



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

Gromor Enterprises Pty Limited (ACN 077 924 353)

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Gromor Enterprises Pty Limited (ACN 077 924 353) (**Gromor**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Background**

2. Gromor operates a mushroom farm near Singleton in New South Wales.
3. In August 2013, Gromor engaged TDS International Investment Group Pty Ltd (**TDS**), a business that supplies horticultural labourers, to perform mushroom picking, weighing and packing activities, initially at the rate of \$20.50 per hour, increasing to \$24.50 per hour in July 2014.
4. Between 30 September 2013 and 24 August 2014 (**Employment Period**), TDS employed 52 employees (**Employees**) on a casual basis to perform work at the mushroom farm operated by Gromor.
5. The terms and conditions of the Employees' employment with TDS were governed by the *Horticulture Award 2010* (MA000028) (**Award**). For the purposes of the transitional provisions of Schedule A to the Award, the applicable transitional instrument is the *Mushroom Industry Employees (State) Award*.
6. On or around 23 July 2014, the FWO commenced an investigation of TDS following two requests for assistance received from former employees of TDS in relation to the alleged non-payment of casual loading and public holiday penalty rates.
7. As a result of its investigation, the FWO determined that:
  - (a) the Employees' classification under the Award was Level 1;
  - (b) the Employees were entitled to be paid the following minimum rates of pay during their employment;

Period Commencing	Minimum Hourly Wage	Casual Hourly Rate	Public Holiday Rate
01/07/2013	\$16.37	\$20.14	\$33.24
01/07/2014	\$16.87	\$21.08	\$37.95

- (c) the Employees were paid a flat rate of \$16.37 per hour for all hours worked; and
  - (d) TDS had contravened provisions of the Award with respect to unpaid casual loading, penalty rates and superannuation.
8. As a result of the contraventions, the FWO assessed the total wage underpayments owed to the Employees during the Employment Period to be \$92,381.92 gross.
  9. TDS subsequently acknowledged that it had underpaid the Employees a total of **\$92,381.92** gross during the Employment Period.

10. Gromor has acknowledged that the hourly rate agreed between Gromor and TDS that was to be paid to TDS to supply the labour was insufficient to satisfy all Award entitlements including the minimum rates of pay set out in 7(b) above and superannuation and has agreed to pay \$40,412.41 (43.74% of the total underpayment) to assist in addressing the underpayments as set out in Attachment B.
11. Gromor has at all times co-operated with the FWO and participated fully in the FWO's investigation.

### **Contraventions**

12. The FWO has determined that TDS contravened section 45 of the FW Act by failing to comply with the following provisions of the Award:
  - (a) Clause A.7.3 of Schedule A to the Award and then from 30 September 2013, clause 10.4(b) of the Award, by failing to pay the Employees a casual loading;
  - (b) Clause A.7.3 of Schedule A to the Award and then from 30 September 2013, clause 28.3 of the Award, by failing to pay the Employees the applicable penalty rate for hours worked on public holidays; and
  - (c) Clause 21.2 of the Award by failing to make all required superannuation contributions to a superannuation fund for the benefit of the Employees.(collectively, the **Contraventions**).
13. Gromor admits that it was involved in the Contraventions by TDS within the meaning of section 550 of the FW Act and is therefore taken to have contravened the provisions.
14. This undertaking sets out the steps that Gromor will take with respect to its involvement in the Contraventions.

### **Commencement of Undertaking**

15. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by Gromor; and
  - (b) the FWO accepts the Undertaking so executed.
16. Upon the commencement of this Undertaking, Gromor undertakes to assume the obligations set out below in paragraph 17.

### **Undertakings**

17. For the purposes of section 715 of the FW Act, Gromor undertakes to:

#### ***Rectify underpayments***

- (a) pay the amounts owed in respect of each employee as set out in Attachment B under the column title "Gromor";
- (b) within 7 days of making a payment in compliance with subparagraph 17(a), provide evidence to the FWO that the payments have been made;
- (c) use reasonable efforts to locate each employee listed in Attachment A for the purpose of complying with the undertaking in subparagraph 17(a), including but not limited to:

- (i) taking steps to ascertain the current residential address, email address, mobile telephone number and/or social media profiles of each employee; and
  - (ii) contacting each employee, using any current or last-known contact details, to advise them they are owed money and explain the process for payment of the money owed to them;
- (d) if an employee listed in Attachment A cannot be located by the date when a payment to that employee falls due according to Attachment B:
- (i) within 21 days of the date when the payment to the employee fell due, provide a report to the FWO on the attempts that were taken to locate the employee together with details of the amount owed to them and their last known contact details;
  - (ii) by 15 April 2016 make application to pay to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act the amounts that were required to be paid to each employee but which have not been paid due to the inability to locate the employee. Gromor will complete the required documents supplied by the FWO.

