Work

## OMBUDSMAN

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### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

THALES AUSTRALIA LIMITED

(ACN 008 642 751 / ABN 66 008 642 751)

## 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) Thales Australia Limited (ACN 008 642 751 / ABN 66 008 642 751) (**the Company**).

### COMMENCEMENT OF ENFORCEABLE 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. This Undertaking will expire on 31 December 2020.

### BACKGROUND:

4. The Company develops, supplies and maintains products and services including munitions, weapons, protected vehicles, mission packages, and command, control, communications and computer systems.
5. The Company employs about 3900 people at more than 35 sites around Australia. Approximately 2200 employees are salaried on individual contracts and 1600 are waged employees. The majority of both classes of employees are covered by the following six enterprise agreements (collectively the **Enterprise Agreements**):
  - (a) *Thales Australia Maritime Enterprise Agreement 2015*;
  - (b) *Thales Australia Lithgow Enterprise Agreement 2015*;
  - (c) *Thales Australia Explosive Ordnance Services Enterprise Agreement 2015*;
  - (d) *Thales Australia Limited trading as Australian Munitions Benalla and Mulwala Enterprise Agreement 2015-2018*;
  - (e) *Thales Australia Bendigo Enterprise Agreement 2016*; and
  - (f) *Thales Australia National Framework Agreement 2017*.
6. On or around 5 September 2018, at their own initiative, the Company wrote to the FWO advising that an issue had arisen associated with employee remuneration entitlements, whereby a number of salaried employees had been identified as

receiving less than the minimum rates of pay in the Enterprise Agreements. The affected employees include middle managers, professionals, administrative employees, salaried manufacturing, and technical employees.

7. The Company advised the FWO that a response team of senior executives formed to rectify the issue as a matter of urgency and the Company had engaged Deloitte Risk Advisory Pty Ltd (**Deloitte**) to conduct a detailed review of Company payroll and employee data to identify affected staff and the extent of remediation required (**Payroll Review**).
8. As at 30 November 2018, the Company had identified and remediated all 235 current salaried employees for a total of \$5.429 million which included:
  - (a) salary adjustments in line with the relevant Enterprise Agreement;
  - (b) back paying \$2.770 million of salary shortfalls incurred between 1 October 2011 and 30 November 2018;
  - (c) interest, an amount in respect of overtime and other entitlements, annual leave loading, additional variable compensation uplifts, and superannuation payments for the salary shortfall back pay, lost earnings on interest, variable compensation uplifts, and lost earnings on superannuation where applicable totalling \$2.659 million.
9. In January 2019, the Company identified 172 former salaried employees who at some point during 1 October 2012 and 30 November 2018 had incurred a payment shortfall for a total remediation of \$2.015 million.
  - (a) As at 17 June 2019, the Company has been successful in contacting and remediating all 172 former salaried employees owed \$888,307 in base back pay.
  - (b) Additionally, interest, an amount in respect of overtime and other entitlements, annual leave loading, additional variable compensation uplifts, additional termination payment uplifts, and superannuation payments for the salary shortfall back pay, lost earnings on interest, variable compensation uplifts, and lost earnings on superannuation where applicable has been paid to former salaried employees totalling \$1.127 million.

10. The Company has also engaged Deloitte to conduct additional reviews to determine if there might be any further:
  - (a) payment shortfalls for waged employees between 1 October 2011 (or 1 October 2012 for former employees) and 31 December 2018 (**Wages Employee Review**) consisting of a minimum sample of 200 waged employees across different work locations, classifications and types or categories of work; and
  - (b) superannuation shortfalls for current and former waged and salaried employees between 1 October 2011 for current employees (1 October 2012 for former employees) and 31 March 2019 (**Superannuation Review**).

#### **Summary of Contraventions**

11. The FWO has determined, and the Company admits, that the Company has contravened the following:
  - (a) sections 44 and 50 of the FW Act and items 2(1), 2(2) and 5 of Schedule 16 of *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, by failing to pay the minimum rates of pay in accordance with the Enterprise Agreements and other contraventions set out in Attachment A;
  - (b) section 323(1)(a) of the FW Act by failing to pay in full amounts payable to the employees in relation to the performance of work; and
  - (c) section 535(2) of the FW Act by failing to make and keep accurate records prescribed by the *Fair Work Regulations 2009 (Cth)* (**FW Regulations**).
12. The FWO recognises that the Company, in conjunction with Deloitte, has performed calculations to determine the quantum of underpayments arising from the above listed contraventions and has, of its own volition, taken steps to remediate the underpayments to current and former salaried employees including that the Company:
  - (a) has adjusted the salaries of current salaried employees in line with the relevant Enterprise Agreements and made back-payments including interest, amounts for overtime and other entitlements, annual leave loading, additional variable compensation uplifts, and superannuation payments for lost earnings on interest, variable compensation uplifts, and lost earnings on superannuation where applicable to all current salaried employees as referred to in paragraph 8 above;
  - (b) has completed the communication and remediation of affected former salaried

