



Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

dated ^{8 November} ~~October~~ 2010

Given by

Kingrise Corporation Pty Ltd (ACN 081 576 605)

trading as "Durty Nelly's Irish Pub"

To

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

concerning

- **breaches of section 182(1) of the *Workplace Relations Act 1996* (as in force after 27 March 2006 ('WR Act')); and**
- **breaches of clauses 11(4) and 26(2) of the *Notional Agreement Preserving the Hotel and Tavern Workers' Award, 1978 No. R 31 of 1977* ('the NAPSA')**

ENFORCEABLE UNDERTAKING

THIS ENFORCEABLE UNDERTAKING is given to the **Commonwealth of Australia** (as represented by the **Fair Work Ombudsman ('FWO')**) by **Kingrise Corporation Pty Ltd (ACN 081 576 605) ('Kingrise')** of Harden East & Conti, Level 1, 20 Kings Park Road, West Perth, Western Australia, 6005, pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**'FW Act'**).

BACKGROUND:

- A. Kingrise was and is a business within the hospitality industry trading as **Durty Nelly's Irish Pub ('the business')**. Kingrise was and is trading from premises located at Lots 7 and 100, Shafto Lane, 379-409 Murray Street, Perth, Western Australia, 6000. The business' operations were and are concerned with providing live entertainment within its premises and serving food and beverages to the public.
- B. The employees listed within **Attachment A** of this Undertaking (**'the employees'**) were respectively employed by Kingrise as Food and Beverage Attendants, Kitchen Attendants, Cooks, Guest Service Officers or Storepersons during the period 1 January 2008 to 6 January 2009 (**'the said period'**).
- C. During the said period, the employees' employment with Kingrise was regulated by the NAPSA and a preserved Australian Pay and Conditions Scale (**'APCS'**) which derived rates of pay (and associated provisions) from the Hotel and Tavern Workers' Award, 1978 No. R 31 of 1977 (**'the Award'**). Those rates of pay were subject to increases determined periodically by the Australian Fair Pay Commission.
- D. The APCS was a term of the Australian Fair Pay and Conditions Standard (**'the Standard'**) for the purpose of sections 171 and 718 of the WR Act.
- E. Kingrise applied incorrect wage rates and classifications to the employees during the said period.
- F. During the said period, Kingrise also made deductions from the employees' entitlements and labelled *'Reimbursement Till Discrepancies'*, *'Uniform Bond'*, *'Staff loans'* and *'Name badge not returned'*. With the exception of the *'Staff loans'*, the said entitlements were a penalty within the meaning of Regulations 7.1(5A) and

7.1(17) of the *Workplace Relations Regulations 2006 (Cth)* on the basis that they were not for the benefit of the employee and affected the employees' basic rates of pay arising under the Standard not being met for the said period when deductions occurred.

- G. Kingrise was, at all material times, a member of an employer association and a client of an accountancy service provider that specialised in book keeping for businesses in the hospitality industry.
- H. As a member of an employer association and a client of an accountancy service provider, it relied heavily upon their workplace relations expertise.
- I. Kingrise had a practice of notifying their accountancy service provider if it received an up-date from their employer association that a contractual entitlement had been amended in the Award so that employee entitlements could be accordingly adjusted.
- J. Kingrise failed to apply the correct classification level to the employees in reliance on advice received from its employer association and accountancy service provider.
- K. By reason of matters in paragraphs E and F above, Kingrise underpaid the employees a collective amount of **\$41,689.99** during the said period.
- L. By reason of matters in paragraphs B, C, E, F and K above, Kingrise:
 - (a) contravened section 182(1) of the WR Act in that it failed to pay the correct rates of pay prescribed by the NAPSA to 146 employees;
 - (b) contravened clause 11(4) of the NAPSA in that it failed to pay the correct penalty rates prescribed by the NAPSA to 131 employees; and
 - (c) contravened clause 26 of the NAPSA in that it failed to pay uniform and laundering allowances prescribed by the NAPSA to 142 employees.
- M. Kingrise admits the contraventions set out in paragraph L above, and gives the Enforceable Undertaking set out below to the FWO in relation to those contraventions.

