



Fair Work
OMBUDSMAN

UNDERTAKING

DATED 30 March 2010

FROM

Mission Australia

ABN 15 000 002 522

To

**The Commonwealth of Australia
(as represented by the Office of the Fair Work Ombudsman)**

Concerning

Contravention of sections 342(1) and 340(2) of the *Workplace Relations Act 1996* (prior to its repeal) in relation to the non-lodgement of Australian Workplace Agreements and Individual Transitional Employment Agreements for 127 employees of Mission Australia

UNDERTAKING

THIS UNDERTAKING is given to the Commonwealth of Australia (as represented by the office of the Fair Work Ombudsman (FWO)) by Mission Australia ACN 000 002 522 of 580 George Street, Sydney (Mission Australia).

BACKGROUND

1. Mission Australia is, and was at all material times:
 - 1.1 a body corporate under the *Corporations Act 2001* (Cth);
 - 1.2 a constitutional corporation within the meaning of section 4(1) of the *Workplace Relations Act 1996* (Cth) (WR Act) and section 12 of the *Fair Work Act 2009* (Cth) (FW Act);
 - 1.3 an employer within the meaning of section 6(1) of the WR Act;
 - 1.4 a national system employer within the meaning of section 14 of the FW Act.
2. At all material times, Mission Australia operated as a community service organisation.
3. Mission Australia employees are bound by numerous industrial instruments including the *Mission Australia Community Services Union Collective Agreement 2008-2011* (Collective Agreement), a number of Awards and for some employees, by their individual Australian Workplace Agreements or Individual Transitional Employment Agreements.
4. As a result of administrative errors and a breakdown in internal procedures, some of the individual Australian Workplace Agreements or Individual Transitional Employment Agreements that had been signed by employees were not lodged with the Workplace Authority.
5. The breakdown in internal procedures resulted in Mission Australia treating a number of employees as if they were bound by Australian Workplace Agreements or Individual Transitional Employment Agreements when no agreement had been lodged with the Workplace Authority. This resulted in some employees being remunerated in accordance with agreements that had not been lodged rather than the applicable industrial instrument and not being accorded the opportunity to vote in relation to the approval of the Collective Agreement.
6. Mission Australia came forward and voluntarily disclosed the errors and failures to lodge agreements to the Workplace Ombudsman (now the Fair Work Ombudsman) on 13 March 2009.

CONTRAVENTIONS:

7. As a result of administrative errors and a breakdown in internal procedures, Mission Australia did not lodge Australian Workplace Agreements (AWAs) for 96 employees in contravention of section 342(1) of the WR Act as it existed before 1 July 2007.
8. As a result of administrative errors and a breakdown in internal procedures, Mission Australia did not lodge Individual Transitional Employment Agreements (ITEAs) for 31 employees in contravention of section 342(1) of the WR Act.

9. As a result of administrative errors and a breakdown in internal procedures, Mission Australia did not provide all relevant employees to be covered by their collective agreement the opportunity to vote in contravention of section 340(2) of the WR Act.
10. Mission Australia admits the contraventions as detailed in this Undertaking and offers to give this Undertaking to the FWO as a result of which the FWO has decided not to commence any civil penalty proceedings against Mission Australia in respect of any conduct of Mission Australia as detailed in this Undertaking.

UNDERTAKING GIVEN BY MISSION AUSTRALIA

Mission Australia gave an undertaking that in consideration of the Workplace Ombudsman agreeing not to commence any civil penalty proceeding against Mission Australia in respect of, or arising out of, Mission Australia having contravened the WR Act as detailed in this Undertaking, Mission Australia would

- (a) use its best endeavours to ensure that Mission Australia complies with the pre-lodgement and lodgement procedures for workplace agreements arising under the WR Act or FW Act and Workplace Relations Regulations or Fair Work Regulations;
- (b) ensure that all members of its management team as at 1 July 2009 undertake, on or after 1 July 2009 training funded by Mission Australia and developed with an accredited workplace relations trainer, addressing education on the FW Act, with copies of the receipts for payment and participation evaluation records for the training to be made available to the WO/FWO within 14 days of a request.
- (c) use its best endeavours to ensure that Mission Australia does not engage in conduct in contravention of the FW Act or Fair Work Regulations, or any legislation which replaces them, in the future.