- employees of the Company whose employment was terminated between 1 October 2012 and 30 November 2018 as referred to in paragraph 9 above;
- (c) has engaged Deloitte to perform the Wages Employee and Superannuation Review referred to in paragraph 10 above;
  - (d) is training its payroll employees, HR business partners and senior managers who are accountable or responsible for Enterprise Agreements at a particular site; and
  - (e) is scoping the requirements for implementation of a new payroll system.

#### **ENFORCEABLE UNDERTAKING**

13. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes to complete the actions outlined in paragraphs 14 to 35 below.

#### **Payroll Review, Wages Employee Review, Back Payments**

14. In respect of the Payroll Review and Wages Employee Review, referred to in paragraphs 7 and 10 above, the Company undertakes as follows:
- (a) Within 60 days of the execution of this Undertaking, complete the Payroll Review, including remediating all contacted former salaried employees referred to in paragraph 9 and provide evidence of payment to the FWO;
  - (b) Within 90 days of the execution of this Undertaking, report to the FWO on the outcome of the Wages Employee Review;
  - (c) Within 90 days of the completion of the Wages Employee Review (or such longer period as is agreed with the FWO), rectify all contraventions identified in the Wages Employee Review, including:
    - (i) contacting all affected former waged employee(s) about their underpayment, outlining amounts owing;
    - (ii) remediating any shortfalls which occurred during 1 October 2011 to 31 December 2018 for current waged employees and 1 October 2012 to 31 December 2018 for terminated waged employees;
    - (iii) provide evidence of payment to the FWO relating to paragraphs 14(a), 14(c)(ii) above; and
    - (iv) agree with the FWO on steps being taken to rectify any systemic errors resulting in shortfalls to other wages employees which have been identified.
15. If any of the Employees referred to in paragraphs 14(a), 14(c)(ii) cannot be located,

within 120 days of the execution of this Undertaking, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Consolidated Revenue Fund. The Company will complete the required documents supplied by the FWO.

#### **Workplace Relations Compliance - Systems and Processes**

16. The Company undertakes to comply at all times and in all respects with the FW Act, the FW Regulations and industrial instruments including the Enterprise Agreements applicable to its employees.
17. Within 60 days of the execution of the Undertaking, the Company undertakes to provide details to the FWO of the steps it has taken or proposes to take to comply with its obligations under the Enterprise Agreements and the FW Act including steps taken in relation to the introduction of the new payroll system. The FWO may provide feedback on the steps taken or proposed.
18. Within 90 days of the Company receiving the FWO's feedback, the Company will take all reasonable steps to incorporate such feedback into its systems and processes.

#### **Apology**

19. Within 14 days of the execution of this Undertaking, the Company undertakes to send a letter of apology in the form of Attachment B, to all Australian employees and identified affected former employees referred to in paragraphs 9, 14(a) and 14(c) and provide a copy to the FWO.

#### **Employee Assistance**

20. For a period of 12 months after the execution of this Undertaking, the Company undertakes to establish and maintain a dedicated telephone hotline and email address to receive and address current and former Company employee wage enquiries.
21. Within 14 days of execution of this Undertaking, the Company is to provide FWO evidence of the establishment of the dedicated telephone hotline and email address referred to in paragraph 20.
22. Within 60 days of the execution of this Undertaking:

- (a) the Company will have taken all reasonable steps to notify all current and affected former Company employees referred to in paragraphs 8, 9, 14(a) and 14(c) of the dedicated telephone hotline and email address; and
  - (b) will have provided evidence to the FWO of paragraph 22(a).
23. Within the 12 months referred to in paragraph 20, the Company undertakes to report to the FWO quarterly on the incoming enquiries received and action taken by the Company to resolve the enquiries received via the dedicated telephone hotline or email address.

#### **Workplace Relations Training**

24. Within 180 days of the execution of this Undertaking, organise and ensure training is provided to all senior managers and other persons in human resource, recruitment or payroll functions (**Training**).
25. Ensure the Training relates to compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Enterprise Agreements.
26. Ensure a workplace trainer conducts the Training. Such person or organisation to be approved by the FWO and paid for by Company.
27. 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.
28. Provide evidence of attendance at the Training to the FWO within 7 days of the provision of Training (including the name and position of all attendees and the date on which the training was attended).

