



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Nature's Care Manufacture Pty Ltd (ACN 059 975 834)

Natralab Australia Pty Ltd (ACN 141 251 390)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Nature's Care Manufacture Pty Ltd (ACN: 059 975 834) (**Nature's Care**); and
 - (b) Natralab Australia Pty Ltd (ACN: 141 251 390) (**Natralab**)(collectively the **Companies**)

for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. Nature's Care manufactures health foods and skin care products in a factory (the **Manufacturing Operation**) located at 5 Minna Close, Belrose, New South Wales (NSW).
3. Nature's Care employs people directly to work in the Manufacturing Operation. It also utilised workers employed by Natralab from April to August 2014.
4. Nature's Care also owns an estate in the Hunter Valley region (the **Estate**) located at 149 Deasys Rd, Pokolbin, NSW. The Estate is a farm where grapes are planted and harvested for the purpose of making wine. The Estate also grows herbs, flowers and plants for health care and skin care products, however none of these products are currently used in the Manufacturing Operation.
5. Thirteen employees requested assistance from the FWO on or about 24 July 2014.
6. Nature's Care employed the 13 employees (listed in **Attachment D**) during various periods from February 2013 to July 2014 to perform work at the Manufacturing Operation.
7. Natralab employed 3 (listed in **Attachment D**) of the 13 employees during various periods from April 2014 to August 2014 to perform work at the Manufacturing Operation.
8. Nature's Care employed one (listed in **Attachment D**) of the 13 employees, at the Manufacturing Operation from 12 July to 2 September 2013, subsequently, from 3 September 2013 to 27 March 2014, at the Estate, then at the Manufacturing Operation from 28 March 2014 to 7 May 2014.
9. At the Manufacturing Operation, the employees were employed as packers on a casual basis. Their employment was covered by the *Manufacturing and Associated Industries and Occupations Award 2010* (the **Manufacturing Award**).
10. At the Estate, the employee was employed as a general labourer on a casual basis. Some of the work at the Estate was covered by the *Wine Industry Award 2010* (the **Wine Award**), however, as there is no appropriate classification in the Wine Award for the duties performed by the employee, he was award free with respect to his employment at the Estate.

Contraventions

11. The FWO has determined, and Nature's Care admits, that:
 - (a) Between February 2013 and July 2014, Nature's Care contravened section 45 of the FW Act by failing to comply with the following provisions of the Manufacturing Award;
 - i. clause 24.1 by failing to pay the employees minimum wages;
 - ii. clause 14.1 by failing to pay the employees casual loading;

- iii. clauses 40.1, 40.7 and 40.8 by failing to pay the employees payment for working overtime; and
 - iv. clause 40.11 by failing to pay some employees meal allowance;
 - (b) Between February 2013 and July 2014 Nature's Care contravened:
 - i. section 535 of the FW Act by failing to make and keep for 7 years employee time records of the kind prescribed by the *Fair Work Regulations 2009* (FW Regulations) in relation to employees; and
 - ii. section 535 of the FW Act by failing to make and keep for 7 years records of the number, or the start and finish times, of ordinary hours worked by employees in accordance with regulation 3.33 of the FW Regulations; and
 - iii. section 535 of the FW Act by failing to make and keep for 7 years records of the number, or the start and finish times, of overtime hours worked by employees in accordance with regulation 3.34 of the FW Regulations.
 - (c) Between February 2013 and July 2014, Nature's Care contravened section 45 of the FW Act by failing to comply with clause 36.2(f) of the Manufacturing Award by failing to pay one employee penalty rates for work performed on public holidays.
 - (d) From 3 September 2013 to 27 March 2014, Nature's Care contravened section 293 of the FW Act by failing to pay one employee the national minimum wage and the applicable casual loading.
12. The FWO has determined, and Natralab admits, that:
- (a) In August 2014, Natralab contravened section 323 of the FW Act by failing to pay an employee wages in relation to work performed.
 - (b) Between April and August 2014, Natralab contravened section 45 of the FW Act by failing to comply with the following provisions of the Manufacturing Award;
 - i. clause 24.1 by failing to pay the employees minimum wages;
 - ii. clause 14.1 by failing to pay the employees casual loading; and
 - iii. clauses 40.1, 40.7 and 40.8 by failing to pay the employees payment for working overtime.
 - (c) Between April and August 2014, Natralab contravened:
 - i. section 535 of the FW Act by failing to make and keep for 7 years employee time records of the kind prescribed by the *Fair Work Regulations 2009* (FW Regulations) in relation to employees; and
 - ii. section 535 of the FW Act by failing to make and keep for 7 years records of the number, or the start and finish times, of ordinary hours worked by employees in accordance with regulation 3.33 of the FW Regulations; and
 - iii. section 535 of the FW Act by failing to make and keep for 7 years records of the number, or the start and finish times, of overtime hours worked by employees in accordance with regulation 3.34 of the FW Regulations.

