

ORIGINAL



Australian Government

# Fair Work OMBUDSMAN

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## **ENFORCEABLE UNDERTAKING**

Between

The Commonwealth of Australia

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

and

Chia Tung Development Corp Ltd  
(License Number: 30938460)

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
  - (a) Chia Tung Development Corp Ltd (License Number: 30938460) (**the Company**)for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Background**

2. The Company is a Taiwan based business which manufactures and exports animal feed mills and machinery.
3. The Company employs Filipino workers on subclass 457 visas and Chinese workers on subclass 400 visas to install the animal feed mills and silos at various project sites in Australia.
4. The Company currently has three (3) project sites in New South Wales (NSW):
  - (a) the Nutramix project site located at Narrabri;
  - (b) the MSM Milling project site located at Manildra; and
  - (c) the Manildra Group project site located at Bomaderry(Collectively, the **Project Sites**).
5. The Company employed:
  - (a) eight (8) Filipino employees (listed in **Attachment D**) during various periods from September 2014 to January 2015 to perform work at the Nutramix project site;
  - (b) two (2) additional Filipino employees (listed in **Attachment D**) during various periods from November 2014 to January 2015 to perform work at both the MSM Milling and Nutramix project sites;
  - (c) thirteen (13) Chinese employees (listed in **Attachment D**) from November 2014 to February 2015 to perform work at the Manildra Group project site;
  - (d) sixteen (16) additional Filipino employees (listed in **Attachment D**) during various periods from October 2014 to January 2015 at the Manildra Group project site; and
  - (e) four (4) additional Filipino employees (listed in **Attachment D**) during various periods from October 2014 to January 2015 at the Nutramix project site.(Collectively, the **Employees**).
6. Twenty (20) of the Employees are currently employed by the Company.
7. At the Project Sites, the Employees were/are employed variously as metal fabricators, welders and electricians on a full time basis. Their employment was/is covered by the FW Act and the *Building and Construction General On-site Award 2010* (the **Building Award**).
8. In January 2015, the FWO received ten (10) requests for assistance concerning the Company relating to unauthorised deductions, underpayment of penalty rates, non issue of payslips and non payment of notice in lieu of termination.
9. The FWO conducted an investigation into the requests for assistance and identified contraventions of the FW Act and the Building Award. The FWO determined that the Company:



- (a) made, from amounts payable to the Employees, unlawful deductions relating to visa processing fees, air tickets, insurance in Australia, food, accommodation and transportation;
  - (b) terminated the employment of the 8 of the Employees employed at the Nutramix project site without providing the appropriate notice, or payment in lieu, as required by the FW Act and their contracts of employment;
  - (c) did not pay accrued but untaken annual leave to twenty-three (23) of the Employees who were employed at the Project Sites, when their employment ended; and
  - (d) did not issue payslips within one day of payment to the Employees.
10. The Company voluntarily performed calculations of underpayments owed to the Employees. The total underpayment calculated by the Company was to the amount of \$873,044.49 less taxation.

### Contraventions

11. The FWO has determined, and the Company admits, that:

#### *At the Project Sites*

- (a) The Company contravened subsection 323(1) of the FW Act by failing to pay the Employees amounts payable in relation to the performance of work in full (as a result of making deductions not authorised by section 324 of the FW Act);
- (b) The Company contravened section 45 of the FW Act by failing to comply with the following provisions of the Building Award:
  - (i) Clause 36.2 by failing to pay the Employees overtime for time worked beyond the employees' ordinary time of work on Monday to Friday;
  - (ii) clause 37.1 by failing to pay the Employees penalty rates for overtime worked on a Saturday;
  - (iii) clause 37.5 by failing to pay the Employees penalty rates for overtime worked on a Sunday;
- (c) The Company contravened subsection 536(1) of the FW Act by failing to give a pay slip to the Employees within one working day of paying an amount to the Employees in relation to the performance of work;

