



Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Kanodia Nominees Pty Ltd (ACN 005 549 262) (**Kanodia Nominees**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

BACKGROUND

2. Kanodia Nominees operates a food manufacturing business trading as Glendal Foods at 1/324 Albert Street, Brunswick Victoria 3056);
3. In August 2012 the FWO received a complaint from an employee of Kanodia Nominees, [REDACTED], relating to excess working hours, underpayment of overtime penalty rates and loss of hours. Most of these issues related to the actions and behaviour of a supervisor employed by Kanodia Nominees. [REDACTED] also raised allegations relating to underpayments for initial periods of employment, overtime work and employment records.
4. In October 2012 the FWO received further information about these allegations from the National Union of Workers (**NUW**). On 8 October 2012 *The Age* newspaper published an article in relation to the allegations made by [REDACTED] and the NUW.
5. The FWO commenced an investigation which included an audit of all employees of Kanodia Nominees working as process workers in the period from 1 January 2010 to 31 December 2012 (the **Assessed Period**).
6. Several of the employees included in the audit were engaged under Australian Workplace Agreements (**AWAs**) during the Assessed Period. The other employees were covered by the *Food, Beverage and Tobacco Manufacturing Award 2010* (the **Award**) until 28 August 2012 and then from 29 August 2012 the *Glendal Foods Enterprise Agreement (2012-2015)* (**Enterprise Agreement**) applied to those employees not covered by AWAs.
7. The investigation identified underpayments to 17 employees (the **Affected Employees**). The underpayments occurred because Kanodia Nominees failed to correctly pay the Affected Employees all their minimum entitlements under the Award during the Assessed period, including the following entitlements:
 - (a) the applicable minimum rate of pay for every hour that they worked;
 - (b) the correct overtime rates for overtime hours worked; and
 - (c) annual leave loading entitlements.
8. Kanodia Nominees underpaid the Affected Employees a total of \$19,731.18 gross

during the Assessed Period.

9. The FWO also identified that Kanodia Nominees had made and kept false employee records in relation to 4 employees.
10. Following the FWO's investigation, Kanodia Nominees made efforts to rectify underpayments to all Affected Employees.
11. Kanodia Nominees has undertaken an external investigation into the actions and behaviours of the supervisor, who is no longer employed by Kanodia Nominees. Kanodia Nominees has advised the FWO that matters relating to bullying were dealt with by Worksafe Victoria and issues relating to leave and discrimination were addressed by Fair Work Australia.

CONTRAVENTIONS

12. The FWO has determined, and Kanodia Nominees admits, that Kanodia Nominees contravened:
 - (a) Schedule 9 Part 4 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* because it paid one employee engaged under an AWA a base rate of pay that was less than the base rate of pay that would have been payable to the employee under the Award;
 - (b) section 45 of the Fair Work Act 2009 (the FW Act) by failing to comply with the following provisions of the Award:
 - i. Clause 20 and Schedule A – minimum base rates of pay;
 - ii. Clause 33 – overtime rates of pay;
 - iii. Clause 33.9 – provision of a paid rest break for employees who work more than 1.5 hours of overtime after completion of ordinary hours; and
 - iv. Clause 34.5 – payment of annual leave loading;
 - (c) section 535 of the FW Act and Regulations 3.33, 3.34 and 3.44 of the *Fair Work Regulations 2009* (the **FW Regulations**) by failing to make or keep an accurate record of gross and net payments made to an employee and overtime hours worked.

COMMENCEMENT OF UNDERTAKING

13. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Kanodia Nominees; and
 - (b) the FWO accepts the Undertaking so executed (as evidenced by the FWO's endorsement below)

(the Commencement Date).

