



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

**E TANNOUS & V TANNOUS**

ABN 49 479 055 203

## Section 715 ENFORCEABLE UNDERTAKING

### Parties

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (**FWO**) by E TANNOUS & V TANNOUS trading as United Petroleum Dee Why for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

### Background

2. United Petroleum Pty Ltd (**United**) is an Australian owned company first registered in 1993. There are 338 United Petroleum retail fuel sites nationally, all of which are operated by Franchisees and Commission Agents.
3. On 3 September 2015, media outlets reported that nationally, Franchisees at some United Petroleum retail fuel sites were underpaying their employees. The report claimed that one Franchisee admitted to paying his workers \$15.00 per hour. The same Franchisee also claimed that some United Petroleum employees were being paid \$10.00 - \$12.00 per hour and that he has told a senior manager about underpaying workers with no response.
4. In response to the media reporting the FWO self-initiated the United Petroleum Compliance Activity (**Activity**) on 28 September 2015, randomly selecting 11 United Petroleum retail fuel sites across Australia. E TANNOUS & V TANNOUS, a Commission Agent of United was randomly selected as part of the Activity.
5. E TANNOUS & V TANNOUS operate a United Petroleum retail fuel site located at 941 Bourke Street, Waterloo NSW 2017. The primary operation of the fuel site is the retail selling or supplying of motor fuels, gas and oils as well as the retail sale of consumables within the store
6. As the fuel site operates within the retail fuel industry, the terms and conditions of the Employees' was governed by the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (MA000089) (**Modern Award**) and the FW Act.
7. E TANNOUS & V TANNOUS was registered on 01 July 2010 and is a family owned business. Mr Elias TANNOUS and Mrs Violette TANNOUS formed the partnership on 01 July 2010.
8. During the period from 3 August 2015 to 31 December 2015 (**Assessment Period**) the FWO conducted an audit of the payments made to three casual Employees (**Employees**) engaged by E TANNOUS & V TANNOUS. The Employees' were paid a flat rate of \$18.00 per hour for all hours worked on any day of the week.
9. Due to the nature of their work in operating the fuel console, performing retail sales and customer service, the appropriate classification for the Employees' within the Modern Award was Level 4 Console Operator.
10. The Employees' are all International students on student Visa's and they range from twenty six to thirty five years of age. They have minimal workplace experience or knowledge of Australian Workplace Laws.
11. The Employees attend University and study during the day and performed the work in the evenings and on non University days to assist with living costs.
12. As a result of the audit, the FWO determined that:
  - (a) The Employees were paid a flat rate of \$18.00 per hour for all hours worked;
  - (b) The Employees were entitled to be paid \$25.05 for the Monday to Friday casual rate;
  - (c) The Employees were entitled to be paid \$32.56 for the Saturday casual rate;
  - (d) The Employees were entitled to be paid \$32.56 for the Sunday casual rate; and

- (e) E TANNOUS & V TANNOUS had contravened provisions of the Modern Award with respect to underpaying the Monday to Friday, Saturday and Sunday casual hourly rates of pay.
13. As a result of the contraventions, the FWO assessed the underpayments owed to the Employees in relation to the Monday to Friday, Saturday and Sunday casual hourly rates of pay during the Assessment Period to be \$3,096.72 gross.
14. E TANNOUS & V TANNOUS subsequently acknowledged that it had underpaid the Employees a total of **\$3,096.72** gross during the Assessment Period as set out in Schedule A and has agreed to pay \$3,096.72 to rectify the underpayments.
15. E TANNOUS & V TANNOUS has at all times co-operated with the FWO and participated fully in the FWO's audit.
16. E TANNOUS & V TANNOUS is no longer operating a retail fuel outlet and is not currently operating a Business or Company and has no employees, however they have advised the FWO of the possibility they may return to the retail fuel industry and operate another retail fuel outlet in the future.

