
Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Malt Cow Pty Ltd (ABN: 43144 591 444 (**Malt Cow**))
 - (b) Warren Inkster; and
 - (c) Lindy Inkster.

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 Malt Cow, Mr and Mrs Inkster; and
 - (b) the FWO accepts the Undertaking so executed (as evidence by the FWO's endorsement below).

Background

3. Malt Cow operates a café in Mornington, Victoria.
4. Between 29 October 2010 and 3 February 2014 Malt Cow employed 10 workers. The employees performed various duties as wait staff, kitchen hand and chefs.
5. One worker (the Worker) was 18 years of age when she commenced with Malt Cow and was entitled to pay increases on her birthday up to 20 years of age and national wage increases on 1 July of each year.
6. The Worker was initially employed Monday to Friday 20 to 40 hours per week, and her hours were reduced to 14 hours on 13 May 2013 without being recorded in writing.
7. Malt Cow had made an assumption that the worker was receiving a supported wage for a disability.
8. The terms and conditions of the Worker's employment were informed by the *Restaurant and Industry Award 2010* (Restaurant Award).
9. FWO commenced an investigation on 15 November 2013 and Malt Cow has fully cooperated with the FWO.
10. As a result of its investigation, the FWO determined that Malt Cow had contravened provisions of the FW Act and the Restaurant Award. The Worker was underpaid a total of \$19,622.05 (gross).

.Contraventions

11. The FWO has determined, and Malt Cow admits, that Malt Cow contravened section 45 of the FW Act and Clause 20 of the Restaurant Award:
 - (a) Failing to pay the minimum wage rate of pay for junior employees;
 - (b) Failing to pay the minimum wage rate for annual leave;
 - (c) Failing to pay the minimum wage rate for annual leave loading; and
 - (d) Failing to pay the minimum wage rate for personal leave.
12. The FWO has determined that Malt Cow has determined, and Malt Cow admits, that Malt Cow also contravened clause 90(2) of the Restaurant Award by failing to pay annual leave and annual leave loading when the Worker's employment ended.
13. The FWO has determined that Malt Cow has determined, and Malt Cow admits, that Malt Cow also contravened clause 12.4 of the Restaurant Award without recording the change of agreed variation in working hours in writing.
14. The FWO has determined, and Mr and Mrs Inkster admit, that they were involved in the contraventions committed by Malt Cow within the meaning of section 550(a) and (c) of the FW Act.

Undertakings

15. Upon the commencement of the Undertaking and for the purposes of section 715 of the FW Act, Malt Cow and Mr Inkster and Mrs Inkster undertake to:

Future workplace relations compliance

- (a) ensure that it complies at all times and in all respects with the FW Act and the Restaurant Award by developing systems and processes to ensure ongoing compliance with Commonwealth workplace laws.
- (b) provide, within 28 days of the date of this EU, the FWO with details of the implementation of systems and processes designed to ensure ongoing compliance with Commonwealth workplace laws.

Make good underpayment

- (c) pay an outstanding amount of \$19,622.05 gross owed in underpayments to the Worker no later than 6 months from the date of execution of the EU and provide proof of such payment to the FWO no later than 7 days after the payment is made.
- (d) if the underpaid employee cannot be located, pay any outstanding amount into the consolidated revenue of the Commonwealth of Australia (through the FWO) to be held on trust for the relevant underpaid employee.

Apology

- (e) write and send to the Worker within 14 days of executing this document, a letter of apology in the form of Attachment A to this EU, signed by the Directors of Malt Cow.

Workplace notice

- (f) provide to all Malt Cow business premises within 28 days of executing this EU, a letter in the form of Attachment B to this EU signed by the Directors of Malt Cow.
- (g) ensure the letter is printed in at least A3 size and clearly displayed at each business premises of Malt Cow for a period of at least 30 days:
 - (a) in a location to which all staff at each business location have access; and

- (b) in a manner which is reasonably capable of drawing the letter to the general attention of all staff (for example, by placement on a staff noticeboard).

Malt Cow workplace relations compliance training

- (h) within 21 days of the signing of this EU, organise and ensure Mr and Mrs Inkster attend a training course ("the training course") which deals with;
 - (a) the rights and responsibilities of an employer under the FW Act in relation to minimum rates of pay; and
 - (b) managing employees with disabilities in the workplace.
- (i) ensure the training course must be conducted by an accredited workplace trainer (not being anyone who has advised Malt Cow in relation to the subject matter of the Contraventions) who is approved by the FWO and paid for by Malt Cow.
- (j) provide the training materials used in the training course to the FWO no later than 14 days before the training is to be conducted and the training materials must be approved by the FWO.
- (k) provide evidence of attendance at the training course and payment of the training course must to FWO within 7 days of the training being provided.