UNDERTAKINGS

14. For the purposes of this Undertaking and for the purpose of section 715 of the FW Act, Kanodia Nominees undertakes to:

Rectification of underpayments

- (a) within 14 days of the Commencement Date:
- i. rectify in full the underpayments to the employees named in Appendix 1 for the amounts specified therein, or any other lesser amount which may remain outstanding as at the Commencement Date;
 - ii. take all reasonable steps to locate all employees in Appendix 1 who are no longer employed, and if those employees cannot be located within 14 days of the Commencement Date, pay the amounts owing to them to the Consolidated Revenue Fund of the Commonwealth;
 - iii. provide to the FWO evidence that the underpayment amounts have been rectified in full; and
 - iv. advise the FWO of the names of the employees in Appendix 1 for whom amounts have been paid to the to the Consolidated Revenue Fund.

Future Workplace Relations Compliance

- (b) take all reasonable steps to ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Award, FW Act and FW Regulations by developing systems and processes to promote ongoing compliance with those requirements;

Audit

- (c) by 30 September 2014, cause to have performed, at their own expense by either an accounting professional (for example, a Certified Practicing Accountant or Chartered Accountant) or employment law specialist, an audit (**Audit**) of the pay and conditions of employees of Kanodia Nominees for the period 1 April 2014 to 30 June 2014 (**Audit Period**) which covers Kanodia Nominees' compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Award, the FW Act and FW Regulations and including the company's compliance with employment record-keeping obligations;
- (d) provide a copy of the Audit to the FWO within seven days of the Audit being provided to Kanodia Nominees;
- (e) in the event that the Audit discloses contraventions of any applicable Commonwealth workplace laws and instruments, rectify all such contraventions with 21 days of the Audit being provided to Kanodia Nominees, including rectification of any and all underpayments to employees during the Audit Period; and
- (f) provide evidence of any action taken to rectify contraventions identified in the Audit, to the FWO within 28 days of the end of the Audit Period.

Fair Work Information Statement

- (g) Within 14 days of the Commencement Date, provide a copy of the Fair Work Information Statement to all current employees, in their preferred language where possible (as available on www.fairwork.gov.au);

Workplace notice

- (h) Within 14 days of the Commencement Date, display a notice at the workplace at 1/324 Albert Street, Brunswick in the form of Attachment C to this Undertaking (**Workplace Notice**);
- (i) Have the Workplace Notice translated into Vietnamese by a National Accreditation Authority for Translators and Interpreters (**NAATI**) accredited translator;
- (j) Ensure the Workplace Notice is displayed in English and Vietnamese, is at least A3 size and is clearly displayed in the workplace:
 - i. in a location to which all employees who work at that location have access; and
 - ii. in a manner which is reasonably capable of drawing the Workplace Notice to the general attention of all employees who work at the workplace (for example, by placement on a staff noticeboard);
- (k) Provide evidence to the FWO of the display of the Workplace Notice within 7 days after its distribution;

Apologies

- (l) Within 14 days of the Commencement Date:
 - i. provide a letter of apology to [REDACTED] in the form set out in Attachment A;
 - ii. provide a written translation in Vietnamese of the letter of apology to [REDACTED] by a NAATI accredited translator;
 - iii. provide a letter of apology to the Affected Employees (other than [REDACTED]), in the form set out in Attachment B;
 - iv. provide a written translation of the letter of apology to each Affected Employee, in their preferred language, by a NAATI accredited translator;

(the **Apologies**); and
- (m) Provide evidence of the Apologies to the FWO within 7 days of the Apologies being sent.

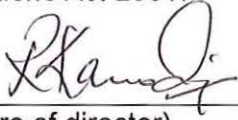
ACKNOWLEDGEMENTS

- 15. Kanodia Nominees 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.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 FWO may rely upon the acknowledgements and admissions made in this Undertaking 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 Kanodia Nominees;
- (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 Kanodia Nominees 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, Kanodia Nominees may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;
- (h) Kanodia Nominees must not, and must ensure that its respective officers, employees or agents, do not, make any statement, orally or in writing, or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with acknowledgements contained in this Undertaking.

