



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Roo and Oz Sheetmetal Pty Ltd (ABN: 55 106 189 888)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Roo and Oz Sheetmetal Pty Ltd (**the Employer**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Employer has been registered as a Constitutional Corporation since 3 September 2003 (ABN 55 106 189 888)
3. The Employer operates within the metal manufacturing industry and operates from 73 Venture Drive, Sunshine West, Victoria.
4. In November 2015, the Employer was subject to an Audit as part of the FWO's VIC Dandenong Regional Campaign 2015/2016, which found contraventions of the Commonwealth workplace laws that occurred between 31 December 2014 and 27 October 2015 (the Investigation Period). Of 89 employees engaged by the Employer, 16 casual employees were found to be underpaid (14 adults and 2 juniors) (**the Employees**). The employees were engaged in various classifications as per Attachment A.
5. The Employees were paid between \$18.00 and \$19.00 per hour for ordinary hours worked, including weekends and public holidays. In addition, the Employees were paid between \$27.00 and \$28.50 per hour for all overtime hours worked.
6. The hourly rates outlined in paragraph 5 were less than the relevant minimum casual hourly rates for labourers, classified as C13 and C14 employees, under the *Manufacturing and Associated Industries Award 2010* (**the Award**) which applies to the Employer.
7. The contraventions resulted in the Employees being underpaid a total of \$23,206.45 during the Investigation Period.
8. On 28 September 2016 the Employer accepted the Audit findings.
9. The Employer will rectify the underpayments in accordance with the terms of this Undertaking and take additional steps to ensure future compliance with the Award and workplace laws.

Contraventions

10. The FWO has determined, and the Employer admits, that the Employer contravened section 45 of the FW Act by failing to comply with the following provisions of the Award:
 - (a) Clause 24 by failing to pay 15 employees applicable ordinary hourly rate of pay;
 - (b) Clause 14.1 by failing to pay 16 employees the applicable casual loading on the ordinary hourly rate;
 - (c) Clause 36.2(e) by failing to pay one employee the applicable Saturday penalty rates.
 - (d) Clause 36.2(f) by failing to pay one employee the applicable Public Holiday penalty rates.
 - (e) Clause 37 by failing to pay three employees the applicable afternoon shift penalty rates.
 - (f) Clause 40 by failing to pay 14 employees the applicable overtime rates.

Commencement of Undertaking

11. This Undertaking comes into effect when:

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

12. Upon the commencement of this Undertaking, the Employer undertakes to assume the obligations set out below.

Undertakings

13. For the purposes of section 715 of the FW Act, the Employer undertakes to:

Rectify underpayments

- (a) Within 90 days of this Undertaking coming into effect, complete full payment of the amounts owed to each Employee as set out in **Attachment A**;
- (b) Within 7 days of making a payment to any of the affected Employees, provide to the FWO evidence of the payment made;

FWO MyAccount Registration

- (c) Within 14 days of the commencement of this Undertaking, register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and complete the profile, minimum pay rates and award options through this portal;
- (d) Provide the FWO with the Company's 'My Account' registration number within 7 days of registration;

Future Workplace Relations Compliance

- (e) Comply at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) (**FW Regulations**), the Award and any modern awards as they apply to any of the Employer's employees;
- (f) Provide the FWO, within 90 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph (e) above. Without limitation, such systems and processes relating to:
 - i. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - ii. Keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

Workplace Notice

- (g) Within 28 days of the commencement of this Undertaking, display a notice within the workplace in a place which is accessible to all employees (**Workplace Notice**) for a period of 14 consecutive days in the terms set out in **Attachment B**;
- (h) Within 7 days of the display of the notice, provide a copy of the **Workplace Notice** and provide photographic evidence of its display to the FWO;

Apology

- (i) Within 28 days of the commencement of this Undertaking, send each of the Employees an apology (**Apology Letter**) in the form of the letter set out in **Attachment C**;

- (j) Within 7 days of the Apology Letter being sent, provide to the FWO a copy of each of the Apology Letters and proof of their delivery to the Employees;

Self – Audit and Reporting Activity

- (k) Cause to have performed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Employer) future audits of the Employer's compliance with the FW Act, FW Regulations and Commonwealth workplace laws including but not limited to the Award on the following terms:

