



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

27th dated Sept 2012

Given by

Gas Hair Studio Pty Ltd
(ACN 101 841 721)

and

Craig Francis Lane

and

Anne-Marie Drummond

to

The Commonwealth of Australia

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

concerning contraventions of Commonwealth workplace laws

Details

Parties FWO;
Gas Hair Studio Pty Ltd;
Craig Lane; and
Anne-Marie Drummond.

FWO

Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
ABN	43 884 188 232
Address	The Fair Work Ombudsman GPO Box 9887 Adelaide SA 5001
Telephone	(08) 8225 8265
Fax	(02) 6204 2824
Attention	Steven Ronson Executive Director, Dispute Resolution and Compliance

Gas Hair Studio Pty Ltd

Name	Gas Hair Studio Pty Ltd (ACN 101 841 721)
ABN	69 101 841 721
Incorporated In	Victoria
Address	[REDACTED]
Telephone	[REDACTED]
Attention	Anne-Marie Drummond

Craig Lane

Name	Craig Francis Lane
Address	[REDACTED]
Telephone	[REDACTED]

Anne-Marie Drummond

Name	Anne-Marie Drummond
Address	[REDACTED]
Telephone	[REDACTED]

Recitals

A The Fair Work Ombudsman (FWO) conducted an investigation into allegations that Gas Hair Studio Pty Ltd (Gas Hair Studio) had breached Commonwealth workplace laws.

B By reason of the matters set out in Attachment "A" (Background), the FWO has determined, and Gas Hair Studio, Craig Lane and Anne-Marie Drummond acknowledge, that Gas Hair Studio contravened Commonwealth workplace laws.

- C By reason of the matters set out in Attachment "A" (Background) Craig Lane acknowledges that he was involved in the contraventions of Commonwealth workplace laws by Gas Hair Studio within the meaning of section 728 of the *Workplace Relations Act 1996* (WR Act).
- D By reason of the matters set out in Attachment "A" (Background) Anne-Marie Drummond acknowledges that she was involved in the contraventions of Commonwealth workplace laws by Gas Hair Studio within the meaning of section 728 of the WR Act.
- E The Parties have agreed to resolve the contraventions by way of this Enforceable Undertaking (the EU) made pursuant to section 715 of the FW Act, in lieu of continuing with the civil penalty proceedings filed by the FWO against Gas Hair Studio, Craig Lane and Anne-Marie Drummond in the Federal Magistrates' Court.
- F Gas Hair Studio, Craig Lane and Anne-Marie Drummond acknowledge that the FWO commenced civil penalty proceedings in order to promote and seek compliance with Commonwealth workplace laws in accordance with its statutory functions under the FW Act.

Governing law

Victoria

Date of agreement

See Signing page

General terms

1 Admission of contraventions

By reason of the matters described in Attachment "A" (Background), which are admitted without demur, Gas Hair Studio Pty Ltd, Craig Lane and Anne-Marie Drummond (collectively, the Respondents) admit that they contravened Commonwealth workplace laws in the respects set out in Attachment "B" (collectively, the Contraventions).

2 Limit of admission

2.1 The FWO acknowledges that the terms of this EU:

- (a) are solely for the purposes of resolving the FWO investigation into the Contraventions; and
- (b) must not be interpreted as an admission of liability by the Respondents for any matter, other than as expressly provided in this EU.

2.2 No assertion or matter in this EU may be relied upon as an admission by any person to support a cause of action in any other civil penalty proceeding.

2.3 However, this term does not prevent any matter in this EU being relied upon in future proceedings in order to inform a relevant Court or tribunal of the details of the conduct that was the evidentiary foundation for the Respondents entering into this EU.

2.4 This means that the FWO reserves the right to rely on the terms of this EU and the admissions in respect of any future proceedings brought by the FWO against any of the Respondents in relation to any future contraventions of Commonwealth workplace laws.

3 Enforceable undertakings

The Respondents **NOW UNDERTAKE** that, in consideration of the FWO agreeing to discontinue the civil remedy proceedings against the Respondents in relation to the Contraventions, the Respondents must do all those activities and things set out in Attachment "C" (the Undertakings).