#### *At the Nutramix project site*

- (d) In January 2015, the Company contravened subsection 44(1) of the FW Act by failing to comply with the following provisions of the National Employment Standards (NES):
  - (i) subsection 117(2) of the FW Act by failing to provide to eight of the Employees the minimum period of notice of termination or make payment in lieu; and
  - (ii) subsection 90(2) of the FW Act by failing to pay eight of the Employees all accrued but untaken annual leave at the end of employment;
- (e) In January 2015, the Company contravened a contractual entitlement arising under subsection 542(1) of the FW Act by failing to pay 8 of the Employees their contractual entitlement to notice of termination or payment in lieu thereof.

#### *At the MSM Milling project site*

- (f) In January 2015, the Company contravened subsection 44(1) of the FW Act by failing to comply with the following provisions of the NES:
  - (i) subsection 90(2) of the FW Act by failing to pay two of the Employees all

accrued but untaken annual leave at the end of employment.

### Commencement of Undertaking

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

### Undertakings

14. For the purposes of section 715 of the FW Act, the Company gives the following undertakings:

#### *Rectify Underpayments*

- (a) the Company undertakes to pay the amount of \$873,044.49 less taxation to the Employees who were underpaid as a result of the Contraventions referred to in paragraph 11 (**Affected Employees**), according to the proportions set out in **Attachment D**, within 28 days of the execution of the Commencement Date;
- (b) the Company undertakes that, in relation to any future requests for assistance received by the FWO of contraventions of Commonwealth workplace laws or instruments, the Company will:
  - (i) use all reasonable endeavours to resolve the complaint, including rectifying any identified contraventions, within 60 days of being notified by the FWO of the complaint;
  - (ii) where a request for assistance has been resolved, provide the FWO with evidence of resolution of the request; and
  - (iii) where a request for assistance has not been resolved by agreement with the individual within the period specified in subparagraph 14(b)(i), report to the FWO about the nature of the request and the steps taken to try to resolve it;

#### *Public and Workplace Notices*

- (c) the Company undertakes to:
  - (i) place a public notice in the Monday edition of the Daily Telegraph (**Public Notice**) within 28 days of the Commencement Date in the terms set out in **Attachment A**;
  - (ii) place a public notice in the Monday edition of the South Coast Register (**Public Notice**) within 28 Days of the Commencement Date in the terms set out in **Attachment A**;
  - (iii) within 28 days of the Commencement Date, place a notice (**Workplace Notice**) at each of the Project Sites in a location which is accessible to all persons employed at the Project Sites in the terms set out in **Attachment A**, such notice to remain in place for a total period of 7 consecutive days;
  - (iv) provide a copy of the Workplace Notice and photographic evidence of its display to the FWO within 7 days of the display of the notice;

#### *Apology*

- (d) the Company undertakes to:
  - (i) within 7 days of the Commencement Date, send an apology to each of the



Affected Employees the terms set out in **Attachment B**, signed on behalf of the Company (**Apology**); and

- (ii) provide a copy of each Apology sent by the Company to the FWO within 7 days of sending such Apology;

*Certificate of Employment*

(e) the Company undertakes to:

- (i) within 7 days of the Commencement Date, send a Certificate of Employment to each of the Affected Employees referred to in paragraphs 5(a) & 5(b) containing the terms set out in **Attachment C**, signed on behalf of the Company (**Certificate of Employment**); and
- (ii) provide a copy of each Certificate of Employment sent by the Company to the FWO within 7 days of sending such document;

*FWO My Account Registration*

(f) the Company undertakes to:

- (i) within 7 days of the Commencement Date, register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and complete the profile, minimum pay rates and Award options;
- (ii) within 14 days of the Commencement Date, provide to the FWO their respective 'My Account' registration numbers; and
- (iii) within 21 days of the Commencement Date, demonstrate to a FWO Fair Work Inspector via [www.fairwork.gov.au](http://www.fairwork.gov.au) 'My Account' knowledge of the current Building Award minimum and penalty rates of pay;

