



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

AAR DEE Traders Pty Ltd

ABN 29 603 336 938 / ACN 603 336 938

## Section 715 ENFORCEABLE UNDERTAKING

### Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by AAR DEE Traders Pty Ltd trading as United Petroleum Pooraka for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**)

### Background

2. United Petroleum Pty Ltd (**United**) is an Australian owned company first registered in 1993. There are 338 United Petroleum retail fuel sites nationally, all of which are operated by Franchisees and Commission Agents.
3. On 3 September 2015, media outlets reported that nationally, Franchisees at some United Petroleum retail fuel sites were underpaying their employees. The report claimed that one Franchisee admitted to paying his workers \$15 per hour. The same Franchisee also claimed that some United Petroleum employees were being paid \$10 - \$12 per hour and that he has told a United senior manager about underpaying employees with no response.
4. In response to the media reporting the FWO self initiated the United Petroleum Compliance Activity (**Activity**) on 28 September 2015, randomly selecting 11 United Petroleum retail fuel sites across Australia. AAR DEE Traders Pty Ltd, a Commission Agent of United was randomly selected as part of the Activity
5. AAR DEE Traders Pty Ltd operate a United Petroleum retail fuel site located at 876 Main North Road, Pooraka SA 5059. The primary operation of the fuel site is the retail selling or supplying of motor fuels, gas and oils as well as the retail sale of consumables within the store.
6. As the fuel site operates within the retail fuel industry, the terms and conditions of the Employees' was governed by the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* (MA000089) (**Modern Award**) and the FW Act.
7. AAR DEE Traders was registered on 11 December 2014 and is a family owned business. Mrs Rashmi Relan was appointed as the Director of the company on 11 December 2014 and her husband Mr Dheeraj Relan was appointed the Secretary of the Company on 11 December 2014.
8. During the period from 3 August 2015 to 31 December 2015 (**Assessment Period**) the FWO conducted an audit of the payments made to five casual Employees (**Employees**) engaged by AAR DEE Traders Pty Ltd. The Employees' were paid a flat rate of \$18.70 per hour for all hours worked between Monday and Friday
9. Due to the nature of their work in operating the fuel console, performing retail sales and customer service, the appropriate classification for the Employees' within the Modern Award was Level 4 Console Operator.
10. The Employees are all International students on students Visa's and they range from twenty two to twenty five years of age. They have have minimal workplace experience or knowledge of Australian Workplace Laws.
11. The Employees attend University and study during the day and performed the work in the evenings and on non University days to assist with living costs.
12. As a result of the audit, the FWO determined that:
  - (a) The Employees were paid a flat rate of \$18.70 per hour for all hours worked
  - (b) The Employees were entitled to be paid \$ 25.05 for the Monday to Friday casual rate; and
  - (c) AAR DEE Traders had contravened provisions of the Modern Award with respect to



underpaying the Monday to Friday casual hourly rate of pay.

13. As a result of the contraventions, the FWO assessed the underpayments owed to the Employees in relation to the Monday to Friday casual hourly rate of pay during the Assessment Period to be \$2,032.00 gross.
14. AAR DEE Traders Pty Ltd subsequently acknowledged that it had underpaid the Employees a total of \$2,032.00 gross during the Assessment Period as set out in attachment A and has agreed to pay \$2,032.00 to rectify the underpayments.
15. AAR DEE Traders has at all times co-operated with the FWO and participated fully in the FWO's audit.

### **Contraventions**

16. The FWO has determined, and AAR DEE Traders Pty Ltd admits, that on the basis of the factual matters outlined above, AAR DEE Traders Pty Ltd contravened:
  - (a) Section 45 of the FW Act, which states a person must not contravene a term of a modern award. Those contraventions were as follows in accordance with the Modern Award:
    - Clause 36.3 of the Modern Award, by failing to pay the Employees the casual rate of pay for hours worked Monday to Friday.