Commencement of Undertaking

13. This Undertaking comes into effect when:
- (a) the Undertaking is executed by the Companies; and
 - (b) the FWO accepts the Undertaking so executed.
14. Upon the commencement of this Undertaking (the **Commencement Date**), the Companies undertake to assume the obligations set out below.

Undertakings

15. For the purposes of section 715 of the FW Act:

Rectify Underpayments

- (a) Nature's Care undertakes to pay the amount of \$93,515.34 less taxation to the employees who were underpaid as a result of the Contraventions referred to in paragraph 11 (**Nature's Care Affected Employees**), according to the proportions set out in **Attachment D**, within 28 days of the execution of the Commencement Date;
- (b) Natralab undertakes to pay the amount of \$4,984.61 less taxation to the employees who were underpaid as a result of the Contraventions referred to in paragraph 12 (**Natralab Affected Employees**), according to the proportions set out in **Attachment D**, within 28 days of the Commencement Date;
- (c) the Companies each undertake:
 - (i) to use all reasonable endeavours to locate each of their Affected Employees for the purpose of complying with the undertakings at subparagraphs 15(a) and 15(b); and
 - (ii) that, if one of its Affected Employees cannot be located within 28 days of payment to that Affected Employee falling due, the relevant Company will pay the amount owed, within 14 days, into the consolidated revenue fund of the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act;
- (d) each of the Companies undertakes that, in relation to any future complaints received by the FWO of contraventions of Commonwealth workplace laws or instruments, the Company to whom the complaint relates will:
 - (i) use all reasonable endeavours to resolve the complaint, including rectifying any identified contraventions, within 60 days of being notified by the FWO of the complaint;
 - (ii) where a complaint has been resolved, provide the FWO with evidence of resolution of the complaint; and
 - (iii) where a complaint has not been resolved by agreement with the complainant within the period specified in subparagraph 15(d)(i), report to the FWO about the nature of the complaint and the steps taken to try to resolve it;

Workplace Notices

- (e) the Companies undertake, jointly and severally, to:
 - (i) within 28 days of the Commencement Date, place a notice (**Workplace Notice**) within the Manufacturing Operation in a location which is accessible to all persons employed at the Manufacturing Operation in the terms set out in Attachment A in both English and Chinese, such notice to remain in place for a total period of 7 consecutive days; and
 - (ii) provide a copy of the Workplace Notice and photographic evidence of its display to the FWO within 7 days of the display of the notice;
- (f) Nature's Care undertakes to:
 - (i) within 28 days of the Commencement Date, to place a second notice in the same terms as the Workplace Notice (**Second Workplace Notice**) within the Estate in a location which is accessible to all persons employed at the Estate, such notice to remain in place for a total period of 7 consecutive days; and
 - (ii) provide a copy of the Second Workplace Notice and photographic evidence of its display to the FWO within 7 days of the display of the notice;

Apology

(g) the Companies each undertake to:

- (i) within 7 days of the Commencement Date, send an apology to each of their Affected Employees in English and Chinese the terms set out in Attachment B, signed on behalf of the relevant company (**Apology**); and
- (ii) provide a copy of each Apology sent by the relevant company to the FWO within 7 days of sending such Apology;

FWO My Account Registration

(h) the Companies each undertake to:

- (i) within 7 days of the Commencement Date, register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options;
- (ii) within 14 days of the Commencement Date, provide to the FWO their respective 'My Account' registration numbers; and
- (iii) within 21 days of the Commencement Date, demonstrate to a FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' knowledge of the current National minimum wage rate, Manufacturing Award and Wine Award minimum and penalty rates of pay;

