



Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Bransfords (Qld) Pty Ltd (ACN: 061 777 722)

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (FWO) by Bransfords (Qld) Pty Ltd (ABN: 99 061 777 722) (**Company**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Commencement of Undertaking

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Bransfords (Qld) Pty Ltd; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, Bransfords (Qld) Pty Ltd undertakes to assume the obligations set out below.

Background

4. Bransfords (Qld) Pty Ltd operates a mixed business incorporating a service station, fast food outlet and a retail fishing tackle shop located in Cairns QLD.
5. The business is located at Captain Cook Highway, Clifton Beach, Qld 4879.
6. Bransfords (Qld) Pty Ltd mixed business includes a Mobil service station, Clifton Village Take-Away and Bransfords Tackle Shop seven (7) days per week including public holidays. The service station trading hours are 6 am – 8 pm (7) days per week. The fishing tackle shop trading hours are 8.00 am to 5.30 pm (7) days per week, the take-away section trading hours are Monday – Thursday 6 am – 8 pm, Friday 6 am – 9 pm, Saturday 6 am – 8 pm and Sunday 11am – 8 pm (7) days per week.
7. On 8 October 2014, the Fair Work Ombudsman conducted an audit which randomly selected a number of local service station businesses including Bransfords (Qld) Pty Ltd for the purpose of checking employee time and wage records and compliance with workplace laws.
8. During the period 1 July 2014 and 23 February 2015 (**audit period**), the employees' terms and conditions of employment were governed by the *FW Act 2009*, the Fast Food Industry Award 2010 (**Fast Food Award**), Vehicle Manufacturing, Repair, Services and Retail Award 2010 (**Vehicle Industry Award**) and the General Retail Industry Award 2010 (**Retail Award**).
9. The FWO's audit established that:
 - (a) 22 employees (**the Employees**) were engaged by the Company on a casual basis during the audit period 1 July 2014 to 23 February 2015 to perform retail, fast food and vehicle industry related duties and functions;
 - (b) The employees' industrial instrument (**the Award**) had not been established by the employer (**the Employer**) therefore the employees' rates of pay were not based on the correct award.
 - (c) The Employee's classification(s) had not been established by the employer (**the Employer**) therefore the correct rates of pay based on the individuals' classification had not been paid.

10. Following further investigation, the FWO determined that the Company failed to pay 19 casual employees who had performed work;
 - (a) a casual loading for every hour they worked; and
 - (b) the applicable penalty rates for work performed on weekends and public holidays
11. Bransfords (Qld) Pty Ltd underpaid the relevant employees for their work by failing to pay the correct minimum hourly rates of pay in accordance with the Fast Food, Vehicle Industry and Retail Awards. The underpayments arose as a result of underpaying rates of pay including all hours worked on week days Monday to Friday, Saturday, Sunday and Public Holidays.
12. On 20 February 2015, the FWO issued the Company with a Findings Letter in relation to the contraventions described in paragraph 10 and required the Company to review the amount of the underpayments owing to its casual employees.
13. The Company conducted a self-audit and as a result, subsequently acknowledged that it had underpaid 19 employees a total of \$64,516.15 gross during the period 1 July 2014 to 23 February 2015, as set out in Attachment A to this undertaking.

Contraventions

14. The FWO has determined, and Bransfords (Qld) Pty Ltd admits, that Bransfords (Qld) Pty Ltd contravened:

Wages

- (a) Subsection 45 of the FW Act by failing to pay the employees their correct minimum base hourly rate of pay in accordance with clause 17 of the Fast Food Industry Award 2010, clause 33.4 of the Vehicle Manufacturing, Repair, Services and Retail Award 2010 and clause 17 of the General Retail Industry Award 2010.

Saturday Penalty Rates

- (b) Subsection 45 of the FW Act by failing to pay the employees the correct penalty rates for time worked on Saturdays in accordance with clause 26.2(b) of the Fast Food Industry Award 2010, clause 38 of the Vehicle Manufacturing, Repair, Services and Retail Award 2010 and clause 29.4(b) of the General Retail Industry Award 2010.

