



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

D-Studio Architects Pty Ltd (ACN 096 506 008)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by D-Studio Architects Pty Ltd (ACN 096 506 008) (**D-Studio Architects**) 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 D-Studio Architects; and
 - b. the FWO accepts the Undertaking so executed (as evidenced by the FWO's endorsement below).

Background

3. D-Studio Architects operate an architectural practice based in Sydney.
4. D-Studio Architects employed [REDACTED] (**the Complainant**) from 9 October 2013 to 2 May 2014 (the **Employment Period**).
5. The Complainant was in the final stages of a Masters of Architecture at a Sydney university when interviewed and then engaged by D-Studio Architects' Director Simon Tso.
6. The Complainant's duties for D-Studio Architects included architectural drawing, consulting with clients and regulators and conducting site visits.
7. D-Studio Architects employed the Complainant from 9 October 2013 to 8 November 2013 as an unpaid worker. The Complainant worked four days per week during this unpaid work period.
8. D-Studio Architects continued to employ the Complainant from 9 November 2013 to 2 May 2014 as a paid worker on a rate of \$12.00 an hour. The Complainant worked five days per week during this paid work period.
9. During the Employment Period, the terms and conditions of the Complainant's employment were governed by the FW Act and the *Architects Award 2010* (**Architects Award**). For the purposes of the transitional provisions of Schedule A to the Architects Award, the applicable transitional instrument is the National Minimum Wage Order (**NMWO**).
10. The Complainant was classified under the Architects Award as a Student of Architecture for the period 9 October 2013 to 18 March 2014 and a Graduate of Architecture for the period 19 March 2014 to 2 May 2014.
11. As a result of its investigation, the FWO determined that D-Studio Architects had contravened provisions of the FW Act and the Architects Award. In particular, the FWO found that D-Studio Architects had underpaid the Complainant a total amount of \$6,830.17 for work performed by failing to pay the correct minimum hourly rate of pay in accordance with the Architects Award.

Contraventions

12. The FWO has determined, and D-Studio Architects admits, that D-Studio Architects Contravened section 45 of the FW Act by failing to comply with the following provisions of the Architects Award:
 - a. Clause A.2.5 of Schedule A of the Architects Award by failing to pay the correct minimum base hourly rate of pay for the Student of Architecture classification during the period 9 October 2013 to 18 March 2014.

- b. Clause A.2.5 of Schedule A of the Architects Award by failing to pay the correct minimum base hourly rate of pay for the Graduate of Architecture classification during the period 19 March 2014 to 2 May 2014.
13. The FWO has determined, and D-Studio Architects admits, that D-Studio Architects also contravened:
- a. Section 323(1) of the FW Act by failing to pay the Complainant amounts payable in relation to the performance of work for the period 9 October 2013 to 8 November 2013.
 - b. Section 536(1) of the FW Act by failing to issue pay slips within one working day of paying amounts in relation to the performance of work.
 - c. Section 90(2) of the FW Act by failing to pay to the Complainant amounts in relation to annual leave on termination.

(collectively the **Contraventions**)

Undertakings

14. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, D-Studio Architects undertakes to:

Rectify Underpayments

- a. pay the Complainant the amount of \$6,830.17 less applicable taxation required by law arising from the Contraventions in accordance with the following repayment schedule upon the commencement of this Undertaking:
 - i. payment of \$2,000 less taxation within 14 days of the execution of this Undertaking;
 - ii. payment of \$2,000 less taxation within 28 days of the execution of this Undertaking;
 - iii. payment of \$2,000 less taxation within 42 days of the execution of this Undertaking; and
 - iv. payment of \$830.17 less taxation within 56 days of the execution of this Undertaking.
- b. provide evidence of each payment to the FWO within 7 days of the payment being made.

Donation

- c. pay the amount of \$500.00 to not for profit organisation Interns Australia (<https://internsaustralia.nationbuilder.com/donate>) within 21 days of the execution of this Undertaking;
 - i. within 28 days of the execution of this Undertaking, provide evidence of payment to the FWO.

Future Workplace Relations Compliance

- d. ensure compliance at all times and in all respects with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the Architects Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
- e. complete all education courses designed for employers available on the FWO online learning centre via www.fairwork.gov.au; and
- f. provide to the FWO, within 56 days of the execution of the Undertaking, written detail

of the systems and processes implemented and evidence gathered in satisfaction of the Undertaking in paragraph 14 (c) and (d) above designed to ensure such ongoing compliance.

FWO My Account Registration

- g. within seven (7) days of the execution of this undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options;
 - i. within 14 days of the execution of the Undertaking provide to the FWO the 'My Account' registration number; and
 - ii. within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' current Architects Award minimum pay rates.

Self-audit and Reporting

- h. by 31 March 2015, cause to have performed by either an accounting professional (for example, a Certified Practising Accountant or Chartered Accountant) or employment law specialist (at the expense of at D-Studio Architects), an audit (Audit) of the pay and conditions of employees of D-Studio Architects for the period 1 July 2014 to 31 December 2014 (Audit Period) which covers D-Studio Architects' compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Architects Award, the FW Act and *Fair Work Regulations 2009* and including D-Studio Architects' compliance with employment record-keeping obligations;
- i. provide a copy of the Audit to the FWO within seven days of the Audit being provided to D-Studio Architects.
- j. in the event the Audit discloses contraventions of any applicable Commonwealth of Australia workplace law and instrument, rectify all such contraventions within 14 days of the Audit's findings being provided to D-Studio Architects including rectification of any and all underpayments to employees; and
- k. provide evidence of rectification of the contraventions to the FWO within 28 days of the Audit's findings being provided to D-Studio Architects.

Acknowledgements

15. D-Studio Architects and Mr Simon Tso 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.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 D-Studio Architects;
- 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 D-Studio Architects 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, D-Studio Architects may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- h. D-Studio Architects 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 D-Studio Architects in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

Simon Tso

(Name of director)

(Name of director/company secretary)

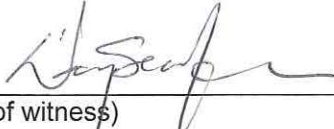
4/12/14

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

Shing K WANG

(Name of witness)

(Name of witness)

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



Steven Ronson

9 DECEMBER 2014

(Date)

Executive Director

Dispute Resolution and Compliance

For Natalie James, Fair Work Ombudsman, as her delegate subject to the instrument of delegation made pursuant to section 683 of the FW Act and executed by Nicholas Paul Wilson on 30 January 2013.

in the presence of:



(Signature of witness)

P.A MORGAN

(Name of Witness)

(Signature of witness)

(Name of Witness)