



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Boonah Packing Pty Ltd

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Boonah Packing Pty Ltd (**Boonah Packing**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. Boonah Packing is in the business of supplying labour to employers in the horticulture sector. This enforceable undertaking arises from the provision of labour by Boonah Packing to a Scott Moffatt & Co farm in Tarome, Queensland, chiefly to sort and pack carrots.
3. Scott Moffatt & Co is a supplier of carrots to the local markets in Brisbane, Sydney and Melbourne and also exports produce overseas. Scott Moffatt & Co also packages and provides produce to Woolworths and Aldi supermarkets.
4. In response to a request for assistance from a (former) employee, on or around 21 March 2016, the FWO commenced an investigation of Boonah Packing in relation to alleged underpayment of wages.
5. The investigation identified that the employee who lodged the request with the FWO was not the only employee potentially affected by the alleged contraventions and an audit into remaining employees' entitlements was commenced on 31 May 2016.
6. Between 1 July 2015 and 31 January 2016 (**Employment Period**), Boonah Packing employed a total of 110 employees (**Employees**) on a casual basis to perform work at Scott Moffatt & Co farms.
7. The terms and conditions of the Employees' employment with Boonah Packing were governed by the *Horticulture Award 2010* [MA000028] (**Horticulture Award**).
8. 95 employees were found to have been underpaid during the Employment Period. 92 of these employees were from Korea, with 91 visiting Australia on 417 working holiday visas and one (1) employee being in Australia on a student visa. The other three (3) affected employees were not visa holders.
9. The other 15 employees' entitlement could not be assessed due to the employer incorrectly engaging the employees as pieceworkers and not maintaining a record of the hours these employees worked.
10. As a result of the FWO's compliance activities, it was determined that:
 - (a) the Employees' classification under the Award was Level 1;
 - (b) the Employees were employed on a casual basis by Boonah Packing;
 - (c) the Employees were entitled to be paid the following minimum rates of pay during their employment;

Period Commencing	Minimum Base Hourly Rate	Casual Hourly Rate	Public Holiday Hourly Rate
First pay period commencing on or after 1 July 2015	\$17.29	\$21.61	\$38.90

- (d) the Employees were paid a casual rate of pay of \$21.08 per hour for all hours worked when not paid a piece rate;
 - (e) Boonah Packing had contravened provisions of the Award by underpaying the casual loading and the public holiday penalty rate; and
 - (f) Boonah Packing had also contravened provisions of the FW Act with respect to failing to make and keep employee records in accordance with sub-section 535(1) of the FW Act and Regulation 3.33(2) by failing to keep records of the hours worked by casual employees.
11. As a result of the contraventions, the FWO assessed the total wage underpayments owed to all Employees during the Employment Period to be **\$16,710.77** gross.
 12. Boonah Packing subsequently acknowledged that it had underpaid the employee who lodged the request for assistance **\$512.77** gross during the period 31 August 2015 to 16 December 2015 and have provided evidence of rectification of this amount by payment of electronic funds transfer on 22 June 2016.
 13. Boonah Packing also acknowledges that it had underpaid the audited Employees a total of **\$16,198.00** gross during the Employment Period.
 14. Boonah Packing has back paid 90 employees a total of **\$15,887.18** as set out in the summary table contained within Attachment A.
 15. A further five (5) employees have been identified as being underpaid during the Employment Period, however attempts to contact these employees have been unsuccessful. The underpayments owing to these five (5) employees total **\$310.82** as set out in the summary table contained within Attachment B.
 16. Boonah Packing has at all times co-operated with the FWO and participated fully with the FWO's investigation.

Contraventions

17. The FWO has determined, and Boonah Packing admits, that Boonah Packing contravened section 45 of the FW Act by failing to comply with the following provisions of the Award:
 - (a) Clause 10.4(b) of the Award, by failing to pay the Employees the applicable casual loading; and
 - (b) Clause 28.3 of the Award, by failing to pay the Employees the applicable public holiday penalty.
18. The FWO has determined, and Boonah Packing admits, that Boonah Packing contravened sub-section 535(1) of the FW Act which provides that an employer must make, and keep for seven (7) years, employee records of the kind prescribed by the *Fair Work Regulations 2009 (the Regulations)* in relation to each of its employees. As the employees of Boonah Packing were deemed to be casual employees, Regulation 3.33(2) of the Regulations required Boonah Packing to make and keep records of each casual employee's days and hours of work.