#### **Co-operation with FWO in its Future Enquiries**

29. The Company undertakes to co-operate with the FWO in its future enquiries or investigations relating to requests for assistance from current or former Company employees, including by:
- (a) responding to any correspondence from the FWO within a reasonable timeframe;
  - (b) responding to requests from the FWO to participate in records of interview or to provide information within a reasonable timeframe; and
  - (c) responding to any other reasonable requests from the FWO in relation to its investigations within a reasonable timeframe.

## Public Notice

30. The Company will:

- (a) within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of this Undertaking, place a public notice in the weekend edition of Australian Financial Review (**Public Notice**), acknowledging:
  - (i) the contraventions that occurred;
  - (ii) the Company was responsible for the contraventions;
  - (iii) the Company has taken steps to rectify the contraventions and are committed to ensuring ongoing compliance with all its obligations; and
  - (iv) the Company sincerely regrets and apologises to all affected employees for its failure to comply with its obligations under Commonwealth workplace laws;
- (b) The Public Notice must:
  - (i) bear the name and logo of the Company;
  - (ii) appear within the public notices section of the paper;
  - (iii) be at least 10 cm x 8 cm in size; and
  - (iv) be in the form of Attachment C;
- (c) Within 7 days of the publication of the Public Notice, provide a copy of the public notice to the FWO.

## Future Payroll Audits

31. The Company undertakes to engage an external professional with qualifications in accounting or workplace relations or an external professional otherwise approved by the FWO, to perform annual audits of the Company's compliance with Commonwealth workplace laws and industrial instruments including the Enterprise Agreements (**Annual Audits**). The Annual Audits will:

- (a) Be conducted in line with an audit methodology approved by the FWO;
- (b) assess a sample of at least 200 of the Company's workforce across different work locations, classifications and types or categories of work;
- (c) be conducted for all full pay periods where part of the period falls within the following dates:
  - (i) 30 September 2019; and
  - (ii) 30 September 2020;



- (d) assess the Company's compliance with:
  - (i) wages or work-related entitlements under any applicable industrial instruments including the Enterprise Agreements 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.
- 32. Within 60 days of each of the finalisation dates specified above in paragraphs 31(c)(i) and (ii), the Company will provide a copy of the Annual Audit report to the FWO, which will include:
  - (a) details of any contraventions identified in the Annual Audit.
- 33. If requested by the FWO, the Company will provide the FWO with any records or documents used to conduct the Annual Audit, including any working documents, within 14 days of such a request.
- 34. Within 60 days of the finalisation dates specified at paragraph 31(c)(i) and (ii) above, the Company will as far as practical:
  - (a) rectify any underpayments arising from contraventions identified;
  - (b) provide to the FWO evidence of such rectification; and
  - (c) make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Consolidated Revenue Fund, if any of the Employees cannot be located, within 90 days of the finalisation dates specified at paragraph 31(c)(i) and (ii) above. The Company will complete the required documents supplied by the FWO.

#### **Contribution Payment**

- 35. Within 28 days of the execution of this Undertaking, make a contribution payment of \$200,000 to the Consolidated Revenue Fund and provide evidence of the payment to FWO.

#### **No Inconsistent Statements**

- 36. The Company:
  - (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 Undertaking.

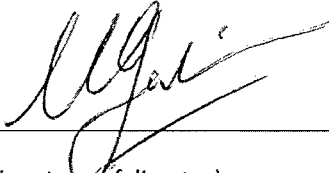
#### ACKNOWLEDGEMENTS

37. The Company acknowledges that:

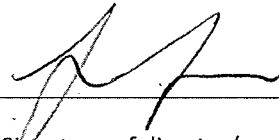
- (a) the FWO may:
  - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
  - (ii) release a copy of this Undertaking (and any of the Attachments hereto) 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 paragraph 11 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 may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) 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 11 above, and also in respect of the question of costs.

