



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Tennant Creek Womens Refuge Inc. (ABN: 97 427 722 429)

Section 715 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 Tennant Creek Womens Refuge Inc. (ABN: 97 427 722 429) (**TCWR**).

Background

2. TCWR has been registered as an Other Incorporated Entity since 07 May 2000 (ABN: 97 427 722 429).
3. TCWR operates crisis accommodation and support services in Tennant Creek NT 0860.
4. In March 2016 the FWO commenced an audit of TCWR as part of the NT Alice Springs - Barkly Regional Campaign. The audit examined the period 1 July 2015 – 30 June 2016 (**the Audit Period**).
5. At the time of the audit TCWR employed 13 employees in a range of crisis accommodation, counselling and outreach roles.
6. These employees are employed under the *Social, Community, Home Care and Disability Services Award 2010* (**the Award**).
7. Rates of pay under the Award are subject to the Fair Work Commission's Equal Remuneration Order 2012 (**ERO**). For the purposes of the ERO, the applicable pre-modern award is the *Social and Community Services Industry - Community Services Workers - Northern Territory Award 2002*.
8. The audit identified underpayments to 11 employees (**the Employees**).
9. The Employees were classified as Crisis Accommodation Employees under the Award. These classifications are detailed in **Attachment A**.
10. During the Audit Period the Employees were paid flat rates of pay of between \$26.75 and \$37.79 per hour.
11. For nine of the eleven employees this flat rate was below the base rate to which they were entitled under the Award and ERO. For these nine employees the underpayment of their base rates ranged from \$0.07 to \$7.17 per hour.
12. During the Audit Period none of the Employees were paid weekend penalty rates or shift work loadings.
13. The contraventions resulted in the Employees being underpaid a total of \$50,664.68 during the Audit Period.
14. TCWR has rectified the all underpayments identified prior to entering this Undertaking.

Contraventions

15. The FWO has determined, and TCWR admits, that TCWR contravened:

- a) Section 305 of the FW Act (Contravention of an Equal Remuneration Order) by failing to pay the minimum ordinary rates of pay in accordance with the ERO
- b) Section 45 of the FW Act (Contravention of a modern award) by failing to pay minimum Saturday and Sunday rates in accordance with clause 26 of the Award
- c) Section 45 of the FW Act (Contravention of a modern award) by failing to pay the minimum shift work loadings in accordance with clause 29.3 of the Award

Commencement of Undertaking

16. This Undertaking comes into effect when:

- a) the Enforceable Undertaking is executed by the TCWR; and
- b) the FWO accepts the Enforceable Undertaking so executed.

Undertakings

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

FWO My Account 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 have completed the profile and Award options
 - (ii) Provide to the FWO TCWR's 'My Account' Customer Registration Number (CRN).
- b) Within 28 days of the execution of the Undertaking, subscribe to the following and provide evidence, consisting of the newsletters saved under the FWO 'My Account' Portal to the FWO of the subscriptions:
 - (i) 'General information' email alerts from the FWO relating to the Relevant Awards, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>
 - (ii) FWO's Employer newsletter for the relevant State and industry, available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
 - i. pay updates;
 - ii. award updates;
 - iii. holiday updates;
 - iv. working hours and breaks; and
 - v. annual leave/sick leave.

Future workplace relations compliance

- c) Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth), the Award and any other modern awards as they apply to any of the Employer's employees;
- d) Provide the FWO, within 60 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 shift loadings;

Workplace relations training

- e) Ensure that Georgina Bracken, as Chief Executive Officer for TCWR complete the educational activities on the FWO website, as set out in **Attachment B** and provide copies of the completed attachment to the FWO within 3 months of the execution of this Undertaking.
- f) For a period of 2 years from the execution of this Undertaking, ensure that the educational activities are completed by any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial, payroll and human resources functions responsibilities
- g) For any persons taking on any of these functions, complete **Attachment B** and submit to the FWO within 28 days of taking responsibility for these functions.

Apology

- h) Within 28 days of the execution of this Undertaking send a letter of apology (**Apology Letter**) to each of the Employees referred to in **Attachment A**, and provide copies to the FWO. This Apology Letter will be in the form set out in **Attachment C** to this Undertaking.

