



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Agri-Labour Australia Pty Ltd (ABN: 23 142 526 216)

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 Agri-Labour Australia Pty Ltd (ABN: 23 142 526 216) (**Agri-Labour**) of 27/88 L'Estrange Terrace, Kelvin Grove QLD 4059.

COMMENCEMENT

2. This Undertaking comes into effect when:
 - a. the Undertaking is executed by Agri-Labour; and
 - b. the FWO accepts the executed Undertaking (hereinafter referred to as the **Commencement Date**).

BACKGROUND

3. Agri-Labour is carrying on a business within the agricultural industry.
4. Agri-Labour employs staff to deliver workforce solutions to clients in the agriculture industry. It places over 7000 people each year in different agricultural sectors.
5. Between approximately 28 December 2017 and 26 April 2018 (**Relevant Period**), Agri-Labour employed seasonal workers from Vanuatu, under the Seasonal Worker Programme, to pick tomatoes at MCG Fresh Produce, a tomato farm near Shepparton, Victoria (**Seasonal Workers**). The Seasonal Workers primarily picked Roma tomatoes and cherry tomatoes.
6. The *Agri-Labour Australia Horticulture Agreement 2016* (**Agreement**) covered and applied to the employment of the Seasonal Workers picking tomatoes at MCG Fresh Produce during the Relevant Period.
7. During the Relevant Period, Agri-Labour engaged the Seasonal Workers as pieceworkers to perform work at MCG Fresh Produce. The Seasonal Workers were guaranteed an average of at least 30 hours work per week by Agri-Labour.
8. Allegations against Agri-Labour were received by the FWO on 18 May 2018 that related to the Seasonal Workers. These allegations included that piecework rates paid to Seasonal Workers were insufficient to enable an average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed for their classification and type of employment, as required by clause 14(b) of the Agreement.
9. The FWO conducted an investigation concerning the Seasonal Workers and found that, during the Relevant Period:

- a. there were no records made or kept of the actual hours worked by the Seasonal Workers;
- b. the Seasonal Workers worked between one and seven days each week;
- c. an individual piecework rate system was used for picking of cherry tomatoes;
- d. a group piecework rate system was used for the picking of Roma tomatoes, where Seasonal Workers worked in teams to fill 400 kilogram bins of Roma tomatoes and were each paid an equal percentage of a piecework rate per bin filled;
- e. the piecework earnings for Seasonal Workers picking Roma tomatoes ranged between \$77.10 and \$139.32 gross per day; and
- f. the piecework earnings for Seasonal Workers picking cherry tomatoes ranged between \$12.80 and \$179.40 gross per day.

ADMISSIONS

10. Agri-Labour admits that:

- a. the piecework agreements for Seasonal Workers picking Roma tomatoes during the Relevant Period did not set out that the workers were to work as a team, or that they were to only be paid an equal percentage of the piecework rate shown in the piecework agreement for each bin filled;
- b. the Agreement does not provide for the use of group piecework rates and the group piecework system used for the picking of Roma tomatoes did not enable Agri-Labour to determine each individual workers productivity or contribution to each bin;
- c. during the Relevant Period the Seasonal Workers picking Roma tomatoes were paid group piecework rates. As such, during the Relevant Period, Agri-Labour did not pay each individual workers based upon their individual productivity in accordance with the piecework agreements; and
- d. in light of the preceding admissions, during the Relevant Period, the Seasonal Workers picking Roma tomatoes at MCG Fresh Produce were not paid in accordance with the pieceworker agreements the Seasonal Workers entered into.

11. Agri-Labour admits that during the Relevant Period:

- a. the Seasonal Workers picking cherry tomatoes were paid an average of \$64.17 per day;
- b. the Seasonal Workers picking Roma tomatoes were paid an average of \$105.40 per day; and
- c. cannot determine if the amounts paid to employees sufficiently compensated the Seasonal Workers for the work performed and will pay the Seasonal Workers a total of **\$50,152.58**.

