



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

GO-KARTS-GO AUSTRALIA Pty Ltd (ACN: 060 294 911)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:

GO-KARTS-GO AUSTRALIA Pty Ltd (ACN: 060 294 911) (**Go-Karts-Go**)

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

Background

2. Go-Karts-Go operates three go kart tracks at Nelson Bay, Broadmeadow and Cameron Park NSW.
3. Between 1 July 2010 and 16 November 2014 (**Employment Period**), Go-Karts-Go employed 31 employees (**Employees**) on a casual and full-time basis.
4. In August 2014 FWO audited Go-Karts-Go's (Nelson Bay) time and wage records relevant to the period 1 July 2014 to 14 July 2014.
5. The terms and conditions of the Employees' employment were governed by the *Amusement, Events and Recreation Award 2010* (MA000080) (**Award**). For the purposes of the transitional provisions of Schedule A to the Award, the applicable transitional instrument is the *Theatrical Employees Recreation And Leisure Industry (State) Award [AN120573]*.
6. FWO's audit revealed that Go-Karts-Go had mistakenly relied on an unlogged Enterprise Agreement 'Go Karts Go Australia Pty Ltd Unit Trust ABN 46277426759 Enterprise Agreement' to determine employee entitlements.
7. As a result of its investigation, the FWO determined that Go-Karts-Go had contravened provisions of the FW Act and the Award with respect to record keeping, pay slips, casual loading, weekend penalty rates and untaken paid annual leave due at the end of employment.
8. As a result of the contraventions the Employees listed in Attachment A were underpaid a total of \$30,225.79 gross during the Employment Period. Go-Karts-Go has agreed to rectify the underpayments.
9. Go-Karts-Go has co-operated with the FWO and participated fully in the FWO's investigation.

Contraventions

10. The FWO has determined, and Go-Karts-Go admits, that Go-Karts-Go contravened Section 45 of the FW Act by failing to comply with the following provisions of the Award (including related Transitional Provisions set out at Schedule A to the Award):
 - (a) Clause 10.4(d) by failing to pay casual employees the casual loading;
 - (b) Clause 14.1 by failing to pay fulltime employees the transitional Saturday penalty;
 - (c) Clause 23.3(a) by failing to pay employees Sunday penalty rates.

11. The FWO has determined, and Go-Karts-Go admits, that Go-Karts-Go also contravened the following sections of the FW Act by failing to comply with:
 - (a) Section 44 Contravening the National Employment Standards by failing to comply with Section 90 Payment for annual leave, paragraph (2) by failing to pay full-time employees untaken paid annual leave due at the end of permanent employment.
 - (b) Section 535 Employer obligations in relation to employee records by failing to make and keep records that include all information prescribed by the regulations;
 - (c) Section 536 Employer obligation in relation to pay slips by failing to give pay slips to the Employees.

(Paragraphs 10 and 11 collectively, the **Contraventions**).

Commencement of Undertaking

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

Undertakings

14. For the purposes of section 715 of the FW Act, Go-Karts-Go undertakes to:

Rectify underpayments

- (a) pay the wage amounts owed to each employee as set out in Attachment A (less all appropriate taxation which is to be remitted to the Australian Taxation Office) and also make appropriate superannuation contributions for the benefit of each employee in accordance with sub-clause 20.1 of the *Amusement, Events and Recreation Award 2010* (MA000080), within 7 days of the execution of this Undertaking;
- (b) within 7 days of making a payment in compliance with subparagraph 14(a), provide evidence to the FWO that the payments have been made;
- (c) use reasonable efforts to locate each employee listed in Attachment A for the purpose of complying with the undertaking in subparagraph 14(a), including but not limited to:
 - (i) taking steps to ascertain the current residential address, email address, mobile telephone number and/or social media profiles of each employee; and
 - (ii) contacting each employee, using any current or last-known contact details, to advise them they are owed money and explain the process for payment of the money owed to them;
- (d) if an employee listed in Attachment A cannot be located:
 - (i) within 60 days of the execution of this Undertaking provide a report to

the FWO on the attempts that were taken to locate the employee together with details of the amount owed to them and their last known contact details;

- (ii) within 60 days of the execution of this Undertaking, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act in relation to the amounts that were required to be paid to each employee but which have not been paid due to the inability to locate the employee; and
- (iii) provide evidence to the FWO that the payments required by subclause 14(d)(ii) were made.

