



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Shine-Lead Pty Ltd (ABN: 59612347001)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (FWO) by:
 - (a) Shine-Lead Pty Ltd (Shine-Lead);for the purposes of section 715 of the *Fair Work Act 2009* (FW Act).

Background

2. Shine-Lead was incorporated on 11 May 2016.
3. Mr Wang Lin is the Director of Shine-Lead.
4. Shine-Lead operates a labour hire business.
5. On 29 August 2016, as a result of an anonymous allegation of underpayment of workers at Pure Gold Holdings Pty Ltd (ACN 128847325) trading as Yuan's Fresh Meat, the FWO commenced an investigation to assess compliance with Commonwealth workplace relations laws.
6. From July 2016, Shine-Lead supplied workers to Yuan's Fresh Meat, a poultry processing business located in the Perth suburb of Canning Vale. The workers supplied by Shine-Lead are involved in performing duties connected with poultry and meat processing.
7. As the employees of Shine-Lead are principally engaged in processing poultry, their terms and conditions of employment are covered by the FW Act and the *Poultry Processing Award 2010* [MA000074] (the Award).
8. Shine-Lead engaged its employees as either ongoing full-time or ongoing part-time.
9. The FWO's investigation found that 19 employees of Shine-Lead were underpaid their entitlements during the period 10 July 2016 to 20 October 2016.
10. Of the 19 employees, 15 were identified as holding various visa types including working holiday visas, student visas and a bridging visa.
11. The FWO classified the 19 employees who were underpaid entitlements as Process Employees Level 1. Their main duties included boning and/or packing poultry. All of the employees were adults for the purposes of the Award.
12. Shine-Lead underpaid its employees by failing to pay the correct rates of pay for ordinary hours, the penalty rates for work performed on Sunday, and non-payment of wages for times when an employee would have normally worked but was absent from his or her employment due to a public holiday in accordance with the Award.
13. Shine Lead paid its employees a flat hourly rate of either \$18.00 or \$19.50 gross for all hours worked.
14. From 1 July 2016 adult employees employed on a permanent full-time or permanent part-time basis, as Process Employee Level 1 workers, under the Award, were entitled to be paid \$18.30 for ordinary hours of employment and \$32.03 for ordinary hours worked on a Sunday.

Contraventions

15. The FWO has determined, and Shine-Lead admits, that Shine-Lead contravened:

Minimum Wages

- (a) section 45 of the FW Act (contravening a term of a modern award) by failing to pay a number of permanent part-time employees the minimum wage for ordinary hours in accordance with clause 12.2 of the Award;
- (b) section 45 of the FW Act (contravening a term of a modern award) by failing to pay a number of permanent full-time employees the minimum wage for ordinary hours in accordance with clause 16.1 of the Award;

Sunday Penalty Rates

- (c) section 45 of the FW Act (contravening a term of a modern award) by failing to pay employees penalty rates for time worked on Sundays in accordance with Clause 24.5 (b) of the Award;

Public Holidays

- (d) section 44 of the FW Act (contravening the National Employment Standards) as provided for by section 116 of the FW Act (payment for absence on public holiday) and in accordance with clause 30.1 of the Award. This occurred as Shine-Lead failed to pay employees who were absent from work on a day or part-day that was a designated public holiday and who would have normally have been rostered on to work had it not been for the public holiday.

(collectively the **Contraventions**)

16. As a result of the Contraventions, 19 employees have been underpaid a total of \$22,137.13 gross. See **Attachment A** for the identified amounts for each employee.

Commencement of Undertaking

17. This Undertaking comes into effect when:

- (a) the Undertaking is executed by Shine-Lead; and
- (b) the FWO accepts the Undertaking so executed.

18. Upon the commencement of this Undertaking, Shine-Lead undertakes to assume the obligations set out below.

Undertakings

19. For the purposes of section 715 of the FW Act, Shine-Lead Pty Ltd undertakes to:

Rectify Underpayments

- (a) pay to the Employees the total amounts arising from the Contraventions as stipulated in **Attachment A** of this Undertaking less taxation within 21 days of the execution of this Undertaking.
 - (i) provide proof of such payment to the FWO on the day the payments are made.

FWO My Account Registration

- (b) register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and award options;

- (i) within 14 days of the execution of this undertaking, provide to the FWO the 'My Account' registration number.

Future Workplace Relations Compliance

- (c) ensure compliance at all times and in all respects with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the FW Act and the *Poultry Processing Award 2010*, by developing systems and processes to ensure ongoing compliance with those requirements. Without limitation, such systems and processes relating to:
 - (i) ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - (ii) ensuring employees are correctly classified under the appropriate instrument, taking into account the employees duties, skill level and qualifications;
 - (iii) issuing payslips to employees within 1 working day of payment; and
 - (iv) keeping accurate and complete records to ensure employees receive their correct wages and entitlements.
- (d) where contacted by current or former employees not named in this Undertaking alleging that their lawful entitlements have not been met, Shine-Lead agrees to:
 - (i) notify the FWO within 7 days of receiving the allegation detailing the nature and content of the allegation;
 - (ii) within 28 days of receiving the allegation, take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act has occurred, and where such contraventions are found, rectify those contraventions within 14 days;
 - (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 have been resolved;
 - (iv) should a decision be made not to rectify an allegation raised, notify the FWO why the allegation could not be resolved within 28 days of receipt of the allegation.

Workplace Notice

- (e) place a notice within the workplace referred to in paragraph 5 of this Undertaking which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking in the terms set out in **Attachment B**;
- (f) provide a copy of the Workplace Notice and written details of how the Workplace Notice has been displayed at the workplace referred to in paragraph 4 of this Undertaking to the FWO within seven (7) days of display of the notice;
- (g) display the Workplace Notice at the workplace referred to in paragraph 4 of this Undertaking for a continuous period of at least 28 days.