(collectively, the **Contraventions**).

Commencement of Undertaking

19. This Undertaking comes into effect when:

- (a) the Undertaking is executed by Boonah Packing; and
 - (b) the FWO accepts the Undertaking so executed.
20. Upon the commencement of this Undertaking, Boonah Packing undertakes to assume the obligations set out below in paragraph 19.

Undertakings

21. For the purposes of section 715 of the FW Act, Boonah Packing undertakes to:

Rectify underpayments

- (a) within 60 days of the execution of this Undertaking, use reasonable efforts to locate each employee listed in Attachment B who remains unpaid for the purpose of complying with the undertaking, 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.
- (b) Where an employee, as listed in Attachment B has been located make payment to them within seven (7) days and provide evidence of that payment to the FWO on the date the payment is made:
- (c) within one (1) day of making a payment in compliance with subparagraph 19(b), issue a FW Act compliant payslip to the employee to whom the payment was made;
- (d) if an employee listed in Attachment B cannot be located within 60 days of the execution of this undertaking:
 - (i) 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) set aside the equivalent amount of the identified underpayment outlined in Attachment B and in the event that the employee makes contact, pay them within seven (7) days as per Undertakings 18(b), 18(c) and above.

FWO My Account Registration

- (e) within 14 days of the execution of this Undertaking:
 - i. register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and complete the profile, minimum pay rates and Award options through this portal;
 - ii. provide to the FWO the business' 'My Account' registration number;
 - iii. within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an officer of the Fair Work Ombudsman knowledge of the use of MyAccount including in relation to accessing the current Award minimum pay rates and Public Holiday 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 Horticulture Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
- (g) provide to the FWO, within 60 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertakings in paragraph 21(f) above designed to ensure such ongoing compliance. Without limitation, such systems and processes relating to:
 - i. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - ii. Issuing payslips to employees within one (1) working day of payment as required by sub-section 536(1) of the FW Act;
 - iii. Keeping accurate and complete records to ensure employees receive their correct wages and entitlements as required by sub-section 535(1) of the FW Act and the Regulations;
 - iv. When engaging employees as pieceworkers, ensuring that these employees have an individual agreement in writing in accordance with Clause 15 of the Horticulture Award;

Apology

- (h) within 14 days of the execution of this Undertaking send to the former Employee who lodged the RFA, a letter apologising for the Contraventions (**Apology Letter**) in the form of Attachment C to this Undertaking and provide the FWO a copy of the Apology Letter to be forwarded to the employee by the FWO on behalf of the employer.

Workplace notices

- (i) within 28 days of the execution of this Undertaking display a notice in the form of Attachment D to this Undertaking (**Workplace Notice**):
 - i. for a continuous period of at least 28 days in all locations where employees engaged by Boonah Packing are performing work; and
 - ii. in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by Boonah Packing (for example, by placement on a staff noticeboard at each workplace in at least A3 size);
- (j) provide written details of the method/s of displaying or providing the Workplace Notice and photographic proof of its display to the FWO within seven (7) days of it first being displayed;

Employee education

- (k) ensure there is reasonable access to a copy of the Horticulture Award and the National Employment Standards (**NES**) for all employees as required by Clause 5 of the Horticulture Award.
- (l) in demonstrating compliance with the undertaking in (k) above, Boonah Packing undertakes to provide photographic evidence of the display of the Horticulture Award and the NES in the workplace or satisfactory evidence that demonstrates employees

are able to access the Horticulture Award and the NES via electronic means to the FWO within 14 days of the execution of this undertaking.

- (m) ensure that new employees receive copies of FWO Fact Sheets "About the Fair Work Ombudsman" and "Employer obligations in relation to employee records and pay slips" and a Fair Work Information Statement and that they complete and sign the Acknowledgement of Receipt – FWO Fact Sheets and Fair Work Information Statement (Attachment E) within 7 days of commencing employment.
- (n) Provide to the FWO copies of the Acknowledgement of Receipt – FWO Fact Sheets and Fair Work Information Statement (Attachment E) referred to in paragraph (l) above, for any new employees employed from:
 - i. 1 September 2016 to 31 March 2017 to be provided by 15 April 2017; and
 - ii. 1 April 2017 to 31 October 2017 by 15 November 2017.

