



Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

dated [7th May] 2010

Given by

Ajlan Pty Ltd (ACN 080 502 147)

To

**The Commonwealth of Australia
(as represented by the Fair Work Ombudsman)**

concerning

- a breach of subsection 182(1) of the *Workplace Relations 1996*
- breaches of subclauses 18(v) and 18(xx) of the notional agreement preserving the terms of the *Cleaning and Building Services Contracts (State) Award*

ENFORCEABLE UNDERTAKING

THIS ENFORCEABLE UNDERTAKING is given to the **Commonwealth of Australia** (as represented by the **Fair Work Ombudsman (FWO)**) by Ajlan Pty Ltd (ACN 080 502 147), pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**).

BACKGROUND:

- A. Ajlan Pty Ltd (ACN 080 502 147), carries on a business within the contract cleaning industry. Employees of Ajlan Pty Ltd are employed to provide cleaning services at a piggery located in Corowa in New South Wales.
- B. Ajlan Pty Ltd trades as Austral Cleaning Service and has provided cleaning services since at least 2005. Since 27 March 2006, Ajlan Pty Ltd was bound by the notional agreement preserving the terms of the *Cleaning and Building Services Contracts (State) Award (NAPSA)*.
- C. Since at least 26 March 2006, Ajlan Pty Ltd incorrectly paid employees pursuant to the terms of the *Breeding and Raising Pigs, & c, Employees (State) Award (Piggery Award)* rather than the terms of the NAPSA.
- D. In paying rates of pay under the Piggery Award rather than prescribed rates under the terms of the NAPSA, Ajlan Pty Ltd breached:
 - (i) subsection 182(1) of the *Workplace Relations Act 1996 (WR Act)* in failing to pay the relevant hourly rate of pay to cleaning staff as prescribed under the Australian Pay and Classification Scale derived from the terms of the *Cleaning and Building Services Contracts (State) Award (APCS)*;
 - (ii) subclause 18(v) the NAPSA in failing to pay employees a rate of double time and one half of their APCS rate for time worked on prescribed public holidays, with a minimum of three hours payment; and
 - (iii) subclause 18(xx) of the NAPSA in failing to pay employees an offensive cleaning allowance.
- E. The outstanding underpayment for employees for the period 27 March 2006 to 26 June 2009 has been assessed to be \$52,574.73.

- F. Ajlan Pty Ltd paid the correct basic hourly rate of pay under the NAPSA to existing employees from 13 January 2009 onwards. Ajlan Pty Ltd has paid the offensive cleaning allowance under the NAPSA to existing employees from 21 April 2009 onwards.
- G. Ajlan Pty Ltd has paid back \$39,435.69 as at 9 April 2010 and undertakes herein to rectify the outstanding \$13,139.04 by the end of June 2010.
- H. **Ajlan Pty Ltd (ACN 080 502 147)**, admit the contraventions set out in paragraphs D(i) to D(iii) above, and gives the Enforceable Undertaking set out below to the FWO in relation to those contraventions.

1. ENFORCEABLE UNDERTAKING

Ajlan Pty Ltd (ACN 080 502 147), NOW UNDERTAKE that in consideration of the FWO agreeing not to apply for any orders under Division 2 of Part 4-1 of the FW Act in relation to the contraventions set out above (as evidenced by the FWO's acceptance of this Enforceable Undertaking endorsed at the foot hereof), **Ajlan Pty Ltd (ACN 080 502 147)**, will:

- (a) ensure that it complies at all times and in all respects with the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth);
- (b) pay an outstanding amount of \$15,403.73 owed in underpayments no later than 30 June 2010 and provide proof of such payment to the FWO no later than 1 July 2010;
- (c) write and send to all affected cleaning employees, within 14 days of executing this document, a letter of apology in the form of Attachment A to this Enforceable Undertaking, signed by its Chief Executive Officers;
- (d) conduct a paid meeting for existing employees who were affected by the underpayment. At the meeting Ajlan will explain the rectification of the underpayment. Ajlan will invite a representative of the FWO to attend the meeting to explain the Enforceable Undertaking.
- (e) within 28 days of executing this document (or so soon afterwards as is available), cause to be placed in two weekly editions of the "Cowra Free Press" a notice which:
 - (i) bears the company names of Ajlan Pty Ltd;

- (ii) bears the business name of Austral Cleaning Service;
 - (iii) bears the logo (if any) of Ajlan Pty Ltd and/or Austral Cleaning Service;
 - (iv) appears on either of pages 3, 5 or 7 of the relevant edition;
 - (v) measures at least 15cms high x 7.4cms wide; and
 - (vi) is in the form of Attachment B to this Enforceable Undertaking;
- (f) ensure that each member of staff with responsibility for human resources management complete a quality Workplace Relations compliance programme or training, conducted by an accredited training body or as otherwise agreed in advance with the FWO, within three (3) months of executing this Undertaking;
- (g) report to the FWO at the end of each financial year, for the next 3 years, regarding the following matters:
- (i) the wage rates and entitlements paid to each employee employed over the reporting period;
 - (ii) the classification (under the NAPSA or applicable industrial instrument) and employment status (casual, part-time, fulltime, trainee) of each employee employed over the reporting period; and
 - (iii) details of any proactive compliance measures implemented over the reporting period (for example attendance at relevant training or self auditing activities).