Hotline and/or point of contact

(i) the Companies each undertake to:

- (i) within 14 days of the Commencement Date, set up a hotline and/or nominate a point of contact to deal with workplace enquires from their respective employees;
- (ii) within 21 days of the Commencement Date, provide the details of the hotline and/or point of contact to all of their respective employees in writing (**Written Communication**);
- (iii) provide evidence of the Written Communication to the FWO within 7 days of sending the Written Communication;

Future Workplace Relations Compliance

(j) the Companies each undertake to:

- (i) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act, the Manufacturing Award and the Wine Award;
- (ii) implement systems and processes to ensure ongoing compliance with the obligations referred to in paragraph 15(j)(i) above, including obligations relating to rates of pay, loadings, penalties, taxation, superannuation and record keeping; and
- (iii) provide to the FWO, within 28 days of the Commencement Date, details of systems and processes implemented in satisfaction of the undertakings in paragraphs 15 (j)(i) and (ii) above;

Self-audits and Reporting

(k) the Companies each undertake:

- (i) to have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at the Companies' expense, an audit (**Audit**) of compliance with Commonwealth

workplace laws and instruments, including but not limited to the FW Act, the Manufacturing Award and the Wine Award, in respect of pay, conditions and record keeping in relation to all of the relevant Company's employees, according to the following schedule:

- i. an Audit of the first complete pay cycle following 1 July 2015, which is to be finalised within 28 days of the last day of the pay cycle;
 - ii. an Audit of the first complete pay cycle following 1 January 2016, which is to be finalised within 28 days of the last day of the pay cycle;
 - iii. an Audit of the first complete pay cycle following 1 July 2016, which is to be finalised within 28 days of the last day of the pay cycle;
 - iv. an Audit of the first complete pay cycle following 1 January 2017, which is to be finalised within 28 days of the last day of the pay cycle;
 - v. an Audit of the first complete pay cycle following 1 July 2017, which is to be finalised within 28 days of the last day of the pay cycle;
 - vi. an Audit of the first complete pay cycle following 1 January 2018, which is to be finalised within 28 days of the last day of the pay cycle;
- (ii) within 7 days of the completion of each Audit, to provide the FWO with details of the methodology used to conduct the Audit and a copy of the certified audit report;
- (iii) in the event that an Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, to rectify all such contraventions within 14 days of receipt of the Audit results; and
- (iv) to provide evidence of rectification of all contraventions disclosed by an Audit to the FWO within 14 days of rectification;

Workplace Relations Training

- (l) the Companies each undertake to:
- i. implement within 90 days of the Commencement Date, a training program (**Training**) so that all persons responsible, either directly or indirectly, for the relevant Company's compliance with Commonwealth workplace laws and instruments, including [REDACTED] and all company Directors, are made aware of the Companies' obligations under Commonwealth workplace laws and instruments. At the Companies' election, they may each comply with their separate undertakings under this clause by the delivery of joint training;
 - ii. provide training material to participants in the Training including material on:
 - (i) compliance with the FW Act, Fair Work Regulations, the Manufacturing Award and the Wine Award;
 - (ii) employer obligations in respect to record keeping and pay slips;
 - (iii) options available to persons to make complaints and FWO contact information; and
 - (iv) how to access FWO resources to calculate rates of pay;
 - iii. ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by the relevant Company;
 - iv. provide the training materials to be used in the Training to the FWO no later than 7 days before the Training is to be conducted;
 - v. within 7 days of the Training being conducted, provide the FWO with evidence

of attendance at the Training (including the name and position of all attendees and the date on which the Training was attended); and

- vi. for a period of 3 years following the Commencement Date, ensure that Training is conducted in the manner prescribed by paragraphs 15(l)(i) to (v) above in relation to any person who acquires responsibilities that include human resource, recruitment or payroll functions for or on behalf of either of the Companies, within 28 days of the person acquiring such responsibilities.

