



Australian Government

# Fair Work

## OMBUDSMAN

---

### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

---

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

and

Melnor Security Services Pty Ltd

(ACN: 124165573)

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (**FWO**) by:  
Melnor Security Services Pty Ltd (**the Company**); and  
Melissa Lee Chown (**Ms Chown**)  
for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Background**

2. The FWO is working with the Australian Security Industry Association Limited (ASIAL) and United Voice to strengthen the procurement practices of local councils, starting with how they procure security services.
3. In June 2015 the FWO commenced the Local Government Procurement Inquiry (Inquiry). The Inquiry is a supply chain-focused compliance campaign to identify unlawful practices among those providing security services to local councils. The campaign started with local councils at the top of the chain and worked down to security providers.
4. The Inquiry is examining the procurement practices of local councils across Australia when engaging security related services and testing whether there are any links between poor governance in the supply chain and non-compliance with Australian workplace laws.
5. The company came to the attention of the FWO due to the contract that they hold with Tamworth City Council (**the Council**). The Company was contracted to provide crowd control security services for the Tamworth Country Music Festival which is held in January each year.
6. The Tamworth Country Music Festival attracts around 50,000 visitors a day, with over 700 artists featured in 2800 scheduled events across 80 venues.
7. The Company provides a range of security related services to businesses in New South Wales including Event Security, Mobile Patrols, Asset protection, Risk Management and Cash Transit.
8. Ms Chown admits and agrees that, at all material times, she:
  - (a) was sole director of the Company, having been so since 27 February 2007;
  - (b) was ultimately responsible for the overall direction, management and supervision of the employees in relation to engaging staff, wages and conditions of employment;
  - (c) was aware that employees are entitled to be paid for work performed in accordance with Security Services Industry Award 2010 (**the Modern Award**) and Commonwealth workplace laws; and
  - (d) by reason of the matters set out in subparagraphs (a) and (c) was responsible in a practical sense for ensuring the Company complied with its legal obligations.
9. The FWO requested the Company produce time and wage records for all employees who performed crowd control services during the Tamworth Country Music Festival held in January 2015. The FWO completed an assessment of the records to ensure that the minimum entitlements of those employees were met.
10. To fulfil the contract with the Council, the Company engaged 10 casual employees. The Employees' terms and conditions of employment were governed by the FW Act and the Modern Award.

11. During the two week period of the Tamworth Country Music Festival (**the Assessment Period**) the company paid flat rates of \$26 and \$28 gross per hour to its employees. These rates were insufficient to meet the minimum award entitlements for night work, Saturday penalty rates, Sunday penalty rates, overtime and the minimum engagement period derived from the Modern Award.
12. As a result, during the Assessment Period the Company underpaid 10 employees at total of \$5,877.92 gross. See Appendix A for further details.

### **Commencement of Undertaking**

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

### **Contraventions**

#### **15. Contraventions**

---

The FWO has determined, and the Company admits, that it contravened:

- (a) the Modern Award by failing to comply with the following provisions:
  - (i) clause 10.5 (b) by failing to pay its employees a 25% casual loading;
  - (ii) clause 21.2(a)(i) by failing to pay a minimum of four hours for casual employees;
  - (iii) clause 22.3 by failing to pay its employees the appropriate penalty rates based on the time and day of each shift. That is, night span, Saturday span and Sunday span; and
  - (iv) clause 23.3 by failing to pay its employees overtime rates.

The underpayments arising as a result of these contraventions totals \$5,877.92 gross for 10 employees during the Assessment Period.

16. The FWO has determined, and Ms Chown admits, that she was, by act or omission, directly and/or indirectly, knowingly concerned in or party to the contraventions stated in paragraph 15 above because she:
  - (a) had knowledge of the essential facts constituting the contraventions;
  - (b) was knowingly concerned in the contraventions; and
  - (c) was an intentional participant in the contraventions based on actual not constructive knowledge of the essential facts constituting the contraventions.

### **Undertakings**

17. For the purposes of section 715 of the FW Act, the Company and Ms Chown undertake to:

#### ***Rectify the Underpayments***

- (a) Make payment to the 10 employees listed in Appendix A for contraventions identified in the Assessment Period amounting to \$5,877.92 gross within 21 days of the execution of this Undertaking;

- (b) provide proof of such payment to the FWO on the day the payment is made;

***Undertake Audit Activity A – retrospective***

- (c) perform, or cause to have performed by a Certified Practising Accountant or employment law specialist, audits to identify all contraventions of relevant Commonwealth workplace laws for all current and former employees covered by the Modern Award from 1 December 2015 to the execution of this Undertaking including; entitlements to the minimum rates of pay, casual loadings, public holidays and overtime rates;
- (d) conduct the audit referred to in (c) within 90 days from the execution of this Undertaking;
- (e) pay to any Affected Employees, referred to in (c), within 180 days of the completion of the audit referred to be in (c), the outstanding amounts as calculated using the compliant minimum rates of pay;
- (f) within 7 days of each payment being made to an Affected Employee as per paragraph (c), provide the methodology of the calculations and reasonable evidence to the FWO that these Payment/s have been made;
- (g) if an Affected Employee cannot be located, within 1 month of the payment falling due, pay any outstanding amount into the consolidated revenue of the Commonwealth of Australia (through the FWO), in accordance with section 559 of the FW Act, to be held in trust for the relevant Employee;

