



Australian Government

# Fair Work

## OMBUDSMAN

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### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Deepcore Australia Pty Ltd (ACN 115 967 809)

## 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) (**Act**) by Deepcore Australia Pty Ltd (ACN 115 967 809) trading as Deepcore Drilling of 29 Ord Street, West Perth WA 6005 (**Company**).

### BACKGROUND

2. The Company carries on business in the mining industry and provides drilling services for mine operators. The Company is owned by Deepcore Drilling Pty Ltd (ACN 115 935 941) with which it shares a common Director being Mr Scott Tumbridge.
3. The Company currently has a workforce of approximately 50 employees. The Company currently has offices in regional Queensland and Victoria.
4. Employees of the Company are employed in various streams, including drilling services and maintenance trades.
5. The current employees are employed on a full time or part time basis. Their employment is governed by the Act and the [Mining Industry Award 2010 \(MA000011\)](#) (**Mining Award**). For the purposes of determining the rate of pay from 1 July 2010 to 30 June 2014 (**transitional period**), the [Drilling and Exploration Industry \(AWU\) Award 1998 \(AP778713\)](#) (**Drilling and Exploration Award**) applied to Victorian employees, and the [Mining \(Non-Coal\) Award – State 2003 \(AN140179\)](#) to Queensland Employees.
6. Since August 2015, 11 requests for assistance regarding the Company have been received by the FWO relating to allegations of underpayment of wages, penalty rates and shift allowances.
7. During the course of the FWO's investigation, the Company admitted to underpaying some of its workforce in Victoria and Queensland in contravention of the Act and the Mining Award (**underpayments**). The underpayments occurred during the transitional period. Specifically, 205 former and current employees as listed in **Attachment A** have been underpaid (**Employees**).
8. The Company admits that the underpayments arose due to the miscalculation of rates of pay payable during the transitional period, and the failure to implement adequate systems and processes to ensure correct payment of all wage-related entitlements to the Employees. In particular, the Company failed to pay the industry allowance in the Mining Award and phase in higher rates for night shift penalty for Victorian employees and Saturday penalty for Queensland employees.
9. The underpayments range from under \$1,000 (32 employees) to more than \$5,000 (99 employees, with 33 being over \$20,000). The Company has agreed to rectify underpayments in a the total amount of \$2,088,063.38 As at the time of execution of this Undertaking, an amount of \$710,003.00 of the total underpayment amount has been paid to Employees.
10. The FWO recognises that the Company has voluntarily undertaken the following corrective action prior to the execution of this Undertaking:

- a) Performed calculations (via their industry representatives) of individual underpayment amounts;
- b) Written to all current Employees to address the underpayments;
- c) Met with all current Employees to discuss the underpayments and rectification payments;
- d) Commenced rectification payments to some Employees;
- e) Employed a Human Resources, Safety and Training Manager;
- f) Created a specific email address [REDACTED] to correspond with former and current Employees in relation to this Undertaking and workplace disputes generally; and
- g) Organised two representatives from its industry association to make attempts to contact all former Employees between 11 – 29 January 2016.

#### **ADMITTED CONTRAVENTIONS**

11. The FWO has formed the reasonable belief, and the Company admits, that by underpaying the Employees, the Company contravened section 45 of the Act by contravening the following terms of the Mining Award:

- a) Clause 14.3(a) by failing to pay the industry allowance;
- b) Clause A.5.4 of Schedule A by failing to transition the night shift penalty rate in clause 20.5(a) in respect of employees in Victoria; and
- c) Clause A.5.4 of Schedule A by failing to transition the Saturday penalty rate in clause 20.6 in respect of employees in Queensland.

(contraventions)

#### **COMMENCEMENT OF UNDERTAKING**

12. This Undertaking comes into effect when:

- a) the Undertaking is executed by the Company; and
- b) the FWO accepts the Undertaking so executed.

#### **UNDERTAKINGS**

13. Upon the execution of this Undertaking and for the purposes of section 715 of the Act, the Company undertakes to do the things set out in paragraphs 14 to 37.