### **Contraventions**

17. The FWO has determined, and E TANNOUS & V TANNOUS admits, that on the basis of the factual matters outlined above, E TANNOUS & V TANNOUS contravened:
- (a) Section 45 of the FW Act, which states a person must not contravene a term of a Modern Award. Those contraventions were as follows in accordance with the Modern Award:
- Clause 36.3 of the Modern Award, by failing to pay the Employees the casual rate of pay for hours worked Monday to Friday.
  - Clause 36.3 of the Modern Award, by failing to pay the Employees the casual rate of pay for hours worked on a Saturday.
  - Clause 36.3 of the Modern Award, by failing to pay the Employees the casual rate of pay for hours worked on a Sunday.

### **Commencement of Undertaking**

18. This Undertaking comes into effect when:
- (a) the Undertaking is executed by E TANNOUS & V TANNOUS; and
- (b) the FWO accepts the Undertaking so executed.
19. Upon the commencement of this Undertaking, and in the event that E TANNOUS & V TANNOUS operates any New Enterprise (**New Enterprise**) as a Constitutional Corporation, Sole Trader or in a Partnership in a role that involves employing employees, E TANNOUS & V TANNOUS undertakes to assume the obligations set out below.

### **Undertakings**

20. For the purposes of section 715 of the FW Act, E TANNOUS & V TANNOUS undertake to:

#### Rectify Underpayments

- (a) Within 28 days of the execution of this undertaking, rectify the contraventions identified in Schedule A through payment of the total underpayment of \$3,096.72 gross to the Employees; and
- (b) Provide proof of such payment to the FWO within 7 days of the payments being made.

#### FWO My Account Registration

- (c) 14 days prior to commencing a New Enterprise, register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and have completed the profile, minimum pay rates and Award options for the appropriate industry;
  - (i) Within 15 days of the commencement of a New Enterprise provide to the FWO the "My Account" registration number; and
  - (ii) Within 28 days of the commencement of a New Enterprise, at a mutually agreed time and location, demonstrate to a Fair Work Inspector through My Account, knowledge of the current Award minimum pay rates and Saturday, Sunday, Public Holiday and overtime rates for the appropriate industry.

#### Future Workplace Relations Compliance

- (d) Where contacted by any former or current Employees not covered by this Undertaking alleging that their lawful entitlements have not been met, E TANNOUS & V TANNOUS agrees to;
  - (i) Notify the FWO within 14 days of receiving the allegation;
  - (ii) Take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act or the Modern Award has occurred, and where such contraventions are found take immediate steps to rectify those contraventions;
  - (iii) Within 14 days of resolving the allegation provide the FWO with evidence that any identified underpayments have been paid and evidence that other issues identified have been resolved; and
  - (iv) Should a decision be made not to rectify an issue raised by an allegation, notify the FWO within 14 days of this decision and the reasons for not rectifying.
- (e) Ensure that a New Enterprise complies at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act, the Fair Work Regulations 2009 (Cth) and any Award, by developing systems and processes to ensure ongoing compliance with those requirements;
- (f) Provide to the FWO, within 28 days of the commencement of a New Enterprise, written details of the systems and processes implemented in satisfaction of the undertakings in paragraph 20 (e) above designed to ensure such ongoing compliance; and
- (g) Provide to the FWO within 14 days of the following dates a copy of the time and wage records for 2 employees, including hours and days of work, start times and finishing times and payslips:
  - (i) 31 January, 2017;
  - (ii) June 30, 2017;
  - (iii) January 31, 2018; and
  - (iv) 30, June 2018

#### Apology

- (h) Send a letter of apology (**Apology Letter**) to the Employees listed in Schedule A in the form of attachment B to this Undertaking and provide copies to the FWO within 14 days of the execution of this Undertaking.

#### Public and Workplace Notice

- (i) Place a public notice (**Public Notice**) in the *Southern Courier* within 28 days of the FWO

publishing a Media Release on its website in respect of this Undertaking in the terms set out in Attachment A; and

- (j) Provide a copy of the **Public Notice** to the FWO within 7 days of publication.