---

***Undertake Audit Activity B – future***

- (h) perform, or cause to have performed by a Certified Practising Accountant or employment law specialist, audits of compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and the FW Act, in respect to the pay and conditions of at least 30% of all employees of the Company (**Audit**), for each year in a three year period as follows:
  - (i) the Audit for the calendar year 2016 is to finalised by 31 March 2017;
  - (ii) the Audit for the calendar year 2017 is to be finalised by 31 March 2018; and
  - (iii) the Audit for the calendar year 2018 is to be finalised by 31 March 2019;
- (i) provide to the FWO, within 14 days of 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;
  - (i) in the event an Audit discloses contraventions, the Company is to provide evidence of rectification of the contraventions to the FWO within 14 days of the completion of the Audit;
- (j) provide to the FWO as follows a sample of time and wage records and payslips that comply with all applicable Commonwealth workplace laws and instruments in respect of at least 30% of all employees for a period of no less than one calendar month, which is to include a public holiday (Sample):
  - (i) the Sample for the calendar year 2016 is to be provided to the FWO by 31 January 2017;
  - (ii) the Sample for the calendar year 2017 is to be provided to the FWO by 31 January 2018; and
  - (iii) the Sample for the calendar year 2018 is to be provided to the FWO by 31 January 2019;

***Public Notice***

- (k) place a public notice in the Saturday edition of the Northern Daily Leader (**Public Notice**) within 28 days of the FWO publishing a Media Release on its website in respect of this Undertaking. The Public Notice must:

- (i) Bear the name of Melnor Security Services Pty Ltd;
- (ii) Bear the logo (if any) of Melnor Security Services Pty Ltd; and
- (iii) Be in the form of Attachment A.

#### **Apology**

- (l) send to all 10 employees identified in the Audit Period, within 14 days of the execution of this Undertaking, a letter apologising for the Contraventions (**Apology**) in the form of Attachment B to this Undertaking;
- (m) provide proof of the Apology to the FWO within seven days of the Apology being sent;

#### **Future Workplace Relations Compliance**

- (n) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
- 
- (o) ensure that all employees are paid the applicable superannuation guarantee on ordinary time earnings pursuant to the *Superannuation Guarantee (Administration) Act 1992*;
- (p) provide to the FWO, within 28 days of execution of this Undertaking, written detail of the systems and processes implemented in satisfaction of the undertaking in paragraph (n) above;

#### **Workplace Relations Training**

- (q) within three months of the execution of this Undertaking, organise and ensure training relating to compliance with applicable Commonwealth workplace laws (**Training**) is provided to any and all relevant persons who have managerial responsibility, including Ms Chown;
- (r) 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 Modern Award;
- (s) ensure the Training is conducted by an accredited workplace trainer; such person or organisation to be approved by the FWO;
- (t) 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;
- (u) 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);
- (v) within 90 days of the execution of this Undertaking ensure persons referred to in paragraph 17 (q) review relevant education material available on the FWO website and complete educational activities as set out in Attachment C and ensure a copy of Attachment C is provided to the FWO.

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

- (w) within 14 days of the execution of this Undertaking:
- (i) register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and have

completed the profile, minimum pay rates and Award options;

- (ii) provide to the FWO Melnor Security Services Pty Ltd 'My Account' registration number;
- (iii) within 14 days of the execution of the Undertaking, subscribe to the following and provide evidence to the FWO as set out in Attachment D;
  - (i) 'General information' email alerts from the FWO relating to the Modern Award, available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>;
  - (ii) 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 updates;
    - (iv) working hours and breaks; and
    - (v) annual leave/sick leave.

## Acknowledgements


---

18. The Company and Ms Chown acknowledge that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at [www.fwo.gov.au](http://www.fwo.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 the Company and Ms Chown;
- (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 the Company or Ms Chown have 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, the Company and Ms Chown may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**


EXECUTED by Melnor Security Services Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

MELISSA CHOWN  
(Name of director)

24/07/2016  
(Date)

in the presence of:

  
(Signature of witness)


Diana Astin  
(Name of witness)

EXECUTED by Ms Melissa Lee Chown:

  
Melissa Lee Chown

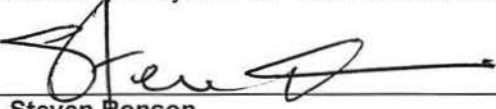
24/07/2016  
(Date)

in the presence of:

  
(Signature of witness)

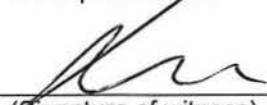
Diana Astin  
(Name of witness)

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

  
Steven Ronson  
Executive Director - Dispute Resolution & Compliance

4 August 2016  
(Date)

in the presence of:

  
(Signature of witness)

LISA-MARIE OLIVER  
(Name of Witness)

## Appendix A - List of Affected Employees

Employee	Underpayment
	\$624.78
	\$884.19
	\$715.57
	\$395.66
	\$467.52
	\$459.01
	\$1,252.05
	\$348.27
	\$505.07
	\$225.80



## Attachment A – Form of Public and Workplace Notice

### Contravention of Fair Work Act by Melnor Security Services Pty Ltd

We refer to the admission made to the Office of the Fair Work Ombudsman (FWO) by Melnor Security Services Pty Ltd that it had contravened the *Fair Work Act 2009*.

