



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Veracity Property Services Pty Ltd (ABN 20122756165)

Section 715 ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by:
 - a) Veracity Property Services Pty Ltd
ABN 20122756165
ACN 122756165
16 Emu Way, NARRE WARREN SOUTH VIC 3805

BACKGROUND

2. In June 2017, the FWO self-initiated a compliance activity (**Activity**) into the contract cleaning supply chain procured by the Department of Education (**DET**) at Victorian Government schools (**Schools**).
3. Metropolitan and regional schools were randomly selected to be part of the Activity to assess whether the cleaning companies engaged by the Schools were compliant with the FW Act.
4. Up until 1 July 2018, Schools engaged cleaning companies from a pre-approved panel of cleaning companies. This panel of cleaning companies was managed by the DET.
5. One cleaning company subcontracted its services to Veracity Property Pty Ltd (**Company**) to clean a Victorian metropolitan School.
6. In August 2017, the Victorian Government announced a new area-based model for school cleaning commences on 1 July 2018. These changes will result in the reduction of more than 100 cleaning contracts currently held to eight selected companies.
7. As a result of these changes, the Company's contract with the cleaning company will expire on 9 June 2018.
8. The Company operates within the cleaning industry as defined in the *Cleaning Services Award 2010* (MA000022) (**Modern Award**).
9. The Company comprises of Sandun Hewa Dewage as the Director, and workers who perform cleaning services at the Victorian metropolitan school. The Company engaged five workers during the period 1 July 2017 to 30 September 2017 (**Assessment Period**), however due to the available documentation, assessments were completed for two of the workers (the **Workers**).
10. The Company engaged the Workers as independent contractors (contract *for* services), however the FWO has determined they should more appropriately have been engaged as employees (contract *of* services).
11. The FWO determined that at all relevant times the Modern Award governed the Workers' terms and conditions of employment.
12. During the Assessment Period, the Workers performed basic cleaning duties at the Victorian metropolitan school. It is not a requirement of the role to hold a qualification in the industry. On this basis, the FWO determined that the Workers' classification under the Modern Award was a Cleaning Services Employee Level 1.
13. The FWO determined that the Workers' status of employment was part-time.

14. The Workers were temporary visa holders on Bridging Visa A (subclass 010) and Temporary Work (Skilled) visa (subclass 457).

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

- a) Section 45 of the FW Act
Contravening a Modern Award
- b) Section 535 of the FW Act
Employer obligations in relation to employee records
- c) Clause 12.4(a) of the Modern Award
Part-time agreement in writing
- d) Clause 12.4 (b)(iii) of the Modern Award
Part-time loading
- e) Clause 16.1 of the Modern Award
Minimum hourly rates
- f) Clause 24.2(e) of the Modern Award
Minimum Engagement
- g) Clause 27.1(a) of the Modern Award
Afternoon shift work penalty

16. The underpayments arising as a result of these contraventions totals **\$1604.59 gross**.

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

17. This Undertaking comes into effect when:

- a) the Undertaking is executed by the Company; and
- b) the FWO accepts the Undertaking so executed.

ENFORCEABLE UNDERTAKING

18. Upon the execution of this Undertaking, and for the purposes of section 715 of the FW Act, the Company undertakes the following:

Rectify underpayments

- a) Within fourteen days of the execution of this Undertaking, rectify the contraventions as identified in paragraph 15(a) to 15(g) by paying the Workers the amounts as listed in **Attachment A** and within seven days provide evidence to the FWO that the payments were made;

- b) If either of the Workers cannot be located, within 28 days of the execution of this Undertaking, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. The Company will complete the required documents supplied by the FWO.

FWO My Account Registration

- c) Within 21 days of the execution of this undertaking:
- (i) register with the FWO My account portal at www.fairwork.gov.au/register and fully complete the My account profile, including information about the business and award/agreement coverage, through this portal;
 - (ii) using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My account;
 - (iii) provide to the FWO the 'My account' Customer Registration Number (CRN).
- d) Within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an officer of the FWO knowledge of the use of My account, including saving information within My account from the website and relevant FWO online tools. You must also demonstrate how your use of this saved information will contribute toward your compliance with workplace obligations including payment to employees of the correct minimum pay rates and penalty rates.
- e) Within 28 days of the execution of the undertaking, subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription:
- (i) Subscribe to the FWO's 'Subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>
 - (ii) Choose the relevant State/s and industry, selecting information updates on the following options:
 - (i) pay rates and entitlements;
 - (ii) new products and resources;
 - (iii) about us and our work;
 - (iv) updates in my industry; and
 - (v) tailored information that's relevant to me.