### **Commencement of Undertaking**

17. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by AAR DEE Traders Pty Ltd; and
  - (b) the FWO accepts the Undertaking so executed.
18. Upon the commencement of this Undertaking, AAR DEE Traders Pty Ltd undertake to assume the obligations set out below.

### **Undertakings**

19. For the purposes of section 715 of the FW Act, AAR DEE Traders Pty Ltd undertake to:

#### *Rectify Underpayments*

- (a) After the execution of this Undertaking, rectify the contraventions identified in Schedule A through payment of the total underpayment of \$2,032.00 (gross) to the Employees according to the payment plan in Schedule B; and
- (b) Provide proof of such payment to the FWO on the day each payment is made.

#### *FWO My Account Registration*

- (c) Within 14 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 Modern Award options;
  - (i) Within 15 days of the execution of the Undertaking provide to the FWO the AAR DEE Traders Pty Ltd 'My Account' registration number; and
  - (ii) Within 28 days of the execution of this Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector through My Account, knowledge of the current Modern Award minimum pay rates and Saturday, Sunday, Public Holiday and overtime rates.

#### *Future Workplace Relations Compliance*

- (d) Where contacted by any former or current Employees not covered by this Undertaking alleging that their lawful entitlements have not been met, AAR DEE Traders Pty Ltd agrees to;
- (i) Notify the FWO within 14 days of receiving the allegation;
  - (ii) Take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act or the Modern Award has occurred, and where such contraventions are found take immediate steps to rectify those contraventions;
  - (iii) Within 14 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
  - (iv) Should a decision be made not to rectify an issue raised by an allegation, notify the FWO within 14 days of this decision and the reasons for not rectifying.
- (e) Ensure that it complies at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act, the *Fair Work Regulations 2009* (Cth) and the Modern Award, by developing systems and processes to ensure ongoing compliance with those requirements; and
- (f) 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 13 (d) above designed to ensure such ongoing compliance;
- (g) Provide to the FWO within 14 days of the following dates a copy of the time and wage records for 2 employees, including hours and days of work, start times and finishing times and payslips:
- (i) 31 January, 2017;
  - (ii) June 30, 2017;
  - (iii) January 31, 2018; and
  - (iv) 30, June 2018

#### Apology

- (h) Send a letter of apology (**Apology Letter**) to the Employees listed in Schedule A in the form of attachment B to this Undertaking and provide copies to the FWO within 14 days of the execution of this Undertaking.

#### Public and Workplace Notice

- (i) Place a public notice (**Public Notice**) in the Northern Messenger within 28 days of the FWO publishing a Media Release on its website in respect of this Undertaking in the terms set out in Attachment A; and
- (j) Place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking in the terms set out in Attachment A; and
- (k) provide a copy of the **Public Notice** and **Workplace Notice** and written details of how the **Workplace Notice** has been displayed within 7 days of publication/display of the notices.

#### Record Keeping

- (l) Within 28 days of the execution of this Undertaking provide to the FWO a copy of time



and wage records and payslips for one employee for the first full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth Workplace Laws

### No inconsistent Statements

(m) AAR DEE Traders Pty Ltd:

- (i) Must not; and
- (ii) Must ensure that each of its officers, workers or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.


### **Acknowledgements**

20. AAR DEE Traders Pty Ltd acknowledges that:

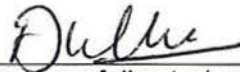
- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its [website](http://www.fairwork.gov.au) at [www.fairwork.gov.au](http://www.fairwork.gov.au) (subject to the FWO taking any necessary steps to redact the names of individuals 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 AAR DEE Traders Pty Ltd;
- (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 AAR DEE Traders Pty Ltd has contravened any of the terms of this 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) consistent with section 715(3) of the FW Act, AAR DEE Traders Pty Ltd may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

EXECUTED by AAR DEE Traders Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)



(Signature of director/company secretary)