*Hotline and/or point of contact*

(g) the Company undertakes to:

- (i) within 14 days of the Commencement Date, set up a hotline and/or nominate a point of contact in Australia to deal with workplace enquires from their respective employees;
- (ii) within 21 days of the Commencement Date, provide the details of the hotline and/or point of contact to all of their respective employees in writing (**Written Communication**);
- (iii) provide evidence of the Written Communication to the FWO within 7 days of sending the Written Communication;

*Future Workplace Relations Compliance*

(h) the Company undertakes to:

- (i) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Building Award;
- (ii) implement systems and processes to ensure ongoing compliance with the obligations referred to in paragraph 14(h)(i) above, including obligations relating to rates of pay, loadings, penalties, taxation, superannuation, record keeping and safety net contractual entitlements; and
- (iii) provide to the FWO, within 28 days of the Commencement Date, details of systems and processes implemented in satisfaction of the undertakings in paragraphs 14 (h)(i) and (ii) above;



*Self-audits and Reporting*

- (i) the Company undertakes:
- (i) to have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at the Company's expense, an audit (**Audit**) of compliance with Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Building Award, in respect of safety net contractual entitlements, conditions and record keeping in relation to the Company's current and future projects concerning all employees, according to the following schedule:
    - i. with the current projects, an Audit of the first complete pay cycle following 1 April 2015, which is to be finalised within 28 days of the last day of the pay cycle;
    - ii. with any future projects within 18 months of the Commencement Date, an Audit of the first complete pay cycle following the commencement of such project, which is to be finalised within 28 days of the last day of the pay cycle; and
    - iii. an Audit of the first complete pay cycle six (6) months from the commencement of such project, which is to be finalised within 28 days of the last day of the pay cycle;
  - (ii) within 7 days of the commencement of all future projects within 18 months of the Commencement Date, to provide the FWO with details of the site contact and the proposed period of engagement;
  - (iii) within 7 days of the completion of each Audit, to provide the FWO with details of the methodology used to conduct the Audit and a copy of the certified audit report;
  - (iv) in the event that an Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, to rectify all such contraventions within 14 days of receipt of the Audit results;
  - (v) to make available to the FWO if requested, the records used to conduct the audit; and
  - (vi) to provide evidence of rectification of all contraventions disclosed by an Audit to the FWO within 14 days of rectification;

*Workplace Relations Training*

- (j) the Company undertakes to:
- (i) implement within 90 days of the Commencement Date, a training program (**Training**) so that all persons responsible, either directly or indirectly, for the Company's compliance with Commonwealth workplace laws and instruments and all company Directors, are made aware of the Company's obligations under Commonwealth workplace laws and instruments;
  - (ii) provide training material to participants in the Training including material on:
    - i. compliance with the FW Act, Fair Work Regulations, and the Building Award;
    - ii. employer obligations in respect to record keeping and pay slips;
    - iii. options available to persons to make complaints and FWO contact information; and
    - iv. how to access FWO resources to calculate rates of pay;
  - (iii) 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;

- (iv) provide the training materials to be used in the Training to the FWO no later than 7 days before the Training is to be conducted;
- (v) within 7 days of the Training being conducted, provide the FWO with evidence of attendance at the Training (including the name and position of all attendees and the date on which the Training was attended); and
- (vi) for a period of 2 years following the Commencement Date, ensure that Training is conducted in the manner prescribed by paragraphs 14(j)(i) to (v) above in relation to any person who acquires responsibilities that include human resource, recruitment or payroll functions for or on behalf of the Company, within 28 days of the person acquiring such responsibilities.