Workplace relations training

- (o) within three (3) months of the execution of this Undertaking, organise and ensure training of all persons engaged by Boonah Packing who have managerial responsibility for human resources, recruitment or payroll functions (**Training**);
- (p) 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;
- (q) 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;
- (r) 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;
- (s) provide evidence of attendance at the Training to the FWO within seven (7) days of the Training being provided (including the name and position of all attendees and the date on which the Training was attended)
- (t) or a period of two (2) years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 18(o) to 18(s) 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

- (u) perform, or cause to have performed by a Certified Practising Accountant or employment law specialist, audits of Boonah Packing's compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Award and the FW Act, in respect of the pay and conditions of at least 25% of all employees of Boonah Packing (Audit), for the following periods as follows:
 - i. the Audit for the first two full pay periods following the execution of this undertaking is to be finalised within 60 days of the execution of this undertaking;

- ii. the Audit for the first two full pay periods following 1 July 2017 is to be finalised by 30 September 2017;
- (v) 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;
- (w) on request, provide to the FWO all employment records relied upon to undertake the audit within 14 days of such request being made;
- (x) 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;
- (y) provide evidence of rectification of any contraventions disclosed by an Audit to the FWO within 14 days of rectification;

No Inconsistent Statements

22. Boonah Packing:

- (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 that is inconsistent with admission or acknowledgements contained in this agreement.

Acknowledgements

23. Boonah Packing 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 Boonah Packing;
- (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 Boonah Packing 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) consistent with section 715(3) of the FW Act, Boonah Packing may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;

Executed as an undertaking

EXECUTED by Boonah Packing Pty Ltd

Heekwang
(Signature of Director)

Heekwang Lee

23/08/2016
(Date)

in the presence of:

8/12/21
(Signature of witness)

MINJI LEE
(Name of witness) **SOLICITOR**

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

Steve Ronson
Steve Ronson

Executive Director Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

[Signature]
(Signature of witness)

26 August 2016
(Date)

LISA-MARIE OLIVER
(Name of Witness)

ATTACHMENT A – WAGE UNDERPAYMENTS

Employee	Total underpayment	Date Paid
	\$3.72	13/07/2016
	\$401.68	22/07/2016
	\$135.58	13/07/2016
	\$345.32	13/07/2016
	\$58.73	22/07/2016
	\$279.78	13/07/2016
	\$408.28	22/07/2016
	\$24.00	13/07/2016
	\$2.59	13/07/2016
	\$184.47	22/07/2016
	\$7.16	13/07/2016
	\$519.67	13/07/2016
	\$266.26	22/07/2016
	\$30.48	15/07/2016
	\$357.49	13/07/2016
	\$115.56	13/07/2016
	\$135.47	13/07/2016
	\$283.11	22/07/2016
	\$283.85	22/07/2016
	\$3.08	15/07/2016
	\$553.40	13/07/2016
	\$5.82	13/07/2016
	\$74.76	22/07/2016
	\$81.13	22/07/2016
	\$418.97	13/07/2016
	\$217.85	16/07/2016
	\$41.22	13/07/2016
	\$62.82	13/07/2016
	\$278.32	13/07/2016
	\$302.13	13/07/2016
	\$357.10	13/07/2016
	\$251.27	13/07/2016
	\$0.30	13/07/2016
	\$2.28	13/07/2016
	\$56.26	13/07/2016
	\$32.07	15/07/2016
	\$12.72	15/07/2016
	\$26.81	13/07/2016
	\$641.32	13/07/2016

