

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Seasonal Labour Solutions Pty. Ltd.

(ABN: 77155 273 493)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by: Seasonal Labour Solutions Pty. Ltd. (**the Employer**) for the purpose of Section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Employer operates a business which includes labour contracting services to farms engaged in horticulture throughout Australia. The Employer is an Approved Employer through the Seasonal Workers Programme (**SWP**) which is managed by the Commonwealth Department of Employment. The Employer is currently subject to a suspension from recruiting under the SWP by the Department of Employment. The Employer is in the process of responding to the Department's inquiries.
3. During the period from 1 September 2015 to 31 January 2016 (**Employment Period**), the Employer employed in excess of 80 employees to provide farm labour, including fruit-picking at Crossmaglen and Bonville NSW (**Employees**).
4. From 1 January 2010 the terms and conditions of the Employees' employment were governed by the *Horticulture Award 2010* (MA000028) (**the MA**) and the *Fair Work Act 2009* (**FW Act**).
5. On or around 22 December 2015, the FWO commenced an audit of the Employer's compliance with Commonwealth workplace laws during the Employment Period as part of FWO's Harvest Trail Inquiry.
6. As a result of its audit, the FWO determined that:
 - (a) Each Employee was properly classified under the MA as a Level 1;
 - (b) In accordance with clause 15 of the MA the Employees had entered into written piece work agreements with the Employer to be paid piece work rates;
 - (c) The Employees are piece workers;
 - (d) The Employees were entitled to be paid the following piece rates for each 1.8 kilogram bucket of blueberries picked during the Employment Period:

Employment Period	Minimum 'piece work' rate	Public Holiday 'piece work' rate
01/09/2015 – 31/01/2016	\$5.71	\$11.42

- (e) The Employees were paid the following piece rates during the Employment Period:

Period Commencing	'Piece work' rate	Public Holiday 'piece work' rate
01/09/2015 – 31/01/2016	\$5.71	\$5.71

- (f) On some occasions during the Employment Period some of the Employees were required to work for 36 consecutive days without a full day's break.
7. On 19 February 2016 the FWO issued, and the Employer complied with, a Compliance Notice in relation to the alleged underpayment of piece rates paid to Employees for the Labour Day Public Holiday on 5 October 2015. The Employer complied with the Compliance Notice. Pursuant to subsection 716(4B) of the FW Act, by complying with the Compliance Notice the

Employer is not taken to have admitted to or found to have contravened a civil remedy provision in relation to the alleged contravention covered by the Compliance Notice. The FWO and Employer acknowledge and agree that this Undertaking does not relate to the contravention identified in the Compliance Notice.

8. The Employer subsequently conducted its own audit and found that it had failed to pay the Employees a Public Holiday 'piece work' rate for work performed on Christmas Day and Boxing Day in 2015 and New Years Day and Australia Day in 2016.
9. The Employer assessed the total wage underpayments owed to the Employees for work performed on Christmas Day and Boxing Day in 2015 and New Years Day and Australia Day in 2016 to be \$14,720.38 gross.
10. The Employer acknowledged that, during the Employment Period, it had underpaid the Employees a total of \$14,720.38 gross in respect of the public holidays identified in paragraphs 8 and 9 above and has rectified the underpayments by paying the Employees the amounts as set out in Attachment A.

Contraventions

11. The FWO has determined, and the Employer admits, that the Employer contravened the following sections of the FW Act and the MA:
 - (a) section 45 of the FW Act by failing to comply with clause 28.3 of the MA by failing to pay the Employees the correct rate of pay for work performed on the following public holidays – Christmas Day and Boxing Day 2015 and New Years' Day and Australia Day 2016;
 - (b) section 44 of the FW Act, by failing to comply with section 62 of the FW Act by requiring workers to work more than the maximum weekly hours prescribed in that section, specifically as outlined in the subsection 62(3)(a) to (j).

(collectively, the **Contraventions**).