*Subsidiary Companies & Transferees*

- (k) the Company undertakes to take all reasonable steps to:
  - (i) ensure that:
    - i. Chiatung Australia Pty Ltd (ACN: 161 318 654) (**Chiatung Australia**);
    - ii. Innovation Hi-Tech Australia Pty Ltd (ACN: 600 568 045) (**Innovation Hi-Tech**); and
    - iii. all associated entities (within the meaning of section 50AAA of the *Corporations Act 2001 (Cth)*) (**Associated Entities**),comply at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Building Award;
  - (ii) monitor the compliance by Chiatung Australia, Innovation Hi-Tech and the Associated Entities with applicable Commonwealth workplace laws and instruments; and
  - (iii) ensure that any identified contraventions of such laws or instruments are rectified by Chiatung Australia, Innovation Hi-Tech or the relevant Associated Entities;
- (l) the Company undertakes to, on a 6 monthly basis for a period of 2 years following the Commencement Date, report to the FWO in writing the steps taken by the Company to comply with the obligations in subparagraph 14(k) above;
- (m) the Company undertakes that in the event that the Company sells or otherwise transfers some or all of its business to another entity (**Transferee**) (whether Chiatung Australia, Innovation Hi-Tech, an Associated Entity or otherwise) within 2 years of the Commencement Date, to:
  - (i) provide a copy of this Undertaking to the Transferee prior to the sale or transfer; and
  - (ii) provide to the FWO, within 7 days of the sale or transfer of business, details of the sale or transfer, including the identity of the Transferee and the business functions or operations that have been sold or transferred.

*Broader community workplace relations education*

- (n) the Company undertakes to:
  - (i) make a donation of \$10,000.00 within 60 days of the Commencement Date to 'Philippine-Australian Community Services Inc' (PACSI) to fund education about workplace rights under the FW Act; and



- (ii) provide proof of the payments referred to in subparagraph 14(n)(i) above to the FWO within 7 days of it being made.

### Acknowledgements

15. The Company 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](http://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 law or instruments by the Company;
  - (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 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) FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against the Company in relation to any future contraventions of Commonwealth workplace laws;
  - (h) the Company must not, and must ensure that their respective officers, agents and employees do not, make any statements, orally or in writing or otherwise, which convey or imply anything inconsistent with the admissions and acknowledgements contained in this Undertaking; and
  - (i) consistent with section 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.





**Executed as an undertaking**


EXECUTED by Chia Tung Development Corp Ltd (License Number: 30938460) in accordance with section 127(1) of the *Corporations Act 2001*:

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


Michael Lin  
\_\_\_\_\_  
(Name of director)

24-03-2015  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)


SIMON JAMIESON  
\_\_\_\_\_  
(Name of witness)

  
\_\_\_\_\_  
(Signature of director/company secretary)

JUDY HUANG  
\_\_\_\_\_  
(Name of director/company secretary)


24-03-2015  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

SIMON JAMIESON  
\_\_\_\_\_  
(Name of witness)

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

  
\_\_\_\_\_  
Michael Campbell  
Deputy Fair Work Ombudsman  
Operations  
Delegate for the FAIR WORK OMBUDSMAN

30/3/15  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

LOUISE CATO  
\_\_\_\_\_  
(Name of Witness)

## Attachment A – Form of Public and Workplace Notice

### Contraventions of the *Fair Work Act 2009* (FW Act) and the *Building and Construction General On-site Award 2010* (the Building Award) by Chia Tung Development Corp Ltd (the Company)

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

The Company is a Taiwan based company which manufactures and exports animal feed mills and machineries. The Company employed Chinese and Filipino workers on subclass 457 & 400 visas to install the animal feed mills at various project sites in Australia. No previous contraventions of Commonwealth workplace laws have been determined against the Company.

The FWO has found that the Company contravened the FW Act and the Building Award by:

1. failing to pay wages in full (by making unauthorised deductions);
2. failing to pay employees the applicable overtime rate for additional hours worked;
3. failing to pay employees the applicable penalty rate for Saturday work performed;
4. failing to pay employees the applicable penalty rate for Sunday work performed;
5. failing to pay employees their annual leave entitlements in accordance with the National Employment Standard (NES);
6. failing to pay employees the appropriate notice in lieu of termination in accordance with the NES; and
7. failing to pay employees their Safety Net Contractual entitlements in relation to notice of termination.

