

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Norman Harris Bright (ABN 55 036 978 311)

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Norman Harris Bright Trading as Norm Bright Agencies (ABN 55 036 978 311) (**Sole Trader**) 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 Norman Harris Bright Trading as Norm Bright Agencies (ABN 55 036 978 311) (**the Employer**) and
 - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking Norman Harris Bright Trading as Norm Bright Agencies undertakes to assume the obligations set out below.

Background

4. The Employer operates as a sole trader providing fencing and mustering services within the Northern Territory and remote communities. Mr Bright engaged 11 Indigenous workers to conduct mustering work at Manyallaluk Community (Eva Valley Station) Katherine in the Northern Territory.
5. Between 14 October 2014 and 16 November 2014 the Employees listed in Appendix 'A' to this Undertaking were employed by the Employer on a casual basis mustering buffalo.
6. During the period 14/10/2014 to 16/11/14 (employment period), the indigenous workers conditions of employment were governed by;
 - (a) the *Fair Work Act 2009* (the Act); and
 - (b) the Pastoral Award 2010 MA000035
7. In February 2015 the FWO commenced an investigation of the Employer following a request for assistance in relation to the alleged underpayment and non-payment of wages.
8. As a result of its investigation, the FWO determined that the Employer had contravened provisions of the FW Act and the Modern Award.

Contraventions

9. The FWO has determined, and Norman Harris Bright admits, that Norman Bright Agencies contravened:
 - (a) Clause 28.1 of the Pastoral Award 2010 by failing to pay the hourly base rate for time worked;
 - (b) Clause 10.4(a) of the Pastoral Award 2010, by failing to engage a casual employee and pay them by the hour. Failed to inform the employees on engagement that they were employed as a casual. Failed to inform whom the employee is employed by, their hours of work, their classification level and their rate of pay;
 - (c) Clause 10.4(c) of the Pastoral Award 2010, by failing to pay a casual employee other than a casual pieceworker an hourly rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%;
 - (d) Clause 10.4(e) of the Pastoral Award 2010, by failing to pay Casual employee at the termination of each engagement and failed to have agreed weekly or fortnightly payments;
 - (e) Clause 10.4(f) of the Pastoral Award 2010, by failing to pay a minimum payment of three hours' work at the appropriate rate on each occasion a casual employee is required to attend for work;
 - (f) Clause 22.4 of the Pastoral Award, 2010 states, by failing to make superannuation contributions to a superannuation fund for the benefit of an employee.
 - (g) Subsection 536(1) of the Fair Work Act 2009; by failing to provide a pay slip to each of its employees within one working day of paying an amount to the employee in relation to the performance of work;
 - (h) Subsection 535(1) of the Fair Work Act 2009, by failing to keep for 7 years, employee records of the kind prescribed by the regulations in relation to each of its employees;
 - (i) Subsection 324(1) of the Fair Work Act 2009, by making deductions that were not authorised in writing by the employees.
10. As a result of the Contraventions, Mr Norman Harris Bright trading as Norm Bright Agencies underpaid gross amounts as detailed below;

Undertakings

11. For the purposes of section 715 of the FW Act, Norman Harris Bright, trading as Norm Bright Agencies agrees to;
 - Rectify Underpayments*
 - (a) pay to the Employees the amounts arising from the Contraventions as stipulated in Appendix 'A' of this Undertaking less taxation within 21 days of the execution of this Undertaking.
 - (i) within 21 days of the execution of this Undertaking, provide evidence to the FWO of the outstanding amounts paid in full.
 - (b) rectify any additional wage entitlement claims received from former employees to the satisfaction of the FWO.

Letters of Apology

- (c) Forward a letter of apology to all employees as worded in Appendix 'B' of this Undertaking confirming that the remedy payment has been made in full.
- (d) Forward a letter of apology to the Aboriginal Elders at Manyallaluk Community (Eva Valley Station) Katherine in the Northern Territory as worded in Appendix 'C' of this Undertaking confirming remedy payment has been made in full.

Public Notice

- (e) Place a public notice in the Wednesday edition of the Katherine Times (Public Notice) within 28 days of the FWO publishing a media release on its website in respect of this Undertaking in the terms set out in Appendix 'D':
 - (i) bears the name of Norman Harris Bright trading as Norm Bright Agencies;
 - (ii) appears within the first 7 pages of the relevant edition;
 - (iii) measures at least 15cms high x 7.4cms wide; and
 - (iv) is in the form of Attachment C to this Undertaking;
- (f) Provide a copy of the Public Notice to the FWO within seven days of the publication of the Public Notice;

Future Allegations of Contraventions

- (g) Where contacted by current or former employees not covered by this Undertaking alleging that their lawful entitlements have not been met, Norman Harris Bright agrees to:
 - (i) notify the FWO within 7 days of receiving the allegation;
 - (ii) take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act has occurred, and where such contraventions are found, take immediate steps to rectify those contraventions;
 - (iii) within 7 days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other issues identified have been resolved; and
 - (iv) should a decision be made not to rectify an issue raised by an allegation, notify the FWO within 7 days of this decision and the reasons for not rectifying.

