



Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

Dated [.....] 2010- 20th

Given by

Ascot Haulage (NT) Pty Ltd ABN 42 007 769 986

and

Northern Territory Freight Services Pty Ltd ABN 54 007 765 979

To

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

concerning

- breaches of sections 234(2), 235(1) and (2), 337(8) and 341 of the *Workplace Relations Act 1996* (as in force after 27 March 2006) (WR Act) and Regulations 19.4 and 19.12 of the *Workplace Relations Regulations 1996* (as in force after 27 March 2006) (WR Regulations), including by operation of section 728 of the WR Act

ENFORCEABLE UNDERTAKING

THIS ENFORCEABLE UNDERTAKING is given to the Commonwealth of Australia (as represented by the Fair Work Ombudsman (FWO)) by:

- Ascot Haulage (NT) Pty Ltd ABN 42 007 769 986 of 30-32 Francis Street, Port Adelaide, South Australia (Ascot); and
- Northern Territory Freight Services Pty Ltd ABN 54 007 765 979 of 30-32 Francis Street, Port Adelaide, South Australia (NTFS)

pursuant to section 715 of the *Fair Work Act 2009* (Cth) (FW Act).

BACKGROUND:

- A. Ascot and NTFS was and is carrying on a transport and logistical services business in South Australia and the Northern Territory offering a complete freight collection and transport service primarily the transportation of bulk liquid products (milk, crude oil, water etc) and distribution and transportation of general goods freight.
- B. Either Ascot or NTFS was the employer of employees who conducted transportation operations in the Cooper Basin (Moomba) District of South Australia (the Moomba Drivers).
- C. NTFS and Ascot had the same managers; there was little if any practical distinction between the two entities in terms of the management of the operations.
- D. If NTFS was the employer, then to the extent Ascot engaged in any relevant conduct, it did so as agent of NTFS. To the extent Ascot was the employer, NTFS was knowingly concerned in the conduct of Ascot and was a person who was involved in that conduct within the meaning of section 728 of the WR Act.
- E. A vote by the Moomba Drivers was held concerning the Ascot Haulage (NT) Pty Ltd – Cooper Basin Enterprise Agreement 2006 (the **Collective Agreement**) on 12 May 2006 (the **Vote**). The Vote was conducted by management calling up the 3 Moomba Drivers who were off-site to ask for their vote whilst they were conducting transport operations in remote locations, and by a ballot of the remainder of the Moomba Drivers who were present on site.

- F. Ascot/NTFS took some steps towards informing the Moomba Drivers about the content of the Collective Agreement prior to the Vote. For example, it appears that Ascot/NTFS provided the Moomba Drivers with reasonable access to copies of the Information Statement at least 7 days before the vote on 12 May 2006. However, Ascot/NTFS did not distribute the consolidated, final version of the Collective Agreement to the Moomba Drivers at any time, and in any event not before 12 May 2006. Nor did Ascot/NTFS make the Collective Agreement readily accessible to the Moomba Drivers.
- G. The Collective Agreement was subsequently lodged by Ascot/NTFS with the Employment Advocate on 23 May 2006.
- H. By reason of the above matters Ascot/NTFS contravened:
- a. section 337(8) of the WR Act in May 2006, by:
 - i. lodging the Collective Agreement with the Employment Advocate; and
 - ii. failing to comply with the requirement in section 337(1) of the WR Act to provide to the relevant employees ready access to the Collective Agreement in the 7 days before it was approved;
 - b. section 341 of the WR Act in May 2006 by lodging with the Employment Advocate the Collective Agreement in circumstances where it had not been approved in accordance with section 340 of the WR Act, in that section Ascot/NTFS had failed to provide the Moomba Drivers with a reasonable opportunity to approve the Collective Agreement prior to its lodgement (as required under s.340(2)).
- I. The Moomba Drivers worked pursuant to a rostering system of 14 days on (of which 2 days involved travel time to and from the work site), and 12 days off.
- J. By reference to clause 32.2 of the Collective Agreement, Ascot/NTFS purported to provide for the forfeiture and discharge of 14 days of the Moomba Drivers' annual leave entitlement each 12 month period. Ascot/NTFS did not obtain a prior written request from the Moomba Drivers to authorise the arrangement.
- K. On or around 20 August 2006, Ascot/NTFS made lump sum payments to a number of Moomba Drivers in respect of annual leave entitlements which they had accrued to that point. Thereafter, Ascot/NTFS paid the Moomba Drivers a sum on a weekly basis in respect of such accruals. A number of the Moomba Drivers agreed verbally to this arrangement.