	\$274.96	13/07/2016
	\$92.20	22/07/2016
	\$311.66	13/07/2016
	\$6.34	15/07/2016
	\$41.19	15/07/2016
	\$323.19	13/07/2016
	\$12.22	15/07/2016
	\$329.89	13/07/2016
	\$11.27	13/07/2016
	\$19.78	15/07/2016
	\$419.45	13/07/2016
	\$39.08	13/07/2016
	\$48.33	13/07/2016
	\$181.93	22/07/2016
	\$37.85	13/07/2016
	\$57.90	13/07/2016
	\$105.36	13/07/2016
	\$161.17	13/07/2016
	\$51.50	13/07/2016
	\$0.47	13/07/2016
	\$360.07	13/07/2016
	\$551.71	22/07/2016
	\$12.46	13/07/2016
	\$18.69	15/07/2016
	\$87.22	15/07/2016
	\$3.60	15/07/2016
	\$399.81	13/07/2016
	\$28.41	13/07/2016
	\$31.50	15/07/2016
	\$293.19	22/07/2016
	\$650.94	22/07/2016
	\$17.85	13/07/2016
	\$112.68	22/07/2016
	\$692.42	15/07/2016
	\$25.48	15/07/2016
	\$263.41	22/07/2016
	\$16.30	13/07/2016
	\$9.03	13/07/2016
	\$13.47	13/07/2016
	\$82.66	13/07/2016
	\$475.96	13/07/2016
	\$310.49	13/07/2016

	\$253.78	13/07/2016
	\$222.09	13/07/2016
	\$432.45	13/07/2016
	\$309.42	13/07/2016
	\$16.98	13/07/2016
	\$88.71	13/07/2016
	\$63.49	13/07/2016
	\$211.80	13/07/2016
	\$42.54	13/07/2016
Total for all employees	\$15,887.18	

ATTACHMENT B – WAGE UNDERPAYMENTS

Employee	Total underpayment	Unable to be located
	\$5.70	
	\$33.12	
	\$258.04	
	\$6.18	
	\$7.78	
Total for all employees	\$310.82	

ATTACHMENT C – LETTER OF APOLOGY

<Date>

<Employee Name & Address>

Dear <Employee Name>

We write to apologise on behalf of Boonah Packing Pty Ltd (**Boonah Packing**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Boonah Packing contravened the *Fair Work Act 2009* by failing to pay you the following entitlements under the Horticulture Award 2010 (MA000028):

- the casual loading
- public holiday penalties

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

Boonah Packing is committed to, and is taking steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (\$512.77); and
- Committing to future compliance.

Boonah Packing have formally admitted to the FWO that they did not comply with their obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the FWO website at www.fairwork.gov.au. As part of the Enforceable Undertaking, Boonah Packing has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

We express sincere regret and apologise to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Heekwang Lee on 04XX XXX XXX.

Yours sincerely

Heekwang Lee (Director)
Boonah Packing Pty Ltd

Attachment D – Form of Workplace Notice

Contraventions of the Fair Work Act 2009 (**FW Act**) and the Horticulture Award 2010 (**Award**) by Boonah Packing Pty Ltd (**Boonah Packing**).

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

The FWO has found that Boonah Packing contravened the FW Act and the Award by failing to pay casual employees (where not covered by a written piecework agreement as per Clause 15 of the Award) engaged in sorting and packing, between 1 July 2015 and 31 January 2016 the following:

- the casual loading for all hours worked;
- public holiday penalties

Boonah Packing 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.

Boonah Packing expresses their sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Boonah Packing 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.

Boonah Packing are committed to ensuring that our employees are paid at least the rates of pay as contained in the Modern Award which covers their employment where not covered by a written piecework agreement as per Clause 15 of the Award. From 1 July 2016 employees covered by the *Horticulture Award 2010* are as follows:

Level	Ordinary Rate of Pay Full time and part time employees	Ordinary Rate of Pay for Casual Employees	Public Holiday Rate Casual employee
Level 1	\$17.70	\$22.13	\$39.83
Level 2	\$18.21	\$22.76	\$40.97
Level 3	\$18.74	\$23.43	\$42.17
Level 4	\$19.44	\$24.30	\$43.74

If you worked for Boonah Packing and have queries or questions relating to your employment, please contact Heekwang on 04XX XXX XXX. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the infoline on 13 13 94.

Attachment E – FWO Fact Sheets and FWIS acknowledgement template.

Acknowledgement of Receipt – FWO Fact Sheets and Fair Work Information Statement

I, of

agree that I received a copy of the FWO Fact Sheets **About the Fair Work Ombudsman and Employer obligations in relation to employee records and pay slips** and a copy of the **Fair Work Information Statement** in

..... (state first language).

Signed:

Date:/...../.....