EXECUTED AS AN UNDERTAKING

EXECUTED by Kanodia Nominees Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

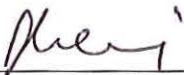
RAJNI KANODIA

(Name of director)

7th July 2014

(Date)


in the presence of:



(Signature of witness)

DHEERAJ AGARWAL

(Name of witness)



(Signature of director/company secretary)

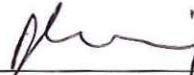
CHANDRA KANODIA

(Name of director/company secretary)

7th July 2014

(Date)

in the presence of:

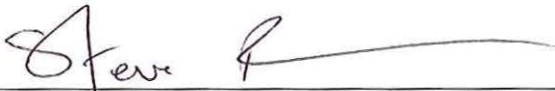


(Signature of witness)

DHEERAJ AGARWAL

(Name of witness)

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



Executive Director – Dispute Resolution and Compliance

(an authorised delegate pursuant to an instrument of delegation made pursuant to section 683 of the FW Act)

in the presence of:



(Signature of witness)

10 JULY 2014

(Date)

10 July 2014

(Name of Witness)

APPENDIX 1 – UNDERPAYMENT AMOUNTS

Employee name	Underpayment amount (gross)
██████████	\$1,780.93
██████████	\$233.49
██████████	\$252.78
██████████	\$4,896.93
██████████	\$241.79
██████████	\$191.03
██████████	\$1,773.11
██████████	\$457.19
██████████	\$191.60
██████████	\$106.12
██████████	\$1,730.07
██████████	\$762.19
██████████	\$347.99
██████████	\$361.38
██████████	\$1,232.01
██████████	\$1,384.62
██████████	\$3,787.95
TOTAL	\$19,731.18

ATTACHMENT A – LETTER OF APOLOGY

<Date>

[REDACTED]

<Employee Address>

Dear [REDACTED]

I am writing to apologise on behalf of Kanodia Nominees Pty Ltd, trading as Glendal Foods (**Glendal Foods**) for non-compliance with Commonwealth Workplace laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Glendal Foods contravened the *Fair Work Act 2009*. The contraventions were not deliberate and Glendal Foods has worked with the FWO to rectify the underpayments identified and take steps to ensure future compliance with workplace laws.

The enclosed Workplace Notice sets out the details of the contraventions and the outcomes of the FWO investigation. Glendal Foods expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

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

Yours sincerely

[**Director/Officer**]

**ATTACHMENT B – LETTER OF APOLOGY (ALL OTHER AFFECTED
EMPLOYEES)**

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Kanodia Nominees Pty Ltd, trading as Glendal Foods (**Glendal Foods**) for non-compliance with Commonwealth Workplace relations laws.

A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Glendal Foods contravened the *Fair Work Act 2009*. The contraventions were not deliberate and Glendal Foods has worked with the FWO to rectify the underpayments identified and take steps to ensure future compliance with workplace laws.

The enclosed Workplace Notice sets out the details of the contraventions and the outcomes of the FWO investigation.

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

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

Yours sincerely

[**Director/Officer**]

ATTACHMENT C: FORM OF WORKPLACE NOTICE

Contraventions of Fair Work Act by Kanodia Nominees Pty Ltd trading as Glendal Foods

The Office of the Fair Work Ombudsman (FWO) has completed an investigation into Kanodia Nominees Pty Ltd trading as Glendal Foods' (Glendal Foods) failure to comply with the *Fair Work Act 2009*.

As a result of that investigation the FWO determined that during the period 1 January 2010 to 28 August 2012 Glendal Foods did not pay employees correctly in accordance with the *Food, Beverage and Tobacco Manufacturing Award 2010*, including by failing to pay correct minimum base rates and overtime rates of pay, failing to provide paid rest break to employees who worked more than 1.5 hours of overtime after working their ordinary hours and failing to pay annual leave loading.

The investigation also found that Glendal Foods failed to make or keep correct records of hours worked and payments made.

The FWO found that some employees were underpaid as a result of these contraventions.

The contraventions were not deliberate and Glendal Foods has worked with the FWO to rectify the underpayments identified and take steps to ensure future compliance with workplace laws.

Glendal Foods has formally admitted to FWO that these contraventions occurred and has 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.

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

If you have queries or questions relating to your employment with Glendal Foods, please contact **[party to include contact details]**. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Fair Work Infoline on 13 13 94.