4 Commencement of enforceable undertaking

This EU comes into effect when:

- (a) the EU is executed by the each of the Respondents; and
- (b) the FWO accepts the EU executed by the Respondents (as evidenced by the FWO's acceptance of this EU endorsed below).

5 Acknowledgements

5.1 The Respondents acknowledge that:

- (a) the undertakings they have given in this EU are reasonable in the circumstances;
- (b) they each unreservedly accept that the FWO commenced civil remedy proceedings in good faith, in accordance with its policies and the law;
- (c) this EU is given to and accepted by the FWO pursuant to section 715 of the FW Act;
- (d) the FWO may:
 - (i) make this EU (and any of the Attachments) available for public inspection, including by posting it on the FWO internet site at www.fwo.gov.au (subject to the FWO taking any necessary steps to the redaction of the names of any person affected by the Contraventions);
 - (ii) release a copy of this EU (and any of the Attachments to it) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this EU;
 - (iv) from time to time, publicly refer to the EU (and any of the Attachments to it) and its terms;
 - (v) rely upon the admissions made by the Respondents in paragraph 1 above in respect of any future decision about enforcement action to be taken in respect

of any future non-compliance by any of the Respondents with Commonwealth workplace relations obligations.

(e) consistent with the Note to section 715(4) of the FW Act, this EU in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this EU; and

(f) If the any of the Respondents contravene any of the terms of this EU:

(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 EU may be provided to the Court as evidence of the admissions made by the Respondents in paragraph 1, and also in respect of the question of costs; and

(iii) this EU is to be taken as having been withdrawn from by the Respondents for the purposes of section 715(3) of the FW Act if the FWO gives its written consent (in which case the FWO may apply for orders against Respondents under Part 4-1 of the FW Act).

6 No inconsistent statements

The Respondents:

~~(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 which conveys or implies or reasonably conveys or implies anything inconsistent with admission or acknowledgements contained in this EU.

7 Termination by the FWO

At any time, the FWO may, by notice in writing, terminate this EU (that is, immediately and without notice) if any of the Respondents commit, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this EU.

8 Withdrawal from or variation to this EU

Consistent with section 715(3) of the FW Act, the Respondents may withdraw from or vary this EU at any time, but only with the consent of the FWO.

9 Continuing obligations

9.1 General survival

Any provision of this EU remaining to be performed or observed by the Respondents or having effect after the cessation of this EU for whatever reason (including termination by the FWO or withdrawal from by the Respondents) remains in full force and effect and is binding on the Respondents after this EU ends.

9.2 Survival

Without limiting the generality of clause 9.1 ("General survival"), the following clauses survive termination of this EU for whatever reason (including termination by the FWO or withdrawal from by the Respondents):

(a) Clause 1 (Admissions and contraventions); and

(b) Clause 6 (No inconsistent statements).

10 Legally binding agreement

These terms are intended to have immediate effect on all parties upon acceptance by the FWO of this EU (as evidenced by the FWO's acceptance of this EU endorsed below).

11 Entire agreement

This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

(a) affects the meaning or interpretation of this EU; or

(b) constitutes any collateral agreement, warranty or understanding between the FWO

and the Respondents.

12 No representations or warranties

The Respondents acknowledge that in entering into this EU they have not relied on any representations or warranties about the subject matter of this EU except as provided in this EU.

13 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this EU or any part of it.

14 Costs

The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this EU and other related documentation.

15 Severance

If the whole or any part of a provision of this EU is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of the agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this EU or is contrary to public policy.

16 Competency

The Respondents acknowledge that:

- (a) before executing this EU, the Respondents were given the opportunity to seek independent legal and other advice of their choice;
- (b) in the light of any advice provided to each of the Respondents, they considered their position;
- (c) if the Respondents have been advised by their solicitors, they have been advised by them as to the terms of this EU; and
- (d) each of the Respondents fully understand the effect of this EU.

17 Governing law

This EU is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

18 Signing page

GAS HAIR STUDIO PTY LTD

SIGNED on 27th Sept by 2012

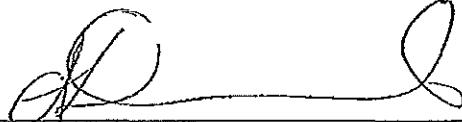
Gas Hair Studio Pty Ltd
ACN 101 841 721 in accordance with section
127(1) of the Corporations Act 2001, in the
presence of:



(Signature of Witness)

KIRSTY BROOK.

