



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Transfab Reinforcement Australia Pty Ltd [ACN: 164 004 997]

Employee	Classification under the Manufacturing Award	Employment Status	Employment Period
Employee A	C14	Full-time	13 April 2016 - 13 July 2016
Employee A	C13	Full-time	14 July 2016 - 31 August 2016
Employee B	C14	Casual	7 January 2016 - 17 February 2016
Employee B	C14	Full-time	18 February 2016 - 7 April 2016
Employee B	C13	Full-time	08 April 2016 - 31 August 2016
Employee C	C14	Casual	23 July 2015 - 23 October 2015
Employee C	C13	Casual	24 October 2015 - 27 April 2016
Employee C	C13	Full-time	28 April 2016 - 31 August 2016
Employee D	C14	Full-time	18 February 2016 - 18 May 2016
Employee D	C13	Full-time	19 May 2016 - 31 August 2016
Employee E	C14	Casual	9 August 2016 - 31 August 2016
Employee F	C14	Casual	5 March 2015 - 5 June 2015
Employee F	C13	Casual	6 June 2015 - 5 August 2015
Employee F	C13	Full-time	6 August 2015 - 31 August 2016
Employee G	C10	Casual	8 September 2014 - 1 October 2014
Employee G	C10	Full-time	2 October 2014 - 5 February 2016
Employee G	C10 with leading hand allowance (3-10 employees)	Full-time	6 February 2016 - 14 September 2016

9. The FWO has determined, and the Company admits, that the Company has contravened the following in relation to the Employees:
- a. Section 44 of the FW Act which provides that an employer must not contravene a term of the National Employment Standards (**NES**). The contraventions of the NES are as follows:
 - i. Section 90(1) of the FW Act which provides for the payment of annual leave;
 - ii. Section 90(2) of the FW Act which provides for payment of untaken annual leave upon termination of employment; and
 - iii. Section 99 of the FW Act which provides for payment for personal leave taken.
 - b. Section 45 of the FW Act, which provides that a person must not contravene a term of a Modern Award. The contraventions of the Manufacturing Award are as follows:
 - i. Clause 24 which provides for minimum rates of pay;
 - ii. Clause 14.1 which provides for casual loading;

- iii. Clause 14.2 which provides for the minimum payment and engagement of four hours for a casual employee;
 - iv. Clause 14.4 which provides for casual conversion;
 - v. Clause 37.3(a) which provides for a 15% loading for afternoon/night shift;
 - vi. Clause 37.4 which provides for the Saturday penalty rate;
 - vii. Clause 40 which provides for overtime rates;
 - viii. Clause 37.5(b) which provides for the public holiday penalty;
 - ix. Clause 41.5 which provides for payment of a 17.5% annual leave loading; and
 - x. Clause 32.1(a) which provides for payment of a leading hand allowance.
- c. Section 535(1) of the FW Act which provides that employers must make and keep employee records for a period of seven years. The Company contravened section 535(1) by:
- i. Failing to keep a record of hours worked by employees in accordance with Regulation 3.33(2) of the *Fair Work Regulations 2009 (FW Regulations)*; and
 - ii. Failing to keep an accurate of leave balances in accordance with Regulation 3.36 of the FW Regulations.
10. The total underpayments identified in relation to six of the employees are set out in Appendix B.
11. The FWO recognises that the Company has:
- a. Made payments totalling \$20,735.74 to Employee A, Employee B, Employee D, Employee E and Employee G in rectification of the above contraventions.
 - b. Despite efforts made by the Company, the Company has been unable to locate Employee C and Employee F as at the time of executing this Undertaking and agrees to take steps to rectify this by making an application to the Commonwealth of Australia in accordance with paragraph 14 of this Undertaking.

Undertakings

12. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes the following:

Rectify Underpayments

13. The Company has made efforts to locate Employee C and Employee F to rectify the underpayments arising from the Company's contraventions. At the time of executing the Undertaking, the Company has been unable to make payment to Employee C and Employee F.
14. Should the Company be unable to make payment to Employee C and Employee F within one month of the execution of this Undertaking, the Company will make an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. The Company will complete the required documents supplied by the FWO.
15. Within 21 days of the execution of this Undertaking, the Company will:
- a. Register with the FWO My account portal at www.fairwork.gov.au/register and fully complete the My account profile, including information about the business and award/agreement coverage;
 - b. Using the FWO's Pay and Conditions Tool (PACT), calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to the

- Company's My account profile;
- c. Provide to the FWO the My account Customer Registration Number (CRN);
- d. Subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription:
 - i. Subscribe to the FWO's 'Subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>
 - ii. Choose the relevant State/s and industry, selecting information updates on the following options:
 - a. pay rates and entitlements
 - b. new products and resources;
 - c. about us and our work;
 - d. updates in my industry; and
 - e. tailored information that's relevant to me.