Audit Activity

- i) To cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at TCWR's expense, audits of TCWR's compliance with all Commonwealth workplace laws and instruments, relating to the pay and conditions of all employees for the 2017/18 and 2018/19 financial years. These audits will be completed as follows:
 - (i) The Audit of 1 July 2017 to 30 June 2018 will be finalised by 30 September 2018;
 - (ii) The Audit 1 July 2018 to 30 June 2019 will be finalised by 30 September 2019.
- j) Provide to the FWO within 14 days of each of the finalisation dates specified in subclause i)(i) and i)(ii) above, details of the methodology used to conduct the Audit and a report on the outcomes of the Audit;
- k) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions and provide

evidence to FWO within 14 days of each of the finalisation dates specified in subclause i)(i) and i)(ii) above;

- l) If any employee(s) identified as having underpayments owing to them cannot be located, within 14 days of each of the finalisation dates specified in subclause i)(i) above, make 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. TCWR will complete the required documents supplied by the FWO.

Workplace Notice

- m) Within 28 days of the execution of this Undertaking, cause to be displayed within all workplaces controlled by TCWR a notice in the form of **Attachment D** to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display:
 - (i) Ensure that the Workplace Notice is printed in at least A4 size and is clearly displayed:
 - i. In a location to which all employees who work for TCWR 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);
 - iii. For a period of 14 continuous days

Public Notice

- n) Place a public notice (Public Notice) in the Saturday edition of Tennant & District Times within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this undertaking. The Public Notice must:
 - (i) Bears the name of Tennant Creek Womens Refuge;
 - (ii) Bears the logo (if any) of Tennant Creek Womens Refuge Inc;
 - (iii) Appears within the first 5 pages of newspaper etc;
 - (iv) Must be at least 10 cm x 8 cm;
 - (v) Is in the form of Attachment E
 - (vi) Provide a copy of the Public Notice to the FWO within seven days of the publication of the Public Notice;

(NB: Check the details of the publication beforehand, to make sure that the specified requirement can be met. Eg some local papers may not have a Saturday edition.)

3rd party notification

- o) Advise in writing to all agencies or other bodies that TCWR receives funding from, specifically that:
 - (i) TCWR has entered an Undertaking with the FWO; and

(ii) A copy of the undertaking is available at <https://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/enforceable-undertakings/2016-2017-enforceable-undertakings>

(iii) Provide a copy of the letter issued to all parties to the FWO within seven days of issue.

No Inconsistent Statements

18. TCWR:

- 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 Undertaking.

Acknowledgements

19. TCWR acknowledges that:

- a) The FWO may;
 - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking (and any of the Attachments hereto) 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 any of the Attachments hereto) and its terms; and
 - (v) the admissions made in the Undertaking may be relied upon by the FWO in respect to any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by TCWR.
- 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, TCWR may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d) 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 TCWR, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by Tennant Creek Womens Refuge Inc.:

H. McCulloch
(Signature of director)

NOJ
(Signature of director/company secretary)
D. RESTA

MEG MCGRATH
(Name of director) **SECRETARY.**

MARIS MURPHY
(Name of director/company secretary)

19/6/17
(Date)

19.06.2017
(Date)

in the presence of:

in the presence of:

G. Bracken
(Signature of witness)
GEORGINA BRACKEN
(Name of witness)

G. Bracken
(Signature of witness)
GEORGINA BRACKEN
(Name of witness)

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

Lynda McArary-Smith
Lynda McArary-Smith Executive Director
Proactive Compliance & Education

21/6/17
(Date)

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:

[Signature]
(Signature of witness)

AGATA MROSS
(Name of Witness)

Attachment A – Underpayments identified

Employee	Classification and employment status	Underpayment identified
	Crisis Accommodation Employee Level 2.1 Casual	\$1,814.95
	Crisis Accommodation Employee Level 2.1 Casual	\$1,318.69
	Crisis Accommodation Employee Level 4.2 Full Time	\$69.16
	Crisis Accommodation Employee Level 2.1 Casual	\$2,806.31
	Crisis Accommodation Employee Level 1.4 Casual	\$8,085.12
	Crisis Accommodation Employee Level 4.3 Full Time	\$854.28
	Crisis Accommodation Employee Level 2.4 Casual	\$13,059.51
	Crisis Accommodation Employee Level 3.3 Casual	\$14,734.47
	Crisis Accommodation Employee Level 3.3 Full Time	\$1,838.55
	Crisis Accommodation Employee Level 1.1 Casual	\$3,210.16
	Crisis Accommodation Employee Level 2.4 Full Time	\$2,873.48