#### **Rectify underpayments**

- 14. By 31 May 2016, the Company will rectify the contraventions by paying all current Employees, the individual underpayment amounts specified in Attachment A, inclusive of interest of 1.5%, and provide evidence to the FWO of the date, gross and net amounts of each payment by 3 June 2016.
- 15. Between 1 July 2016 to 18 March 2017, the Company will rectify the contraventions by paying all former Employees who are able to be located by that time, the individual underpayment amounts specified in Attachment A, inclusive of interest of 1.5%, and provide evidence to the FWO of the date, gross and net amounts of each payment by 22 March 2017.
- 16. For the period of 12 months from the execution of this Undertaking the Company will:
  - a) take all reasonable steps to locate any former Employees including, but not limited to, taking steps to ascertain their current residential address and contacting them by telephone, post or email to:



- I. advise them that they are owed money;
    - II. explain the process for claiming the money owed to them; and
  - b) report to the FWO after every four months on the Company's attempts to locate former Employees and the payments made to former Employees in the preceding four month period.
17. Within seven days of the end of the period specified in paragraph 16 the Company will:
- a) pay any amounts owed to former Employees who could not be located within the 12 month period to the Commonwealth (as represented by the FWO), pursuant to section 559 of the Act and in discharge of the Company's liability to make further payments to those Employees; and
  - b) report to the FWO on the former Employees who could not be located including details of the amount owed to them, their last known contact details, date of birth, details of the bank account into which they last received wages, visa details (if any).

#### **FWO My Account Registration**

18. Within 14 days of the execution of this Undertaking the Company will:
- a) Register with the FWO 'My Account' portal at <https://www.fairwork.gov.au/my-account/registerpage.aspx> and have completed the profile, minimum pay rates and Award options; and
  - b) Provide to the FWO the Company's 'My Account' Customer Registration Number (CRN).
19. Within 21 days of the execution of this Undertaking, the Company will subscribe, and provide evidence to the FWO of subscriptions, to the following:
- a) FWO's 'General information' email alerts relating to the Mining Award, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>; and
  - b) FWO's Employer newsletter for the relevant State and industry, available at <http://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
    - I. pay updates;
    - II. award updates;
    - III. holiday entitlements;
    - IV. working hours and breaks; and
    - V. annual leave/sick leave.

#### **Future workplace relations compliance**

20. The Company will comply, and ensure compliance at all times, with the Act, the *Fair Work Regulations 2009* (Cth), the Mining Award and any other modern award(s) applicable to the Company's employees.
21. Within 60 days of the execution of this Undertaking, the Company will provide to the FWO evidence and details of systems and processes in place to ensure compliance with paragraph 20 above. Without limitation, such systems and processes are to ensure that employees receive the correct minimum rates of pay and entitlements, such as allowances, penalty rates and overtime rates.
22. The Company will provide to each new Company employee at the commencement of their

employment:

- a) A copy of the Fair Work Information Statement;
- b) The name of the applicable industrial instrument that applies to the employee and information about where the employee can access or view a copy of the instrument; and
- c) A point of contact for all employment related queries.

### **Workplace relations training**

23. Within 120 days of the execution of this Undertaking, the Company will:

- a) at its own expense, organise and ensure training is provided to all persons who have managerial responsibility for human resources, recruitment, employee entitlements or payroll functions on behalf of the Company (**Training**) that relates to:
  - I. Obligations on employers under the Mining Award and National Employment Standards in the Act;
  - II. the systems and processes developed and implemented in accordance with paragraph 20above;
- b) Ensure the Training is conducted by a person or organisation with professional qualifications in workplace relations;

24. Within seven days of delivery of the Training, the Company will provide to the FWO:

- a) a copy of the content of the Training;
- b) the name of the person or organisation providing the training;
- c) the method of delivery of the training; and
- d) evidence of attendance at the Training (including the name and position title of all attendees and the date on which the training was attended);

25. For a period of three years from the execution of this Undertaking, the Company will ensure that the Training is delivered in the manner prescribed in paragraphs 23 and 24 in relation to any new or existing employees or contractors who acquire managerial responsibilities for human resources, employee entitlements, recruitment or payroll functions on behalf of the Company;

### **Employee Assistance**

26. For a period of 12 months after the execution of this Undertaking, the Company will maintain adequate resources to monitor the email address [REDACTED] for all persons engaged by the Company (past and present) to make enquiries about any underpayment owing to them;
27. In the event that any of the affected Employees seek a copy of the methodology of calculation, the Company will produce the calculations to the requesting Employee within seven days of receipt of the request.

### **Apology**

28. Within 14 days of the execution of this Undertaking, the Company will send each Employee a letter of apology in the form of **Attachment B** for current employees and **Attachment C** for former employees and provide written confirmation to the FWO within 7 days of the letter(s) being sent to Employees.