Acknowledgements


12. Norman Harris Bright, trading as Norm Bright Agencies acknowledges that:

- 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);
- the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- 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;

- 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 Norman Harris Bright , trading as Norm Bright Agencies;
- 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;
- if the FWO considers that Norman Harris Bright , trading as Norm Bright Agencies 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;
- consistent with section 715(3) of the FW Act, Norman Harris Bright , trading as Norm Bright Agencies may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Norman Harris Bright, trading as Norm Bright Agencies (ABN 55 036 978 311) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

NORMAN HARRIS BRIGHT

(Name of director)

(Name of director/company secretary)


14 OCT 2015

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)


(Signature of witness)

Todd Cripps

(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
Executive Director
Dispute Resolution and Compliance

20 OCTOBER 2015

(Date)

as delegate for the Fair Work Ombudsman
subject to an instrument of delegation made
pursuant to section 683 of the FW Act

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of Witness)

APPENDIX 'A'

[REDACTED]	\$227.12
[REDACTED]	\$550.08
[REDACTED]	\$1,138.68
[REDACTED]	\$280.92
[REDACTED]	\$359.16
[REDACTED]	\$1,173.96
[REDACTED]	\$344.16
[REDACTED]	\$458.88
[REDACTED]	\$929.52
[REDACTED]	\$948.60

APPENDIX 'B'

<insert date>

<insert name of employee>

Dear xxxx

The purpose of this letter is to apologise on behalf of Norman Harris Bright, trading as Norm Bright Agencies for non-compliance with Commonwealth of Australia Workplace Relations Laws.

A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Norman Harris Bright, trading as Norm Bright Agencies had contravened the Fair Work Act 2009 (FW Act) by failing to pay its employees the following entitlements under the Pastoral Award 2010:

- Applicable base rate for time worked;
- Applicable pay to a casual employee other than a casual pieceworker an hourly rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%;
- Applicable pay to casual employee at the termination of each engagement and agreed weekly or fortnightly payments;
- Applicable minimum payment of three hours' work at the appropriate rate on each occasion a casual employee is required to attend for work;
- Applicable superannuation contributions to a superannuation fund for the benefit of an employee.

As a result of the Contraventions, Mr Norman Harris Bright trading as Norm Bright Agencies underpaid a gross amounts as detailed below;

Regrettably, the investigation determined that you were affected by the above contraventions. Mr Norman Harris Bright trading as Norm Bright Agencies is taking steps to remedy the contraventions, including by rectifying <insert amount> less taxation that you have been underpaid.

You will/ receive this payment on <insert date> and will be provided with payment advice (payslip) regarding the payment.

Mr Norman Harris Bright trading as Norm Bright Agencies has formally admitted to the FWO that it did not comply with its obligations under Commonwealth of Australia Workplace Relations Laws and have entered into an Enforceable Undertaking under the FW Act with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

Mr Norman Harris Bright trading as Norm Bright Agencies expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact Mr Norman Harris Bright trading as Norm Bright Agencies on <insert contact>.

Yours sincerely

Mr Norm Bright

APPENDIX 'C'

<insert date>

LETTER OF APOLOGY - MANYALLALUK COMMUNITY (Eva Valley Station) Katherine Northern Territory.

The purpose of this letter is to apologise on behalf of Norman Harris Bright, trading as Norm Bright Agencies for non-compliance with Commonwealth of Australia Workplace Relations Laws.

A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Norman Harris Bright, trading as Norm Bright Agencies had contravened the Fair Work Act 2009 (FW Act) by failing to pay its employees the following entitlements under the Pastoral Award 2010:

- Applicable base rate for time worked;
- Applicable pay to a casual employee other than a casual pieceworker an hourly rate of 1/38th of the weekly rate prescribed for the class of work performed, plus 25%;
- Applicable pay to casual employee at the termination of each engagement and agreed weekly or fortnightly payments;
- Applicable minimum payment of three hours' work at the appropriate rate on each occasion a casual employee is required to attend for work;
- Applicable superannuation contributions to a superannuation fund for the benefit of an employee.

As a result of the Contraventions, Mr Norman Harris Bright trading as Norm Bright Agencies underpaid a number of workers from the Manyallaluk Community (Eva Valley Station) Katherine Northern Territory.

Mr Norman Harris Bright trading as Norm Bright Agencies has formally admitted to the FWO that it did not comply with its obligations under Commonwealth of Australia Workplace Relations Laws and have entered into an Enforceable Undertaking under the FW Act with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

Mr Norman Harris Bright trading as Norm Bright Agencies expresses its sincere regret and apologises to the community for failing to comply with its lawful obligations.

Should you have any questions, please contact Mr Norman Harris Bright trading as Norm Bright Agencies on <insert contact>.

Yours sincerely

Mr Norm Bright

APPENDIX 'D'

FORM OF WORKPLACE NOTICE

Underpayment of employees of Mr Norman Harris Bright trading as Norm Bright Agencies

The Office of the Fair Work Ombudsman (**FWO**) has investigated allegations that Mr Norman Harris Bright trading as Norm Bright Agencies had contravened the *Fair Work Act 2009 (FW Act)* between 2008 and 2011.

The FWO investigation identified that Mr Norman Harris Bright trading as Norm Bright Agencies failed to pay employees their correct entitlements due to them under the relevant Award.

Mr Norman Harris Bright trading as Norm Bright Agencies has rectified the underpayments.

Mr Norman Harris Bright trading as Norm Bright Agencies has formally admitted to the FWO that it contravened workplace laws by failing to pay the affected employee.

An Enforceable Undertaking under the FW Act has been given by Mr Norman Harris Bright trading as Norm Bright Agencies to the FWO to reflect these formal admissions (that Enforceable Undertaking is available at www.fairwork.gov.au).

Mr Norman Harris Bright trading as Norm Bright Agencies expresses his sincere regret and apologises to current and former employees for failing to comply with his lawful obligations.

Furthermore, Mr Norman Harris Bright trading as Norm Bright Agencies commits to current and prospective employees that such conduct will not occur again and that he will comply with Commonwealth of Australia workplace relations laws in the future.

Mr Norman Harris Bright trading as Norm Bright Agencies