Broader industry or community workplace relations compliance education

- (l) fund a disability organisation, *Disability Advocacy Victoria*
 - (a) make payment of \$1,000 within 60 days of this EU being executed to Disability Advocacy Victoria
 - (b) provide proof of payment of the amount of \$1,000 to FWO within seven days of payment

Future reporting to the FWO

- (m) report to the FWO at the end of each financial year, for the next 3 years after the date of this EU ("reporting period"), regarding the following matters
 - (a) the wage rates and entitlements paid to each employee employed over the reporting period; and
 - (b) the classification under the Restaurant Award and employment status (casual, part-time, fulltime, trainee) of each employee employed over the reporting period.

Acknowledgements


16. Malt Cow, Mr Inkster and Mrs Inkster acknowledge 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 the 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 the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth of Australia workplace relations obligations by Malt Cow , Mr Inkster and Mrs Inkster
- (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 the Undertaking
- (f) If the FWO considers that Malt Cow, Mr Inkster and Mrs Inkster have contravened any of the terms of the 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, Malt Cow, Mr Inkster and Mrs Inkster may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO
- (h) No assertion or matter in this Undertaking may be relied upon as an admission by any other person to support a cause of action in any other civil penalty proceeding. However, this term does not prevent any matter in this Undertaking being relied upon in further proceedings in order to inform a relevant Court or tribunal of the details of the conduct that was the evidentiary foundation for Malt Cow, Mr Inkster and Mrs Inkster entering into this Undertaking
- (i) The FWO reserves the right to rely on the terms of the Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against Malt Cow, Mr Inkster or Mrs Inkster in relation to any future contraventions or Commonwealth of Australia workplaces laws
- (j) Malt Cow, Mr Inkster and Mrs Inkster:
 - (i) must not; and
 - (ii) must ensure their respective officers, employees or agents, do not; make any statements, orally, in writing or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with the acknowledgements contained in this Undertaking

Executed as an undertaking

EXECUTED by Malt Cow Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:


(Signature of director)


(Signature of director/company secretary)

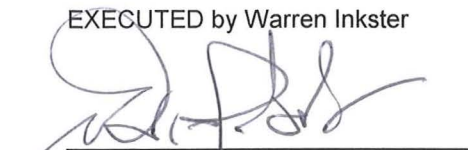
WARREN HENRY INKSTER
(Full name of director)

MELINDA INKSTER
(Full name of director/company secretary)

7.8.14
(Date)

7.8.14
(Date)

EXECUTED by Warren Inkster



(Warren Inkster)

7.8.14
(Date)

Alex Inkster
In the presence of:

Alex Inkster
(Name of Witness)

EXECUTED by Lindy Inkster



(Lindy Inkster)

7/8/14
(Date)

Alex Inkster
In the presence of:

Alex Inkster
(Name of Witness)

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

pro 
(Fair Work Ombudsman)

11 August 2014
(Date)


In the presence of:

PIA MORGAN
(Name of Witness)

Attachment A – Letter of Apology

[letterhead]

<Date>

<Worker name>

<Worker address>

Dear

I am writing to let you know about the outcome of a recent investigation by the Office of the Fair Work Ombudsman ("the FWO") and to offer Malt Cow Pty Ltd's sincere apology to you for the unfortunate situation which was the subject of the FWO's investigation.

The FWO's investigation looked at underpayments and discrimination which occurred during your employment. Following its investigation, the FWO alleged that Malt Cow Pty Ltd was in contravention of Commonwealth workplace relations laws.

Malt Cow Pty Ltd has formally admitted to the FWO that it underpaid your wages, underpaid annual leave and leave loading on your resignation and did not put your change of hours from 13 May 2013 in writing.

Malt Cow Pty Ltd expresses its sincere regret and apologises to you for failing to comply with its lawful obligations. Furthermore, Malt Cow Pty Ltd gives our commitment that the prescribed conduct will not occur again.

Signed

Warren and Lindy Inkster

Directors, Malt Cow

Attachment B – Workplace Notice

The Office of the Fair Work Ombudsman (“the FWO”) recently investigated allegations that Malt Cow Pty Ltd contravened workplace laws from October 2010 – February 2014. The allegations were that Malt Cow underpaid wages to a former employee.

Malt Cow Pty Ltd has formerly admitted to the FWO that it did in fact contravene workplace laws by underpaying wages, annual leave and annual leave loading and not putting a change of hours in writing.

An Enforceable Undertaking has been given by Malt Cow Pty Ltd to the FWO to reflect these formal admissions (available at www.fairwork.gov.au).

Malt Cow Pty Ltd expresses its sincere regret and apologises for any inconvenience this action has caused. Furthermore Malt Cow Pty Ltd gives its commitment that such conduct will not occur again and that it will comply with Commonwealth workplace relations laws.