12. Agri-Labour admits that during the Relevant Period:

- a. it deducted monies from the Seasonal Workers' wages for 'wet weather gear' in a manner inconsistent with the requirements of the FW Act;
 - b. from time to time, deductions higher than the amounts authorised in writing by the Seasonal Workers were made from wages; and
 - c. will pay the 19 Seasonal Workers named in Attachment A a total of **\$670.84** for deductions that were made that were inconsistent with the FW Act.
13. Agri-Labour admits that the wage records provided to the FWO show that the wages for the pay period ending 19 April 2018 were paid on 24 April 2018. Bank records show that these wages were not paid until 7 May 2018.

CONTRAVENTIONS

14. The FWO has determined, and Agri-Labour admits that it contravened the following provisions of the FW Act and the *Fair Work Regulations 2009* (Cth) (**FW Regulations**) during the Relevant Period:
 - a. section 50 of the FW Act – Contravening an enterprise agreement by failing to comply with Clause 14 – Pieceworkers, subclause 14(d) of the Agreement;
 - b. section 323 of the FW Act – Method and frequency of payment, sub-section 323(1)(a); and
 - c. regulation 3.44 of the FW Regulations – Records – Accuracy – subregulation 3.44(2).

ENFORCEABLE UNDERTAKING

15. Upon the Commencement Date of this Undertaking and for the purposes of section 715 of the FW Act, Agri-Labour undertakes to take the following actions set out at clauses 16 to 54 below.

Payments to and on behalf of employees

16. Agri-Labour undertakes to pay a total of **\$50,823.42** to the 19 Seasonal Workers listed in Attachment A of this Undertaking in the amounts set out in Attachment A, and provide evidence to the FWO that the payments were made, within 28 days of the Commencement Date.
17. If any of the Seasonal Workers identified in Attachment A cannot be located within 28 days of the Commencement Date, Agri-Labour will, within 90 days of the Commencement Date:
 - a. pay the amounts specified in Attachment A in respect of those Seasonal Workers into a dedicated bank account; and
 - b. provide the FWO with details of the dedicated bank account, what monies have been deposited into the dedicated bank account and which Seasonal Workers the deposits relate to.

18. Any money deposited in accordance with clause 17 above must remain in the bank account until two years after the Commencement Date except as specified in clause 19 below. During that period Agri-Labour undertakes to make reasonable ongoing attempts to locate the Seasonal Workers.
19. Any money deposited into the bank account in respect of a Seasonal Worker in accordance with clause 17 above must be paid to that Seasonal Worker if and when that Seasonal Worker is located or details enabling the Seasonal Worker to be paid are obtained by Agri-Labour.
20. Every six months from the Commencement Date Agri-Labour will provide to the FWO any information about attempts made to locate the Seasonal Workers and/or payments made to Seasonal Workers in accordance with clauses 18 and 19 above and provide the balance of the account in clause 17(a).

Engagement of pieceworkers

21. Agri-Labour will not use a system that is based on the payment of a group piecework rate. Agri-Labour will implement and maintain a piecework system that is based on an individual pieceworker's productivity.
22. Agri-Labour will:
 - a. make and keep a record setting out the hours worked by all of its horticulture workers, including pieceworkers; and
 - b. keep such time records in a condition that will allow Agri-Labour to check the wages being paid to pieceworkers to ensure that the piecework rate set is sufficient to enable the average competent employee to earn at least 15% more per hour than the minimum hourly rate prescribed for each employee's type of employment and classification.
23. Agri-Labour undertakes to make an adjustment to a pieceworker's piece rate, if the piece rate paid becomes insufficient to comply with Clause 14(b) of the Agreement, or any subsequent industrial instrument covering the horticulture employees. Any adjustment to a pieceworker's piece rate must be done in accordance with the requirements in the applicable industrial instrument and the FW Act.
24. During the period from the Commencement Date until two years after the Commencement Date, Agri-Labour undertakes to provide a consolidated report to the FWO of the piecework rates paid to employees (and any adjustments made) on a six monthly basis.

Deductions

25. Agri-Labour undertakes to only make deductions from workers' wages in accordance with the requirements of the FW Act.

26. Agri-Labour undertakes to ensure that any deductions from an employee's wages and any variations to deductions are authorised in writing, specifying the amount of the deduction and signed by the employee.