Commencement of Undertaking

12. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Seasonal Labour Solutions Pty. Ltd.; and
 - (b) the FWO accepts the Undertaking so executed.
13. Upon the commencement of this Undertaking the Employer undertakes to assume the obligations set out below.

Undertakings

14. For the purposes of Section 715 of the FW Act the Employer, undertakes to:

FWO MyAccount Registration

- (a) Within 28 days of the execution of this Undertaking:
 - i. register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options;
 - ii. provide to the FWO the 'My Account' registration number;
 - iii. at a mutually agreed time and location, demonstrate to a FWO officer My Account knowledge of the current *Horticulture Award 2010* minimum pay rates including rates for working public holidays and overtime provisions for permanent employees.
 - iv. subscribe to receive email alerts from the FWO relating to the MA, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-e>

mail-updates

- v. subscribe to FWO's Employer newsletter for the relevant State <http://fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
- pay updates;
 - award updates;
 - public holiday entitlements;
 - working hours and breaks;
- vi. Provide to the FWO evidence of the above subscriptions, including advising the FWO of the email address used to register.

Future Workplace Relations Compliance

- (b) Ensure the Employer complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* and the MA;

Self- Audit and Reporting Activity

- (c) By 30 June 2017 have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Employer) an audit of its compliance with the Fair Work Act 2009 (Cth), the Fair Work Regulations 2009 (Cth) and the Horticulture Award 2010 (MA). Specifically:
- (i) The Employer must demonstrate compliance with their record keeping and pay slip obligations under the FW Act and *Fair Work Regulations 2009*;
 - (ii) The Employer must demonstrate compliance with the MA, including, but not limited to, Clauses 10,14,15 and 28.
 - (iii) The Employer must provide to the FWO evidence of superannuation contributions to a superannuation fund for the benefit of the employees as this will avoid the Employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to employees;
 - (iv) The audit is to be conducted upon a 20% sample of the Employer's full-time, part-time and casual employees for a period of two (2) full pay periods of which at least one pay period must include a Public Holiday occurring in 2017; and
 - (v) The Employer must provide a copy of the audit report to the FWO by 7 July 2017.
- (d) To make available to the FWO if requested the records used to conduct the audit; and
- (e) Provide evidence of rectification of any contraventions disclosed by the audit to the FWO by 31 July 2017.

No Inconsistent Statements

15. The Employer:

- (a) must not; and
- (b) 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

16. 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.

End date

17. The undertaking shall end and the Employer will be discharged from the Undertaking upon compliance by the Employer with paragraph 14 herein.

Attachment A - List of Underpayments Rectified

		\$451.09
		\$713.75
		\$588.13
		\$616.68
		\$639.52
		\$610.97
		\$633.81
		\$685.20
		\$571.00
		\$770.85
		\$765.14
		\$479.64
		\$451.09
		\$531.03
		\$468.22
		\$531.03
		\$650.94
		\$531.03
		\$576.71
		\$365.44
		\$593.84
		\$525.32
		\$553.87
		\$371.15
		\$628.10
		\$416.83
Total = 26 employees		\$14720.38

Executed as an undertaking

EXECUTED by Seasonal Labour Solutions Pty. Ltd.



(Signature on behalf of Seasonal Labour Solutions Pty. Ltd.)

Brian FRANKHAUSER

17/06/2016
(Date)

(Date)

in the presence of:

in the presence of:

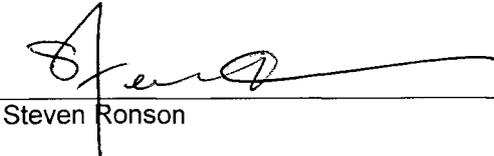

(Signature of witness)

(Signature of witness)

SELINA FRANKHAUSER
(Name of witness)

(Name of witness)

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

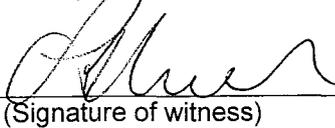

Steven Ronson

5 JULY 2016
(Date)

Executive Director Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

5/7/2016
(Name of Witness)