



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Mesa 3 Pty Ltd (ABN 11 104 719 039) and Helen Maria Papagelou as trustees for the Ex-RPH Trust and **accepted** by the Fair Work Ombudsman pursuant to section 715 of the *Fair Work Act 2009*.

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by Mesa 3 Pty Ltd (ABN 11 104 719 039) (**Mesa 3**) and Helen Maria Papagelou as trustees for the Ex-RPH Trust trading as Villa Romana (**Villa Romana**), of 101 Sheridan Street, Cairns QLD 4870.

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Villa Romana; and
 - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

BACKGROUND

3. Villa Romana operates a restaurant located on the corner of Esplanade & Aplin Street, Cairns City QLD 4870. The restaurant employs up to 65 workers during the peak season comprising of visa workers and longer-term local staff. Villa Romana is covered by the *Restaurant Industry Award 2020* (**Restaurant Award**).
4. In June 2023 Inspectors from the FWO conducted a site visit at the Villa Romana restaurant as part of the Cairns 2023 Food Precinct Activity. Subsequently, the FWO issued Notices to Produce to Villa Romana.
5. On 26 November 2024 the FWO issued a Findings of Contravention letter to Villa Romana detailing that Villa Romana failed to:
 - (a) between 1 April 2021 to 28 May 2023 (**Period 1**), comply with section 535(1) of the FW Act, by failing to keep records for seven years in accordance with by failing to keep records for seven years in accordance with the regulations set out in paragraph 10(a) below of the *Fair Work Regulations 2009* (**FW Regulations**),
 - (b) between 29 May 2023 to 1 October 2023 (**Period 2**), comply with section 45 of the FW Act, by contravening clauses the Restaurant Award set out in paragraph 11 below, and
 - (c) pay 76 employees, as set out in Appendix A (**Contravention Employees**), a total of \$86,873.01 as a result of the section 45 contraventions in Period 2.
6. By 16 January 2025 Villa Romana had back paid all Contravention Employees identified by

the FWO.

7. The FWO acknowledges Villa Romana's cooperation throughout the FWO's investigation as well as the prompt rectification payments made by Villa Romana in accordance with the FWO's calculated underpayment amount.
8. The FWO also acknowledges Villa Romana's commitment to establish and implement comprehensive systems/processes across the organisation to avoid any future similar contraventions occurring as detailed in, but not limited to, the admissions set out in clauses 10 and 11 below.
9. In consideration of these matters, the FWO accepts this Undertaking, the terms of which are set out below.

ADMISSIONS

10. The FWO has a reasonable belief, and Villa Romana admits, that during Period 1 Villa Romana contravened:
 - (a) Section 535(1) of the FW Act, by failing to make and keep records for seven years in accordance with the following regulations of the FW Regulations:
 - i. Regulation 3.33(3)(d) - if an employee is entitled to be paid a penalty rate the record must set out details of the penalty rate;
 - ii. Regulation 3.33(3)(e) - if an employee is entitled to be paid an allowance the record must set out the details of the allowance; and
 - iii. Regulation 3.34 - if an employee is entitled to be paid an overtime rate for overtime hours actually worked, the record must specify either, the number of overtime hours worked during each day, or when the employee started and ceased working overtime hours.
11. The FWO also has a reasonable belief, and Villa Romana admits, that during Period 2 Villa Romana contravened:
 - (a) Section 45 of the FW act, by contravening the following provisions of the Restaurant Award:
 - i. Clause 18.1(a) by failing to pay full-time employees the minimum weekly rate for ordinary hours worked;
 - ii. Clause 18.1(b) by failing to pay part-time employees the minimum hourly rate for ordinary hours worked;