Sunday Penalty Rates

- (c) Subsection 45 of the FW Act by failing to pay the employees the correct penalty rates for time worked on Sundays in accordance with clause 26.2(c) of the Fast Food Industry Award 2010, clause 39 of the Vehicle Manufacturing, Repair, Services and Retail Award 2010 and clause 29.4(c) of the General Retail Industry Award 2010.

Public Holiday Penalty Rates

- (d) Subsection 45 of the FW Act by failing to pay the employees the correct penalty rates for time worked on public holidays in accordance with clause 30 of the Fast Food Industry Award 2010, clause 40 of the Vehicle Manufacturing, Repair, Services and Retail Award 2010 and clause 29.4(d) of the General Retail Industry Award 2010.

Breaks

- (e) Clause 27 of the Fast Food Industry Award 2010, clause 31 of the General Retail Industry Award 2010 and clause 43.1 provides for breaks. A number of employees of Bransfords (Qld) Pty Ltd did not receive their allocated rest or meal break when they were entitled to same.

Notification to employees of classification in writing

- (f) Clause 16.1 of the Fast Food Industry Award 2010, clause 16 of the General Retail Industry Award 2010 and clause 33.2 of the Vehicle Manufacturing, Repair, Services and Retail Award 2010 provides for classifications. The Employer failed to advise their employees in writing of their classification and any changes to their classification.

Access to the Award and National Employment Standards (NES)

- (g) Clause 5 of the Modern Awards provides for access to the award and the NES. The employer failed to ensure that copies of the relevant Modern Awards and the NES are available to all employees to whom they apply either on a notice board which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

Overtime

- (h) Clause 26 of the Fast Food Industry Award 2010, clause 29.2 of the General Retail Industry Award 2010 and clause 36 of the Vehicle Manufacturing, Repair, Services and Retail Award 2010 provides for overtime. The Employer failed to pay the employees the correct rates for overtime when worked.

Deductions not authorised

- (i) Section 324(1) of the *FW Act* by not having written authorisation from its employees to make deductions from their wages.

(Collectively the Contraventions)

- 15. As a result of the Contraventions, the employees were underpaid (wages, long service leave, superannuation) at \$64,516.15 gross by Bransfords (Qld) Pty Ltd.

Undertakings

- 16. For the purposes of section 715 of the *FW Act*, Bransfords (Qld) Pty Ltd undertakes to;

Rectify Underpayments

- (a) pay the amount of \$64,516.15 less taxation and amounts already paid to employees arising from the Contraventions within 3 months of the execution of this Undertaking.
 - (i) within 28 days of the execution of this Undertaking, provide evidence to the FWO of the first payment; the payment will be \$500.00 initially followed by 10% of the balance outstanding per week until the outstanding amount is paid in full.
- (b) rectify any additional wage entitlements received from employees to the satisfaction of the FWO including any unpaid annual leave accruals

FWO My Account Registration

- (c) Within seven (7) days of the execution of this undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options:
 - (i) within 14 days of the execution of the Undertaking provide to the FWO the Bransfords (Qld) Pty Ltd registration number for the FWO 'My Account'.
 - (ii) within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector via www.fairwork.gov.au 'My Account' current Fast Food, Vehicle Industry and Retail Award minimum pay rates and Saturday, Sunday and Public Holiday penalty rates of pay.

Future Workplace Relations Compliance

- (d) ensure that it complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the Fast Food Industry Award 2010, Vehicle Manufacturing, Repair, Services and Retail Award 2010 and the General Retail Industry Award 2010 Awards;

Workplace Notice

- (e) place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 7 days of the execution this Undertaking for a total consecutive period of seven (28) days in the terms set out in Attachment B;
 - (i) provide a copy of the **Workplace Notice** and photographic evidence of its display to the FWO within seven (7) days of the display of the notice;

Self-audits and Reporting

- (f) have completed by an external accounting professional (e.g. Certified Practicing Accountant), audit specialist or employment law specialist (at the expense of Bransfords (Qld) Pty Ltd, no earlier than 11 calendar months but no later than 12 calendar months of the execution of this undertaking, an audit of its compliance with Commonwealth workplace laws. Specifically:
 - (i) must demonstrate compliance relating to the wages and entitlements of its employees;
 - (ii) the audit is to include the one (1) full single pay period after the commencement of the eleventh month of the execution of this undertaking; and
 - (iii) Bransfords (Qld) Pty Ltd must provide a copy of the audit's findings to the FWO within seven (7) days of its completion.

