



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by R.J. Cornish & Co. Proprietary Limited (ABN: 63 004 392 214) and **accepted** by the Fair Work Ombudsman pursuant to section 715 of the *Fair Work Act 2009*.

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by R.J. Cornish & Co. Proprietary Limited (ABN: 63 004 392 214) (**R.J. Cornish**).

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by R.J. Cornish; and
 - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

BACKGROUND

3. R.J. Cornish commenced operation in 1957 at 174 Cottons Road Cobram VIC 3644 and has since obtained a second orchard on the corner of Tobruk Road and Blamey Road, Muckatah, VIC.
4. R.J. Cornish grows peaches, pears, apples and citrus fruit for suppliers and fresh fruit markets.
5. R.J. Cornish's workforce comprises less than 30 full time, part time and casual employees, dependent upon the seasonal nature and peak times of horticulture work. Employee terms and conditions are informed by the *Horticulture Award 2020* (formerly *Horticulture Award 2010*) (**Award**).
6. In March 2024, Fair Work Inspectors undertook a site inspection at 174 Cottons Road, Cobram VIC 3644 where contraventions of the FW Act were identified in relation to deductions from employee wages for costs associated with power ladder hire, fuel and sprinkler damage (**Deductions**).
7. On 8 November 2024, R.J. Cornish wrote to the FWO admitting non-compliance with the FW Act in relation to 112 casual employees (**Affected Employees**) listed in Schedule A engaged between 1 July 2017 and 30 June 2024 (**Contravention Period**).
8. The FWO acknowledges:
 - (a) R.J. Cornish's commitment to identifying the Deductions and rectifying the amounts for 112 casual workers who were financially disadvantaged because of the

contravention noted at clause 10.

(b) R.J. Cornish's commitment to establishing and implementing systems and processes to avoid future non-compliance with its workplace relations obligations, including but not limited to, the contraventions listed at clause 10. To prevent future non-compliance, R.J. Cornish has ceased:

- deducting a hire fee for power ladders from employees wages;
- deducting costs related to fuel from employees wages; and
- deducting costs related to sprinkler damage from employees wages.

9. In consideration of these matters, the FWO accepts this Undertaking, the terms of which are set out below.

ADMISSIONS

10. The FWO has a reasonable belief, and R.J. Cornish admits, that during the Contravention Period, R.J. Cornish contravened section 323(1)(a) of the FW Act by making deductions that were not permitted under section 324(1) of the FW Act.

RECTIFICATION

11. Upon Commencement Date, R.J. Cornish confirms that the following amounts have been paid to 108 Affected Employees in rectification of the contravention in clause 10:

(a) \$123,249.31 net (98 Australian based Affected Employees \$117,256.91 and 10 overseas Affected Employees \$5,992.40) for deductions made from net entitlements; and

(b) 4 Affected Employees are still owed \$3,610.11 net. R.J. Cornish has made attempts to locate these 4 employees but been unsuccessful, and an application has subsequently been made to make payment to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act.

12. R.J. Cornish declares that these amounts satisfy all entitlements owing to the Affected Employees in relation to the contraventions identified in clause 10 during the Contravention Period.

UNDERTAKINGS

13. R.J. Cornish will take the actions set out at clauses 14 to 36 (inclusive) below.

Workplace relations systems, processes and training

Mandatory training

14. Within 90 days of the Commencement Date, R.J. Cornish will ensure that all current employees of R.J. Cornish with responsibility for human resources, payroll and rostering have completed training which satisfies clause 15 below.
15. The mandatory training must:
 - (a) be provided by an external workplace relations, human resources or employment law expert;
 - (b) cover, at a minimum how to apply entitlements under the Award including, without limitation: understanding and implementing casual minimum rate entitlements under the Award; and other FW Act entitlements and obligations, including the National Employment Standards, permitted deductions and record keeping obligations.
16. Within six months of the Commencement Date, R.J. Cornish will provide to the FWO evidence of its compliance with clauses 14 and 15 including:
 - (a) a copy of the training materials used; and
 - (b) a list of the employees who received the training and the date on which they attended.