FWO MyAccount Registration

- (e) within 7 days of the execution of this Undertaking, register with the FWO 'MyAccount' portal at 'www.fairwork.gov.au' and complete the profile, minimum pay rates and Award options through this portal. Thereafter:
 - i. within 14 days of the execution of this Undertaking provide to the FWO the Company's 'My Account' registration number.
 - ii. within 28 days of the execution of this Undertaking, at a mutually agreed time and location, demonstrate to an employee of the Fair Work Ombudsman your MyAccount knowledge, including in relation to accessing the current *Amusement, Events and Recreation Award 2010* minimum pay rates and penalty rates.

Future workplace relations compliance

- (f) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the *Amusement, Events and Recreation Award 2010* and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
- (g) provide to the FWO, within 28 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertakings in paragraph 14(f) above designed to ensure such ongoing compliance;

Workplace relations training

- (h) within four months of the execution of this Undertaking, organise and ensure training of all persons engaged by Go-Karts-Go who have managerial responsibility for human resources, recruitment or payroll functions (**Training**);
- (i) ensure the Training relates to compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Award;
- (j) 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 Company;
- (k) 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;
- (l) provide evidence of attendance at the Training to the FWO within seven days

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

- (m) for a period of two years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 14(h) to 14(l) above in relation to any new or existing employees who, after the commencement of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Company;

Audit Activity

- (n) perform, or cause to have performed by a Certified Practising Accountant or employment law specialist, audits of Go-Karts-Go's compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the *Amusement, Events and Recreation Award 2010* and the FW Act, in respect of the pay and conditions of at least 50% of all employees of Go-Karts-Go (**Audit**), for the following periods:
 - (i) the Audit for the 1 July 2015 – 31 December 2015 is to be finalised by 1 February 2016;
 - (ii) the Audit for the 1 January 2016 – 30 June 2016 is to be finalised by 1 August 2016;
 - (iii) the Audit for the financial year 2016 - 2017 is to be finalised by 31 August 2017;
- (o) provide to the FWO, within 14 days of the completion of each Audit, details of the methodology used to conduct the Audit and the outcomes of the Audit certified as correct by a Certified Practising Accountant or employment law specialist;
- (p) on request, provide to the FWO all employment records relied upon to undertake the audit within 14 days of such request being made;
- (q) in the event an Audit discloses contraventions of any applicable Commonwealth workplace laws and/or instruments, rectify all such contraventions within 14 days of the Audit being provided to the Company, including any and all underpayments to employees;
- (r) provide evidence of rectification of any contraventions disclosed by an Audit to the FWO within 14 days of rectification;

Apology

- (s) within 14 days of the execution of this Undertaking send to each of the employees listed in Attachment A a letter apologising for the Contraventions (**Apology Letters**) in the form of Attachment B to this Undertaking;
- (t) within seven days of the Apology Letters being sent, provide a copy of each Apology Letter to the FWO and proof of it being sent.

Workplace notices

- (u) within 28 days of the execution of this Undertaking display, a notice in the form of Attachment C to this Undertaking (**Workplace Notice**):
 - (i) for a period of at least 28 days in locations where employees are engaged by Go-Karts-Go; and

- (ii) in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by Go-Karts-Go (for example, by placement on a staff noticeboard at each workplace in at least A3 size);
- (v) provide written details of the method/s of displaying or providing the Workplace Notice, and photographic proof of their display, to the FWO within seven days of it first being displayed.

Donation to Starlight Children's Foundation Australia

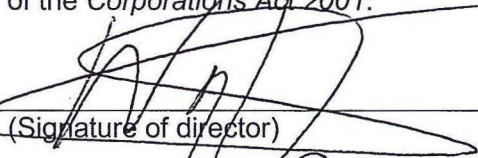
- (w) the company undertakes to:
 - (i) by 31 August 2017, have arranged and undertaken three separate charity days for up to 40 participants on behalf of the Starlight Children's Foundation Australia, with such charity days to be in addition to any current charity work undertaken by Go-Karts-Go; and
 - (ii) within 21 days of each charity day being held in accordance with (w)(i), provide to the FWO a letter from the Starlight Children's Foundation Australia acknowledging the event, with such letter to show the date the charity day was undertaken and the number of participants who took part.