**Executed as an undertaking**

EXECUTED by Thales Australia Limited in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)



(Signature of director/company secretary)

CHRIS JENKINS

(Name of director)

JAMES COUCHE

(Name of director/company secretary)

12 AUGUST 2019

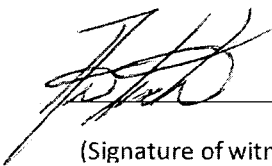
(Date)

12 AUGUST 2019

(Date)

in the presence of:

in the presence of:



(Signature of witness)



(Signature of witness)

RONAN CAROLAN

(Name of witness)

TONY BROUGHTON

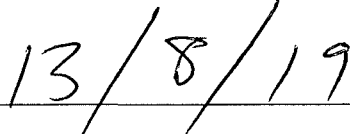
(Name of witness)

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

Act 2009 on:

  
\_\_\_\_\_


Michael Campbell – Deputy Fair Work  
Ombudsman, Operations

  
\_\_\_\_\_

(Date)

Delegate for the FAIR WORK  
OMBUDSMAN

in the presence of:

  
\_\_\_\_\_

(Signature of witness)

  
\_\_\_\_\_

(Name of Witness)

## ATTACHMENT A – OTHER CONTRAVENTIONS

- Minimum salary and wages under the Industrial Instruments;
- Allowances, special rates and related payments under the Industrial Instruments;
- Overtime, shift and other penalties and loadings under the Industrial Instruments;
- Superannuation contributions under the Industrial Instruments and legislation;
- Leave Payments (including annual leave loading) under the Industrial Instruments, the National Employment Standards and legislation;
- Termination payments under the Industrial Instruments (including payment in lieu of notice and severance pay) and the National Employment Standards;
- Miscellaneous other contraventions associated with the above.

In this attachment, Industrial Instruments means

- the ADI Limited (Middle Management and Professional) Award 1998;
- the ADI Limited trading as Thales Australia Lithgow Collective Agreement 2006;
- the Thales Australia Benalla and Mulwala Collective Agreement 2009;
- the Thales Australia Bendigo Collective Agreement 2007;
- the Thales Australia Bendigo Enterprise Agreement 2010;
- the Thales Australia Bendigo Enterprise Agreement 2013;
- the Thales Australia Bendigo Enterprise Agreement 2016;
- the Thales Australia Explosive Ordnance Services Collective Agreement 2009;
- the Thales Australia Explosive Ordnance Services Collective Agreement 2012;
- the Thales Australia Explosive Ordnance Services Enterprise Agreement 2015;
- the Thales Australia Explosive Ordnance Storage Distribution and Maintenance Collective Agreement 2006;
- the Thales Australia Limited Trading as Australian Munitions Benalla and Mulwala Enterprise Agreement 2012-2015;
- the Thales Australia Limited Trading as Australian Munitions Benalla and Mulwala Enterprise Agreement 2015-2018;
- the Thales Australia Lithgow Enterprise Agreement 2009;
- the Thales Australia Lithgow Enterprise Agreement 2012;
- the Thales Australia Lithgow Enterprise Agreement 2015;
- the Thales Australia Maritime Enterprise Agreement 2012;
- the Thales Australia Maritime Enterprise Agreement 2015;
- the Thales Australia National Framework Agreement 2012;
- the Thales Australia National Framework Agreement 2013;
- the Thales Australia National Framework Agreement 2017;
- the Thales Australia Naval Collective Agreement 2007; and
- the Thales Australia Naval Enterprise Agreement 2009.

**ATTACHMENT B – FORM OF APOLOGY LETTER TO THALES AUSTRALIA LIMITED EMPLOYEES**

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Thales Australia Limited (the **Company**) for non-compliance with Commonwealth Workplace relations laws.

As you will be aware, the Company identified that a number of employees were not correctly paid under their enterprise agreements – including because some employment contracts were not correctly aligned with those enterprise agreements. The Company has remedied most of these contraventions already and is in the process of remedying the remainder – including to former employees.

The Company has now formally admitted to the Fair Work Ombudsman (FWO) that these errors meant the Company 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 will be available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

As part of the enforceable undertaking, the Company has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws including maintaining a dedicated telephone hotline and email address to receive and address current and former employee wage enquiries.

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

Should you have any questions, please contact us at [insert dedicated hotline number] or [insert dedicated email address]

Yours sincerely

**[Director(s) Name]**

## ATTACHMENT C – FORM OF PUBLIC NOTICE

### **Contraventions of Fair Work Act 2009 (Cth) by Thales Australia Limited**

Thales Australia Limited (the **Company**) has recently undertaken a review of its historical payroll records. The Company has identified circumstances in which errors were made where employees' employment contracts were not correctly aligned with the Company's enterprise agreements, resulting in incorrect payments being paid to employees between 1 October 2011 to 30 November 2018. These underpayments were in contravention of the *Fair Work Act 2009* (Cth).

The Company has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking (EU) with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)). The EU commits to a number of measures to remedy the contraventions including correcting the underpayments and maintaining a dedicated telephone hotline and email address to receive and address current and former employee wage enquiries.

The Company expresses its sincere regret and apologises for the contraventions. Furthermore, the Company 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.

Should you have any questions, please contact us at [insert dedicated hotline number] or [insert dedicated email address]

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