Subsidiary Companies & Transferees

- (m) the Companies each undertake to take all reasonable steps to:
 - i. ensure that all associated entities of the relevant Company (within the meaning of section 50AAA of the *Corporations Act 2001 (Cth)*) (**Associated Entities**) comply at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act, the Manufacturing Award and the Wine Award;
 - ii. monitor the compliance by its Associated Entities with applicable Commonwealth workplace laws and instruments; and
 - iii. ensure that any identified contraventions of such laws or instruments are rectified by the relevant Associated Entity;
- (n) the Companies each undertake to, on a 6 monthly basis for a period of 3 years following the Commencement Date, report to the FWO in writing the steps taken by the relevant Company to comply with the obligations in subparagraph 15(m) above;
- (o) the Companies each undertake that in the event that the relevant Company sells or otherwise transfers some or all of its business to another entity (**Transferee**) (whether an Associated Entity or otherwise) within 3 years of the Commencement Date, to:
 - i. provide a copy of this Undertaking to the Transferee prior to the sale or transfer; and
 - ii. provide to the FWO, within 7 days of the sale or transfer of business, details of the sale or transfer, including the identity of the Transferee and the business functions or operations that have been sold or transferred.

Broader community workplace relations education

- (p) the Companies jointly and severally undertake to:
 - (i) make a donation of \$5,000 (such donation to be apportioned by the Companies between themselves but to be enforceable in its entirety against either Company) within 60 days of the Commencement Date to 'Asian Women at Work Inc' to fund education about workplace rights under the FW Act; and
 - (ii) provide proof of the payment referred to in subparagraph 15(p)(i) above to the FWO within 7 days of it being made.

Acknowledgements


- 16. The Companies each 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 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 law or instruments by either or both of the Companies;
- (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 either of the Companies 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) 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 either of the Companies in relation to any future contraventions of Commonwealth workplace laws;
- (h) each Company must not, and must ensure that their respective officers, agents and employees do not, make any statements, orally or in writing or otherwise, which convey or imply anything inconsistent with the admissions and acknowledgements contained in this Undertaking; and
- (i) consistent with section 715(3) of the FW Act, the Companies may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Nature's Care Manufacture Pty Ltd (ACN: 059 975 834) in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

ALEX WU
(Name of director)

02/02/2015
(Date)

in the presence of:


(Signature of witness)

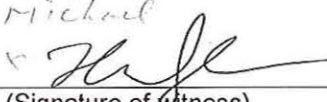
MICHAEL WU
(Name of witness)

JINA
X JINA 
(Signature of director/company secretary)

X JINA
(Name of director/company secretary)

02/02/2015
(Date)

in the presence of:


(Signature of witness)

MICHAEL WU
(Name of witness)

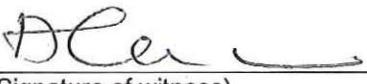
EXECUTED by Natralab Australia Pty Ltd (ACN: 141 251 390) in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

MICHAEL WU
(Name of director)

02-02-15
(Date)

in the presence of:


(Signature of witness)

ALEX WU
(Name of witness)

(Signature of director/company secretary)

(Name of director/company secretary)

(Date)

in the presence of:

(Signature of witness)

(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
Operations
Delegate for the FAIR WORK OMBUDSMAN

16/2/15
(Date)

in the presence of:



(Signature of witness)

Louise CATO

(Name of Witness)

Attachment A – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Manufacturing and Associated Industries and Occupations Award 2010* by Nature's Care Manufacture Pty Ltd and Natralab Australia Pty Ltd (together, the Companies).

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Nature's Care Manufacture Pty Ltd (Nature's Care) and Natralab Australia Pty Ltd (Natralab) contravened the *Fair Work Act 2009* and the *Manufacturing and Associated Industries and Occupations Award 2010*.

Nature's Care owns and operates a manufacturing operation at Belrose in New South Wales and a vineyard in the Hunter Valley region. The Companies employed workers at the manufacturing operation and Nature's Care employed a worker at the vineyard. No previous contraventions of Commonwealth workplace laws have been determined against the Companies.

The FWO has found that the Companies contravened the *Fair Work Act 2009* and the *Manufacturing and Associated Industries and Occupations Award 2010* by:

1. failing to pay employees the correct minimum wage;
2. failing to pay employees the applicable casual loading;
3. failing to pay employees the applicable overtime rates for additional hours worked;
4. in respect of Nature's Care only, failing to pay an employee the applicable public holiday penalty rate;
5. in respect of Nature's Care only, failing to pay some employees the applicable overtime meal allowance; and
6. failing to keep employee records required by law.