Future Workplace Relations Compliance

16. The Company will ensure that it complies at all times and in all respects with the FW Act, the FW Regulations, the Manufacturing Award and any other Modern Award(s) applicable to its employees.
17. Within 60 days of the execution of this Undertaking, the Company will provide to the FWO details of systems and processes already in place or to be implemented to comply with paragraph 16 above. Without limitation, such systems and processes will relate to:
 - a. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates, shift loadings and overtime rates;
 - b. Ensuring that the employment status of each employee (i.e. whether they are full-time, part-time or casual) is adequately communicated to each employee at the commencement of employment;
 - c. Ensuring that employees meet the definition of full-time, part-time and casual employees as outlined respectively in clauses 12, 13 and 14 of the Manufacturing Award;
 - d. Ensuring employees are engaged under the correct classification as per Schedule B to the Manufacturing Award, including making appropriate enquiries as to the qualification held by each employee;
 - e. Ensuring that, where applicable, employees receive allowances in accordance with clause 32 of the Manufacturing Award;
 - f. Ensuring employees receive their break entitlements in accordance with clause 38 of the Manufacturing Award;
 - g. Ensuring employees have a direct line of communication with payroll and management to raise issues about their pay and other conditions of employment, such as via a dedicated email address or contact person; and
 - h. Ensuring that employee records are created and maintained on an ongoing basis in accordance with the requirements of the FW Act and FW Regulations.

Workplace Relations Training

18. Within 120 days of the execution of this Undertaking, the Company will:
 - a. At its own cost, organise and ensure training is provided to all persons who have responsibility for human resource, recruitment or payroll functions (**Training**);
 - b. Ensure that the Training relates to compliance with applicable workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Manufacturing Award;

- c. 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; and
 - d. Ensure that the Training is conducted by a person approved by the FWO.
19. Within seven days of the delivery of the Training, the Company will provide to the FWO:
- a. The method of delivery of the Training; and
 - b. Evidence of attendance at the Training, including the name and job title of all attendees and the date of attendance.
20. For a period of three years following the execution of this Undertaking, the Company will ensure that training is conducted in the manner prescribed in paragraph 18 in relation to any new or existing employees or contractors, who, after the commencement of this Undertaking acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Company.

Apology

21. Send a letter of apology (**Apology Letter**) to the Employees listed in Appendix A and in the form of Appendix C to this Undertaking and provide copies to the FWO within 14 days of the execution of the Undertaking.

Future Audit Activity

22. The Company will cause to have performed by an external professional with qualifications in accounting or workplace relations or an external professional otherwise approved by the FWO, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of the Company's employees as follows:
- a. The Audits will assess a sample of at least 50% of the Company's workforce at the relevant time, with the sample to be representative of the different work locations, classifications and types or categories of work that apply across the Company's business;
 - b. The Audits will be conducted for all full pay periods where part of the period falls within the following dates:
 - i. 1 November 2017 – 30 November 2017 - to be finalised by 28 February 2018;
 - ii. 1 November 2018 – 30 November 2018 - to be finalised by 28 February 2019; and
 - iii. 1 November 2019 – 30 November 2019 - to be finalised by 29 February 2020.
 - c. The Audits will assess the Company's compliance with the following obligations according to each employees' classification of work, category of employment and hours worked during the Audit period:
 - i. Wages or work related entitlements under the applicable industrial instrument and the National Employment Standards; and
 - ii. Record keeping and pay slip obligation listed within Division 3 of Part 3-6 of the FW Act and within the FW Regulations
 - d. 21 days prior to the Audit due date/s, the Company will provide for the FWO's approval, details of the methodology to be used to conduct the Audit;
23. In the event that an Audit identifies contraventions of Commonwealth workplace laws, the Company will rectify all such contraventions and provide evidence of such rectification to the FWO.

24. The Company will provide to the FWO within 14 days of each of the finalisation dates specified in subclause 22(b):
 - a. A copy of the Audit report which will include a statement of the methodology used to conduct the Audit; and
 - b. Details of any contraventions identified in the Audit.
25. The Company will rectify any underpayments arising from contraventions identified in the Audit within 30 days of the completion of the Audit.
26. If requested by the FWO, the Company will provide the FWO with all records and documents used to conduct the Audit, including any working documents, within seven days of such a request.
27. If any employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause 22(b) above, the Company will make an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Consolidated Revenue Fund.

Workplace Notice

28. Within 14 days of the execution of this Undertaking, the Company will:
 - a. Display within all workplaces where work is performed by its employees a notice in the form of Appendix D to this Undertaking (**Workplace Notice**) and provide photographic evidence to the FWO of its display; and
 - b. Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed;
 - I. In a location to which all employees of the Company have access;
 - II. In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard); and
 - III. For a period of 14 continuous days.

Website Notice

29. Within 14 days of the FWO publishing a Media Release on its website in respect to the Undertaking, the Company will post a notice in the form of Appendix D on the Company's website at <https://www.transfabreo.com.au/> (**Website Notice**) with respect to this Undertaking and which:
 - a. Is in the form of Appendix D;
 - b. Is displayed in a prominent location on the homepage of the website in at least size 10 font;
 - c. Is displayed for a period of 14 continuous days; and
 - d. Contains a html link to the Undertaking.