Rashmi Relan

(Name of director)

DHEERAJ RELAN

(Name of director/company secretary)

25-7-16

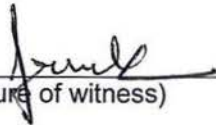
(Date)

25/7/16

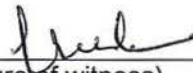
(Date)

in the presence of:

in the presence of:



(Signature of witness)



(Signature of witness)

Forukh Zia

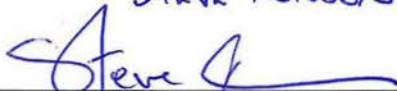
(Name of witness)

Forukh Zia

(Name of witness)

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

STEVE RONSON - ED-DRC



[Insert name and role of Delegate]

5 AUGUST 2016

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

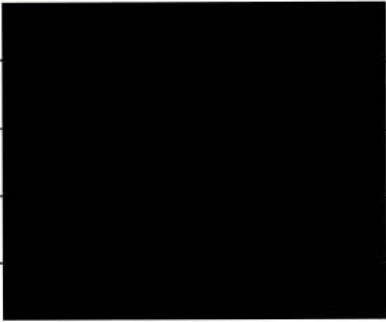


(Signature of witness)

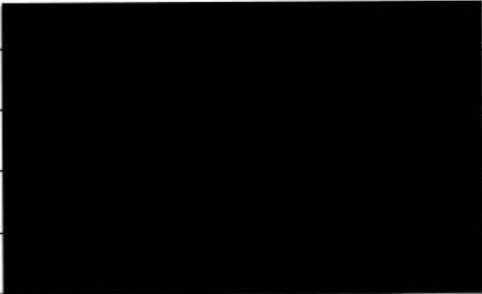
LISA-MARIE OLIVER

(Name of Witness)

Schedule A – Employee underpayments

Table of underpayments	
Employee	Amount Owing
	\$101.60
	\$508.00
	\$762.00
	\$254.00
	\$406.40
TOTAL	\$2,032.00

## Schedule B – Employee underpayments

AAR DEE Traders Pty Ltd Payment Plan		
Employee	Payment Date	Amount
	26/08/2016	\$101.60
	26/08/2013	\$254.00
	09/09/2016	\$406.40
	23/09/2016	\$508.00
	07/10/2016	\$762.00
		<b>\$2,032.00</b>



## Attachment A – Form of Public and Workplace Notice

### Contravention of *Fair Work Act 2009* and the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* by AAR DEE Traders Pty Ltd

We refer to the audit conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that AAR DEE Traders Pty Ltd contravened the *Fair Work Act 2009* and the *Vehicle Manufacturing, Repair, Services and Retail Award 2010* by:

1. failing to pay employees the casual rate of pay for hours worked between Monday and Friday.

AAR DEE Traders Pty Ltd has formally admitted to 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 by rectifying the underpayments of \$2,032.00 less taxation to the employees affected by the contraventions. AAR DEE Traders PTY LTD expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore AAR DEE Traders PTY LTD gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for AAR DEE Traders PTY LTD and have queries or questions relating to your employment, please contact **Dheeraj Relan** on [REDACTED]

Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

## Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of AAR DEE Traders Pty Ltd for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that AAR DEE Traders Pty Ltd had contravened the *Fair Work Act 2009* by:

- Failing to pay the casual rate of pay for hours worked Monday to Friday.

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

AAR DEE Traders Pty Ltd is taking steps to remedy the contraventions, including by rectifying the amount that you have been underpaid through a payment plan and changing workplace practices. You will have received the first payment by \_\_\_\_\_ 2016 and will be/have been provided with payment advice regarding the payment.

AAR DEE Traders Pty Ltd 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](http://www.fairwork.gov.au). As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

AAR DEE Traders Pty Ltd expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

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

Yours sincerely

Mr Dheeraj Relan  
Secretary  
AAR DEE Traders Pty Ltd