### ***FWO MyAccount Registration***

- (e) within 7 days of the execution of this Undertaking:
- i. register with the FWO 'MyAccount' portal at 'www.fairwork.gov.au' and complete the profile, minimum pay rates and Award options through this portal
  - ii. provide to the FWO the Company's 'My Account' registration number.
  - iii. within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an officer of the Fair Work Ombudsman knowledge of the use of MyAccount including in relation to accessing the current Horticulture Award minimum pay rates and Public Holiday penalty rates.

### ***Future workplace relations compliance***

- (f) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Horticulture Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
- (g) review any contracts with labour contractors to ensure that current and future contracts include terms which bind contracting parties to compliance with workplace laws;
- (h) monitor the relevant labour contractors' compliance with workplace laws.
- (i) provide to the FWO, within 28 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertakings in paragraph 17(f) to 17(h) above designed to ensure such ongoing compliance. Without limitation, such systems and processes are to include:
  - 1. making and retaining accurate records of all persons performing work (including employees of labour contractors) on Gromor's site including of all time worked and all duties performed;

2. self-auditing of employee records to ensure obligations are being met for Gromor's own employees to be carried out on a quarterly basis; and
3. auditing of employee records made by labour contractors engaged by Gromor to be carried out on a quarterly basis to ensure Commonwealth workplace obligations are being met by the contractor, including checking these records against Gromor's own records to identify any inconsistencies and ensure any issues identified are addressed to and rectified by the labour contractor.

### ***Acknowledgment of regret***

- (j) within 14 days of the execution of this Undertaking send to each of the employees listed in Attachment A a letter of regret in relation to the Contraventions (**Letters of regret**) in the form of Attachment C to this Undertaking and provide the FWO a copy of each Letter of regret and proof of it being sent.

### ***Workplace notices***

- (k) within 28 days of the execution of this Undertaking display a notice in the form of Attachment D to this Undertaking (**Workplace Notice**):
  - (i) for a period of at least 28 days in locations where employees of Gromor work; and
  - (ii) in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by Gromor (for example, if applicable by placement on a staff noticeboard at each workplace in at least A3 size);
- (l) provide written details of the method/s of displaying or providing the Workplace Notice and photographic proof of its display to the FWO within seven days of it first being displayed.

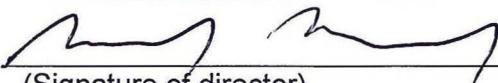
### **Acknowledgements**

18. Gromor acknowledges that:
  - (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at [www.fairwork.gov.au](http://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 Gromor;

- (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 Gromor 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, Gromor may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;

**Executed as an undertaking**

EXECUTED by **Gromor Enterprises Pty Limited** in accordance with section 127(1) of the *Corporations Act 2001*:

  
\_\_\_\_\_  
(Signature of director)

Neal Marland  
\_\_\_\_\_  
(Name of director)

5-11-2015  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

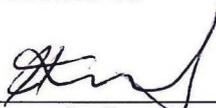
Joy Knight  
\_\_\_\_\_  
(Name of witness)

  
\_\_\_\_\_  
(Signature of director/company secretary)

Derek Masland  
\_\_\_\_\_  
(Name of director/company secretary)

5-11-15  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

Joy Knight  
\_\_\_\_\_  
(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

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

16 NOVEMBER 2015  
\_\_\_\_\_  
(Date)

F. PILOURAS  
\_\_\_\_\_  
(Name of Witness)

**ATTACHMENT A – WAGE UNDERPAYMENTS**

Employee ID	Employee Name	Wage Amounts Underpaid
		\$3,630.29
		\$584.41
		\$129.38
		\$886.56
		\$943.06
		\$1,932.54
		\$114.61
		\$144.95
		\$6,938.06
		\$886.97
		\$4,272.90
		\$1,901.24
		\$4,374.26
		\$3,105.90
		\$1,042.24
		\$669.75
		\$3,489.34
		\$752.28
		\$2,409.07
		\$2,285.24
		\$2,517.22
		\$2,374.81
		\$821.10
		\$5,730.37
		\$190.12
		\$5,572.66
		\$2,453.41
		\$702.56
		\$267.30
		\$2,812.90
		\$2,630.11
		\$2,590.28
		\$2,169.96
		\$3,159.31
		\$3,234.76
		\$1,915.09
		\$2,044.98
		\$2,113.73
		\$488.86
		\$385.19
		\$382.44
		\$1,158.02
		\$1,188.83
		\$1,152.87