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](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions and prevent them from occurring in the future, including rectifying the underpayments to affected employees and changing workplace practices.

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 workplace relations laws in the future.

If you worked for the Company and have queries or questions relating to your employment, please contact \_\_\_\_\_ in the first instance on telephone \_\_\_\_\_. 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**

**address**

Day Month Year

Dear ,

I am writing to apologise on behalf of Chia Tung Development Corp 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 (FW Act)* and the *Building and Construction General On-site Award 2010 (the Building Award)*.

The FWO has found that the Company contravened the FW Act and the Building Award by:

1. failing to pay wages in full (by making unauthorised deductions);
2. failing to pay employees the applicable overtime rate for additional hours worked;
3. failing to pay employees the applicable penalty rate for Saturday work performed;
4. failing to pay employees the applicable penalty rate for Sunday work performed;
5. failing to pay employees their annual leave entitlements in accordance with the National Employment Standard (**NES**);
6. failing to pay employees the appropriate notice in lieu of termination in accordance with the NES; and
7. failing to pay employees their Safety Net Contractual entitlements in relation to notice of termination.

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

The Company is taking steps to remedy the contraventions, including paying \$ (less taxation) that you have been underpaid.

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

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

Should you have any questions, please contact \_\_\_\_\_ in the first instance on telephone \_\_\_\_\_ or by email \_\_\_\_\_.

Yours sincerely,

**Mr Michael Lin**  
**Director – Chia Tung Development Corp Ltd**

**Attachment C – Certificate of Employment**

**To Whom It May Concern**

\_\_\_\_\_ Employee \_\_\_\_\_ was engaged as a \_\_\_\_\_ Occupation \_\_\_\_\_ for the period between \_\_\_\_\_ and \_\_\_\_\_ at \_\_\_\_\_ Site name \_\_\_\_\_.

Chia Tung Development Corp Ltd sponsored \_\_\_\_\_ the employee \_\_\_\_\_ on a subclass 457 visa to perform such work in Australia.

Yours sincerely,

**Mr Michael Lin**  
**Director – Chia Tung Development Corp Ltd**

**Attachment D – Employees and amounts owed**

8 workers referred to in paragraph 5(a)

<b>Employees</b>	<b>Gross amount owed in Australian dollars</b>
	\$30,066.92
	\$30,148.76
	\$30,148.76
	\$30,148.76
	\$25,133.70
	\$16,669.10
	\$16,750.94
	\$10,577.47

2 workers referred to in paragraph 5(b)

<b>Employees</b>	<b>Gross amount owed in Australian dollars</b>
	\$10,958.75
	\$7,863.90

13 workers referred to in paragraph 5(c)

<b>Employees</b>	<b>Gross amount owed in Australian dollars</b>
	\$31,322.63
	\$31,322.63
	\$30,977.50
	\$30,977.50
	\$30,977.50
	\$30,977.50
	\$30,980.23
	\$30,977.50
	\$30,977.50
	\$25,733.38
	\$25,733.38
	\$25,733.38
	\$25,733.38

16 workers referred to in paragraph 5(d)

<b>Employees</b>	<b>Gross amount owed in Australian dollars</b>
	\$24,644.41
	\$24,848.34
	\$25,694.88
	\$24,644.41
	\$16,183.69
	\$14,134.48
	\$15,995.14
	\$14,284.71
	\$14,545.19
	\$18,376.33
	\$19,719.79
	\$2,326.68
	\$2,801.69
	\$2,595.94
	\$2,920.44
	\$2,187.68

4 workers referred to in paragraph 5(e)

<b>Employees</b>	<b>Gross amount owed in Australian dollars</b>
	\$20,351.84
	\$8,549.56
	\$8,549.56
	\$18,798.66