



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Illawarra Communications Pty Ltd

ABN 14113915361

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (FWO) by:
 - (a) Illawarra Communications Pty Ltd (ABN: 113915361)for the purposes of section 715 of the *Fair Work Act 2009* (FW Act).

Background

2. Illawarra Communications Pty Ltd is a privately owned supplier of both mobile and fixed communication systems and is located in Wollongong NSW.

Illawarra Communications Pty Ltd was established in April 2005 and Mr Ronald Scott Baxter is the sole Director and Secretary of Illawarra Communications Pty Ltd.

Illawarra Communications Pty Ltd currently engages approximately 20 employees primarily as casuals in the position of contract call centre operators.

In August 2015, the FWO received requests for assistance from eight long serving employees of Illawarra Communications Pty Ltd alleging underpayment of wages.

It was understood that Mr Baxter had mistakenly applied rates from an expired state award over several years and failed to increase wages over this period of time.

The employees' duties include but are not limited to answering telephone calls on behalf of clients, transferring calls through to relevant 'On-Call' staff, order taking on behalf of clients, answering emergency service calls, taking bookings for tour operators and doctor surgeries.

On 7 September 2015, the FWO issued a Notice to Produce (NTP) records or documents pursuant to Section 712 of the FW Act to Illawarra Communications Pty Ltd, requesting time and wages records for the period 1 January 2015 to 31 July 2015. Illawarra Communications Pty Ltd produced time and wage records to the FWO on 2 October 2015.

The Employees were covered by the terms of the FW Act and the *Contract Call Centres Award 2010* [MA000023] (**Modern Award**).

The FWO conducted an assessment of the time and wage records between 1 January 2015 and 4 August 2015 (**the Assessment Period**) for [REDACTED] which highlighted a number of contraventions of the FW Act and the Modern Award, which had application to all the employees of Illawarra Communications Pty Ltd.

Contraventions

3. The FWO has determined, and Mr Baxter admits, that Illawarra Communications Pty Ltd contravened:
 - (a) Clause 13.1 of the Modern Award by failing to pay casual employee an hourly rate of 1/38 of the weekly rate prescribed for the class of work performed, plus 25 per cent.
 - (b) Clause 24.7 (a)(i) and (ii) of the Modern Award by failing to pay time and one quarter for time worked outside the spread of ordinary hours Monday to Friday and Saturdays.
 - (c) Clause 24.7 (a)(iii) of the Modern Award by failing to pay time and three quarters for time worked outside the spread of ordinary hours on Sunday.

- (d) Clause 24.7(a)(iv) of the Modern Award by failing to pay time and one half for ordinary time worked on Sunday.
- (e) Clause 30.4 (a) of the Modern Award by failing to pay employees required to work on a public holiday double time and a half for 'day work' and double time for afternoon and night shifts.
- (f) Clause 26.1 (i) of the Modern Award by failing to pay time and a half for the first three hours an double time thereafter for time worked in excess of ordinary hours on Monday to Saturday.
- (g) Clause 26 (ii) of the Modern Award by failing to pay double time for time worked in excess of ordinary hours on Sunday.

The underpayments arising as a result of these contraventions totals \$3,098.18 to one worker, [REDACTED] for the Assessment Period.

Commencement of Undertaking

- 4. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Illawarra Communications Pty Ltd; and
 - (b) the FWO accepts the Undertaking so executed.
- 5. Upon the commencement of this Undertaking, Illawarra Communications Pty Ltd to undertake to assume the obligations set out below.

Undertakings

- 6. For the purposes of section 715 of the FW Act, Illawarra Communications Pty Ltd undertakes to:
 - a) Rectify the underpayments**
 - (i) Make payment to [REDACTED] for contraventions identified in the Assessment Period amounting to \$3,098.18, within 21 days of the execution of this Undertaking;
 - (ii) Provide proof of such payment to the FWO on the day the payment is made.
 - b) Audit**
 - (iii) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Illawarra Communications Pty Ltd's expense, audits to identify all contraventions of relevant Commonwealth workplace laws for all current and former employees covered by the Modern Award from 1 January 2015 to the execution of this Undertaking including; entitlements to minimum rates of pay, casual loadings, public holidays and overtime rates;
 - (iv) Conduct the audit referred to in (iii) within 90 days from the execution of this Undertaking;
 - (v) Pay to any Affected Employees, referred to in (iii), within 180 days of the completion of the audit referred to in (iii), the outstanding amounts as calculated using the compliant minimum rates of pay;
 - (vi) Within 7 days of each payment being made to an Affected Employee as per paragraph (iii), provide the methodology of the calculations and reasonable evidence to the FWO that these Payment/s have been made;
 - (vii) If an Affected Employee cannot be located, within 1 month of the payment falling due, pay any outstanding amount into the consolidated revenue of the Commonwealth of Australia (through the FWO), in accordance with section 559 of the FW Act, to be held on trust for the relevant Employee.