Acknowledgements

15. Go-Karts-Go acknowledges that:
- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
 - (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
 - (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Go-Karts-Go;
 - (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 Go-Karts-Go 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; and
 - (g) consistent with section 715(3) of the FW Act, Go-Karts-Go may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by **GO-KARTS-GO AUSTRALIA PTY LTD** in accordance with section 127(1) of the *Corporations Act 2001*:



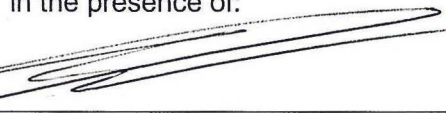
(Signature of director)

Wayne Russell

(Name of director)

7-10-15

(Date)

in the presence of:


(Signature of witness)

Luke De Oylan

(Name of witness)

(Signature of director/company secretary)

(Name of director/company secretary)


(Date)

in the presence of:

(Signature of witness)

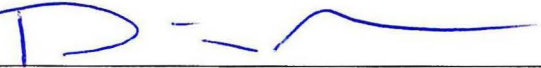
(Name of witness)

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



Steve Ronson

Executive Director Dispute Resolution and Compliance
Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

2/11/2015

(Date)

Pia Morgan

(Name of Witness)

ATTACHMENT A – WAGE UNDERPAYMENTS

Employee Name	Wage Amounts Underpaid
[REDACTED]	\$54.73
[REDACTED]	\$1,424.98
[REDACTED]	\$535.60
[REDACTED]	\$523.54
[REDACTED]	\$1,585.46
[REDACTED]	\$43.24
[REDACTED]	\$480.21
[REDACTED]	\$725.41
[REDACTED]	\$813.44
[REDACTED]	\$604.94
[REDACTED]	\$97.37
[REDACTED]	\$1,119.44
[REDACTED]	\$3,634.86
[REDACTED]	\$156.82
[REDACTED]	\$1,375.84
[REDACTED]	\$2,792.00
[REDACTED]	\$59.22
[REDACTED]	\$71.70
[REDACTED]	\$1,756.20
[REDACTED]	\$2,532.39
[REDACTED]	\$830.64
[REDACTED]	\$664.61
[REDACTED]	\$327.54
[REDACTED]	\$7,692.51
[REDACTED]	\$323.10
Total Wages Underpaid:	\$30,225.79

ATTACHMENT B – LETTER OF APOLOGY

<Date>

<Employee Name & Address>

Dear <Employee Name>

I am writing to apologise on behalf of GO-KARTS-GO AUSTRALIA PTY LTD (**Go-Karts-Go**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Go-Karts-Go contravened the *Fair Work Act 2009* by failing to pay its casual and fulltime employees the following entitlements under the Amusement, Events and Recreation Award 2010 (MA000080):

Casual employees

- casual loading;
- penalty rates for work performed on a Sunday

Fulltime Employees

- transitional penalty rates for work performed on a Saturday
- penalty rates for work performed on a Sunday
- pro rata Annual Leave on termination

The investigation determined that you were affected by the above contraventions.

Go-Karts-Go is committed to, and is taking steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (Insert amount); and
- Committing to future compliance.

Go-Karts-Go has formally admitted to the 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. As part of the Enforceable Undertaking, Go-Karts-Go has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Go-Karts-Go expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact me.

Yours sincerely,

Wayne Russell (Director)
Go-Karts-Go Australia Pty Ltd

Attachment C – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* (**FW Act**) and the Amusement, Events and Recreation Award 2010 (MA000080) (**Award**) by Go-Karts-Go Australia Pty Ltd (**Go-Karts-Go**).

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Go-Karts-Go contravened the FW Act and the Award.

The FWO has found that Go-Karts-Go contravened the FW Act and the Award by failing to pay casual and fulltime employees engaged between 1 July 2010 and 16 November 2014 the following:

Casual employees

- casual loading;
- penalty rates for work performed on a Sunday

Fulltime Employees

- transitional penalty rates for work performed on a Saturday
- penalty rates for work performed on a Sunday
- untaken paid annual leave due at the end of permanent employment

Go-Karts-Go has 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, including by rectifying the underpayments to the employees affected by the contraventions and changing workplace practices.

Go-Karts-Go has expressed their sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Go-Karts-Go gives a commitment that such conduct will not occur again and will comply with all requirements of the Commonwealth workplace relation laws in the future.

If you worked for Go-Karts-Go and have queries or questions relating to your employment, please contact Wayne Russell (Director). Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the infoline on 13 13 94.