- iii. Clause 24.2(a) by failing to pay full-time and part-time employees the additional amount for hours worked, or part hours worked, on a Monday to Friday between 10.00pm to midnight;
- iv. Clause 24.2(a) by failing to pay full-time and part-time employees the additional amount for hours worked, or part hours worked, on a Monday to Friday between midnight to 6.00am;
- v. Clause 24.2(a) by failing to pay full-time and part-time employees 125% of the minimum hourly rate for work performed on Saturdays;
- vi. Clause 24.2(a) by failing to pay full-time and part-time employees 150% of the minimum hourly rate for work performed on Sundays;
- vii. Clause 24.2(a) by failing to pay full-time and part-time employees 225% of the minimum hourly rate for work performed on public holidays;
- viii. Clauses 23.1(a) and 23.4 by failing to pay full-time employees 150% of the minimum hourly rate for overtime hours worked on a Monday to Friday – first 2 hours;
- ix. Clauses 23.1(a) and 23.4 by failing to pay full-time employees 200% of the minimum hourly rate for overtime hours worked on a Monday to Friday – after 2 hours;
- x. Clauses 23.1(a) and 23.4 by failing to pay full-time employees 175% of the minimum hourly rate for overtime hours worked on a Saturday – first 2 hours;
- xi. Clauses 23.1(a) and 23.4 by failing to pay full-time employees 200% of the minimum hourly rate for overtime hours worked on a Saturday – after 2 hours;
- xii. Clauses 23.1(a) and 23.4 by failing to pay full-time employees 200% of the minimum hourly rate for overtime hours worked on a Sunday;
- xiii. Clauses 10.13(b), 23.1(b) and 23.4 by failing to pay part-time employees 150% of the minimum hourly rate for overtime hours worked on a Monday to Friday – first 2 hours;
- xiv. Clauses 10.13(b), 23.1(b) and 23.4 by failing to pay part-time employees 200% of the minimum hourly rate for overtime hours worked on a Monday to Friday – after 2 hours;
- xv. Clauses 10.13(b), 23.1(b) and 23.4 by failing to pay part-time employees 175% of the minimum hourly rate for overtime hours worked on a Saturday – first 2 hours;
- xvi. Clauses 10.13(b), 23.1(b) and 23.4 by failing to pay part-time employees 200% of the minimum hourly rate for overtime hours worked on a Saturday – after 2 hours;
- xvii. Clauses 10.13(b), 23.1(b) and 23.4 by failing to pay part-time employees 200% of the minimum hourly rate for overtime hours worked on a Sunday; and

- xviii. Clause 21.3(b) by failing to pay those full-time and part-time employees the split shift allowance when working 2 work periods of 2 hours or greater on a day, separated by a break of greater than 60 minutes.
12. As a result of the contraventions of section 45 of the FW Act referred to in clause 11 above, the FWO has a reasonable belief, and Villa Romana admits, that during Period 2, Villa Romana underpaid the Contravention Employees named in Appendix A, the amount or amounts to which that employee was entitled under the Restaurant Award resulting in the underpayments identified in Appendix A totalling \$86,873.01.
13. The contraventions referred to in clauses 10 and 11 do not include:
- (a) any contraventions which relate to or arise as a consequence of Villa Romana failing to correctly apply the Restaurant Award to any employee who is not one of the Contravention Employees, or because of any failure by Villa Romana to correctly apply clauses of the Restaurant Award to Contravention Employees that are not set out in clause 11 above; or
 - (b) any contraventions which have not yet occurred at the date that this Undertaking is offered by Villa Romana; or
 - (c) any contraventions which have not yet occurred at the date that this Undertaking is offered by Villa Romana (whether or not those contraventions are identified in the independent audit at clauses 22 to 39 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by Villa Romana and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention; or
 - (d) any contraventions of the Restaurant Award by Villa Romana which occurred outside Period 1 or Period 2.

UNDERTAKINGS

14. Villa Romana will take the actions set out at clauses 15 to 52 (inclusive) below.

Workplace relations systems, processes and training

Workplace relations systems and processes

15. By 2 March 2026, Villa Romana will provide the FWO with detailed information about the systems and processes that it is implementing to ensure compliance with its obligations under the FW Act and the Restaurant Award (and any future replacement instrument). In particular, Villa Romana will provide a written report which will include the following:

- (a) details of the HR specialist engaged by Villa Romana to review its practices,
 - (b) an overview of the scope of the above engagement,
 - (c) a copy of a payslip issued by Villa Romana to an employee within 60 days prior to the provision of the written report,
 - (d) an example of employee timesheet data maintained by Villa Romana over a pay period within 60 days prior to the provision of the written report.
 - (e) an example of an employment contract, and
 - (f) an overview of the number of employees employed at the time of the report, including a numerical breakdown of the applicable industrial instruments, the status and classifications of employees under each industrial instrument.
16. The FWO may, within 28 days of receiving the information under clause 15 seek reasonable further information regarding the systems and processes from Villa Romana by issuing a written notice to Villa Romana specifying the additional information required. Villa Romana must provide the information specified in such a notice within 28 days of receipt.