- L. At least from 20 August 2006, Ascot/NTFS failed to properly credit the Moomba Drivers with their annual leave accruals.
- M. Ascot/NTFS failed to properly pay the Moomba Drivers for annual leave accruals on termination of their employment.
- N. By reason of the matters in paragraphs J, K, L and M above Ascot/NTFS contravened:
 - a. Section 318 on and after 20 August 2006 by adopting a practice of cashing out half of the Moomba Drivers' annual leave accruals instead of crediting annual leave accruals in accordance with section 234 of the WR Act contrary to the requirements of section 234 of the WR Act;
 - b. Section 318 by adopting a practice of payment for annual leave accruals that did not pay the Moomba Drivers for each hour of their untaken accrued annual leave upon termination of their employment in accordance with section 235(2).
- O. Ascot/NTFS failed to make and keep accurate records relating to its employees containing details of the accrual of annual leave, annual leave taken by its employees and the employees' entitlement to annual leave from time to time.
- P. By reason of the matters in paragraph O, Ascot/NTFS contravened Regulation 19.4 and 19.12 of the WR Regulations.
- Q. Ascot and NTFS jointly and severally admit the contraventions set out in paragraphs H, N and P above, and give the Enforceable Undertaking set out below to the FWO in relation to those contraventions.

1. ENFORCEABLE UNDERTAKING

Ascot and NTFS jointly and severally **NOW UNDERTAKE** that in consideration of the FWO agreeing not to commence proceedings in relation to the contraventions set out above (as evidenced by the FWO's acceptance of this Enforceable Undertaking endorsed at the foot hereof), Ascot and NTFS will:

- (a) each ensure that they comply at all times and in all respects with the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth);
- (b) within 60 days of the date of the execution of the Enforceable Undertaking pay each of the Moomba Drivers the sums identified at Attachment A;

- (c) within 60 days of the date of the execution of the Enforceable Undertaking conduct a paid meeting for all existing Moomba Drivers, to explain this Enforceable Undertaking. Ascot and NTFS will invite a representative from the FWO to attend the meeting and explain this Enforceable Undertaking;
- (d) write (in the form approved by FWO at Attachment B) to all its existing Moomba Drivers advising them of the adjustments to the annual leave accruals and the cancellation of the cash out arrangements;
- (e) within 60 days of the date of the execution of the Enforceable Undertaking provide to the FWO documentary proof to the satisfaction of the FWO of the undertakings set out at 1(b) and 1(d);
- (f) not continue to give effect to any arrangements for the cashing out of annual leave, other than in accordance with s93(2) of the Fair Work Act 2009 (Cth) and/or any other applicable Commonwealth laws;
- (g) on and from the date of the execution of the Enforceable Undertaking credit annual leave in accordance with the requirements of the National Employment Standards as prescribed in the Fair Work Act 2009;
- (h) within 60 days of the date of the execution of the Enforceable Undertaking, have the HR Manager and each General Manager employed across Australia within the Group Operations attend not less than 3 hours training conducted by an accredited training body concerning minimum employee entitlements and agreement-making under Commonwealth workplace laws;
- (i) provide a written report to the FWO, after 90 days and not more than 180 days commencing from the date of executing the Enforceable Undertaking identifying the steps they have taken to ensure on-going compliance with Part 2-2 Division 6 Annual Leave of the FW Act (or comparable provisions in any legislation which may replace Part 2-2 Division 6 Annual Leave of the FW Act). This report will include evidence of compliance in respect of a sample of not less than 10 employees of Ascot/NTFS, selected with the prior approval of the FWO;
- (j) will, 7 days prior to taking any action within the scope of Part 2-4 (Enterprise Agreements) of the FW Act (or any comparable successor legislation) (if that action is taken within 3 years of the date of executing the Enforceable Undertaking), provide the FWO with a written report of the steps they will take to ensure compliance with Part 2-4 of the FW Act. Following the conclusion of any resulting enterprise agreement, Ascot and NTFS will, within 30 days of

the registration of any resulting enterprise agreement, provide the FWO with a report about their compliance with Part 2-4 of the FW Act.

2. ADMISSIONS, ACKNOWLEDGEMENT AND NO INCONSISTENT STATEMENTS

- (a) Ascot and NTFS jointly and severally admit that they contravened Commonwealth workplace laws as set out in paragraphs H, N and P of the Background.
- (b) Ascot and NTFS jointly and severally:
 - (i) must not; and
 - (ii) 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 the admission in paragraph 2(a) herein.