## **Audit Activity**

29. The Company will cause to have performed by an external professional with qualifications in accounting or workplace relations, at its expense, audits of the Company's compliance with the Act and applicable industrial instruments, relating to the pay and conditions of Company employees (**Audits**), as follows:
- a) The Audits will assess a sample of at least 25% of the total workforce of the Company, with the sample to be representative of the different work locations, wage classifications and types or categories of work that apply across the Company's business;
  - b) The Audits will be conducted for the following periods with the following finalisation dates:
    - I. The Audit period of 4 – 31 July 2016 is to be finalised 26 August 2016;
    - II. The Audit period of 3 – 30 July 2017 is to be finalised by 25 August 2017; and
    - III. The Audit period of 2 – 27 July 2018 is to be finalised by 24 August 2018;
  - c) The Audits will assess the Company's compliance with the following obligations according to each employee's classification of work, category of employment and hours worked during the audit period:
    - I. wages and work-related entitlements under the applicable modern award or industrial instrument;
    - II. accrual and payment of entitlements under the National Employment Standards in Part 2-2 of the Act;
    - III. method and frequency of payment in accordance with the section 323 of the Act; and
    - IV. record keeping and pay slip obligations in Division 3 of Part 3-6 of the Act.
30. The Company will provide to the FWO within 14 days of each of the finalisation dates:
- a) a copy of the audit report which will include a statement of the methodology used in the audit; and
  - b) written details of any contraventions identified in the audit and the steps the Company will take to rectify any identified contravention(s) and by when the rectification will occur.
31. In the event that an audit discloses contraventions of the Act or any applicable instruments, the Company will rectify all such contraventions and provide evidence of rectification to the FWO;
32. If a contravention involves an underpayment to an employee who cannot be located, for a period of 12 months after the finalisation date, the Company will follow the procedures to locate the employee(s) set out in paragraph 16 above.

## **Notices**

33. The Company will place a public notice (**Public Notice**) in the Saturday edition of the Herald Sun within 28 days of the FWO publishing a Media Release on its website in respect of this Undertaking, in the form of **Attachment D** and bearing the Company logo and provide evidence to FWO within 7 days of publication.
34. Within 28 days of the execution of this Undertaking the Company will:
- a) display within all workplaces in Australia a notice in the form of Attachment D (**Workplace Notice**) and provide photographic evidence of its display;
  - b) ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:



- I. In a location to which all employees who work at the Company have access;
  - II. In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard); and
  - III. For a period of 14 continuous days;
- c) list and hyperlink the industrial instrument(s) that applies to Company employees on the Employment pages of the Company's website, to remain for a period of three years from the date of execution of this Undertaking.
35. Within 28 days of execution of this Undertaking, the Company will post a notice on the Company's website at <http://www.deepcoredrilling.com/> (**Website Notice**) with respect to this Undertaking and which:
- a) Is in the form of Attachment D;
  - b) Is displayed on the homepage of the website in at least size 10 font;
  - c) Remains on the website until 28 days after the final payment has been made; and
  - d) Contains an html link to the Undertaking;

#### **Donation to Community Legal Centre**

36. Within 28 days of execution of this Undertaking, the Company will make a donation of \$15,000 to the [Loddon Campaspe Community Legal Centre](#) (ABN: 23 082 541 240) for the purposes of provision of employment related legal services in the Loddon-Campaspe region, with proof of payment to provided to FWO within 7 days of it being made.

#### **ACKNOWLEDGEMENTS**

37. The Company acknowledges that:
- a) the FWO may:
    - I. make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it to its website at [www.fairwork.gov.au](http://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;
    - IV. from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
    - V. rely upon the terms of this Undertaking and the admissions made by the Company set out in paragraph 11 above in respect of any future proceedings brought by the FWO against the Company in relation to any future non-compliance with the Company's workplace relations obligations.
  - b) Consistent with the Note to section 715(4) of the 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 Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and

d) If the FWO forms the belief that the Company has contravened any of the terms of this Undertaking:

a) the FWO may apply to any of the Courts set out in section 715(6) of the Act, for orders under section 715(7) of the Act; and

b) this Undertaking may be provided to the Court as evidence of the admissions made by the Company in paragraph 11 above, and also in respect of the question of costs.

38. The Company:

a) must not; and

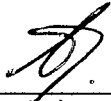
b) must ensure that each of its officers, employees or agents do not,

make any statement, orally or in writing, or otherwise imply anything which conveys or implies anything inconsistent with the terms of this Undertaking.



**Executed as an undertaking**

EXECUTED by Deepcore Australia Pty Ltd (ACN 115 967 809) in accordance with section 127(1) of the Corporations Act 2001:

  
\_\_\_\_\_  
(Signature of director)

\_\_\_\_\_  
(Signature of director/company secretary)

SCOTT TUMBRIDGE  
\_\_\_\_\_  
(Name of director)

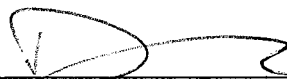
\_\_\_\_\_  
(Name of director/company secretary)

13-04-2016  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of witness)

DONALD MACDONALD  
\_\_\_\_\_  
(Name 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

21/4/2016  
\_\_\_\_\_  
(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

LOUISE CATO  
\_\_\_\_\_  
(Name of Witness)