- (i) The audits will be required to cover each of the full pay period(s) that fall in the period from 1 September to 30 September (inclusive) in the years 2017, 2018 and 2019;
- (ii) The audits must be completed within 30 days of the end of the relevant audit period each year;
- (iii) The audits will apply to all employees employed at any time during the audit period in a classification of work of any fair work instrument applying to the Employer in the audit period;
- (iv) The audits will assess the Employer's compliance with the following obligations according to each employee's classification of work, category of employment and hours worked during the audit period:
 - wages and work-related entitlements;
 - any accrual and payment of entitlements under the National Employment Standards in Part 2-2 of the FW Act;
 - method and frequency of payment in accordance with the section 323 of the FW Act; and
 - record keeping and pay slip obligations in Division 3 of Part 3-6 of the FW Act;
- (v) Within 7 days of the Audit finalisation dates contained in paragraph 13 (ii), the Employer will provide to the FWO a copy of the audit report which must include:
 - a statement of the qualifications of the person conducting the audit and the methodology used in the audit;
 - the audit findings including the particulars of any contraventions identified in the audit; and
 - in the event an audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions by 30 November of the relevant year, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO.

Acknowledgements

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

Attachment A – Employees and amounts owed

Employees	Classification	Amount Owed	Period of Engagement
	C13	\$8,677.63	
	C13	\$965.88	
	C14	\$849.28	
	C14	\$137.88	
	C14	\$600.90	
	C13	\$260.51	
	C13	\$138.80	
	C14	\$94.48	
	C14	\$57.76	
	C14	\$1,084.16	
	C14	\$36.10	
	C14	\$771.61	
	C14	\$281.38	
	C14	\$339.41	
	C14	\$720.12	
	C13	\$8,190.55	

Attachment B – Form of Workplace Notice

Contravention of *Fair Work Act 2009* and the *Manufacturing and Associated Industries Award 2010* by Roo and Oz Sheetmetal Pty Ltd

A recent audit conducted by the Office of the Fair Work Ombudsman (FWO) determined that Roo and Oz Sheetmetal Pty Ltd contravened the *Fair Work Act 2009* by failing to pay casual employees the correct entitlements under the *Manufacturing and Associated Industries Award 2010* as follows:

- Underpayment of ordinary hourly rate of pay;
- Underpayment of casual loading on the ordinary hourly rate;
- Underpayment of Weekend and Public Holiday penalty rates.
- Underpayment of afternoon shift penalty rates.
- Underpayment of overtime rates

Roo and Oz Sheetmetal 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 to remedy the contraventions, including by rectifying the underpayments.

Roo and Oz Sheetmetal Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore Roo and Oz Sheetmetal Pty Ltd 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.

If you have queries or questions relating to your employment, please contact me on [insert director's name on XXXXXXXX](#). Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment C – Letter of Apology

<Date>

<Employee name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Roo and Oz Sheetmetal Pty Ltd for non-compliance with Commonwealth workplace relations laws. A recent audit conducted by the Office of the Fair Work Ombudsman (FWO) determined that Roo and Oz Sheetmetal Pty Ltd contravened the *Fair Work Act 2009* by failing to pay casual employees the correct entitlements under the *Manufacturing and Associated Industries Award 2010* as follows:

- Underpayment of ordinary hourly rate of pay;
- Underpayment of casual loading on the ordinary hourly rate;
- Underpayment of Weekend and Public Holiday penalty rates.
- Underpayment of afternoon shift penalty rates.
- Underpayment of overtime rates

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

Roo and Oz Sheetmetal Pty Ltd is taking steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (insert amount); and
- Committing to future compliance.

You will receive this payment by (insert date) and will be provided with a payment advice regarding the payment.

Roo and Oz Sheetmetal Pty Ltd 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, Roo and Oz Sheetmetal Pty Ltd has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

We sincerely regret and apologise for failing to comply with our lawful obligations.

Should have any questions, please contact me on insert director's contact number.

Yours sincerely

insert director name

Director

Roo and Oz Sheetmetal Pty Ltd