c) Future Audit Activity

- (viii) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Illawarra Communications Pty Ltd's expense, audits of Illawarra Communications Pty Ltd's compliance with all Commonwealth workplace laws and instruments (Audits), relating to the pay and conditions of 25% of employees as follows:
 - (a) The Audit of 1 complete pay period in January 2017 to be finalised by 31 March 2017;
 - (b) The Audit of 1 complete pay period in January 2018 to be finalised by 31 March 2018.
- (ix) Provide to the FWO within 14 days of each of the finalisation dates specified in subclause (viii) a and (viii) b above details of the methodology used to conduct the Audit and a report on the outcomes of the Audit;
- (x) in the event the Audit discloses contraventions of any applicable Commonwealth workplace relations laws, rectify all such contraventions including rectification of any and all underpayments to employees and provide evidence of the rectification to the FWO within 14 days of completion of each Audit;
- (xi) If an Affected Employee cannot be located, within 1 month of the payment falling due, pay any outstanding amount into the consolidated revenue of the Commonwealth of Australia (through the FWO), in accordance with section 559 of the FW Act, to be held on trust for the relevant Employee.

d) Apology

- (xii) within 28 of the execution of this Undertaking, send an apology to [REDACTED] in the terms set out in Attachment B;
- (xiii) in the event that the Audits referred to in c) (viii) a and (viii) b requires rectification of any underpayments, send an apology to the affected workers within 28 days of payment being made in the terms set out in Attachment B;
- (xiv) within 7 days of the distribution of the Apology Letter(s) to and any affected worker, including [REDACTED] provide a copy of the Apology Letter to the FWO.

e) Public Notice

- (xv) Place a public notice (**Public Notice**) in the Illawarra Mercury within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking. The Public Notice must:
 - (a) Bear the name of Illawarra Communications Pty Ltd;
 - (b) Bear the logo (if any) of Illawarra Communications Pty Ltd;
 - (c) Be in the form of Attachment A.
- (xvi) provide a copy of the Public Notice within 7 days of publication.

f) Workplace relations training

- (xvii) Within 90 days of the execution of this Undertaking, organise and ensure training for all persons engaged by Illawarra Communications Pty Ltd who have managerial responsibility for human resources, recruitment/termination or payroll functions (**Training**);
- (xviii) Ensure the Training relates to compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Modern Award;
- (xix) Ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by Illawarra Communications Pty

Ltd;

- (xx) 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;
- (xxi) Provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended);
- (xxii) Within 90 days of the execution of this Undertaking ensure persons referred to in paragraph f) (xvii) review relevant education material available on the FWO website and complete educational activities as set out in Attachment C and ensure a copy of each Attachment C completed is provided to the FWO.

g) FWO My Account Registration

Within 14 days of the execution of this Undertaking:

- (xxiii) Register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options;
- (xxiv) Provide to the FWO Illawarra Communications Pty Ltd 'My Account' registration number
- (xxv) Within 14 days of the execution of the Undertaking, subscribe to the following and provide evidence to the FWO as set out in Attachment D;
- (xxvi) 'General information' email alerts from the FWO relating to the Modern Award, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>;
- (xxvii) FWO's Employer newsletter for the relevant State and industry, available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
 - (i) pay updates;
 - (ii) award updates;
 - (iii) holiday updates;
 - (iv) working hours and breaks; and
 - (v) annual leave/sick leave.

h) Workplace notices

- (xxviii) within 28 days of the execution of this Undertaking display, a notice in the form of Attachment A to this Undertaking (**Workplace Notice**):
 - (i) for a period of at least 28 days in locations where employees are engaged by Illawarra Communications Pty Ltd; and
 - (ii) in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by Illawarra Communications Pty Ltd (for example, by placement on a staff noticeboard in the workplace in at least A3 size).
- (xxix) provide written details of the method/s of displaying or providing the Workplace Notice, and photographic proof of their display, to the FWO within 7 days of it first being displayed.

i) No Inconsistent Statements

- (xxx) Illawarra Communications Pty Ltd:
 - (i) must not; and
 - (ii) 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.