# Attachment A – Underpaid Employees

Employee	Gross Amount Owed	Gross Amount Owed Plus 1 5% Interest
	\$1,579.71	\$1,603.41
	\$949.26	\$963.50
	\$5,514.22	\$5,596.93
	\$13,217.85	\$13,416.12
	\$1,965.27	\$1,994.75
	\$2,799.64	\$2,841.63
	\$50,350.33	\$51,105.58
	\$2,078.41	\$2,109.59
	\$1,005.14	\$1,020.22
	\$8,632.31	\$8,761.80
	\$19,021.58	\$19,306.91
	\$31,758.82	\$32,235.21
	\$1,443.65	\$1,465.30
	\$5,983.47	\$6,073.22
	\$2,373.87	\$2,409.47
	\$5,547.21	\$5,630.42
	\$3,007.05	\$3,052.15
	\$47,341.22	\$48,051.34
	\$25,982.66	\$26,372.40
	\$3,946.14	\$4,005.34
	\$12,613.72	\$12,802.92
	\$22,981.36	\$23,326.08
	\$4,209.63	\$4,272.78
	\$4,677.01	\$4,747.17
	\$1,560.35	\$1,583.76
	\$1,156.56	\$1,173.91
	\$1,866.56	\$1,894.56
	\$1,738.38	\$1,764.46
	\$3,332.57	\$3,382.56
	\$2,969.56	\$3,014.11
	\$8,789.40	\$8,921.24
	\$461.04	\$467.95
	\$543.32	\$551.47
	\$7,111.00	\$7,217.67
	\$3,994.47	\$4,054.39
	\$24,383.79	\$24,749.55
	\$6,533.05	\$6,631.05
	\$2,735.13	\$2,776.16

	\$12,631.15	\$12,820.61
	\$21,892.37	\$22,220.76
	\$2,861.44	\$2,904.36
	\$1,540.58	\$1,563.69
	\$1,132.70	\$1,149.69
	\$1,333.95	\$1,353.96
	\$9,750.03	\$9,896.28
	\$11,230.07	\$11,398.52
	\$2,461.56	\$2,498.48
	\$2,522.06	\$2,559.89
	\$1,114.90	\$1,131.63
	\$4,998.86	\$5,073.84
	\$1,574.55	\$1,598.17
	\$34,294.75	\$34,809.17
	\$6,766.82	\$6,868.32
	\$14,410.44	\$14,626.59
	\$1,694.62	\$1,720.04
	\$3,673.42	\$3,728.52
	\$7,113.26	\$7,219.96
	\$19,561.99	\$19,855.42
	\$13,470.28	\$13,672.33
	\$1,836.48	\$1,864.03
	\$51,726.30	\$52,502.20
	\$9,842.46	\$9,990.10
	\$97.20	\$98.65
	\$2,511.34	\$2,549.01
	\$8,433.28	\$8,559.78
	\$9,425.80	\$9,567.19
	\$6,289.49	\$6,383.83
	\$50,009.82	\$50,759.97
	\$1,834.64	\$1,862.16
	\$1,767.35	\$1,793.86
	\$1,602.46	\$1,626.50
	\$37,765.13	\$38,331.60
	\$19,723.81	\$20,019.67
	\$229.00	\$232.44
	\$7,711.05	\$7,826.72
	\$4,923.31	\$4,997.16
	\$1,614.43	\$1,638.65
	\$8,950.13	\$9,084.38
	\$332.30	\$337.28
	\$527.03	\$534.94

	\$9,150.08	\$9,287.33
	\$10,099.59	\$10,251.08
	\$4,351.01	\$4,416.27
	\$5,783.81	\$5,870.57
	\$3,801.44	\$3,858.46
	\$1,588.35	\$1,612.17
	\$2,171.36	\$2,203.93
	\$29,078.27	\$29,514.44
	\$30,016.63	\$30,466.88
	\$2,175.88	\$2,208.52
	\$8,300.14	\$8,424.64
	\$322.82	\$327.66
	\$23,815.95	\$24,173.19
	\$1,662.82	\$1,687.76
	\$29,013.02	\$29,448.22
	\$5,160.67	\$5,238.08
	\$3,005.95	\$3,051.04
	\$23,325.33	\$23,675.21
	\$9,636.09	\$9,780.63
	\$2,788.65	\$2,830.48
	\$546.65	\$554.85
	\$10,619.48	\$10,778.78
	\$233.89	\$237.40
	\$53,676.54	\$54,481.69
	\$1,705.29	\$1,730.87
	\$1,289.15	\$1,308.49
	\$2,004.74	\$2,034.81
	\$20,570.95	\$20,879.51
	\$4,164.57	\$4,227.04
	\$341.66	\$346.78
	\$7,658.62	\$7,773.49
	\$1,912.28	\$1,940.96
	\$3,420.50	\$3,471.81
	\$11,699.77	\$11,875.27
	\$213.94	\$217.15
	\$5,292.51	\$5,371.90
	\$142.62	\$144.76
	\$3,069.06	\$3,115.10
	\$4,480.45	\$4,547.66
	\$1,005.25	\$1,020.33
	\$11,881.50	\$12,059.72
	\$146.10	\$148.29