(Name of Witness In Full)



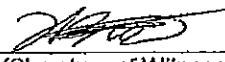
(Signature of Officer)

ANNE-MARIE DRUMMOND

(Name of Officer In Full)

CRAIG FRANCIS LANE

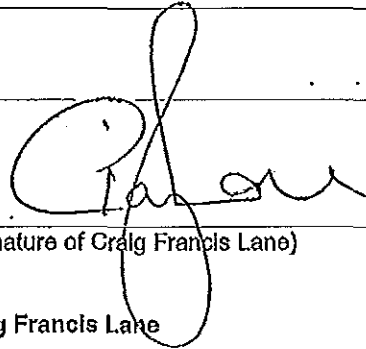
SIGNED on 27th Sept by 2012
Craig Francis Lane, in the presence of:



(Signature of Witness)

KIRSTY BROOK

(Name of Witness in Full)

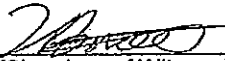


(Signature of Craig Francis Lane)

Craig Francis Lane

ANNE-MARIE DRUMMOND

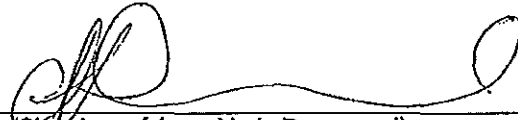
SIGNED on 27th Sept by 2012
Anne-Marie Drummond, in the presence of:



(Signature of Witness)

KIRSTY BROOK.

(Name of Witness In Full)

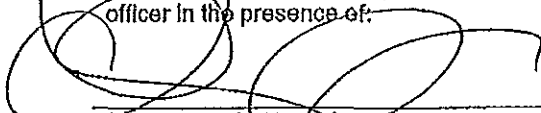


(Signature of Anne-Marie Drummond)

Anne-Marie Drummond

FAIR WORK OMBUDSMAN

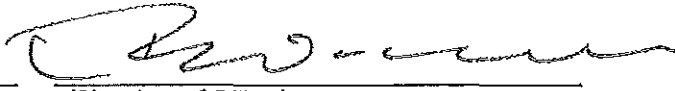
SIGNED on 2nd October 2012 for the
COMMONWEALTH OF AUSTRALIA (FAIR
WORK OMBUDSMAN), by its duly authorised
officer in the presence of:



(Signature of Witness)

Nannie Standliffe

(Name of Witness In Full)



(Signature of Officer)

**NICHOLAS PAUL WILSON
FAIR WORK OMBUDSMAN**

or by his Delegate subject to the Instrument of
delegation made pursuant to section 683 of the
FW Act and executed by Nicholas Paul Wilson
on 2 July 2009.

ATTACHMENT "A" (BACKGROUND)

Complaints made to the FWO

1. On 2 September 2010 [REDACTED] filed a complaint with the Fair Work Ombudsman (FWO) arising from Ms Starfas' employment by Gas Hair Studio Pty Ltd (Gas Hair Studio) between 30 March 2006 to 18 October 2007.
2. The FWO subsequently conducted an investigation into this complaint.
3. Gas Hair Studio, which now trades at Mariposa Cafe, Hair and Beauty, was at all material times in the business of operating a hairdressing salon in Glen Waverly, Craig Lane and Anne-Marie Drummond are, and were at all relevant times, directors, secretaries and equal shareholders in Gas Hair Studio. Ms Drummond was at all relevant times responsible for the management and supervision of the Gas Hair Studio's operations.
4. [REDACTED] was engaged by Ms Drummond at Gas Hair Studio on a full-time basis as an apprentice hairdresser until on or around 18 October 2007.
5. During the course of her employment with Gas Hair Studio, [REDACTED] was required or requested to attend a range of training sessions related to her work as an apprentice hairdresser, in addition to the training required for the purpose of her apprenticeship (Additional Training). [REDACTED]
 - a. was not paid for Additional Training attended outside her normal rostered hours or on her rostered day off; and
 - b. was required to work additional hours without payment to compensate for time spent at Additional Training during her normal rostered hours.
6. On the basis of hours purportedly 'owed' to Gas Hair Studio when [REDACTED] employment with Gas Hair Studio ended, Gas Hair Studio failed to pay [REDACTED] her accrued annual leave entitlements on termination.
7. [REDACTED] was also denied entitlements in relation to public holidays falling on her rostered day off, and was underpaid allowances by Gas Hair Studio.