Independent Audit

17. R.J. Cornish must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct an audit of R.J. Cornish's compliance with the FW Act and *Fair Work Regulations 2009* (Cth) (**FW Regulations**) and the Award (or replacement industrial instrument) (**Audit**).
18. R.J. Cornish will notify the FWO of its proposed Independent Auditor by no later than 45 days after the Commencement Date. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require R.J. Cornish to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be approved by the FWO in writing before being engaged by R.J. Cornish.
19. R.J. Cornish must ensure that the Audit conducted by the Independent Auditor includes:
 - (a) an assessment of (the greater of) 15 employees or 15% of all employees to whom the Award (or any replacement industrial instrument) applies, across a range of classifications and employment types (including full-time, part-time and casual), during the relevant audit period (**Sampled Employees**) in respect of their

- employment by R.J. Cornish;
- (b) an assessment of whether the Sampled Employees have been correctly classified under the Award by R.J. Cornish;
 - (c) an assessment of whether any deductions from employee wages are lawful and permitted and the pay and conditions of the Sampled Employees during the relevant audit period complies with the FW Act and FW Regulations and the Award (or replacement industrial instrument);
 - (d) the production of a written report on the Audit setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
 - (e) that the written report referred to in (d) above contains the following declarations from the Independent Auditor:
 - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - (ii) notwithstanding that the Independent Auditor is retained by R.J. Cornish the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from R.J. Cornish in preparing the report;
 - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
 - (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

The Audit

- 20. R.J. Cornish must ensure the Independent Auditor commences the Audit by no later than 6 months after the Commencement Date.
- 21. The relevant audit period for the Audit must be at least eight full pay periods falling within the period of 1 February 2025 to 29 March 2025 (**Assessment Period**).
- 22. Within four months of the Commencement Date, R.J. Cornish will provide for the FWO's approval details of the methodology to be used by the Independent Auditor to conduct the Audit.
- 23. R.J. Cornish will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Audit directly to the FWO no later than nine months after the Commencement Date setting out the draft Audit findings, and the facts and circumstances supporting the Audit findings. R.J. Cornish will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to R.J. Cornish without the FWO's approval.

24. R.J. Cornish will use its best endeavours to ensure the Independent Auditor finalises the Audit and provides a written report of the Audit (**Audit Report**) directly to the FWO within six weeks of FWO providing any comments on the draft report to the Independent Auditor.

Outcome of Audit

25. If the Audit identifies underpayments to any Sampled Employees, R.J. Cornish will within 30 days of receipt of the Audit Report, rectify any underpayments identified in the Assessment Period for Sampled Employees.
26. R.J. Cornish will provide to the FWO Reasonable Evidence of such rectification within 30 days of reconciliation payments being made.
27. If any employees identified in the Audit as having underpayments owing to them cannot be located within 60 days of the conclusion of the Audit, R.J. Cornish will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. R.J. Cornish will complete the required documents supplied by the FWO for this purpose.
28. If the Audit identifies an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audit are also likely to have been underpaid, R.J. Cornish will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the Award (or any replacement industrial instrument) applies (**Additional Audit**). Any Additional Audit must be paid for by R.J. Cornish.
29. If requested by the FWO, R.J. Cornish will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 21 days of such a request.

Contribution Payment

30. Within 28 days of the Commencement Date, R.J. Cornish will collectively make a contribution payment of \$5,500 to the Consolidated Revenue Fund.
31. R.J. Cornish will provide evidence to the FWO of any contribution payment within 14 days of making payment to the Consolidated Revenue Fund.

Reporting Changes in Circumstances

32. R.J. Cornish will notify the FWO of any changes of circumstances that impacts on R.J. Cornish's ability to comply with the obligations contained in this Undertaking, as soon as reasonably practicable after they become aware of such circumstances. Such

circumstances include but are not limited to:

- (a) a sale or potential sale or transfer of the organisation, or part of the organisation;
- (b) ceasing or an expectation of ceasing to trade/operate; or
- (c) the organisation going into administration or liquidation.

Extensions of Time

- 33. R.J. Cornish may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. The FWO will not unreasonably withhold agreement on a request for an extension of time.
- 34. Where a time specified for actioning an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

No Inconsistent Statements

- 35. R.J. Cornish must not, and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

Media Release

- 36. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this.

ACKNOWLEDGEMENTS

- 37. R.J. Cornish acknowledges that:
 - (a) the FWO may:
 - (i) make this Undertaking available on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this Undertaking;
 - (iv) from time to time, publicly refer to the Undertaking and its terms; and
 - (v) rely upon the admissions made by R.J. Cornish set out in clause 10 above in respect of decisions taken regarding enforcement action in the event that R.J.

Cornish is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by R.J. Cornish to comply with its obligations under this Undertaking.

- (b) 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 herein;
- (c) consistent with section 715(3) of the FW Act, R.J. Cornish may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if R.J. Cornish contravenes any of the terms of this Undertaking:
 - (i) 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
 - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by R.J. Cornish in clause 8 above, and also in respect of the question of costs.

DICTIONARY

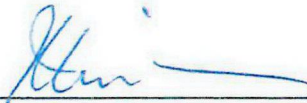
Unless the contrary intention appears, words in the singular include the plural, and other than terms defined, have their ordinary natural meaning.