Contribution Payment

30. Within 14 days of the execution of this Undertaking, the Company will:
 - a. Make a donation of \$5,000.00 to Job Watch Inc. [ABN: 74 615 132 361] of 21 Victoria Street Melbourne, VIC 3000, with the objective of assisting with the provision of free workplace legal advice to the community; and
 - b. Provide evidence of the donation to the FWO within seven days of payment.

Acknowledgements

31. The Company acknowledges that:

- a. The FWO may make this Undertaking (and any of the Appendices hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
- b. The FWO may release a copy of this Undertaking (and any of the Appendices hereto) 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 this Undertaking (and any of the Appendices hereto) and its terms;
- d. The FWO may rely upon the admissions made by the Company set out in paragraph 9 above in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations;
- 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 herein;
- f. Consistent with section 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- g. If the Company 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 the Company in paragraph 10 above, and also in respect of the question of costs.

No Inconsistent Statements

32. The Company:

- a. must not; and
- b. must ensure that each of its officers, employees or agents, do not:
 - i. make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this Undertaking.

Executed as an undertaking

EXECUTED by Transfab Reinforcement Australia Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

(Signature of director)

Andrew Pavloff
(Name of director)

30/8/17
(Date)

(Signature of director/company secretary)

John Pavloff
(Name of director/company secretary)

30/8/17
(Date)

in the presence of:

(Signature of witness)

Jay Pavloff
(Name of witness)

in the presence of:

(Signature of witness)

Jay Pavloff
(Name of witness)

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

Steve Ronson
Steve Ronson
Executive Director Dispute Resolution and
Compliance

6 SEPTEMBER 2017
(Date)

Nhen
(Signature of witness)

NERILLY HARRIS
(Name of Witness)

Appendix A – Employees

Employee Name	Referred to
	Employee A
	Employee B
	Employee C
	Employee D
	Employee E
	Employee F
	Employee G

Appendix B – Underpayment Amounts Identified

Employee Name	Amount Owed (Gross)
Employee A	\$822.04
Employee B	\$3,665.00
Employee C	\$5,615.70
Employee D	\$2,677.63
Employee F	\$9,384.06
Employee G	\$12,247.57
TOTAL	\$34,412.00

Appendix C – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Transfab Reinforcement Australia Pty Ltd (**Company**) for non-compliance with Commonwealth workplace relations laws.

A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company had contravened the *Fair Work Act 2009* (Cth) (**FW Act**) and the Manufacturing and Associated Industries and Occupations Award 2010 [MA000010] in respect of full-time and casual employees by:

- Failing to pay the correct minimum wage;
- Failing to pay the correct 25% casual loading;
- Failing to pay the correct minimum engagement entitlement for a casual employee;
- Failing to pay the correct Saturday penalty rate;
- Failing to pay the correct public holiday penalty rate;
- Failing to pay the correct overtime rates, including where work was performed on Saturday, Sunday and public holidays;
- Failing to pay the correct afternoon and night shift loading rates;
- Failing to pay allowances;
- Failing to comply with the casual conversion clause;
- Failing to satisfy annual leave entitlements;
- Failing to pay annual leave loading;
- Failing to pay annual leave upon termination; and
- Failing to keep accurate records.

The Company has taken steps to remedy the contraventions, including providing back payments and making a donation of \$5,000.00 to fund education about workplace rights and entitlements.

The Company 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 will be available on the FWO's website at 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.

The Company expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Joy Pavloff at [REDACTED]

Yours sincerely,

Andrew Pavloff and John Pavloff
Director(s)

Appendix D – Form of Workplace Notice and Website Notice

Contraventions of *Fair Work Act 2009* (Cth) by Transfab Reinforcement Australia Pty Ltd

Transfab Reinforcement Australia Pty Ltd (**Company**) is a fabrication factory, specialising in prefabricated reinforcement, located in Altona, Victoria.

As a result of a review of our wage records, the Company has failed to provide the correct rates of pay to employees. These underpayments amount to contraventions of the *Fair Work Act 2009* (Cth) (**FW Act**) and the Manufacturing and Associated Industries and Occupations Award 2010 [MA000010] (Manufacturing Award (Manufacturing Award)).

The Company has formally admitted to the Fair Work Ombudsman (**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:

- Making a donation of \$5,000 to fund education about workplace rights and entitlements; and
- Providing training and conducting future audits to ensure employees are paid correct rates of pay.

The Company expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, the Company gives a commitment to ensuring future compliance with Commonwealth workplace relations laws.

If you are a current or former employee of the Company and you have questions regarding this notice, please contact us via [REDACTED]

If you have general questions regarding conditions of employment, please refer to the FWO website at www.fairwork.gov.au or call the Infoline on 13 13 94.