### Record Keeping

- (k) Within 28 days of the commencement of a New Enterprise provide to the FWO a copy of time and wage records and payslips for one employee for the first full pay period following the commencement of the New Enterprise. Such records are to comply with Commonwealth Workplace Laws

### No inconsistent Statements

- (l) E TANNOUS & V TANNOUS:


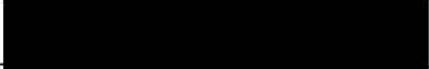

- (i) Must not; and
- (ii) Must ensure that each of its officers, workers or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

### **Acknowledgements**

21. E TANNOUS & V TANNOUS 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 E TANNOUS & V TANNOUS;
- (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 E TANNOUS & V TANNOUS 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, E TANNOUS & V TANNOUS may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Schedule A – Employee underpayments

<b>Table of underpayments</b>	
<b>Employee</b>	<b>Amount Owning</b>
	\$852.00
	\$912.08
	\$1,332.64
<b>TOTAL</b>	<b>\$3,096.72</b>

## Attachment A – Form of Public Notice

### **Contravention of *Fair Work Act 2009* and the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* by E TANNOUS & V TANNOUS**

We refer to the audit conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that E TANNOUS & V TANNOUS contravened the *Fair Work Act 2009* and the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* by:

1. Failing to pay employees the casual rate of pay for hours worked between Monday and Friday.
2. Failing to pay employees the casual rate of pay for hours worked on a Saturday.
3. Failing to pay Employees the casual rate of pay for hours worked on a Sunday.

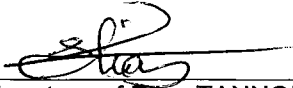
E TANNOUS & V TANNOUS has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments of \$3,096.72 less taxation to the employees affected by the contraventions. E TANNOUS & V TANNOUS expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore E TANNOUS & V TANNOUS 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 worked for E TANNOUS & V TANNOUS and have queries or questions relating to your employment, please contact **Joseph Tannous** on [REDACTED]

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.

**Executed as an undertaking**

EXECUTED by E TANNOUS & V TANNOUS:

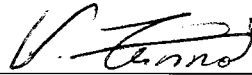


(Signature of Elias TANNOUS)

(Signature of Violette TANNOUS)

11/8/16

(Date)



(Date)

11/8/2016

in the presence of:



(Signature of Witness)



(Signature of Witness)

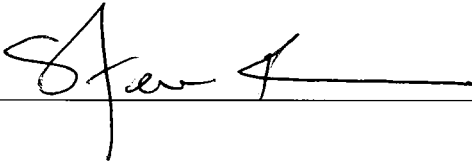
Wissam Azzi

(Name of witness)

Wissam Azzi

(Name of witness)

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

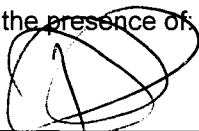


17 August 2016.

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

Tiina Debevc

(Name of Witness)



## Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of E TANNOUS & V TANNOUS for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that E TANNOUS & V TANNOUS had contravened the *Fair Work Act 2009* by:

- Failing to pay the casual rate of pay for hours worked Monday to Friday.
- Failing to pay employees the casual rate of pay for hours worked on a Saturday.
- Failing to pay Employees the casual rate of pay for hours worked on a Sunday.

Regrettably, the investigation determined that you were affected by the above contraventions.

E TANNOUS & V TANNOUS is taking steps to remedy the contraventions, including by rectifying the amount that you have been underpaid. You will receive the payment within 28 of the date of this letter and will be provided with payment advice regarding the payment.

E TANNOUS & V TANNOUS has formally admitted to the FWO that 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 is available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au). As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

E TANNOUS & V TANNOUS expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Joseph Tannous on [REDACTED]

Yours sincerely

Mr Joseph Tannous  
Representative  
E TANNOUS & V TANNOUS