

**ENFORCEABLE UNDERTAKING**

Between

The Commonwealth of Australia

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

and

Merri Transport Company Proprietary Limited (ACN 005 121 380)

*Fair Work Act 2009*

**Section 715 Enforceable Undertaking**

# Parties

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (FWO) by Merri Transport Company Proprietary Limited (ACN 005 121 380) (Merri Transport) for the purposes of section 715 of the Fair Work Act 2009 (FW Act).

# Commencement of Undertaking

1. ThisUndertaking comes into effect when:
   * the Undertaking is executed by Merri Transport Company Propriety Limited, and
   * the FWO accepts the Undertaking so executed (as evidence by the FWO’s endorsement below).

# Background

1. Merri Transport is in the business of long haul cartage and transport in Allansford Victoria;
2. In February 2014 Merri Transport sold a portion of their business to Ryan’s Transport;
3. As a result, a number of employees (**the Employees**) were made redundant;
4. In or around February 2014 the FWO commenced an investigation into Merri Transport after receiving a number of requests for assistance from current and former employees employed by Merri Transport. These enquiries were relating to various entitlements owing. The terms and conditions of the employees’ employment were governed by the *Road Transport (Long Distance Operations) Award 2010* (the **Transport Award**);
5. The current and former employees were employed as long haul truck drivers and were classified as Grade 6 under the Transport Award;
6. As a result of its investigation, the FWO determined that Merri Transport had contravened provisions of the FW Act and the Transport Award. In particular, the FWO found that Merri Transport had underpaid eight (8) employees a total amount of $260,565.25, ranging from $3,516.37 to $60,940.50. The FWO also found that Mr Bligh, the Director of Merri Transport since 1975, was involved in the contraventions.

# Contraventions

1. The FWO has determined, and Merri Transport admits, that Merri Transport contravened section 45 of the FW Act by failing to comply with the following provision of the Transport Award:
   * Clause 13.4(a) by failing to pay the correct minimum cents per kilometre rate method;
   * Clause 13.6 by failing to pay the correct entitlement where an employee was engaged on loading or unloading duties;
   * Clause 22 by failing to pay the relevant rate of pay when a long distance operation was delayed because of breakdowns or impassable highways; and
   * Clause 26.3 by failing to pay the relevant rate of pay when an employee performed work on a public holiday;
2. The FWO has determined, and Merri Transport admits, that Merri Transport also contravened:
   * section 117 of the FW Act by failing to follow the requirements for notice of termination or payment in lieu;
   * section 119 of the FW Act by failing to pay the correct redundancy pay on termination;
   * section 535 of the FW Act by failing to make and keep employee records as prescribed by the *Fair Work Regulations 2009* in relation to their employees; and
   * section 536 of the FW Act by failing to provide payslips that are in the form prescribed by the regulations.

# Undertakings

1. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, Merri Transport undertake to:

## Future workplace relations compliance

* + ensure compliance at all times and in all respects with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the Transport Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
  + enquire about joining a relevant employer association that will provide Merri Transport regular workplace relation updates;
  + complete all education courses designed for employers available on the FWO on line learning centre via www.fairwork.gov.au; and
  + provide to the FWO, within 28 days of the execution of this Undertaking, written detail of the systems and processes implemented and evidenced gathered in satisfaction of the undertakings in paragraph 10 above, designed to ensure such ongoing compliance.

## FWO My Account Registration

* + 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;
    1. within 14 days of the execution of the Undertaking provide to the FWO the ‘My Account’ registration number; and
    2. within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an FWO Fair Work Inspector via www.fairwork.gov.au “My Account’ current Transport Award minimum pay rates and Public Holiday penalty pay rates.

## Workplace relations training

* + within three (3) months of the execution of this Undertaking, organise and ensure training for all persons engaged by Merri Transport who have managerial responsibility for human resources, recruitment or payroll functions (including Mr Bligh) (**Training**);
  + ensure the Training relates to compliance with all applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Transport Award;
  + ensure the Training is conducted by an accredited workplace trainer. Such person or organisation is to be approved by the FWO and paid for by Merri Transport;
  + 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;
  + provide evidence of attendance at the Training to the FWO within seven (7) days of the Training being provided (including the name and position of all attendees and the date on which the Training was attended);
  + for a period of two (2) years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed above 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 Merri Transport.