FWO My account registration

27. Within 28 days of the Commencement Date, Agri-Labour 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, through this portal; and
 - b. provide to the FWO the 'My account' Customer Registration Number (CRN).
28. Within 28 days of the Commencement Date, Agri-Labour will:
- a. subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription;
 - b. 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>; and
 - c. choose the relevant State/s and industry, selecting information updates on the following options:
 - I. pay rates and entitlements;
 - II. new products and resources;
 - III. about us and our work;
 - IV. updates in my industry; and
 - V. tailored information that's relevant to me.

Workplace relations systems and processes

29. Agri-Labour undertakes to ensure that it complies at all times and in all respects with the FW Act, the FW Regulations and the Agreement (or any subsequent industrial instrument covering horticulture employees).
30. Agri-Labour undertakes to provide the FWO, within 90 days of the Commencement Date, with details of systems and processes already in place or to be implemented to ensure:
- a. employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - b. all the piecework rates set enable the average competent employee to earn at least 15% or more per hour than the minimum hourly rate prescribed for the type of employment and classification level of the employee;

- c. pay slips are issued to employees within one (1) working day of payment; and
- d. accurate records of employee wages and entitlements are kept.

31. Agri-Labour undertakes to:

- a. provide all new employees with details of Agri-Labour's 1300 247 823 number, which the employees can use to raise any employment concerns, by including this number in individual employee's Letter(s) of Offer and on individual employee's pay slips; and
- b. until two years after the Commencement Date, report to the FWO every six months, on the number and nature of calls to the 1300 and any remedies that were applied.

Workplace relations training

32. Within 90 days of the Commencement Date, Agri-Labour must ensure that all persons who have responsibility for human resources, recruitment, on-site management or payroll functions have completed suitable and up to date training on compliance with applicable workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Agreement (**Training**).

33. The Training must be conducted by a workplace trainer, and such person or organisation must be approved by the FWO and paid for by Agri-Labour.

34. Agri-Labour must:

- a. 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
- b. provide evidence of attendance at the Training to the FWO within 7 days of the Training being delivered (including the names and positions of all attendees and the date on which the training was attended).

35. During the period from the Commencement Date until 2 years after the Commencement Date, Agri-Labour must:

- a. ensure that training is conducted in the manner prescribed in clauses 32 to 34 in relation to any new or existing employees or contractors who acquire responsibilities that include human resources, recruitment or payroll functions on behalf of Agri-Labour. The Training must be undertaken, and evidence provided to the FWO within 90 days of the relevant employee or contractor taking on responsibility for the functions;
- b. ensure that all persons responsible for management, payroll and human resources functions complete the educational activities on the FWO website, as set out in Attachment C to this Undertaking;

- c. enter all of the required information in Attachment C and provide copies of the completed attachment to the FWO for each person required to complete the education activities, within 90 days of the Commencement Date of this Undertaking;
- d. ensure that any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial (including but not limited to responsibility for the on-site management of all workers), payroll and human resources functions responsibilities complete all education courses designed for employers available on the FWO online learning centre via <http://www.fairwork.gov.au/how-we-will-help/online-training> within 28 days of taking responsibility for these functions; and
- e. for any persons taking on any managerial (including but not limited to responsibility for the on-site management of workers), payroll or human resources functions complete Attachment C and submit to the FWO within 28 days of taking responsibility for these functions.

Audit Activity

- 36. Agri-Labour will at its expense engage an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, to conduct two audits of Agri-Labour's compliance with all Commonwealth workplace laws and instruments (**Audits**) within the periods specified in clause 38 below, including at least the following clauses of the Agreement and sections of the FW Act:
 - a. clause 13.6 of the Agreement – Minimum wages;
 - b. clause 14 of the Agreement – Pieceworkers;
 - c. clause 16 of the Agreement – Allowances;
 - d. clause 28 of the Agreement - Public holidays;
 - e. section 323 of the FW Act – Method and frequency of payment;
 - f. section 324 of the FW Act – Permitted deductions;
 - g. section 325 of the FW Act – Unreasonable requirement to spend or pay amount;
 - h. section 535 of the FW Act – Employer obligations in relation to employee records; and
 - i. section 536 of the FW Act – Employer obligations in relation to pay slips.
- 37. Each of the two Audits must include the pay and conditions of at least 15% of all workers and include two full pay periods, a range of classifications and employment types (where possible, full time, part time and casual), and where applicable include pieceworkers and employees from a range of sites. The Audits must cover the following pay periods:

- a. Audit 1 must include the last pay period in July 2019 and the first pay period in August 2019; and
 - b. Audit 2 must include the last pay period in July 2020 and the first pay period in August 2020.
38. Agri-Labour must ensure that 28 days prior to the Audit due date/s, as specified below, Agri-Labour will provide details of the methodology to be used to conduct the Audit to the FWO for the FWO's approval:
- a. Audit 1 is to be finalised and a report on the outcome of the audit is to be provided to the FWO by 30 September 2019; and
 - b. Audit 2 is to be finalised and a report on the outcome of the audit is to be provided to the FWO by 30 September 2020.
39. The reports provided to the FWO in accordance with clause 38 must include details of Agri-Labour's compliance or non-compliance with the clauses and sections detailed in clause 36.
40. In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, Agri-Labour must rectify all such contraventions within 28 days of each of the finalisation dates specified in clause 38 above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO.
41. If requested, Agri-Labour must provide the FWO with all records and documents used to conduct the Audits, including any working documents, within 28 days of such a request
42. If any employee(s) identified as having underpayments owing to them as a result of Audit 1 and/or Audit 2 cannot be located, within 60 days of each of the finalisation dates specified in clause 38, Agri-Labour will pay any amounts identified as owing to those employee(s) to the Commonwealth of Australia (through the FWO) pursuant to section 559(1) of the FW Act.

Matters notified to the FWO

43. Where the FWO receives a request for assistance regarding alleged non-compliance with a modern award or registered agreement in respect of Agri-Labour, Agri-Labour and its officers undertake to fully co-operate with the FWO to ensure compliance.

Website Notice

44. Agri-Labour will, within 28 days of the FWO publishing a media release on the FWO's website in respect of this Undertaking, place a notice on the home page of its website (**Website Notice**) which will:
- a. be in the form of the Website Notice set out at Attachment B;
 - b. be displayed in at least size 10 font; and
 - c. remain on the website for a period of 28 days.
45. Agri-Labour will provide evidence of the placement of the Website Notice to the FWO on the date

it is published.

Social Media Notice

46. Agri-Labour will, within 28 days of the FWO publishing a media release on the FWO's website in respect of this Undertaking, place a post on its Facebook page. The post will:
 - a. be posted to Agri-Labour's Facebook page in public view;
 - b. remain pinned to the top of the Facebook page for a continuous period of at least 28 days; and
 - c. be in the form of the Website Notice set out at Attachment B.
47. Agri-Labour will provide evidence of posting the Website Notice on its Facebook page to the FWO on the date it is posted.

Record Keeping

48. Agri-Labour undertakes to ensure that all records made and kept are accurate. Should a record containing an error be identified, it will be corrected and will include a notation of the nature of the corrected error in accordance with FW Regulations 3.44(2) and (3).
49. Agri-Labour will provide to the FWO a copy of time and wage records and pay slips for one pieceworker for the first full pay period following the Commencement Date, where pieceworkers have performed work, within 28 days of the completion of that pay period.
50. Agri-Labour undertakes to notify the FWO of any records containing errors that have been identified and corrected during the period from the Commencement Date until two years after the Commencement Date. The notification to the FWO is to occur on the following dates:
 - a. 30 September 2019;
 - b. 30 September 2020; and
 - c. Two years after the Commencement Date.

Contribution Payment

51. Agri-Labour will, within 28 days of the Commencement Date, make a contribution payment of \$15,000 to the Consolidated Revenue Fund and provide evidence of the payment to FWO.

Reporting

52. Agri-Labour will notify the FWO of any changes of circumstances that could potentially impact on Agri-Labour's ability to comply with the undertakings contained in this Undertaking, as soon as it becomes aware of such circumstances. Such circumstances shall include but not be limited to:
 - a. sale or potential sale of the business, or part of the business;
 - b. change of or change in details of company directors, or other officeholder positions;
 - c. change in engagement of workers, for example engaging contractors, labour hire or family

- members in lieu of employees;
 - d. Agri-Labour or its directors opening any new establishments or businesses, or acquiring any existing businesses establishments; whether alone or in partnership with another entity;
 - e. ceasing or an expectation of ceasing to trade; and
 - f. Agri-Labour going in to, or having an expectation of going in to, administration or liquidation.
53. In the event that there are any events or circumstances required to be reported to the FWO as described in clause 52 above, Agri-Labour will provide any documentation or other evidence requested by the FWO to confirm the event/s that have transpired.