3. COMMENCEMENT OF ENFORCEABLE UNDERTAKING

This Enforceable Undertaking comes into effect when:

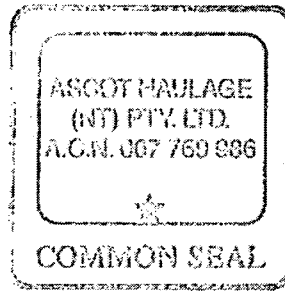
- (a) the Enforceable Undertaking is executed by Ascot and NTFS; and
- (b) the FWO accepts the Enforceable Undertaking so executed.

4. ACKNOWLEDGEMENTS

Ascot and NTFS jointly and severally acknowledge that:

- (a) this Enforceable Undertaking is given by them, 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)*;

THE COMMON SEAL of Ascot Haulage (NT) Pty Ltd was hereunto affixed by the authority of the Board of Directors in the presence of:





(Signature of Secretary/Director)



(Signature of Director)

BRUCE C GRUBB

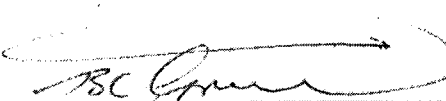
(Name of Secretary/Director in Full)

RAYMOND W SCOTT

(Name of Director in Full)

THE COMMON SEAL of Northern Territory Freight Services Pty Ltd was hereunto affixed by the authority of the Board of Directors in the presence of:





(Signature of Secretary/Director)



(Signature of Director)

BRUCE C GRUBB

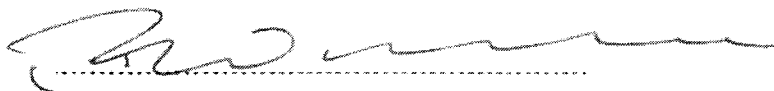
(Name of Secretary/Director in Full)

RAYMOND W SCOTT

(Name of Director in Full)

ACCEPTED by the FAIR WORK OMBUDSMAN

Dated: [15th Feb.] 2010 2011



NICHOLAS WILSON
FAIR WORK OMBUDSMAN

ATTACHMENT A

Employee Name	Amount owed (Gross)
Gregory Chidlow	\$380.92
Andrew Clarke	\$1,446.08
Torrence Dean Clark	\$48.16
Rudi De Maria	\$952.18
Rodger Evans	\$39.40
Alan Hall	\$557.38
Keith Hall	\$439.46
Shaun Harvie	\$446.79
Stanley Lyall	\$1,927.74
Tony Mangan	\$695.59
Albert Molzer	\$399.69
David McCarthy	\$597.62
John McGrath	\$2,287.44
Symon Muscat	\$1,031.69
Martin Oxlade	\$1,096.59
Robin Proctor	\$42.80
Peter Penhale	\$865.16
Stan Pluta	\$54.69
Timothy Richardson	\$431.05
Mark Rix	\$722.13
Graham Rodger	\$863.27
Trevor Schache	\$1,791.89
Keith Solomon	\$863.23
Craig Staunton	\$496.95
Geoffrey Thomas	\$652.38
George Walker	\$97.34

ATTACHMENT B

**Letterhead Ascot Haulage (NT) Pty Ltd
Address & Date**

Dear Sir/Madam,

Apology – Annual Leave arrangements

The Fair Work Ombudsman (FWO), has investigated whether Ascot Haulage (NT) Pty Ltd and Northern Territory Freight Services Pty Ltd (**the Companies**) breached aspects of the Workplace Relations Act 1996 (Cth) (**WR Act**) concerning you and other employees working in the Cooper Basin (Moomba) District of South Australia (**the Moomba Drivers**).

As a result of the FWO's investigation, the Companies have formally admitted that they breached:

- A. section 337(8) of the WR Act by not giving all of the Moomba Drivers ready access to a final version of the Ascot Haulage (NT) Pty Ltd – Cooper Basin Enterprise Agreement 2006 (**Collective Agreement**) in the 7 days before the vote on 12 May 2006;
- B. section 341 of the WR Act, by not providing the Moomba Drivers with a reasonable opportunity to approve the Collective Agreement before it was lodged.
- C. section 318 of the WR Act, by cashing out half of Moomba's Drivers' annual leave instead of properly crediting those entitlements in accordance with section 234 of the WR Act.

The Companies' formal admissions are reflected in an Enforceable Undertaking given by the Companies to the FWO. A copy of that Enforceable Undertaking is enclosed with this letter.

The Companies express their sincere regret and apology to you for engaging in the conduct which was in breach of Commonwealth workplace laws. The Companies give you their commitment that the wrongful conduct will not occur again.

The Companies wish you well in your future endeavours.

Yours sincerely

Signature - CEO [Company name]