Outcome of investigation

8. Following a full investigation, the FWO determined that, as a result of the contraventions identified in Attachment "B" (Contraventions), Gas Hair Studio underpaid [REDACTED] \$3,181.21 (gross), and issued a contravention letter to that effect on 31 August 2011.
9. On 29 March 2012 the FWO commenced civil remedy proceedings in the Federal Magistrates' Court (MLG359/2012) against Gas Hair Studio, Anne-Marie Drummond and Craig Lane in respect of the contraventions identified in Attachment "B" (Contraventions), seeking orders for the rectification of the underpayment to [REDACTED], along with the imposition of penalties in respect of the contraventions outlined in Attachment "B" (Contraventions).
10. The underpayment to [REDACTED] was subsequently rectified by Gas Hair Studio on 24 April 2012.
11. In deciding to commence civil remedy proceedings the FWO took into account the history of previous complaints lodged against the Respondents with the FWO and its predecessor agencies, which included 2 complaints since 2003 in respect of conduct similar to that subject to this EU including the non-payment of entitlements for training attended by employees.

Enforceable Undertaking

12. Gas Hair Studio, Craig Lane and Anne-Marie Drummond now admit the contraventions set out in Attachment "B" (Contraventions) and undertake to commit to future compliance and audit activities in accordance with the terms of Attachment "C" (Undertakings).
13. In consideration of the full rectification of the underpayments identified by the FWO and the admissions now made by each of the Respondents, the FWO agrees to discontinue civil remedy proceedings following the execution of this Enforceable Undertaking.

ATTACHMENT "B" (CONTRAVENTIONS)

Gas Hair Studio Pty Ltd

Gas Hair Studio Pty Ltd contravened:

1. subsection 182(1) of the *Workplace Relations Act 1996* (WR Act) by failing to pay [REDACTED] her basic periodic rate of pay for all guaranteed hours worked between 30 March 2006 and 18 October 2007;
2. the following provisions of the *Hairstressing and Beauty Services – Victoria – Award 2001* [AP806816] (pre-Modern Award):
 - (a) clause 30.2.2, by failing to pay the [REDACTED] overtime rates for work in excess of 38 hours per week;
 - (b) clause 30.3, by failing to pay [REDACTED] at the rate of double time for all overtime performed on her rostered day off;
 - (c) clause 30.5, by failing to pay [REDACTED] overtime rates where she was required to attend a function or training night after her normal rostered hours, including for the time between the end of her shift and the commencement of the function or training night;
 - (d) clause 21.1.2 by failing to pay [REDACTED] sufficient late night meal allowance;
 - (e) clause 4 of the *Hairstressing and Beauty Services Victorian Common Rule Declaration 2005* [PR953356] in Schedule A of the pre-Modern Award, by failing to pay [REDACTED] annual leave loading in respect of periods of annual leave taken during this period; and
 - (f) clause 37.5.1 of the Award, by failing to provide [REDACTED] with:
 - (i) another paid day off;
 - (ii) an equivalent day's pay; or
 - (iii) an extra day of annual leave;where a prescribed public holiday fell on her rostered day off.
3. subsection 235(2) of the WR Act, by failing to pay [REDACTED] for each hour of accrued untaken annual leave on termination; and
4. subregulation 19.4(1) of the *Workplace Relations Regulations 2006* by failing to make, or cause to be made, a record stating the number of overtime hours worked by [REDACTED] each day, or when she started and ceased working overtime hours between 27 March 2007 and 18 October 2007.

Anne-Marie Drummond

Pursuant to section 728 of the WR Act, Anne Marie Drummond was a person involved in each above-mentioned contravention by Gas Hair Studio, and is therefore taken to have contravened each of those provisions herself.