1. ENFORCEABLE UNDERTAKING

Kingrise NOW UNDERTAKES 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), **Kingrise** 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) write and send to the employees at their respective places of residence within 14 days of executing this document, a letter of apology in the form of **Attachment B** to this Enforceable Undertaking, signed by the Director of Kingrise;
- (c) within 90 days of executing this document ensure that:
 - (i) key personnel employed or engaged by Kingrise, including but not limited to its Director, Manager and payroll service provider, undertake training on the Hospitality Industry (General) Award, the *Fair Work Act 2009* (Cth) and the *Fair Work Regulations 2009* (Cth), and the National Employment Standard conducted by the Australian Hotels Association (Western Australia) (who will submit the training materials to the Office of the FWO not less than 4 weeks prior to the delivery of the training) at the expense of Kingrise; and
 - (ii) the Australian Hotels Association (Western Australia) conduct an audit of Kingrise to determine whether Kingrise is paying its employees correctly and complying with payslip and record keeping requirements under the *Fair Work Regulations 2009* (Cth), and will rectify all outstanding entitlements to affected employees. Kingrise will submit the findings of that audit, and evidence of all rectification action taken, to the FWO.

2. ADMISSIONS, ACKNOWLEDGMENT AND NO INCONSISTENT STATEMENTS

- (a) Kingrise admits that it contravened Commonwealth workplace laws as set out in paragraphs E and F of the Background;
- (b) Kingrise:
 - (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 (a) (above).

3. COMMENCEMENT OF ENFORCEABLE UNDERTAKING

This Enforceable Undertaking comes into effect when:

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

4. ACKNOWLEDGEMENTS

Kingrise acknowledges that:

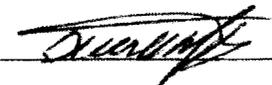
- (a) this Enforceable Undertaking is given it and accepted by the FWO pursuant to section 715 of the FW Act;
- (b) the FWO may:
 - (i) make this Enforceable Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fwo.gov.au;
 - (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 Kingrise in paragraph L above in respect of decision making concerning any future non-compliance with Kingrise's 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 Kingrise contravenes 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 Kingrise in paragraph L above, and also in respect of the question of costs.

Dated: September 2010

EXECUTED BY Kingrise in accordance with section 127(1) of the Corporations Law:

(Signature of Secretary/Director)



Dragan Kapinkoff, Director and Secretary,
Kingrise Corporation Pty Ltd

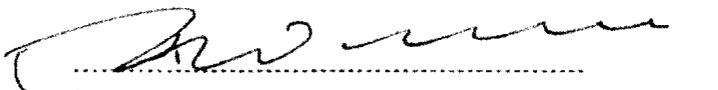
(Signature of Director)

DRAGAN KAPINKOFF

(Name of Director In Full)

ACCEPTED by the FAIR WORK OMBUDSMAN

8 November .
Dated: ~~13~~ October 2010



NICHOLAS WILSON
FAIR WORK OMBUDSMAN

ATTACHMENT A

[List of affected employees deleted to protect their privacy]

ATTACHMENT B

Letterhead [Kingrise]

Address & Date

Dear (employee's name)

Apology – Failure to pay correct wages and/or entitlements

By now you should have received back payment for underpayment of wages and/or penalty rates or allowances. This amount was paid to you in (state month and year).

This was a genuine mistake that occurred and was made by our accountant, which went unnoticed by us, and we would like to sincerely apologise for this error.

The payment of wages to our staff was outsourced from a bookkeeper to an accountant. The accountant had guaranteed us that he had years of experience managing payroll in many hospitality businesses such as ours.

During a random investigation of our business by the Fair Work Ombudsman (FWO) in 2009, it was brought to our attention that we, as your employer (Kingrise Corporation Pty Ltd trading as "Durdy Nelly's Irish Pub") had erred in the calculation of your wages and/or penalty rates and allowances.

Once we were advised of the investigation, we immediately rectified the underpayments for all current and former staff.

As a result of this, we have entered into an Enforceable Undertaking with the FWO upon their request. The Enforceable Undertaking is available at www.fwo.gov.au.

We now take this opportunity to genuinely apologise for any inconvenience caused and to assure you that such underpayments have been rectified and our award obligations will be adhered to in the future.

Should you have any questions please do not hesitate to contact me.

Yours sincerely

Signature – Director and Secretary Kingrise