



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

SHELLY REMOVALS & STORAGE PTY LTD (ABN 34 152 788 684 / ACN 152 788 684)

and

Mrs Sima Vaknin

Section 715 ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Shelly Removals & Storage Pty Ltd (ABN: 34152788684) (**Shelly Removals**); and
 - (b) Mrs Sima Vaknin (**Mrs Vaknin**)

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

COMMENCEMENT OF UNDERTAKING

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Shelly Removals and Mrs Vaknin; and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, Shelly Removals undertake to assume the obligations set out below

BACKGROUND

4. Shelly Removals operates a removalist and storage business located at 20 James Street, Clayton South VIC 3169.
5. Mrs Vaknin admits and agrees that, at all material times, she:
 - (a) was the a director of the Company, having been so since 22 August 2011;
 - (b) was ultimately responsible for overall direction, management and supervision of the operations at the Company in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment; and
 - (c) by reason of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Company complied with its legal obligations.
6. The FWO commenced an investigation in January 2016, (the **Investigation**) after it received a Request for Assistance (**RFA**) regarding allegations of underpayments by Shelly Removals to its former employee identified in Attachment C (the **Employee**).
7. Shelly Removals employed the Employee between 20 October 2015 and 19 January 2016 (the **Employment Period**).
8. During the Employment Period, the Employee's terms and conditions of employment were governed by the FW Act, *Fair Work Regulations 2009* (Cth) (the **FW Regs**) and the *Road Transport and Distribution Award 2010* [MA000038] (the **Modern Award**).
9. The investigation determined that the Employee was employed on a casual basis.
10. The Employee performed the duties of a Truck driver/furniture removalist at Shelly Removals.
11. The FWO determined the Employee was classified as a Transport Worker Grade 3 under the Modern Award.
12. At all relevant times, Shelly Removals paid the Employee a flat rate of pay for all hours worked, including evening work, weekends and public holidays.

13. The FWO determined that during the course of the Employment Period, Shelly Removals underpaid the Employee an aggregate total of \$8,711.12 (gross). On 27 June 2016, the FWO received evidence from the Company that the \$8,711.12 (gross) was paid to the Employee.

CONTRAVENTIONS

14. The FWO has determined and Shelly Removals and Mrs Vaknin admit, that on the basis of the factual matters outlined above, Shelly Removals 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:
 - i. Underpayment of base hourly rate (cl. 15);
 - ii. Non-payment of casual loading (cl. 12.5(c));
 - iii. Non-payment of casual loading for overtime hours (cl. 12.5(d));
 - iv. Non-payment of removalist allowance (cl. 16.2(b)(v));
 - v. Non-payment of overtime penalty rate (cl. 27.1);
 - vi. Non-payment of Sunday penalty rate (cl. 28.1(b));
 - vii. Non-payment of public holiday penalty rate, (cl. 28.2(f));
 - viii. Non-payment of meal allowance (cl. 26.3); and
 - ix. Minimum engagement (cl. 12.5(c)).
 - (b) Section 535(1) of the FW Act, which states that an employer must make and keep records for a period of seven years, in a form prescribed by the FW Regs, specifically Regulation 3.33 and 3.34;
 - (c) Section 536(2) of the FW Act, which states that an employer must ensure that a pay slip is in the form prescribed by the FW Regs, specifically Regulation 3.44; and
 - (d) Section 323(1)(a) of the FW Act, which states that an employer must pay an employee amounts payable in relation to the performance of work in full.

UNDERTAKINGS

15. For the purposes of section 715 of the FW Act, Shelly Removals and Mrs Vaknin undertake to:

Future Workplace Relations Compliance

- (a) Ensure that it complies at all times and in all respects with the FW Act, the FW Regs and the Modern Award.
- (b) Provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph (a) above. Without limitation, such systems and processes will include 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 pay slips to employees within 1 working day of payment; and
 - (iii) Keeping accurate and complete records to ensure employees receive their correct wages and entitlements

Workplace Relations Training

- (c) Within 90 days of the execution of this Undertaking, organise and ensure training is provided to all persons who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
- (d) Ensure the Training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities

of employers under the FW Act and the Modern Award;

- (e) Ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by Shelly Removals;
- (f) 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;
- (g) Provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended)

Apology

- (h) Send a letter of apology (**Apology Letter**) to the Employee listed in Attachment C in the form of Attachment B to this undertaking and provide copies to the FWO within 14 days of the execution of this undertaking.

Audit Activity

- (i) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Shelly Removal's expense, audits of Shelly Removal's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of all employees as follows:
 - (i) The Audit of the first full pay period after 1 November 2016 is to be finalised by 1 December 2016;
 - (ii) The Audit of the first full pay period after 1 May 2017 is to be finalised by 1 June 2017;
- (j) Provide to the FWO within 14 days of each of the finalisation dates specified in subclauses (i) and (ii) above, the details of the methodology used to conduct the Audit and a report on the outcomes of the Audit;
- (k) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of each of the finalisation dates specified in subclauses (i) and (ii) above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;
- (l) If any employee(s) identified as having underpayments owing to them cannot be located, within 14 days of each of the finalisation dates specified in subclauses (i) and (ii) above, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. Shelly Removals will complete the required documents supplied by the FWO.