	\$406.60	\$412.70
	\$25,836.98	\$26,224.53
	\$677.74	\$687.91
	\$3,066.55	\$3,112.55
	\$14,290.50	\$14,504.86
	\$42,013.79	\$42,644.00
	\$14,515.35	\$14,733.08
	\$8,594.15	\$8,723.06
	\$1,245.73	\$1,264.42
	\$4,344.36	\$4,409.53
	\$142.62	\$144.76
	\$4,069.12	\$4,130.16
	\$8,328.33	\$8,453.26
	\$8,121.22	\$8,243.03
	\$772.78	\$784.37
	\$3,124.95	\$3,171.82
	\$996.80	\$1,011.75
	\$7,371.66	\$7,482.23
	\$3,345.40	\$3,395.58
	\$3,417.75	\$3,469.01
	\$55,446.21	\$56,277.90
	\$18,552.26	\$18,830.54
	\$1,232.12	\$1,250.60
	\$1,259.23	\$1,278.12
	\$4,230.62	\$4,294.08
	\$7,636.43	\$7,750.98
	\$21,563.70	\$21,887.16
	\$13,418.87	\$13,620.15
	\$10,809.24	\$10,971.38
	\$2,310.61	\$2,345.26
	\$2,475.23	\$2,512.35
	\$925.52	\$939.40
	\$911.97	\$925.65
	\$8,593.46	\$8,722.36
	\$345.16	\$350.34
	\$7,044.08	\$7,149.74
	\$4,060.37	\$4,121.27
	\$2,973.32	\$3,017.92
	\$12,662.48	\$12,852.42
	\$1,968.74	\$1,998.27
	\$544.77	\$552.94
	\$1,553.80	\$1,577.11

	\$2,847.96	\$2,890.68
	\$540.76	\$548.87
	\$791.25	\$803.12
	\$1,156.56	\$1,173.91
	\$26,565.62	\$26,964.10
	\$1,345.67	\$1,365.85
	\$3,800.15	\$3,857.15
	\$6,984.46	\$7,089.23
	\$9,173.47	\$9,311.07
	\$5,324.45	\$5,404.32
	\$915.84	\$929.58
	\$2,693.97	\$2,734.38
	\$11,468.34	\$11,640.37
	\$37,179.25	\$37,736.94
	\$4,287.63	\$4,351.94
	\$87.73	\$89.05
	\$1,266.81	\$1,285.82
	\$5,872.52	\$5,960.61
	\$12,455.28	\$12,642.11
	\$1,786.07	\$1,812.86
	\$1,643.22	\$1,667.87
	\$44,923.56	\$45,597.41
	\$8,120.35	\$8,242.16
	\$5,264.30	\$5,343.26
	\$36,779.12	\$37,330.81
	\$2,243.33	\$2,276.98
	\$19,584.22	\$19,877.98
	\$4,163.45	\$4,225.91
	\$8,759.01	\$8,890.39
	\$2,996.31	\$3,041.25
	\$4,603.85	\$4,672.91
	\$15,687.65	\$15,922.96
	\$3,943.50	\$4,002.65
	\$32,496.91	\$32,984.37
	\$48,072.19	\$48,793.27
	\$2,808.71	\$2,850.84
	\$32,394.39	\$32,880.31
	\$1,806.80	\$1,833.90
	\$44,983.74	\$45,658.50
	\$10,883.14	\$11,046.39
	\$2,134.67	\$2,166.69
	\$8,642.71	\$8,772.35

		\$830.62	\$843.08
		\$5,640.03	\$5,724.63
		\$893.21	\$906.61
		\$2,528.72	\$2,566.65
		\$1,265.45	\$1,284.43
		\$4,439.58	\$4,506.17
		\$771.62	\$783.19
		\$1,615.08	\$1,639.31
		\$640.14	\$649.74
		\$3,994.00	\$4,053.91
		\$15,795.57	\$16,032.50
		\$23,323.85	\$23,673.71
		\$41,759.85	\$42,386.25
		\$1,303.72	\$1,323.27
		\$2,137.50	\$2,169.56
		\$16,429.01	\$16,675.45
		\$42,135.26	\$42,767.29
		\$7,219.98	\$7,328.27

## Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Deepcore Australia Pty Ltd for non-compliance with Commonwealth workplace relations laws. A recent audit determined that we've contravened the *Fair Work Act 2009* by failing to pay employees the correct entitlements under the *Mining Industry Award 2010*.