## Future Audits

* + cause to have performed by an accounting professional (for example, a Certified Practising Accountant) or an employment law specialist, at Merri Transport’s expense, audits of Merri Transport’s compliance with all applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the Transport Award and the FW Act, relating to the pay and conditions of at least 30% of all employees of Merri Transport (**Audit**), for each year in a two (2) year period as follows:
    1. the Audit for the calendar year 2014 is to be finalised by 31 March 2015; and
    2. the Audit for the calendar year 2015 is to be finalised by 31 March 2016.
  + provide to the FWO, at least 14 days prior to the commencement of an Audit being undertaken, the methodology to be used for the purpose of the Audit for approval by the FWO;
  + provide to the FWO, within 14 days of each finalised Audit being provided to Merri Transport, details of the methodology used to conduct the Audit and the outcomes of the Audit;
  + in the event an Audit discloses contraventions of any applicable Commonwealth of Australia workplace laws and instruments, rectify all such contraventions within 14 days of the Audit findings being provided to Merri Transport including rectification of any and all underpayments to employees;
  + provide evidence of rectification of the contraventions to the FWO within 28 days of the Audit findings being provided to Merri Transport.

## Record Keeping

* + provide to the FWO time and wage records and payslips that comply with all applicable Commonwealth of Australia workplace laws and instruments in respect of at least 30% of all employees of Merri Transport for a period of no less than one (1) calendar month, which is to include a public holiday (**Sample**):
    1. the Sample for the calendar year 2014 is to be provided to the FWO by 14 March 2015, and
    2. the Sample for the calendar year 2015 is to be provided to the FWO by 14 March 2016.

## Apology

* + send a letter **(Apology Letter)** to each of the Affected Employees (listed in Attachment C), detailing in each letter the provision(s) of the Transport Award and the *Fair Work Act 2009* that it breached in respect to the employee, and apologising for the contravention(s).   The form of the letter is that contained in Attachment A and the letter is to be sent within 14 days of the execution of this Undertaking;
  + within seven (7) days of the Apology Letters being sent, provide proof to the FWO and a copy of the Apology Letters. Upon receipt of the Apology Letters by the FWO, the FWO will review the Apology Letters and if the FWO identifies errors in the Apology Letters particularly in respect of identification of the contraventions relevant to the employee, the FWO will advise Merri Transport within seven days of receipt of the letter. Merri Transport will then rectify the error and send to the affected employee(s) another Apology Letter within seven days of receipt of notification from the FWO of the error(s) in the Apology Letter. Within seven days of the Apology Letter being sent, provide proof to the FWO and a copy of the Apology Letter.

## Workplace notice

* + cause to be displayed a notice in the form of Attachment B to this Undertaking (**Workplace Notice**):
    1. for a period of at least 28 days, at the depot operated by Merri Transport; and
    2. ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
       - 1. in a location to which all employees who work at the depot have access;
         2. in a manner which is reasonably capable of drawing the Workplace Notice to the general attention to all employees who work at the depot restaurant (for example, by placement on a staff noticeboard);
  + Provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

## Future complaints

* + Where contacted by current or former employees not covered by this Undertaking alleging that their lawful entitlements have not been met, Merri Transport agree to:
    1. notify the FWO within seven (7) days of receiving the allegation;
    2. take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act has occurred, and where such contraventions are found, take immediate steps to rectify those contraventions;
    3. within seven (7) days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other issues identified have been resolved; and
    4. should a decision be made not to rectify an issue raised by an allegation, notify the FWO within seven (7) days of this decision and the reasons for not rectifying.

## Acknowledgements

1. Merri Transport and Mr Bligh acknowledge that:
   1. 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);
   2. the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
   3. 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;
   4. 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 of Australia workplace relations obligations by Merri Transport and Mr Bligh;
   5. 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;
   6. if the FWO considers that Merri Transport or Mr Bligh have 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;
   7. consistent with section 715(3) of the FW Act, Merri Transport or Mr Bligh may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;
   8. 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 future proceedings in order to inform a relevant Court or tribunal of the details of the conduct that was the evidentiary foundation for Merri Transport and Mr Bligh entering into this Undertaking;
   9. The FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against Merri Transport or Mr Bligh in relation to any future contraventions of Commonwealth of Australia workplace laws;
   10. Merri Transport and Mr Bligh:
       1. must not; and
       2. must ensure their respective officers, employees or agents, do not;

make any statement, orally, in writing or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with the acknowledgements contained in this Undertaking.

1. The FWO acknowledge that:
2. the FWO will provide Merri Transport with updates where there is a change in position on award interpretations and may impact on the operation of Merri Transport; and
3. the FWO will provide this information to Merri Transport as soon as practicable.