**Melnor Security Services Pty Ltd** worked cooperatively with the FWO to determine that it had contravened Section 45 of the FW Act by contravening a Modern Award, specifically failing to pay the prescribed casual loadings, public holidays, weekends and overtime rates.

**Melnor Security Services 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 in addition to rectifications already made, which includes future reporting to the FWO.

**Melnor Security Services Pty Ltd** expresses its sincere regret and apologises for its actions which resulted in the contraventions. Furthermore, **Melnor Security Services** gives a commitment that it will not happen again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

---

If you worked for **Melnor Security Services Pty Ltd** and have queries or questions relating to your employment, please contact **Melissa Chown** on \_\_\_\_\_ or \_\_\_\_\_. 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**

**FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEE**

<Date>

■

<Employee Address>

Dear ■

I am writing to apologise on behalf of Melnor Security Services Pty Ltd (**the Company**) and myself for non-compliance with Commonwealth Workplace relations laws. A recent audit conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company had contravened the *Fair Work Act 2009 (FW Act)* by:

- Failing to comply with the following provisions of the Security Services Industry Award:
  - clause 10.5(a) by failing to pay its employees a 25% casual loading;
  - clause 21.2(a)(i) by failing to pay a minimum of four hours for its casual employees;
  - clause 22.3 by failing to pay its employees the appropriate penalty rates based on the time and day of each shift. That is, night span, Saturday span and Sunday span; and
  - clause 23.3 by failing to pay its employees overtime rates.

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

The Company is taking steps to remedy the contraventions, including by rectifying \$\_\_\_\_\_ gross that you have been underpaid during the period \_\_\_\_\_. You will receive this payment on \_\_\_\_\_ 2016. You will be provided with payment advice regarding these payments.

The Company and I have formally admitted to the FWO that there was a lack of compliance with 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](http://www.fairwork.gov.au). As part of the Enforceable Undertaking the Company and I have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Melnor Security Services Pty Ltd and I express our sincere regret and apologies to you for failing to comply with our lawful obligations.

Should you have any questions, please contact me on [party to include contact details].

Yours sincerely

**Melissa Chown**  
Melnor Security Services Pty Ltd

## Attachment C - Workplace relations training

### TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, \_\_\_\_\_ have undertaken the following tools:

#### Completed online courses\* including:

- Difficult conversations in the workplace – manager course      date completed: \_\_\_\_\_
- Hiring employees      date completed: \_\_\_\_\_
- Managing performance      date completed: \_\_\_\_\_
- Other \_\_\_\_\_      date completed: \_\_\_\_\_
- Other \_\_\_\_\_      date completed: \_\_\_\_\_

---

*\* Please provide printout of the Statement/Certificate of Attainment for each course completed*

#### Viewed Videos including:

- Welcome to fairwork.gov.au      date completed: \_\_\_\_\_
- Finding information for your industry      date completed: \_\_\_\_\_
- My account      date completed: \_\_\_\_\_
- Leave Calculator      date completed: \_\_\_\_\_
- Other \_\_\_\_\_      date completed: \_\_\_\_\_
- Other \_\_\_\_\_      date completed: \_\_\_\_\_

#### Read Factsheets including:

- Role of the Fair Work Ombudsman      date completed: \_\_\_\_\_
- International Students      date completed: \_\_\_\_\_
- Other \_\_\_\_\_      date completed: \_\_\_\_\_
- Other \_\_\_\_\_      date completed: \_\_\_\_\_

#### Read information on the following:

- **Pay Overview**
- Minimum wages      Page Ref No. \_\_\_\_\_      date completed: \_\_\_\_\_

○ Penalty rates & allowances Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• ***Leave Overview***

○ Annual leave Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

○ Sick & carer's leave Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• ***Ending Employment Overview***

○ Notice & final pay Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

○ Unfair dismissal Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• ***Employee Entitlements Overview***

○ Types of employees Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

○ National Employment Standards Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• ***Awards & Agreements Overview***

○ Awards Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

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

\_\_\_\_\_  
(Name of director)

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

**Attachment D - Workplace relations training**

**FAIR WORK OMBUDSMAN WEBSITE – SUBSCRIPTIONS**

I, \_\_\_\_\_, on behalf of Melnor Security Services Pty Ltd have undertaken the following activities:

- Registered for "My Account"
- Subscribed to the bi-monthly employer newsletter
- Subscribed to the pay rate update alert RSS feed for the following Award:

*Security Services Industry Award 2010*

---

(Signature of director)

---

(Name of director)

---

(Date)