Regrettably, the audit determined that you were affected by the contraventions.

Deepcore Australia Pty Ltd is taking steps to remedy the contraventions, including:

- paying you the amount of the underpayment being \$[insert amount] (less taxation) that you have been underpaid
- paying you a total superannuation payment of [insert amount]
- paying interest on the underpayment and superannuation of 1.5%; and
- implementing a range of corrective measures in the business to ensure future compliance with workplace laws.

To date you have already been paid [insert amount] under the current payment plan. The remaining amount of [insert amount] owing to you will be paid no later than <Insert Date> and will be provided with a payment advice regarding the payment.

Deepcore Australia Pty Ltd has formally admitted to the Fair Work Ombudsman (FWO) that it 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](http://www.fairwork.gov.au).

Deepcore Australia Pty Ltd expresses its sincere regret and apologises to you for failing to comply with its legal obligations.

Should you have any questions, please contact us on [REDACTED]

Yours sincerely



Mr Scott Tumbridge  
Director



**Attachment C**

**<Date>**

**<Employee Name>**

**<Employee Address>**

Dear **<Employee Name>**

I am writing to apologise on behalf of Deepcore Australia Pty Ltd for non-compliance with Commonwealth workplace relations laws. A recent audit determined that we've contravened the *Fair Work Act 2009* by failing to pay employees the correct entitlements under the *Mining Industry Award 2010*.

Regrettably, the audit determined that you were affected by the contraventions.

Deepcore Australia Pty Ltd is taking steps to remedy the contraventions, including:

- paying you the amount of the underpayment being **\$[insert amount]** (less taxation) that you have been underpaid
- paying you a total superannuation payment of **[insert amount]**
- paying interest on the underpayment and superannuation of 1.5%; and
- implementing a range of corrective measures in the business to ensure future compliance with workplace laws.

You will receive the amounts owing to you by no later than **<Insert Date>** and will be provided with a payment advice regarding the payment. Please nominate your superannuation fund for the superannuation payment by completing Form D2 that is attached to this letter.

Deepcore Australia Pty Ltd has formally admitted to the Fair Work Ombudsman (FWO) that it 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](http://www.fairwork.gov.au).

Deepcore Australia Pty Ltd expresses its sincere regret and apologises to you for failing to comply with its legal obligations.

Should you have any questions, please contact us on [REDACTED].

Yours sincerely



Mr Scott Tumbridge  
Director

**FORM D2****SUPERANNUATION FUND DETAILS**

Please provide your current nominated superannuation fund details:

<b>Superannuation fund name:</b>	
<b>Superannuation Product Identification Number (SPIN) number:</b>	
<b>Fund ABN number:</b>	
<b>Your membership number with the fund:</b>	

Please ensure that the details you have provided above are correct as this will be the fund used for when Deepcore commences transferring payment/s to you.

Once fully completed, please return Form D2:

Via email to:



**OR**

Via post to:

Deepcore Drilling Pty Ltd  
PO Box 2875 Bendigo 3554

## Attachment D – Notice

### Contravention of *Fair Work Act 2009* by Deepcore Australia Pty Ltd

Deepcore Australia Pty Ltd (Deepcore) employs approximately 100 employees in the mining industry across Victoria and Queensland.

As a result of a review of our wage records, Deepcore has identified some circumstances in which it failed to provide the correct rate of pay to employees between 2010 and 2015. These underpayments amount to contraventions of the *Fair Work Act 2009* (Cth) and the [Mining Industry Award](#).

Deepcore has formally admitted to the Fair Work Ombudsman (FWO) that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions, including:

- rectifying the underpayments by 31 May 2016
- paying 1.5% interest on underpayments
- making a donation of \$15,000 to Loddon Campaspe Community Legal Centre
- providing training and conducting future audits, to ensure employees are paid correct rates of pay
- creating a point of contact (being [REDACTED]) for all past and present employees to raise any concerns of underpayment

Deepcore expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Deepcore gives a commitment to ensuring future compliance with Commonwealth workplace relations laws.

If you are a current or former employee of Deepcore and you have questions regarding this notice, please contact us via [REDACTED]

If you have general questions regarding conditions of employment, please refer to the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Infoline on 13 13 94.