Mandatory training

17. By 1 April 2026, Villa Romana will ensure that at least one director of Mesa 3 Pty Ltd and all current employees of Villa Romana with responsibility for human resources, payroll and rostering have completed training which satisfies clause 18 below.
18. The following training courses must be completed via the FWO website:
- (a) 'Record-keeping and pay slips', and
 - (b) 'Hiring employees'.
19. By 1 May 2026, Villa Romana will provide to the FWO evidence of its compliance with clause 17, including:
- (a) a schedule or list of the relevant director(s) and employees who undertook the training and the date on which they completed each module.

No limitation on use of information

20. Villa Romana will not assert, or seek to assert, any limitation on how the FWO may use or rely on the information provided pursuant to clauses 15 to 19 above, in the lawful performance of its statutory functions and powers.

Independent Audits

21. Villa Romana must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent**

- Auditor**) to conduct two (2) audits of Villa Romana' compliance with the FW Act, FW Regulations and the Restaurant Award (or any replacement industrial instrument) (**Audits**).
22. The Audits will be conducted on a total of 20 employees of Villa Romana to whom the Restaurant Award applies, as set out in each of the relevant periods set out below:
- (a) An audit of 10 employees across 3 full pay periods falling within the period 1 March 2026 to 30 April 2026 (**Initial Audit**); and
 - (b) An audit of 10 employees across 3 full pay periods falling within the period 1 May 2027 to 30 June 2027 (**Second Audit**).
23. Villa Romana will notify the FWO of its proposed Independent Auditor by no later than 45 days after the Commencement Date. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Villa Romana to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. In this event, the FWO will provide reasons in writing to Villa Romana as to why the Independent Auditor nominated by Villa Romana is not considered appropriate and Villa Romana will be given a reasonable opportunity to address those reasons in writing before the FWO determines whether to decline approval or not. The Independent Auditor must be approved by the FWO in writing before being engaged by Villa Romana.
24. Villa Romana must ensure that each of the Audits conducted by the Independent Auditor includes:
- (a) an assessment of 10 different employees in each audit period to whom the Restaurant Award (or any replacement industrial instrument) applies, across a range of classifications, lengths of service, and employment types (including full-time, part-time and casual), during the relevant audit period (**Affected Employees**) in respect of their employment by Villa Romana;
 - (b) an assessment of whether the Affected Employees have been correctly classified under the Restaurant Award by Villa Romana;
 - (c) an assessment of whether the pay and conditions of the Affected Employees during the relevant audit period comply with the FW Act, FW Regulations and the Restaurant Award;
 - (d) the production of a written report on the Audit setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
 - (e) that the written report referred to in (d). above contains the following declarations from the Independent Auditor:
 - i. the Independent Auditor has no actual, potential or perceived conflict of

- interest in providing the report to the FWO;
- ii. notwithstanding that the Independent Auditor is retained by Villa Romana the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Villa Romana in preparing the report;
 - iii. the report is provided in accordance with applicable professional standards (which will be listed in the report); and
 - iv. the report is provided to the FWO for its benefit and the FWO can rely on the report.

The Audits

25. Villa Romana must ensure the Independent Auditor commences the:
 - (a) Initial Audit by no later than 1 July 2026; and
 - (b) Second Audit by no later than 1 August 2027.
26. The Audits will be conducted for all full pay periods where any part of the period falls within the relevant audit periods.
27. Within four months of the Commencement Date, Villa Romana will provide for the FWO's approval details of the methodology the Independent Auditor intends to use to conduct the Audits.
28. Villa Romana will instruct and use its best endeavours to ensure the Independent Auditor provides a draft written report of the each of the Audits to the FWO (Initial Audit - no later 1 September 2026 and Second Audit – no later than 1 November 2027) setting out the draft Audit findings, and the facts and circumstances supporting the draft Audit findings.
29. Villa Romana will instruct and use its best endeavours to ensure the Independent Auditor finalises each Audit and provides a written report of the Audit (**Audit Report**) to the FWO and Villa Romana within six weeks of FWO providing any comments on the draft report to the Independent Auditor.

Outcome of the Audits

30. If either Audit identifies underpayments to any Affected Employees, Villa Romana will:
 - (a) within 30 days of receipt of the Audit Report, (and subject to clauses 33 and 34 below) rectify any underpayments identified in the relevant audit period; and
 - (b) within 120 days of receipt of the respective Audit Report, and unless otherwise advised by the FWO, conduct a reconciliation of the amounts paid and owed to those employees in the 12 month period immediately before the relevant audit period, and rectify any underpayments that are identified.