The Companies have formally admitted to the FWO that these contraventions occurred and have entered into an Enforceable Undertaking with the FWO (available at www.fwo.gov.au) committing to a number of measures to remedy the contraventions and prevent them from occurring in the future, including rectifying the underpayments to affected employees and changing workplace practices.

The Companies express their sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore, the Companies give a commitment that such conduct will not occur again and that they will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for the Companies and have queries or questions relating to your employment, please contact [REDACTED] in the first instance on telephone 02 9485 8888. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment B – Letter of Apology

address

Day Month Year

Dear ,

I am writing to apologise on behalf of Nature's Care Manufacture Pty Ltd (the **Company**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company had contravened the *Fair Work Act 2009* and the *Manufacturing and Associated Industries and Occupations Award 2010* (the **Manufacturing Award**).

The FWO has found that the Company contravened the *Fair Work Act 2009* and the Manufacturing Award by:

1. failing to pay employees the correct minimum wage;
2. failing to pay employees the applicable casual loading;
3. failing to pay employees the applicable overtime penalty rates for additional hours worked;
4. failing to pay an employee the applicable public holiday penalty rate;
5. failing to pay some employees the applicable overtime meal allowance; and
6. failing to keep employee records.

Regrettably, the investigation determined that you were affected by the above contraventions.

The Company is taking steps to remedy the contraventions, including paying \$ (less taxation) that you have been underpaid.

The Company has formally admitted to the FWO that the Company did not comply with its obligations under Commonwealth workplace relations laws and has 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 the Company has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

The Company expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [REDACTED] in the first instance on telephone 02 9485 8888 or by email [REDACTED]

Yours sincerely,

Mr Alex Wu
Director – Nature's Care Manufacture Pty Ltd

Attachment C – Letter of Apology

address

Day Month Year

Dear,

I am writing to apologise on behalf of Natralab Australia Pty Ltd (the **Company**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company had contravened the *Fair Work Act 2009* and the *Manufacturing and Associated Industries and Occupations Award 2010* (the **Manufacturing Award**).

The FWO has found that the Company contravened the *Fair Work Act 2009* and the Manufacturing Award by:

1. failing to pay employees the correct minimum wage;
2. failing to pay employees the applicable casual loading;
3. failing to pay employees the applicable overtime penalty rates for additional hours worked; and
4. failing to keep employee records.

Regrettably, the investigation determined that you were affected by the above contraventions.

The Company is taking steps to remedy the contraventions, including paying \$ (less taxation) that you have been underpaid.

The Company has formally admitted to the FWO that the Company did not comply with its obligations under Commonwealth workplace relations laws and has 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 the Company has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

The Company expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [REDACTED] in the first instance on telephone 02 9485 8888 or by email [REDACTED]

Yours sincerely,

Mr Michael Wu
Director –Natralab Australia Pty Ltd

Attachment D – Employees and amounts owed

Nature's Care Employees	Amount Owed by Nature's Care	Period of engagement
[REDACTED]	\$5,012.52	16/05/2013 to 25/10/2013
[REDACTED]	\$4,663.45	16/05/2013 to 25/10/2013
[REDACTED]	\$2,829.01	15/04/2013 to 16/09/2013
[REDACTED]	\$6,154.71	02/05/2013 to 16/09/2013
[REDACTED]	\$7,713.04	01/10/2013 to 09/04/2014
[REDACTED]	\$6,748.14	12/07/2013 to 07/05/2014
[REDACTED]	\$7,908.64	08/01/2014 to 18/06/2014
[REDACTED]	\$7,035.11	20/05/2013 to 15/11/2013
[REDACTED]	\$7,192.02	05/02/2013 to 04/11/2013
[REDACTED]	\$12,833.27	04/02/2013 to 15/11/2013
[REDACTED]	\$11,500.27	06/03/2013 to 05/09/2013
[REDACTED]	\$11,424.68	03/12/2013 to 16/07/2014
[REDACTED]	\$2,500.48	07/01/2014 to 14/02/2014

Natralab Employees	Amount Owed by Natralab	Period of engagements
[REDACTED]	\$1,760.23	10/04/2014 to 06/06/2014
[REDACTED]	\$1,569.35	08/05/2014 to 24/06/2014
[REDACTED]	\$1655.03	07/07/2014 to 07/08/2014