Australian Government

# Fair Work

## OMBUDSMAN

*Fair Work Act 2009*

### Section 715 Enforceable Undertaking - Variation

1. This variation to an enforceable undertaking (**Variation**) is made pursuant to section 715(3) of the *Fair Work Act 2009* (Cth) (**the Act**).
2. On 21 April 2016, the Fair Work Ombudsman (**FWO**) accepted an enforceable undertaking (**Undertaking**) from Deepcore Australia Pty Ltd (ACN 115 967 809) (**Deepcore**).
3. Deepcore admitted to contraventions of section 45 of the Act, by failing to comply with terms of the *Mining Industry Award 2010 (MA000011)* (**Mining Award**), and committed to rectifying underpayments to Deepcore employees identified in Attachment A of the Undertaking.
4. After entering into the Undertaking, the parties have become aware that:
  - (a) additional amounts are owing to the Deepcore employees identified in Attachment A of the Undertaking; and
  - (b) additional employees of Deepcore and Deepcore Bendigo Pty Ltd not identified in the audit undertaken by Deepcore were affected by the contraventions of section 45 of the Act, being the failure to comply with the clauses of the Mining Award referred to in Clauses 11(a)-(c) of the Undertaking, and as a result were underpaid.
5. The Parties agree to vary the Undertaking as follows:
  - (a) In paragraph 7:
    - add the following words at the end of the first sentence: *"The Company also admits that it was involved in underpayments of employees of its subsidiary, Deepcore Bendigo Pty Ltd, caused by the same contraventions."*
    - delete "205 former and current employees" and replace it with "296 former and current employees of the Company and Deepcore Bendigo Pty Ltd".
  - (b) In paragraph 9, replace the figure "\$2,088,063.38" with "\$2,524,890.32".
  - (c) In paragraph 11, insert the words *"and being involved in the underpayment of the"* after the word "underpaying" in the first sentence.
  - (d) Insert new Attachment A1 in the form of Appendix 1 to this Variation.



(e) Insert a new clause 28A as follows:

*"By 16 December 2016, the Company will send each Employee in Attachment A1 a letter of apology in the form of Attachment C and provide written confirmation to the FWO within 7 days of the letter(s) being sent. Provided that if the Employee has already received an apology letter the letter will be varied by the Company to explain the reason for the further letter and the increase identified in the underpayment amount and payment being made."*

6. The variations agreed in paragraph 5 above are taken to be terms of the Undertaking given by Deepcore from the date of the consent by the Fair Work Ombudsman, or her authorised delegate, to the variation.
7. All other terms of the Undertaking remain unchanged.
8. Deepcore agree and acknowledge that the provisions of clause 37 of the Undertaking apply to this variation in the same way as the Undertaking, including that a copy of this variation may be made available for public inspection by the FWO, including by posting a copy to the FWO's website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

**Executed as a variation to the Enforceable Undertaking accepted by the Fair Work Ombudsman on 21 April 2016:**

EXECUTED by **Deepcore Australia Pty Ltd (ACN 115 967 809)** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
(Signature of director)

\_\_\_\_\_  
(Signature of director/company secretary)

SCOTT TUMBRIDGE  
(Name of director)

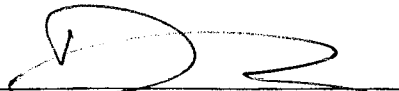
\_\_\_\_\_  
(Name of director/company secretary)

23-12-2016  
(Date)

\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:


  
(Signature of witness)

\_\_\_\_\_  
(Signature of witness)

DONALD MACDONALD  
(Name of witness)

\_\_\_\_\_  
(Name of witness)

ACCEPTED by the **Fair Work Ombudsman** pursuant to section 715(3) of the *Fair Work Act 2009* (Cth):

  
Michael Campbell  
Deputy Fair Work Ombudsman – Operations  
Authorised delegate pursuant to an  
instrument of delegation made pursuant to  
section 683 of the FW Act

12 / 1 / 2017  
(Date)

in the presence of:

  
(Signature of witness)

Lynda McAulay-Smith  
(Name of Witness)