		\$730.50
		\$156.26
		\$156.26
		\$712.37
		\$713.04
		\$341.91
		\$589.82
		\$431.83

<b>Total Wages Underpaid:</b>	<b>\$92,381.92</b>
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**ATTACHMENT B – SCHEDULE OF PAYMENTS**

**Payments will be made to employees as follows:**

1. Payment of the Amounts Underpaid to be made to the Employees listed in the Tables below in the following manner:
  - a. Employees listed in Table 1 to be paid on or before 15 November 2015;
  - b. Employees listed in Table 2 to be paid on or before 15 December 2015;
  - c. Employees listed in Table 3 to be paid on or before 15 January 2016;
  - d. Employees listed in Table 4 to be paid on or before 15 February 2016;
  - e. Employees listed in Table 5 to be paid on or before 15 March 2016; and
  - f. Employees listed in Table 6 to be paid on or before 15 April 2016.

<b>Table 1: Payable on or before 15 November 2015</b>			
<b>Employee ID</b>	<b>Employee Name</b>	<b>Amount Payable</b>	<b>GROMOR</b>
		\$3,630.29	\$1,587.89
		\$584.41	\$255.62
		\$129.38	\$56.59
		\$886.56	\$387.78
		\$943.06	\$412.49
		\$1,932.54	\$845.29
		\$114.61	\$50.13
		\$144.95	\$63.40
		\$6,938.06	\$3,034.71
	<b>Sub-Total: Table 1</b>	<b>\$15,303.86</b>	<b>\$6693.90</b>

<b>Table 2: Payable on or before 15 December 2015</b>			
<b>Employee ID</b>	<b>Employee Name</b>	<b>Amount Payable</b>	<b>GROMOR</b>
		\$886.97	\$387.96
		\$4,272.90	\$1,868.97
		\$1,901.24	\$831.60
		\$4,374.26	\$1,913.30
		\$3,105.90	\$1,358.52
		\$1,042.24	\$455.88
	<b>Sub-Total: Table 2</b>	<b>\$15,583.51</b>	<b>\$6,816.23</b>

<b>Table 3: Payable on or before 15 January 2016</b>			
<b>Employee ID</b>	<b>Employee Name</b>	<b>Amount Payable</b>	<b>GROMOR</b>
		\$669.75	\$292.95
		\$3,489.34	\$1,526.24

		\$752.28	\$329.05
		\$2,409.07	\$1,053.73
		\$2,285.24	\$999.56
		\$2,517.22	\$1,101.03
		\$2,374.81	\$1,038.74
		\$821.10	\$359.15
	<b>Sub-Total: Table 3</b>	<b>\$15,318.81</b>	<b>\$6700.45</b>

<b>Table 4: Payable on or before 15 February 2016</b>			
<b>Employee ID</b>	<b>Employee Name</b>	<b>Amount Payable</b>	<b>GROMOR</b>
		\$5,730.37	\$2,506.46
		\$190.12	\$83.16
		\$5,572.66	\$2,437.48
		\$2,453.41	\$1,073.12
		\$702.56	\$307.30
		\$267.30	116.92
	<b>Sub-Total: Table 4</b>	<b>\$14,916.42</b>	<b>\$6,524.44</b>

<b>Table 5: Payable on or before 15 March 2016</b>			
<b>Employee ID</b>	<b>Employee Name</b>	<b>Amount Payable</b>	<b>GROMOR</b>
		\$2,812.90	\$1,230.36
		\$2,630.11	\$1,150.41
		\$2,590.28	\$1,132.99
			\$949.14
		\$2,169.96	
		\$3,159.31	\$1,381.88
			\$1,414.88
		\$3,234.76	
	<b>Sub-Total: Table 5</b>	<b>\$16,597.32</b>	<b>\$7,259.66</b>