Workplace relations systems and processes

- f) Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Modern Award.
- g) Provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph 15 above. 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 leave entitlements;
 - (ii) Issuing payslips to employees within 1 working day of payment;
 - (iii) Keeping accurate and complete records to ensure employees receive their correct wages and entitlements;
 - (iv) Ensuring workers are correctly classified as employees or independent contractors depending on the nature of their engagement and the work they perform.

Workplace relations training

- h) 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 D
 - (i) For each person required to complete the education activities, enter all of the required information in Attachment D and provide copies of the completed attachment to the FWO within 3 months of the execution of this Undertaking;
 - (ii) For a period of two years 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
 - (iii) For any persons taking on any of these functions, complete Attachment D and submit to the FWO within 28 days of taking responsibility for these functions.

Apology

- i) Send a letter of apology (**Apology Letter**) to the Workers named in **Attachment A** in the form of **Attachment B** to this Undertaking and provide copies to the FWO within 14 days of the execution of this Undertaking.

Audit Activity

- j) The Audit will verify the pay and conditions of all employees and include two full pay periods, include a range of classifications and employment types (full time, part time and casual).
- k) Will ensure that the following requirements are met:
 - (i) 21 days prior to the Audit due date, as specified below, the Company will provide for the FWO's approval, details of the methodology to be used to conduct the Audit;
 - (ii) The Audit for two pay periods between 3 September 2018 and 30 September 2018 is to be finalised and a report on the outcomes of the audit is to be provided to the FWO by 31 October 2018. The report must include details of the Company's compliance or non-compliance with the Modern Award and FW Act provisions referred to in clauses 16(a) to 16(e) as above.
- l) In the event the Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of each of the finalisation dates specified in subclause 18(k)(ii) above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO.
- m) If requested, provide the FWO with all records and documents used to conduct the audit, including any working documents, within 7 days of such a request.

Matters notified to the FWO

- n) Where the FWO receives a request for assistance regarding non-compliance with a Modern Award or registered agreement, the Employer and its officers undertake to fully co-operate with the FWO to ensure compliance. This includes:
 - Providing all requested employment records and other documentation to the FWO relevant to the request for assistance;
 - Participating fully in any subsequent requests for information relevant to the request for assistance, including participation in any formal records of interview; and
 - Co-operation in FWO's processes employed to resolve the request for assistance.

Public Notice

- o) Place a public notice (**Public Notice**) in a weekly edition of the *Progress Leader*

within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this undertaking in the terms set out in **Attachment C**. The Public Notice must:

- I. Bear the name of the Company;
 - II. Bear the logo (if any) of the Company;
 - III. Must be at least 10 cm x 8 cm;
 - IV. Is in the form of Attachment C
- p) Provide a copy of the Public Notice to the FWO within seven days of the publication of the Public Notice;

Workplace Notice

- q) Within 14 days of the execution of this Undertaking, cause to be displayed within all the workplaces serviced or operated by Veracity Property Services Pty Ltd, a notice in the form of **Attachment C** to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display and the location of the notice in the workplace/s:
- r) Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
- i. In locations which all workers who work at Veracity Property Services Pty Ltd have access;
 - ii. In a manner which is reasonably capable of drawing attention of all workers to the Workplace Notice (for example, by placement on a staff noticeboard);
 - iii. For a period of 28 continuous days
- s) At the end of the period of 28 days provide confirmation to the FWO that the Workplace Notice/s has/have been continuously displayed for the required period;

Record Keeping

- t) Within 30 days provide to the FWO a copy of time and wage records and payslips for one Cleaning Services Employee Level 1 for the first full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth workplace laws.

Contractors Self-Audit

- u) Within three months of the execution of the Undertaking:
- I. Complete an assessment of each person currently engaged by the Company as an independent contractor to determine if they were and continue to be lawfully engaged as an independent contractor

- (Contractor Self-Audit). Such audit to be completed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at the Company's expense;
- II. Where a person has been misclassified and it is determined that they should have been/are an employee, determine whether they have been paid in accordance with the relevant Modern Award and have received their minimum entitlements under the FW Act, including but not limited to entitlements to minimum pay, penalty rates and leave entitlements;
 - III. rectify any contraventions of Commonwealth workplace laws that have been identified including any underpayments and provide evidence to the FWO; and
 - IV. Provide details of the methodology and a report on the outcome of the Contractor Self-Audit to the FWO.