## Appendix 1

### Attachment A1 - Additional Underpayments – Deepcore Australia Pty Ltd

Employee	Gross Amount	Gross Amount Plus 1.5% interest
	\$809.03	\$821.16
	\$10,179.56	\$10,332.25
	\$1,162.34	\$1,179.78
	\$2,562.41	\$2,600.85
	\$3,760.65	\$3,817.06
	\$3,382.57	\$3,433.31
	\$1,409.42	\$1,430.56
	\$8,413.16	\$8,539.36
	\$1,164.90	\$1,182.38
	\$8,835.57	\$8,968.10
	\$8,145.65	\$8,267.83
	\$2,593.61	\$2,632.51
	\$3,769.09	\$3,825.63
	\$2,699.91	\$2,740.41
	\$2,457.98	\$2,494.85
	\$863.49	\$876.45
	\$746.00	\$757.19
	\$6,701.08	\$6,801.60
	\$7,688.66	\$7,803.99
	\$3,049.91	\$3,095.66
	\$6,532.44	\$6,630.43
	\$1,470.72	\$1,492.78
	\$660.24	\$670.14
	\$11,149.71	\$11,316.95
	\$12,441.83	\$12,628.46
	\$1,411.41	\$1,432.58
	\$1,157.39	\$1,174.75
	\$1,085.23	\$1,101.51
	\$5,277.45	\$5,356.61
	\$1,466.13	\$1,488.12
	\$9,622.20	\$9,766.53
	\$1,991.33	\$2,021.20
	\$2,526.61	\$2,564.51
	\$5,434.99	\$5,516.51
	\$12,778.40	\$12,970.08
	\$244.92	\$248.59
	\$13,122.05	\$13,318.88
	\$10,005.95	\$10,156.04
	\$1,568.94	\$1,592.47
	\$6,956.05	\$7,060.40

# Additional Underpayments – Deepcore Bendigo Pty Ltd

Employee	Gross Amount	Gross Amount Plus 1.5% interest
	\$896.32	\$909.76
	\$3,861.13	\$3,919.05
	\$7,349.01	\$7,459.24
	\$332.83	\$337.82
	\$275.76	\$279.90
	\$2,501.37	\$2,538.89
	\$4,687.21	\$4,757.52
	\$67.08	\$68.09
	\$9,010.41	\$9,145.57
	\$6,253.69	\$6,347.50
	\$872.12	\$885.20
	\$1,457.32	\$1,479.18
	\$517.49	\$525.25
	\$4,413.80	\$4,480.00
	\$1,890.05	\$1,918.40
	\$4,707.70	\$4,778.32
	\$3,255.82	\$3,304.66
	\$997.32	\$1,012.28
	\$705.84	\$716.43
	\$892.74	\$906.13
	\$1,281.75	\$1,300.97
	\$1,375.84	\$1,396.47
	\$623.43	\$632.78
	\$1,428.44	\$1,449.86
	\$867.33	\$880.34
	\$4,619.03	\$4,688.31
	\$1,073.29	\$1,089.39
	\$5,540.64	\$5,623.75
	\$90.06	\$91.41
	\$4,624.61	\$4,693.97
	\$808.68	\$820.81
	\$1,082.47	\$1,098.71
	\$252.87	\$256.67
	\$6,772.85	\$6,874.45
	\$1,081.89	\$1,098.12
	\$3,130.84	\$3,177.80
	\$1,080.79	\$1,097.00
	\$1,195.44	\$1,213.38
	\$2,820.93	\$2,863.24
	\$119.76	\$121.56
	\$459.08	\$465.97
	\$4,292.84	\$4,357.23
	\$1,919.68	\$1,948.48



Employee	Gross Amount	Gross Amount Plus 1.5% interest
	\$723.45	\$734.31
	\$2,344.70	\$2,379.87
	\$196.57	\$199.52
	\$186.33	\$189.13
	\$1,836.11	\$1,863.65
	\$1,454.28	\$1,476.09
	\$349.09	\$354.33
	\$2,940.93	\$2,985.04
	\$59.88	\$60.78
	\$4,544.71	\$4,612.88
	\$179.64	\$182.33
	\$1,301.61	\$1,321.14
	\$3,850.96	\$3,908.72
	\$11,662.80	\$11,837.74
	\$1,874.61	\$1,902.73
	\$5,337.59	\$5,417.65
	\$493.43	\$500.83
	\$538.92	\$547.00
	\$3,196.21	\$3,244.15
	\$1,431.51	\$1,452.99
	\$2,284.88	\$2,319.15
	\$6,652.99	\$6,752.79
	\$1,740.19	\$1,766.29
	\$9,260.25	\$9,399.15
	\$1,621.59	\$1,645.91
	\$10,068.18	\$10,219.20
	\$4,737.92	\$4,808.99
	\$846.05	\$858.74
	\$3,085.16	\$3,131.44
	\$240.57	\$244.18
	\$12,196.26	\$12,379.21
	\$2,120.64	\$2,152.45
	\$236.09	\$239.63
	\$4,072.10	\$4,133.18
	\$6,763.84	\$6,865.30
	\$880.51	\$893.72
	\$8,179.84	\$8,302.53
	\$7,438.42	\$7,550.00
	\$4,561.72	\$4,630.14
	\$5,922.29	\$6,011.12
	\$422.53	\$428.86
	\$867.73	\$880.75
	\$511.79	\$519.47

Employee	Gross Amount	Gross Amount Plus 1.5% interest
	\$1,812.37	\$1,839.55
	\$1,009.43	\$1,024.57
	\$4,265.20	\$4,329.18
	\$838.87	\$851.45
	\$899.72	\$913.22