2. ADMISSIONS, ACKNOWLEDGEMENT and NO INCONSISTENT STATEMENTS

- (a) Ajlan Pty Ltd:
- (i) admits that it contravened Commonwealth workplace laws as set out in paragraph D of the Background; and
 - (ii) acknowledges that there was:
 - a. sufficient evidence to commence; and
 - b. public interest which would have justified the FWO commencing,civil penalty proceedings in respect of the admitted contraventions.
- (b) Ajlan Pty Ltd:
- (i) must not; and

(ii) 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 either the admission or the acknowledgement in paragraph 2(a) (above).

3. COMMENCEMENT OF ENFORCEABLE UNDERTAKING

This Enforceable Undertaking comes into effect when:

- (a) the Enforceable Undertaking is executed by Ajlan Pty Ltd, and
- (b) the FWO accepts the Enforceable Undertaking so executed.

4. FURTHER ACKNOWLEDGEMENTS

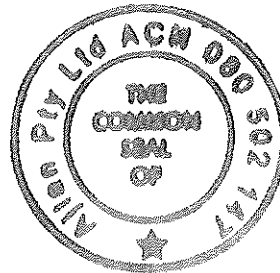
Ajlan Pty Ltd (ACN 080 502 147) acknowledge that:

- (a) this Enforceable Undertaking is given it and accepted by the FWO pursuant to section 715 of the FW Act;
- (b) the FWO may:
 - (i) make this Enforceable Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fwo.gov.au;
 - (ii) release a copy of this Enforceable Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this Enforceable Undertaking;
 - (iv) from time to time, publicly refer to the Enforceable Undertaking (and any of the Attachments hereto) and its terms;
 - (v) rely upon the admissions made by Ajlan Pty Ltd in paragraph E above in respect of decision making concerning any future non-compliance with Ajlan Pty Ltd workplace relations obligations.

- (c) consistent with the Note to section 715(4) of the FW Act, this Enforceable Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein; and
- (d) if Ajlan Pty Ltd contravene any of the terms of this Enforceable Undertaking:
 - (i) 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; and
 - (ii) this Enforceable Undertaking may be provided to the Court as evidence of the admissions made by Ajlan Pty Ltd in paragraph H above, and also in respect of the question of costs.

Dated: [7th May] 2010

THE COMMON SEAL of Ajlan Pty Ltd (ACN 080 502 147) was hereunto affixed by the authority of the Board of Directors in the presence of:



A.J. Norman
(Signature of Secretary/Director)

A.J. Norman
(Signature of Director)

Alan James Norman
(Name of Secretary/Director in Full)

Alan James Norman
(Name of Director in Full)

ACCEPTED by the FAIR WORK OMBUDSMAN

[Signature]
Dated: [8th May] 2010

[Signature]
Nicholas P. Wilson
Fair Work Ombudsman

NICHOLAS WILSON
FAIR WORK OMBUDSMAN

ATTACHMENT A

Address & Date

Dear [Name]

Apology – Failure to pay wages pursuant to the notional agreement preserving the terms of the *Cleaning and Building Services Contracts (State) Award*

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO), (formerly, the Office of the Workplace Ombudsman) into allegations that Ajlan Pty Ltd t/as Austral Cleaning Service (the Company) contravened the *Workplace Relations Act 1996* and the notional agreement preserving the terms of the *Cleaning and Building Services Contracts (State) Award (NAPSA)*, by failing to pay you your correct rates of pay.

The Company has formally admitted that it did underpay you, as reflected in an Enforceable Undertaking given by the Company to the FWO. A copy of that Enforceable Undertaking is enclosed with this letter.

The Company has also back paid you [xxxx] which was owed to you as a result of the Company's failure to pay you your correct rate of pay. **OR** The Company has also agreed to back pay you [xxxx] which is owed to you as a result of the Company's failure to pay you your correct rate of pay. This amount will be paid to you on [date].

The Company expresses its sincere regret and apology to you for failing to pay you your correct entitlements. Furthermore, the Company gives you its commitment that this will not occur again.

The Company wishes you well in your future endeavours.

Yours sincerely

Signature - CEO [Company name]

ATTACHMENT D

The Office of the Fair Work Ombudsman (**FWO**), (formerly, the Office of the Workplace Ombudsman) investigated allegations that Ajlan Pty Ltd t/as Austral Cleaning Service (**the Company**) breached workplace laws. The allegations were that the Company paid incorrect rates of pay to employees between the period of 27 March 2006 and 26 June 2009.

The Company admits that it did in fact breach workplace laws by:

- failing to pay employees the correct hourly rate of pay for time worked;
- failing to pay employees the correct rate of pay for time worked on public holidays; and
- failing to pay employees their entitlement to an offensive cleaning allowance.

Ajlan Pty Ltd has formally admitted that it engaged in this conduct, as reflected in an Enforceable Undertaking given by the Company to the FWO that is available at www.fwo.gov.au.

As CEO of the Company, I express our sincere regret and apologies for engaging in this unlawful conduct. Furthermore, the Company gives its commitment that such conduct will not occur again and that they will comply with Commonwealth workplace relations laws, including the *Fair Work Act 2009*.