The following defined term is adopted in this Undertaking:

- **Reasonable Evidence** means such evidence as the FWO may reasonably require, and which could reasonably be expected to satisfy a court of:
 - a. the truth of any fact asserted by R.J. Cornish or by any of its servants or agents; and/or
 - b. the accuracy and correctness of any information provided by R.J. Cornish, or by any of its servants or agents; and/or
 - c. compliance by R.J. Cornish with any term of this Undertaking.

Executed as an undertaking

EXECUTED by an authorised person of R.J. Cornish


JAMES ROBERT CORNISH 
(Name and position of authorised signatory) (Signature of authorised signatory)
DIRECTOR.

in the presence of:

KAREN BROWN 
(Name of witness) (Signature of witness)

15 / 01 / 2025
(Date)


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

CRESTA NICKL 
Cresta Nickl (Acting Executive Director, (Signature of Delegate)
Enforcement)

21 / 01 / 2025
(Date)

Delegate for the Fair Work Ombudsman

in the presence of:

 LOUISE BATISTIC
(Signature of witness) (Name of Witness)

SCHEDULE A – AFFECTED EMPLOYEE LIST AND DEDUCTIONS IDENTIFIED

Employee	Amount
██████████	\$417.70
██████████	\$260.38
██████████	\$495.16
██████████	\$177.76
██████████	\$369.30
██████████	\$933.10
██████████	\$525.80
██████████	\$38.60
██████████	\$464.24
██████████	\$176.78
██████████	\$835.63
██████████	\$459.99
██████████	\$1,105.95
██████████	\$701.50
██████████	\$50.00
██████████	\$308.63
██████████	\$544.64
██████████	\$282.68
██████████	\$2,387.14
██████████	\$861.56
██████████	\$139.85
██████████	\$1,216.95
██████████	\$1,482.05
██████████	\$392.65
██████████	\$945.10
██████████	\$6,076.73
██████████	\$1,863.14
██████████	\$821.70
██████████	\$818.08
██████████	\$60.00
██████████	\$1,005.99
██████████	\$60.93
██████████	\$25.85
██████████	\$1,132.38
██████████	\$487.83
██████████	\$1,899.40
██████████	\$2,027.08
██████████	\$430.23
██████████	\$412.35
██████████	\$755.60
██████████	\$129.00
██████████	\$704.60
██████████	\$270.00
██████████	\$1,119.62
██████████	\$613.44
██████████	\$171.88

Employee	Amount
[REDACTED]	\$42.50
[REDACTED]	\$421.50
[REDACTED]	\$819.23
[REDACTED]	\$912.74
[REDACTED]	\$332.38
[REDACTED]	\$411.60
[REDACTED]	\$441.35
[REDACTED]	\$1,015.43
[REDACTED]	\$232.18
[REDACTED]	\$441.75
[REDACTED]	\$41.50
[REDACTED]	\$7,544.36
[REDACTED]	\$126.08
[REDACTED]	\$297.90
[REDACTED]	\$147.90
[REDACTED]	\$142.40
[REDACTED]	\$3,325.59
[REDACTED]	\$2,744.18
[REDACTED]	\$21.25
[REDACTED]	\$1,120.66
[REDACTED]	\$1,714.74
[REDACTED]	\$605.66
[REDACTED]	\$393.39
[REDACTED]	\$1,956.00
[REDACTED]	\$122.20
[REDACTED]	\$648.66
[REDACTED]	\$64.50
[REDACTED]	\$871.60
[REDACTED]	\$4,655.22
[REDACTED]	\$91.75
[REDACTED]	\$5,527.45
[REDACTED]	\$166.65
[REDACTED]	\$7,855.18
[REDACTED]	\$233.93
[REDACTED]	\$612.40
[REDACTED]	\$2,277.88
[REDACTED]	\$408.28
[REDACTED]	\$478.10
[REDACTED]	\$177.03
[REDACTED]	\$187.70
[REDACTED]	\$168.15
[REDACTED]	\$117.43
[REDACTED]	\$52.00
[REDACTED]	\$123.38
[REDACTED]	\$908.42
[REDACTED]	\$1,046.54
[REDACTED]	\$1,420.00
[REDACTED]	\$356.09

Employee	Amount
[REDACTED]	\$26.25
[REDACTED]	\$170.43
[REDACTED]	\$5,667.92
[REDACTED]	\$7,156.17
[REDACTED]	\$524.82
[REDACTED]	\$203.40
[REDACTED]	\$1,207.77
[REDACTED]	\$1,008.85
[REDACTED]	\$305.52
[REDACTED]	\$881.15
[REDACTED]	\$46.75
[REDACTED]	\$1,070.47
[REDACTED]	\$4,640.48
[REDACTED]	\$644.54
[REDACTED]	\$9,881.04
[REDACTED]	\$1,751.44
[REDACTED]	\$477.64
[REDACTED]	\$913.00
TOTAL	\$126,859.42