Public Notice

- (m) Place a public notice (**Public Notice**) in the 'Moorabbin Kingston Leader' within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this undertaking. The Public Notice must:
 - (i) Bear the name of Shelly Removals & Storage Pty Ltd;
 - (ii) Bear the logo (if any) of Shelly Removals & Storage Pty Ltd;
 - (iii) Is in the form of Attachment A
- (n) Provide a copy of the Public Notice to the FWO within seven days of the publication of the Public Notice.

Workplace Notice

- (o) Within 28 days of the execution of this Undertaking, cause to be displayed within all workplaces controlled by Shelly Removals a notice in the form of Attachment A to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display;
- (p) 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 Shelly Removals 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;
- (iii) For a period of 14 continuous days;

Record Keeping

- (q) Within 28 days 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

- (r) Shelly Removals:
 - (i) must not; and
 - (ii) 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

16. Shelly Removals 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 (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 Shelly Removals;
- (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 Shelly Removals 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, Shelly Removals may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Shelly Removals & Storage Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:

Sima
(Signature of director)

Sima
(Signature of Sima Vaknin)

Sima Vaknin
(Name of director)

Sima Vaknin
(Name of Sima Vaknin)

26.08.16
(Date)

26.08.16
(Date)

in the presence of:

in the presence of:

Boris Pak
(Signature of witness)

Boris Pak
(Signature of witness)

BORIS PAK
(Name of witness)

BORIS PAK
(Name of witness)

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

Steven Ronson
Steven Ronson

16 SEPTEMBER 2016
(Date)

Executive Director

Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

Carey Trundle
(Signature of witness)

CAREY TRUNDLE
(Name of Witness)

Attachment A – Form of Public and Workplace Notice

Contravention of *Fair Work Act 2009* by Shelly Removals & Storage Pty Ltd

We refer to the investigation conducted by the Commonwealth Government of Australia's Office of the Fair Work Ombudsman (**FWO**) into allegations that Shelly Removals & Storage Pty Ltd (the **Company**) contravened the *Fair Work Act 2009* by:

- failing to pay the correct minimum rate of pay for time worked Monday to Friday;
 - failing to pay the correct casual loading for time worked;
 - failing to pay the correct casual loading for overtime worked;
 - failing to pay the correct removalist allowance;
 - failing to pay the correct meal allowance;
 - failing to pay the correct penalty rates for overtime worked;
-
- failing to pay the correct penalty rates for time worked on Sundays;
 - failing to pay the correct penalty rates for time worked on Public Holidays;
 - failing to pay the correct minimum engagement entitlement;
 - failing to make and keep appropriate employee records which contain information as prescribed by the *Fair Work Regulations 2009* (**FW Regs**);
 - failing to ensure pay slips is in a form prescribed by the FW Regs.
 - failing to ensure that amounts payable to in relation to the performance of work is in full

The Company has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayment of AUD \$8,711.12 (gross) owed to one employee whom had worked with the Company (located in Victoria, Australia).

The Company expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, the Company gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth of Australia workplace relations laws in the future.

If you worked for the Company and have queries or questions relating to your employment, please contact <insert details of internal contact>. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au.

Attachment B – Letter of Apology

<Date>

<Name>

<Address 1>

<Address 2>

Dear <Name>

I am writing to apologise on behalf of Shelly Removals & Storage Pty Ltd (the **Company**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company had contravened the *Fair Work Act 2009*, *Fair Work Regulations 2009* and *Road Transport and Distribution Award 2010*:

- failing to pay your correct minimum rate of pay for time worked Monday to Friday;
- failing to pay your correct casual loading for time worked;
- failing to pay your correct casual loading for overtime worked;
- failing to pay your correct removalist allowance;
- failing to pay your correct meal allowance;
- failing to pay your correct penalty rates for overtime worked;
- failing to pay your correct penalty rates for time worked on Sundays;
- failing to pay your correct penalty rates for time worked on Public Holidays;
- failing to pay your correct minimum engagement entitlement;
- failing to make and keep appropriate employee records which contain information as prescribed by the *Fair Work Regulations 2009* (**FW Regs**);
- failing to ensure pay slips is in a form prescribed by the FW Regs.
- failing to ensure that amounts payable to you in relation to the performance of work is in full

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

The Company has taken steps to remedy the contraventions, including by rectifying AUD \$8,711.12 (gross) that you have been underpaid. I confirm that you have received this payment on 27 June 2016 via electronic funds transfer and have been provided with a pay slip.

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

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

Should you have any questions, please contact me on [insert phone number].

Yours sincerely

Mrs Sima Vaknin
Shelly Removals & Storage Pty Ltd

Attachment C – The Employee

Employee	
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