No Inconsistent Statements

19. The Company:

- a) must not; and
- b) must ensure that each of its 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

20. The Company acknowledges that:

- a) The FWO may:
 - I. 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);
 - II. the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - III. 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;
 - IV. 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 Veracity Property Services Pty Ltd;
- b) 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;

- c) If the FWO considers that the Company 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;
- d) 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.

USE IF BEING EXECUTED BY THE FWO

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

FAIR WORK OMBUDSMAN

(Date)

in the presence of:

(Signature of witness)

(Name of Witness)

Attachment A- Schedule of underpayment to Workers

Workers	Amount Owed	Assessment Period
████████████████████	\$888.04 (gross)	1 July 2017- 30 September 2017
████████████████████	\$716.55 (gross)	1 July 2017- 30 September 2017
Total	\$1604.59 (gross)	

Attachment B – Letter of Apology

Dear <name>

I am writing to apologise on behalf of Veracity Property Services Pty Ltd (**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 should have employed you as a part-time employee with entitlements under the *Cleaning Services Award 2010 (Modern Award)*, instead of an independent contractor. The Company has contravened the Modern Award and the *Fair Work Act 2009 (FW Act)* by:

- Misclassifying a contract of services (i.e.: an employment relationship) as a contract for services (i.e.an independent contracting relationship);
- Failing to keep employee records
- Failing to provide a part-time agreement in writing;
- Failing to pay part-time loading;
- Failing to pay afternoon shift work penalty; and
- Failing to provide minimum engagement periods

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

The Company is taking steps to remedy the contraventions and will repay you any amounts identified as owing. You will be provided with a payslip regarding any payments.

The Company has formally admitted to the FWO that the Company did not comply with its obligations under Commonwealth workplace laws and has entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the FWO website at 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 express their sincere regret and apologies to you for failing to comply with its lawful obligations.

Should you have any questions, please contact Sandun Hewa Dewage on [REDACTED]

Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Yours sincerely,

<signature>

Sandun Hewa Dewage
Director

Attachment C – Form of Public and Workplace Notice

1 FORM OF PUBLIC NOTICE and WORKPLACE NOTICE

Contravention of Fair Work Act by Veracity Property Services Pty Ltd (Company)

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that the Company contravened the *Fair Work Act 2009* and the Cleaning Services Award 2010 by:

- Misclassifying a contract of services (i.e.: an employment relationship) as a contract for services (i.e.: an independent contracting relationship);
- Failing to keep employee records
- Failing to provide a part-time agreement in writing;
- Failing to pay part-time loading;
- Failing to pay afternoon shift work penalty; and
- Failing to provide minimum engagement period

The Company has formally admitted to 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 by rectifying the underpayments to the affected employees.

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 Sandun Hewa Dewage on [REDACTED]. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment D

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

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

have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date completed: _____
- Hiring employees date completed: _____
- Managing performance date completed: _____
- Managing employees date completed: _____
- Record-keeping and pay slips date completed: _____
- Diversity and discrimination date completed: _____
- Workplace flexibility date completed: _____

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

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Introduction to the Pay and Conditions Tool date completed: _____
- PACT – Award classifications date completed: _____
- PACT – Pay summary date completed: _____
- PACT – Penalty rates date completed: _____
- PACT – Allowances date completed: _____
- PACT – Award Coverage date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Contractors and employees – what's the difference? date completed: _____

Read information on the following:

- *Pay Overview*

○ Minimum wages
Date completed: _____ Page Ref No. _____

○ Penalty rates & allowances
Date completed: _____ Page Ref No. _____

• ***Leave Overview***

○ Annual leave
Date completed: _____ Page Ref No. _____

○ Sick & carer's leave
Date completed: _____ Page Ref No. _____

• ***Ending Employment Overview***

○ Notice & final pay
Date completed: _____ Page Ref No. _____

○ Unfair dismissal
Date completed: _____ Page Ref No. _____

• ***Employee Entitlements Overview***

○ Types of employees
Date completed: _____ Page Ref No. _____

○ National Employment Standards
Date completed: _____ Page Ref No. _____

- **Awards & Agreements Overview**

- Awards Page Ref No. _____
Date completed: _____

- Date and signature: _____