Attachment B

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ (enter name and position in the organisation)
have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course
date completed: _____
- Hiring employees
date completed: _____
- Managing performance
date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au
date completed: _____
- Finding information for your industry
date completed: _____
- My account
date completed: _____
- Introduction to the Pay and Conditions Tool
date completed: _____
- PACT – Award classifications
date completed: _____
- PACT – Pay summary
date completed: _____
- PACT – Penalty rates
date completed: _____
- PACT – Shift calculator
date completed: _____
- PACT – Allowances
date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman
date completed: _____
- Contractors and employees – what's the difference?
date completed: _____

Read information on the following:

- ***Pay Overview***

- Minimum wages Page Ref No. _____ date completed: _____
- Penalty rates & allowances Page Ref No. _____ date completed: _____

- ***Leave Overview***

- Annual leave Page Ref No. _____ date completed: _____
- Sick & carer's leave Page Ref No. _____ date completed: _____

- ***Ending Employment Overview***

- Notice & final pay Page Ref No. _____ date completed: _____
- Unfair dismissal Page Ref No. _____ date completed: _____

- ***Employee Entitlements Overview***

- Types of employees Page Ref No. _____ date completed: _____
- National Employment Standards Page Ref No. _____ date completed: _____

- ***Awards & Agreements Overview***

- Awards Page Ref No. _____ date completed: _____

- Date and signature: _____

Attachment C – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Tennant Creek Womens Refuge Inc. for non-compliance with Commonwealth Workplace relations laws. A recent audit conducted by the Office of the Fair Work Ombudsman (FWO) determined that Tennant Creek Womens Refuge Inc. had contravened the *Fair Work Act 2009* by failing to pay correct minimum rates of pay, penalty rates and loadings as per the provisions of the *Social, Community, Home Care and Disability Services Industry Award 2010*.

Regrettably, the audit determined that you were affected by these contraventions.

Tennant Creek Womens Refuge Inc. is taking steps to remedy the contraventions, including by making back payment to you. You have received this payment on [party to include details] and have been provided with a payment advice regarding the payment.

Tennant Creek Womens Refuge Inc. have formally admitted to the FWO that the Company did not comply with its obligations under Commonwealth workplace relations laws and have 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 we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Tennant Creek Womens Refuge Inc. expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [party to include contact details].

Yours sincerely

[Chief Executive Officer]

Attachment D – Workplace Notice

Contravention of Fair Work Act by Tennant Creek Women's Refuge

We refer to the audit conducted by the Office of the Fair Work Ombudsman (FWO) which identified that Tennant Creek Womens Refuge Inc. contravened the *Fair Work Act 2009* and the *Social, Community, Home Care and Disability Services Industry Award 2010* by:

- Failing to provide the correct rate of pay to a number of employees
- Failing to pay the correct shift loadings and penalty rates as required by law

Tennant Creek Womens Refuge Inc. 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 underpayment.

Tennant Creek Womens Refuge Inc. expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Tennant Creek Women's Refuge Inc. 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 XXXXXXX. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment E – Public Notice

Contravention of Fair Work Act by Tennant Creek Women's Refuge Inc

We refer to the audit conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Tennant Creek Women's Refuge Inc. contravened the *Fair Work Act 2009* and the *Social, Community, Home Care and Disability Services Industry Award 2010* by failing to pay correct minimum rates of pay, penalty rates and loadings.

Tennant Creek Women's Refuge Inc. 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 and conducting workplace training.

Tennant Creek Women's Refuge Inc. expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Tennant Creek Women's Refuge Inc. 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 Tennant Creek Women's Refuge Inc. and have queries or questions relating to your employment, please contact [party to include contact details]. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94