Broader Community Workplace Relations Education

- (h) make a donation of two thousand dollars (**\$2,000.00**) to the Employment Law Centre of Western Australia (Inc) (<http://elcwa.org.au>) (ABN 36 365 876 841) and provide proof of the payment to the FWO within 21 days of the execution of the Undertaking.

Self-audits and Reporting

- (i) have completed by an accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of Shine-Lead), audits of Shine-Lead's compliance with all Commonwealth workplace laws and instruments, including the *Poultry Processing Award 2010 (the Audit)*, relating to the pay and conditions of employment for all employees for all complete pay periods falling in the months of July and August 2017;
- (j) the audit is to be finalised by 30 September 2017;
- (k) provide to the FWO by 7 October 2017, details of the methodology used to conduct the Audit and the outcome of the Audit;
- (l) in the event the Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions and provide evidence of any rectification by 21 October 2017, including rectification of any and all underpayments to employees.

Workplace relations training

- (m) Ensure that all persons responsible for management, payroll and human resources functions complete the educational activities on the FWO website, as set out in **Attachment C**;
- (n) For each person required to complete the education activities, enter all of the required information in Attachment B and provide copies of the completed attachment to the FWO within 3 months of the execution of this Undertaking;
- (o) For a period of 12 months from the execution of this Undertaking, ensure that the educational activities are completed by any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial, payroll and human resources functions responsibilities; and
- (p) For any persons taking on any of these functions, complete Attachment C and submit to the FWO within 28 days of taking responsibility for these functions.

No Inconsistent Statements

20. Shine Lead:

- (a) must not; and
- (b) must ensure that each of their officers, employees or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

Acknowledgements

21. Shine-Lead 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 (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 Shine-Lead Pty Ltd;
- (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 Shine-Lead 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, Shine-Lead may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Shine-Lead Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

wang Lin

(Name of director)

(Name of director/company secretary)

27 MARCH 2017

(Date)

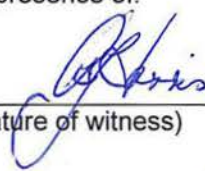
(Date)

in the presence of:



(Signature of witness)

in the presence of:



(Signature of witness)

RUSSELL COLE

(Name of witness)

ANTHONY HARRIS

(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
Delegate for the FAIR WORK OMBUDSMAN

4 APRIL 2017

(Date)

in the presence of:



(Signature of witness)

LISA-MARIE OLIVER

(Name of Witness)

Attachment A – Underpaid Employees

EMPLOYEE	GROSS AMOUNTS OWED	VISA TYPE HELD	IMMIGRATION STATUS
<div style="display: flex; justify-content: space-between; align-items: center;"> ████ ████ ████ </div>	\$1,581.00	TZ417	Lawful Onshore
	\$1,598.54	TU500	Lawful Onshore
	\$1,571.85	TZ417	Lawful Onshore
	\$1,598.54	TU500	Lawful Onshore
	\$1,764.59	TU570	Lawful Onshore
	\$1,598.54	WC030	Lawful Onshore
	\$1,787.47	TU572	Lawful Onshore
	\$1,781.82	TU570	Lawful Onshore
	\$1,643.81	TU572	Lawful Onshore
	\$732.86	BB155	Lawful Onshore
	\$743.54		
	\$743.54		
	\$743.54		
	\$740.49	UC457	Lawful Onshore
	\$699.88		
	\$705.21	WC030	Lawful Onshore
	\$694.54	BV552	Lawful Onshore
	\$705.21	VB885	Lawful Onshore
	\$702.16	BS801	Lawful Onshore

Attachment B – Workplace Notice

Contravention of Fair Work Act by Shine-Lead Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Shine-Lead Pty Ltd contravened the *Fair Work Act 2009* by:

- failing to pay the correct rate of pay and associated penalties to employees as provided for under the *Poultry Processing Award 2010* during the period 10 July 2016 to 20 October 2016.

Shine-Lead Pty Ltd 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) committing to a number of measures to remedy the contraventions, including:

- making a donation of \$2,000.00 to the Employment Law Centre of Western Australia (Inc);
- undertaking workplace relations training and conducting future audits, to ensure employees are paid correct rates of pay; and
- rectifying the underpayment of wages made to employees during the period 10 July 2016 to 20 October 2016.

Shine-Lead Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Shine-Lead Pty Ltd 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 have general questions regarding conditions of employment, please refer to the FWO website at www.fairwork.gov.au or call the Infoline on 13 13 94.

Attachment C

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ (Enter name and position in the organisation)

have accessed the following tools and resources:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date completed: _____
- Hiring employees date completed: _____
- Managing performance date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Other _____ date completed: _____
- Other _____ date completed: _____

Read information on the following:

- **Pay Overview**
 - Minimum wages Page Ref No. _____ date completed: _____
 - Penalty rates & allowances Page Ref No. _____ date completed: _____

- **Leave Overview**
 - Annual leave Page Ref No. _____ date completed: _____
 - Sick & carer's leave Page Ref No. _____ date completed: _____

- **Ending Employment Overview**
 - Notice & final pay Page Ref No. _____ date completed: _____
 - Unfair dismissal Page Ref No. _____ date completed: _____

- ***Employee Entitlements Overview***

- Types of employees Page Ref No. _____ date completed: _____

- National Employment Standards Page Ref No. _____ date completed: _____

- ***Awards & Agreements Overview***

- Awards Page Ref No. _____ date completed: _____

- ***Other educational material utilised***

Date and signature