<b>Table 6: Payable on or before 15 April 2016</b>			
<b>Employee ID</b>	<b>Employee Name</b>	<b>Amount Payable</b>	<b>GROMOR</b>
		\$1,915.09	\$837.66
		\$2,044.98	\$894.47
		\$2,113.73	\$924.55
		\$488.86	\$213.83
		\$385.19	\$168.48
		\$382.44	\$167.28
		\$1,158.02	\$506.52
		\$1,188.83	\$519.99
		\$1,152.87	\$504.27
		\$730.50	\$319.52
		\$156.26	\$68.35

		\$156.26	\$68.35
		\$712.37	\$311.59
		\$713.04	\$311.88
		\$341.91	\$149.55
		\$589.82	\$257.99
		\$431.83	\$188.88
	<b>Sub-Total: Table 6</b>	<b>\$14,662.00</b>	<b>\$6,413.16</b>

<b>Total Amount Payable by 15 April 2016:</b>	<b>\$92,381.92</b>	<b>\$40,407.84</b>
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## ATTACHMENT C – LETTER OF REGRET

<Date>

<Employee Name & Address>

Dear <Employee Name>

I am writing on behalf of Gromor Enterprises Pty Ltd (**Gromor**) to acknowledge Gromor's regret for its involvement in the non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Gromor was involved in a contravention by employer TDS International Investment Group Pty Ltd (TDS) of the *Fair Work Act 2009* as a result of a failure by TDS to pay casual employees of TDS the following entitlements under the Horticulture Award 2010 (MA000028):

- casual loading;
- penalty rates for work performed on a public holiday; and
- superannuation.

The investigation determined that you were affected by the above contraventions.

Gromor is committed to, and is taking steps to remedy its involvement in the contraventions, including by:

- Paying you the portion of the amount that you have been underpaid (Insert amount) with TDS to pay the remaining amount; and
- Committing to taking steps to ensure future compliance by any labour hire contractor engaged by Gromor.

Gromor 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](http://www.fairwork.gov.au). As part of the Enforceable Undertaking, Gromor has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

We express sincere regret for failing to comply with our lawful obligations.

Should you have any questions, please contact [**party to include contact details**].

Yours sincerely

[Director/Officer]  
Gromor Enterprises Pty Ltd

## ATTACHMENT D – FORM OF WORKPLACE NOTICE

Contraventions of the *Fair Work Act 2009 (FW Act)* and the *Horticulture Award 2010 (Award)* by TDS International Investment Group Pty Ltd (**TDS**) and Gromor Enterprises Pty Limited (**Gromor**).

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that TDS and Gromor contravened the FW Act and the Award.

The FWO has found that Gromor contravened the FW Act and the Award by being involved in the failure by TDS to pay its casual employees engaged in picking, packing and weighing functions at Gromor's premises between 30 September 2013 and 24 August 2014 the following:

- a casual loading for all hours worked;
- penalty rates for time worked on Public Holidays; and
- all employer superannuation contributions to a superannuation fund for the benefit of employees.

Gromor has formally admitted to the FWO that these contraventions occurred and have entered into an Enforceable Undertaking with the FWO (available at [www.fwo.gov.au](http://www.fwo.gov.au)) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments to TDS's employees who were affected by the contraventions and agreeing to establish better processes for ensuring labour hire companies engaged by Gromor comply with workplace laws.

Gromor expresses its sincere regret and apologises for the conduct which resulted in its involvement in the contraventions. Furthermore, Gromor gives a commitment that such conduct will not occur again and will comply with all requirements of the Commonwealth workplace relation laws in the future.

Gromor are committed to ensuring that labour hire employees performing work at Gromor's premises are paid at least the rates of pay as contained in the Modern Award which covers their employment. From 1 July 2015 rates of pay for employees covered by the *Horticulture Award 2010* are as follows:

Level	Ordinary Rate of Pay Full time and part time employees	Ordinary Rate of Pay for Casual Employees	Public Holiday Rate Casual employee
Level 1	\$17.29	\$21.61	\$38.90
Level 2	\$17.79	\$22.24	\$40.03
Level 3	\$18.30	\$22.88	\$41.18
Level 4	\$18.99	\$23.74	\$42.73

If you were an employee of TDS and worked at Gromor's premises and have queries or questions relating to your employment, please contact **[insert contact]** . Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the infoline on 13 13 94.