31. Villa Romana will provide to the FWO Reasonable Evidence of such rectification within 30 days of reconciliation payments being made.
32. If any employees identified in either Audit as having underpayments owing to them cannot be located within 60 days of the conclusion of the Audit, Villa Romana will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Villa Romana will complete the required documents supplied by the FWO for this purpose.
33. If Villa Romana determines that in any respect there is inaccuracy or error in respect of any underpayments identified by the Independent Audit, it will have the right within 30 days of the receipt of the Audit Report to make written submissions to the FWO and the Independent Auditor seeking a reconsideration of the affected underpayments.
34. The FWO and the Independent Auditor will give consideration to any issues raised and will provide a response to those matters before requiring Villa Romana to proceed with rectification as set out at clause 30 above.
35. If any of the Audits identify an underpayment of minimum entitlements to one or more of the Employees, and the FWO reasonably believes that additional underpayments were likely to have occurred, the FWO (subject to clause 36 below) may direct Villa Romana to engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit which may require an audit of all its employees to whom the Restaurant Award (or any replacement industrial instruments) applies over an additional audit period (**Additional Audit**). Any Additional Audit must be paid for by Villa Romana.
36. Prior to the FWO giving any direction at clause 35 above, Villa Romana will be given an opportunity to seek clarification and provide written submissions to the FWO as to whether the Additional Audit is warranted and the scope and reference terms of any Additional Audit.
37. The FWO will consider any submissions made and must provide Villa Romana with reasoning as to why it maintains that an Additional Audit is required and as to the scope and reference terms of any Additional Audit.
38. If requested by the FWO, Villa Romana will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 21 days of such a request, subject to any legal professional privilege attaching to such records.

Contribution Payment

39. Within 28 days of the Commencement Date, Villa Romana will make a contribution payment of \$40,000 to the Consolidated Revenue Fund.

40. Villa Romana will provide evidence to the FWO of the contrition payment within 14 days of making payment to the Consolidated Revenue Fund.

Workplace Notice

41. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking.
42. Within 14 days of, but not before, the FWO publishing a media release on its website, Villa Romana will cause to be displayed within its restaurant situated on the corner of Esplanade & Aplin Street, Cairns City, QLD, a notice in the form of **Appendix B** to this Undertaking (**Workplace Notice**).
43. Villa Romana must ensure the Workplace Notice is:
- (a) at least A4 in size;
 - (b) clearly displayed in a location to which all employees have access (for example, by placement on a staff noticeboard); and
 - (c) displayed for a period of 60 continuous days.
44. Within 7 days of first displaying the Workplace Notice, Villa Romana will provide photographic evidence to the FWO of the display and location of the Workplace Notice.
45. At the end of the 60-day period referred to in clause 43 above, Villa Romana will provide confirmation to the FWO that the Workplace Notice has been continuously displayed for the required period.

Worker Voice

46. Villa Romana is committed to listening to the views and perspectives of its employees. Within 12 months of the Commencement Date, Villa Romana will undertake an employee engagement survey. The design and implementation of the survey will be approved by the FWO.

FWO My Account Registration

47. Within 28 days of the execution of the Undertaking, Villa Romana will:
- (a) register with the FWO My Account portal [Register for My account](#) and complete the 'My Account' profile, including information about the business and award coverage through the portal; and
 - (b) provide to the FWO the 'My Account Customer Registration Number (CRN).

Subscribe to email updates

48. Within 28 days of the execution of the Undertaking, Villa Romana will subscribe to the FWO's

subscription service available at [FWO Subscribe](#) and upon registering to the subscription service, request updates on the following and provide evidence of the subscription to the FWO:

- (a) 'Alerts and updates'; and
- (b) 'New subscribers'.

Reporting Changes in Circumstances

49. Villa Romana will notify the FWO of any changes of circumstances that impacts on Villa Romana's ability to comply with the obligations contained in this Undertaking, as soon as reasonably practicable after becoming aware of such circumstances. Such circumstances include but are not limited to:

- (a) a sale or potential sale (once a binding sale agreement has been entered into) of the business, or part of the business;
- (b) ceasing or an expectation of ceasing to trade; or
- (c) the business going into administration or liquidation.

Extensions of Time

50. Villa Romana may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. The FWO will not unreasonably withhold agreement on a request for an extension of time.

51. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

No Inconsistent Statements

52. Villa Romana must not, and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

53. Villa Romana acknowledges that:

- (a) the FWO may:
 - i. make this Undertaking available on the FWO internet site at

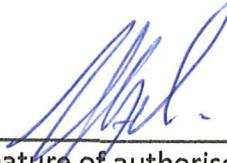
- ii. release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982 (Cth)*;
 - iii. issue a media release in relation to this Undertaking;
 - iv. from time to time, publicly refer to the Undertaking and its terms; and
 - v. rely upon the admissions made by Villa Romana set out in clauses 10 to 12 above in respect of decisions taken regarding enforcement action in the event that Villa Romana is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Villa Romana to comply with its obligations under this Undertaking.
- (b) 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 herein;
- (c) consistent with section 715(3) of the FW Act, Villa Romana may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if Villa Romana contravenes any of the terms of this Undertaking:
- i. 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; and
 - ii. this Undertaking may be provided to the Court as evidence of the admissions made by Villa Romana in clauses 10 to 12 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by an authorised person of Mesa 3

GEORGE PAPAGELOU

(Name and position of authorised signatory)

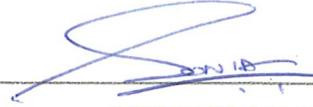


(Signature of authorised signatory)

in the presence of:

SONIA SATYEPRIYE

(Name of witness)



(Signature of witness)

JUSTICE OF THE PEACE FOR VICTORIA
Sonia Satyepriye
Reg. No. 14641
C/- Honorary Justice Services Support
24/121 Exhibition Street
Melbourne Vic 3000

28/1/26

(Date)

EXECUTED by Helen Maria Papegelou

HELEN PAPAGELOU

(Name and position of authorised signatory)



(Signature of authorised signatory)

in the presence of:

SONIA SATYEPRIYE

(Name of witness)



(Signature of witness)

JUSTICE OF THE PEACE FOR VICTORIA
Sonia Satyepriye
Reg. No. 14641
C/- Honorary Justice Services Support
24/121 Exhibition Street
Melbourne Vic 3000

28/1/26

(Date)

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

(Name and role of Delegate)

(Signature of Delegate)

(Date)

Delegate for the Fair Work Ombudsman
in the presence of:

(Signature of witness)

(Name of Witness)

Appendix <A> – Contravention Employees

Name	Underpayment
	\$482.69
	\$1,453.87
	\$715.50
	\$145.95
	\$750.20
	\$2,522.92
	\$213.75
	\$183.91
	\$526.66
	\$944.95
	\$1,349.00
	\$2,401.47
	\$130.79
	\$34.71
	\$39.20
	\$1,656.87
	\$322.72
	\$140.24
	\$1,855.36
	\$29.94
	\$1,643.23
	\$907.98
	\$1,001.04
	\$1,202.98
	\$10.56
	\$326.99
	\$3,056.93
	\$1,434.90
	\$4,283.11
	\$239.32
	\$2,065.67
	\$1,551.00
	\$459.84
	\$712.02
	\$1,387.89
	\$517.47
	\$1,981.18
	\$1,579.92
	\$1,292.27
	\$435.43
	\$1,311.99
	\$2,627.52
	\$575.24
	\$168.50

	\$203.40
	\$668.39
	\$1,515.42
	\$2,745.97
	\$2,059.33
	\$582.95
	\$1,090.52
	\$961.55
	\$3,519.72
	\$734.91
	\$1,692.10
	\$2,265.32
	\$1,668.29
	\$318.45
	\$887.19
	\$333.29
	\$1,769.68
	\$380.61
	\$1,029.88
	\$132.75
	\$1,212.40
	\$3,035.88
	\$2,675.71
	\$194.81
	\$1,943.58
	\$376.30
	\$2,551.30
	\$239.69
	\$392.04
	\$1,816.93
	\$448.38
	\$752.59
Total Underpayment	\$86,873.01

Appendix – Workplace Notice

As a result of a Fair Work Ombudsman Audit, it was identified that Villa Romana had contravened the *Fair Work Act 2009* (Cth) and various clauses of the *Restaurant Industry Award 2020*.

Villa Romana has formally admitted to the Fair Work Ombudsman (**FWO**) that contraventions occurred and consequently a number of employees were underpaid.

Villa Romana has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

Villa Romana sincerely regrets that these underpayments occurred and has, as a result of the Enforceable Undertaking, committed to a number of activities to ensure ongoing compliance, such as the implementation of new workplace relations systems, processes and training, as well as independent audits over the next two years.

If you worked for Villa Romana during the period from 1 April 2021 to 1 October 2023 and have queries relating to your employment, please contact:

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Alternatively, anyone can contact the FWO via <http://www.fairwork.gov.au> or on 13 13 94.