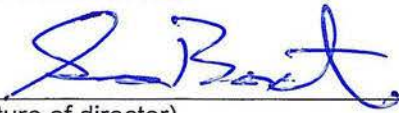
Acknowledgements

Illawarra Communications Pty Ltd 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 (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 Illawarra Communications Pty Ltd;
- (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 Illawarra Communications Pty Ltd has contravened any of the terms of this 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, Illawarra Communications Pty Ltd may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an Undertaking

EXECUTED by Illawarra Communications Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

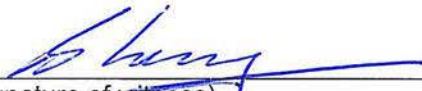
SCOTT BAXTER

(Name of director)

10/5/2016

(Date)

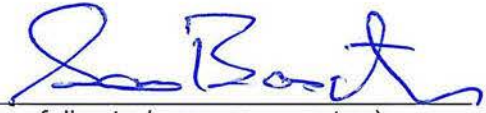
in the presence of:



(Signature of witness)

BARRY LACEY

(Name of witness)



(Signature of director/company secretary)

SCOTT BAXTER

(Name of director/company secretary)

10/5/2016

(Date)

in the presence of:



(Signature of witness)

BARRY LACEY

(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 & Compliance.

16 MAY 2016

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of Witness)

Attachment A – Form of Public and Workplace Notice

Contravention of Fair Work Act by Illawarra Communications Pty Ltd

We refer to the admission made to the Office of the Fair Work Ombudsman (FWO) by **Illawarra Communications Pty Ltd** that it had contravened the *Fair Work Act 2009*.

Illawarra Communications Pty Ltd worked cooperatively with the FWO to determine that it had contravened Section 45 of the FW Act by contravening a Modern Award, specifically failing to pay the prescribed casual loadings, public holidays, weekends and overtime rates.

Illawarra Communications Pty Ltd has formally admitted to 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 in addition to rectifications already made, which includes future reporting to the FWO.

Illawarra Communications Pty Ltd expresses its sincere regret and apologises for its actions which resulted in the contraventions. Furthermore, **Illawarra Communications Pty Ltd** gives a commitment that it will not happen again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for **Illawarra Communications Pty Ltd** and have queries or questions relating to your employment, please contact **Diana Magil (Office Administration Manager) on 02 4229 7300 or diana@illcom.com.au**. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment B – Letter of Apology

FORM OF APOLOGY LETTER

Date

Employee Name
Address
Address

Dear _____

The purpose of this letter is to apologise on behalf of Illawarra Communications Pty Ltd for non-compliance with Commonwealth workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Illawarra Communications Pty Ltd had contravened the *Fair Work Act 2009* (FW Act) by failing to pay its employees the following entitlements under *Contract Call Centres Award 2010 [MA000023]*:

- Clause 13 - Prescribed casual loading
- Clause 24.6 - Spread of ordinary hours of work
- Clause 24.7 - Penalty rates for time worked outside the spread of ordinary hours Monday to Friday and on weekends
- Clause 30.4 - Payment for time worked on a public holiday
- Clause 26.1 - Payment for working overtime

Regrettably, the investigation determined that you were affected by the above contraventions. Illawarra Communications Pty Ltd is taking steps to remedy the contraventions, including by rectifying \$_____ that you have been underpaid.

You will/have receive/d this payment on (date) and will be provided with payment advice (pay slip) regarding the payment.

Illawarra Communications Pty Ltd has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking under the FW Act with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking, Illawarra Communications Pty Ltd has committed to a number of measures to ensure future compliance with Commonwealth workplace laws.

Illawarra Communications Pty Ltd expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact -----, (Position) on _____.

Yours sincerely

Illawarra Communications Pty Ltd

Attachment C - Workplace relations training

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date completed: _____
- Hiring employees date completed: _____
- Managing performance date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Leave Calculator date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- International Students date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

Read information on the following:

- **Pay Overview**
 - Minimum wages Page Ref No. _____ date completed: _____
 - Penalty rates & allowances Page Ref No. _____ date completed: _____

- **Leave Overview**

- Annual leave Page Ref No. _____ date completed: _____
- Sick & carer's leave Page Ref No. _____ date completed: _____

- **Ending Employment Overview**

- Notice & final pay Page Ref No. _____ date completed: _____
- Unfair dismissal Page Ref No. _____ date completed: _____

- **Employee Entitlements Overview**

- Types of employees Page Ref No. _____ date completed: _____
- National Employment Standards Page Ref No. _____ date completed: _____

- **Awards & Agreements Overview**

- Awards Page Ref No. _____ date completed: _____

(Signature of director)

(Name of director)

(Date)