As a consequence of identifying the breakdown in internal procedures and the voluntary disclosure to Workplace Ombudsman, Mission Australia

- (a) conducted an analysis of the payments to each employee who had been paid in accordance with an AWA or ITEA that had not been lodged to determine if there were any underpayments that had been made. A sample of the analysis was independently audited by KPMG to verify that the analysis had been properly done. The analysis identified 17 employees who had been underpaid. The underpayments were rectified in June and July 2009.
- (b) provided a letter to each employee who had signed an AWA or ITEA that had not been lodged, identifying the underpayments (if any) and giving contact details for an officer of the Workplace Ombudsman's staff that the employee could contact if they wanted to discuss the matter. Each such letter was delivered to the employee by their manager who also explained to the employee the failure by Mission Australia to lodge the AWA or ITEA and the consequences of that failure.

As a consequence of the undertaking given to the Workplace Ombudsman, Mission Australia arranged for training materials to be developed by an external provider as agreed with the WO. All Mission Australia managers had completed the training by mid October 2009.

Mission Australia now undertakes that in consideration of the FWO agreeing not to commence any civil penalty proceeding against Mission Australia in respect of, or arising out of, Mission Australia having contravened the WR Act as detailed in this Undertaking, as evidenced by the FWO's acceptance of this Undertaking endorsed at the foot hereof,

Mission Australia will:

- (a) use its best endeavours to ensure that Mission Australia complies with the pre-lodgement and lodgement procedures for workplace agreements arising under the FW Act and Fair Work Regulations (which now replace the WR Act and Workplace Relations Regulations);
- (b) use its best endeavours to ensure that Mission Australia does not engage in conduct in contravention of the FW Act or Fair Work Regulations, or any legislation which replaces them, in the future.

COMMENCEMENT OF UNDERTAKING

This Undertaking comes into effect when:

- (a) the Undertaking is executed by Mission Australia; and
- (b) the FWO accepts the Undertaking so executed.

ACKNOWLEDGEMENTS

Mission Australia acknowledges that:

- (a) the FWO may:
 - i. make this Undertaking available for public inspection, including posting it on the FWO internet site www.fwo.gov.au;
 - ii. release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982*;
 - iii. respond to any media inquiries;
 - iv. from time to time publicly refer to the Undertaking as part of any more general communications concerning the functions and achievements of the FWO provided that any references to this Undertaking will acknowledge that the contraventions by Mission Australia were voluntarily disclosed and that the contraventions were as a consequence of procedural failings and not malice;
 - v. rely upon the admissions made by Mission Australia in this undertaking in respect of decision making concerning any future non-compliance with its workplace relations obligations.
- (b) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.
- (c) if Mission Australia breaches any of its respective undertakings, this Undertaking will be submitted to the court by the FWO seeking one or more of the following:
 - i. an order directing Mission Australia to comply with the terms of this undertaking;
 - ii. an order awarding compensation for loss that a person has suffered because of the contravention;

iii. any other order that the court considers appropriate.

SIGNED in accordance with s.126 of the
Corporations Act 2001 on behalf of Mission
Australia by its duly authorised representative
TOBY HALL in the presence of:

)
) Toby Hall
)

M Kennedy
Signature of witness

30/03/10
Date

VOONA KENNEDY
Name of witness (please print)

ACCEPTED by the OFFICE OF THE FAIR WORK OMBUDSMAN

Dated: 28th May 2010

Nicholas Wilson

**NICHOLAS WILSON
FAIR WORK OMBUDSMAN**