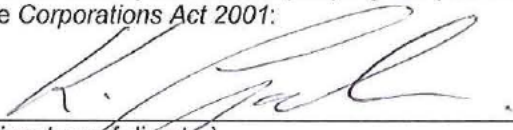
Acknowledgements

17. Bransfords (Qld) Pty Ltd acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Bransfords (Qld) Pty Ltd;
- (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (f) if the FWO considers that Bransfords (Qld) Pty Ltd has contravened any of the terms of this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
- (g) consistent with section 715(3) of the FW Act, Bransfords (Qld) Pty Ltd may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Bransfords (Qld) Pty Ltd (ABN: 99 061 777 722) in accordance with section 127(1) of the *Corporations Act 2001*:


(Signature of director)


(Signature of director/company secretary)

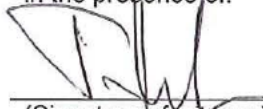

(Name of director)

VICTORIA GRAHAM
(Name of director/company secretary)

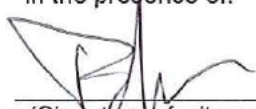
15-4-15
(Date)

15.4.15
(Date)

in the presence of:


(Signature of witness)

in the presence of:


(Signature of witness)

Truls Fauske
(Name of witness)

Truls Fauske
(Name of witness)

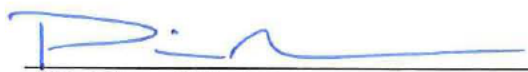
ACCEPTED by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* on:


Steven Ronson
Executive Director
Dispute Resolution and Compliance

20 APRIL 2015.
(Date)

as delegate for the Fair Work Ombudsman
subject to an instrument of delegation made
pursuant to section 683 of the FW Act

in the presence of:


(Signature of witness)

PIA MORGAN
(Name of Witness)

ATTACHMENT A - UNDERPAYMENTS

Employee Name	Amount owing
	2805.65
	41.04
	453.90
	2156.13
	3779.16
	1300.98
	886.68
	524.30
	385.46
	248.60
	6488.00
	6469.90
	1799.76
	6866.77
	7008.21
	8506.45
	8017.89
	2105.97
	4671.30

Total wages	64,516.15
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Contraventions of the *Fair Work Act 2009* and the

Fast Food Industry Award 2010, Vehicle Manufacturing, Repair Service and Retail Award 2010 and General Retail Industry Award 2010 by Bransfords (Qld) Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Bransfords (Qld) Pty Ltd trading as Bransfords Tackle, Clifton Village Take-Away and Mobil service station contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010 (Fast Food Award)*, *General Retail Industry Award 2010 (Retail Award)* and the *Vehicle Manufacturing, Repair, Services and Retail Award 2010 (Vehicle Industry Award)*.

Bransfords (Qld) Pty Ltd owns Bransfords Tackle, Clifton Village Take-Away and Mobil Service Station located at the corner of Captain Cook Highway and Endeavour Road, Clifton Beach, Qld 4879 and no previous contraventions of Commonwealth workplace laws have been determined against Bransfords (Qld) Pty Ltd.

The FWO has found that Bransfords (Qld) Pty Ltd contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010, General Retail Industry Award 2010 and the Vehicle Manufacturing, Repair, Services and Retail Award 2010* by:

1. failing to pay an employee their correct minimum base hourly rates of pay for time worked Monday to Friday;
2. failing to pay an employee a casual loading for all hours worked;
3. failing to pay an employee penalty rates for time worked on Saturdays;
4. failing to pay an employee penalty rates for time worked on Sundays; and
5. failing to pay an employee penalty rates for time worked on Public Holidays.
6. failing to pay an employee overtime rates for additional hours worked

Bransfords (Qld) Pty Ltd has formally admitted to the 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 to the employee affected by the contraventions and changing workplace practices.

Bransfords (Qld) Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Bransfords (Qld) 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 Bransfords (Qld) Pty Ltd and have queries or questions relating to your employment, please contact Mrs Victoria Graham in the first instance on telephone [REDACTED] or by email at [REDACTED]

Anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94 to check their rates of pay and Restaurant Award terms and conditions.

Mrs Victoria Graham

Director – Bransfords (Qld) Pty Ltd