No Inconsistent Statements


54. Agri-Labour must not, (and 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 the admissions or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

55. Agri-Labour 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 which is consistent with its terms;
 - iv. from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms, and rely upon the admissions made by Agri-Labour set out in clauses 10 to 13 above in respect of decision making concerning any future non-compliance with Agri-Labour's workplace relations obligations.
 - 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, Agri-Labour may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
 - d. if Agri-Labour 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 Agri-Labour in clauses 10 to 13 above, and also in respect of the question of costs.

Executed as an undertaking


EXECUTED by [insert party] in accordance with section 127(1) of the *Corporations Act 2001*:


(Signature of director)


CASEY BROWN
(Name of director)

4.4.2019
(Date)

in the presence of:


(Signature of witness)

RUTH BLANCHARD
(Name of witness)


(Signature of director/company secretary)

LUKE BROWN
(Name of director/company secretary)

4.4.2019
(Date)

in the presence of:


(Signature of witness)


RUTH BLANCHARD
(Name of witness)

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


Michael Campbell – Deputy Fair Work
Ombudsman

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

12/4/19
(Date)

LOUISE CATO
(Name of Witness)

ATTACHMENT A – PAYMENT TO SEASONAL WORKERS

Name	Employee Payment	Wet Weather Gear Reimbursement
	\$1,939.34	\$37.87
	\$550.08	\$37.87
	\$2,724.11	\$37.87
	\$2,304.76	\$37.87
	\$3,763.31	\$16.23
	\$2,672.73	\$37.87
	\$2,818.94	\$37.87
	\$2,303.74	\$37.87
	\$1,893.72	\$37.87
	\$2,618.57	\$37.87
	\$1,596.62	\$37.87
	\$2,944.34	\$37.87
	\$3,404.26	\$32.46
	\$1,598.64	\$37.87
	\$4,553.35	\$37.87
	\$2,714.62	\$32.46
	\$2,544.79	\$37.87
	\$4,336.19	\$21.64
	\$2,870.47	\$37.87
TOTAL	\$50,152.58	\$670.84

ATTACHMENT B

FORM OF WEBSITE NOTICE

Contravention of *Fair Work Act 2009* by Agri-Labour Australia Pty Ltd

We refer to the investigation conducted by the Fair Work Ombudsman (**FWO**) into allegations that Agri-Labour Australia Pty Ltd contravened the *Fair Work Act 2009* (**FW Act**), the *Fair Work Regulations 2009* (**Regulations**) and the *Agri-Labour Australia Horticulture Agreement 2016* (**Agreement**) by:

- failing to comply with Section 50 of the FW Act – Contravening an enterprise agreement, by failing to comply with Clause 14 – Pieceworkers, subclause 14(d) of the Agreement;
- failing to comply with Section 323 of the FW Act – Method and frequency of payment, sub-section 323(1); and
- failing to comply with Regulation 3.44(2) – Accuracy.

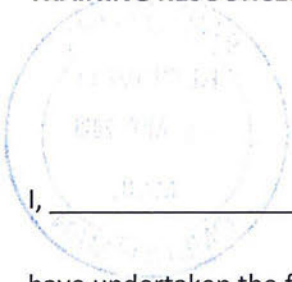
Agri-Labour Australia Pty Ltd has formally admitted to FWO that these contraventions occurred between approximately 28 December 2017 and 26 April 2018 and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including by making payments to employees and making a contrition payment of \$15,000.

Agri-Labour Australia Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Agri-Labour Australia Pty Ltd 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 Agri-Labour Australia Pty Ltd and have queries or questions relating to your employment, please contact <insert details of internal contact>. Alternatively, you can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

ATTACHMENT C

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: _____
- Managing performance date completed: _____
- Diversity and discrimination date completed: _____
- Record-keeping and pay slips date completed: _____

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

Signature: _____

Date: _____