# Executed as an undertaking

Executed by Merri Transport in accordance with section 127(1) of the *Corporations Act 2001*:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| (Signature of Director) |  | (Signature of Director/Company Secretary) |
|  |  |  |

(Name of Director) (Name of Director/Company Secretary)

|  |  |  |
| --- | --- | --- |
|  |  |  |

(Date) (Date)

in the presence of: in the presence of:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| (Signature of Witness) |  | (Signature of Witness) |
|  |  |  |

(Name of Witness) (Name of Witness)

|  |  |  |
| --- | --- | --- |
| Accepted by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on: | | |
| Executive Director - Dispute Resolution and Compliance  Delegate for the FAIR WORK OMBUDSMAN |  | (Date) |
| in the presence of: |  |  |
| (Signature of Witness) |  | (Name of Witness) |

# Attachment A – Workplace Notice

**Contraventions of the *Fair Work Act 2009* by**

**Merri Transport Company Proprietary Limited**

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Merri Transport Company Proprietary Limited (ACN 005 121 380) (Merri Transport) contravened the *Fair Work Act 2009.* Merri Transport is in the business of long haul cartage and transport in Allansford, Victoria.

The FWO has found that Merri Transport contravened the *Fair Work Act* 2009 by failing to comply with the following provisions of the *Road Transport (Long Distance Operations) Award 2010:*

* + Clause 13.4(a) by failing to pay the correct minimum cents per kilometre rate method;
  + Clause 13.6 by failing to pay the correct entitlement where an employee was engaged on loading or unloading duties;
  + Clause 22 by failing to pay the relevant rate of pay when a long distance operation was delayed because of breakdowns or impassable highways; and
  + Clause 26.3 by failing to pay the relevant rate of pay when an employee performed work on a public holiday.

The FWO has also found that Merri Transport contravened:

* section 117 of the FW Act by failing to follow the requirements for notice of termination or payment in lieu;
* section 119 of the FW Act by failing to pay the correct redundancy pay on termination;
* section 535 of the FW Act by failing to make and keep employee records as prescribed by the *Fair Work Regulations 2009* in relation to their employees; and
* section 536 of the FW Act by failing to provide payslips that are in the form prescribed by the regulations.

Merri Transport 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 changing workplace practices and rectifying underpayments to the employees affected by the contraventions.

Merri Transport expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Merri Transport gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relation laws in the future.

If you worked for Merri Transport and have queries or questions relating to this employment, please contact Mr Patrick McSparron in the first instance on (03) 5565 1721 or by email at pat@merri.com.au.

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 the *Road Transport (Long Distance Operations) Award 2010* terms and conditions.

# Attachment B – Letter of Apology

**<Date>**

**<Employee Name>**

**<Employee Address>**

Dear **<Employee Name>**

The purpose of this letter is to apologise on behalf of Merri Transport Company Proprietary Limited (ACN 005 121 380) (Merri Transport) for non-compliance with Commonwealth of Australia workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Merri Transport had contravened the *Fair Work Act 2009* (FW Act) by failing to comply with the following provisions of the *Road Transport (Long Distance Operations) Award 2010*:

* Clause 13.4(a) by failing to pay the correct minimum cents per kilometre rate method;
* Clause 13.6 by failing to pay the correct entitlement where an employee was engaged on loading or unloading duties;
* Clause 22 by failing to pay the relevant rate of pay when a long distance operation was delayed because of breakdowns or impassable highways; and
* Clause 26.3 by failing to pay the relevant rate of pay when an employee performed work on a public holiday;

The FWO has also found that Merri Transport contravened:

* section 117 of the FW Act by failing to follow the requirements for notice of termination or payment in lieu;
* section 119 of the FW Act by failing to pay the correct redundancy pay on termination;
* section 535 of the FW Act by failing to make and keep employee records as prescribed by the Fair Work Regulations 2009 in relation to their employees; and
* section 536 of the FW Act by failing to provide payslips that are in the form prescribed by the regulations.

Regrettably, the investigation determined that a number of employees were affected.

Merri Transport has taken steps to remedy the contraventions, including changing workplace practices and rectifying underpayments to the employees affected by the contraventions.

Merri Transport have formally admitted to the FWO that they did not comply with its obligations under Commonwealth of Australia workplace relations laws and have entered into an Enforceable Undertaking under the FW Act with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking Merri Transport have committed to a number of measures to ensure future compliance with Commonwealth of Australia workplace relations laws.

The Management of Merri Transport expresses its sincere regret and apologises to all affected employees for failing to comply with our lawful obligations.

Should you have any questions, please contact Mr Patrick McSparron.

Yours sincerely

**Patrick McSparron**

Merri Transport Company Proprietary Limited (ACN 005 121 380)

# Attachment C - List of affected employees

|  |  |
| --- | --- |
| REDACTED | **$**45,966.00 |
| REDACTED | **$**60,940.50 |
| REDACTED | **$**44,687.00 |
| REDACTED | **$**49,885.00 |
| REDACTED | **$**35,431.00 |
| REDACTED | **$**11,920.00 |
| REDACTED | **$**3,516.37 |
| REDACTED | **$**8,219.38 |