Craig Lane

Pursuant to section 728 of the WR Act, Craig Lane was a person involved in each above-mentioned contravention by Gas Hair Studio, and is therefore taken to have contravened each of these provisions himself.

ATTACHMENT "C" (UNDERTAKINGS)

Gas Hair Studio Pty Ltd, Craig Lane and Anne-Marie Drummond (collectively, the Respondents) undertake to:

Future workplace relations compliance

1. Ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the *Hair and Beauty Industry Award 2010* (the *Modern Award*) and the *Fair Work Act 2009* (FW Act) by developing systems and processes to ensure ongoing compliance with those requirements.
2. In particular, ensure that in compliance with Commonwealth workplace laws:
 - (a) all employees are paid for all time spent at training directed by Gas Hair Studio Pty Ltd where that training is related to the operations of Gas Hair Studio Pty Ltd and/or the occupation of hairdressing, and/or where the training or attendance at the training is organised by or on behalf of Gas Hair Studio Pty Ltd for its employees, including training attended after the employee's normal rostered hours or their rostered day off; and
 - (b) employees will not be required to work additional hours without payment to compensate for time spent at training related to their work during their normal rostered hours.

3. Provide to the FWO within 28 days of the date of this Enforceable Undertaking (the EU) written details of the implementation of systems and processes designed to ensure such ongoing compliance with paragraph 2.

Public notices

4. Jointly with Hennesy Lane Hair Design Pty Ltd, cause to be placed within 28 days of the execution of the EU (or so soon afterwards as is available), a notice in The Australian newspaper which:
 - (a) bears the name of Gas Hair Studio Pty Ltd;
 - (b) bears the logo (if any) of Gas Hair Studio Pty Ltd; and
 - (c) is in the form of Attachment D to the EU.
5. Provide a copy of each notice to the FWO within 7 days of publication.

Audits

6. Cause to have performed by an accounting professional (e.g. Certified Practising Accountant) or an audit or employment law specialist (at their own expense) within eight weeks of the execution of the EU an audit of compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Award and FW Act, relating to the pay and conditions of employees of Gas Hair Studio Pty Ltd, in relation to the period from 1 July 2012 to the date of the execution of the EU (the Audit).
7. Direct that the Audit specifically consider whether during the period from 1 July 2012 to the date of the execution of the EU (the Audit Period) the employees the subject of the Audit:
 - (a) were correctly classified;
 - (b) were paid the correct wage rates and entitlements;
 - (c) were paid for all hours worked, including any time spent at training following a request by, or direction of the Employer; and
 - (d) ought to have received any further payments for:
 - (i) allowances, overtime, penalty rates and any other entitlements;
 - (ii) attendance at training for which payment is required by law; and
 - (iii) public holidays.
8. Provide a copy of the Audit to the FWO within 7 days of the Audit being provided to the Company and/or the Directors.
9. In the event that the Audit discloses contraventions of any applicable Commonwealth workplace laws and instruments, rectify all such contraventions within 28 days of the Audit being provided to the relevant business and/or Directors, including rectification of any and all

underpayments to employees during the Audit Period.

10. Provide evidence of rectification of any amounts to employees pursuant to the Audit to the FWO within seven days of the rectification occurring.
11. Cause to have performed audits for the 2 year period following the execution of the EU, to be finalised by 30 September 2013 and 30 September 2014 for the preceding 12-month period (collectively, the Future Audits). The Future Audits are to be conducted in accordance with Undertakings 6 to 10 above, that is, in the same manner as the Audit.

Workplace notices

12. Cause to be displayed at the business premises of Gas Hair Studio Pty Ltd within 28 days of the execution of the EU, a registered memo which is in the form of Attachment D to the EU (the Memo).
13. Ensure the Memo is printed in at least A3 size and clearly displayed at the salon operated by Gas Hair Studio Pty Ltd for a period of at least 28 days:
 - (a) in a location to which all employees of Gas Hair Studio Pty Ltd have access; and
 - (b) in a manner which is reasonably capable of drawing the Memo to the general attention of all employees of Gas Hair Studio Pty Ltd (for example, by placement on a staff noticeboard).
14. Provide evidence to the FWO of the display of the Memo within seven days of its distribution.

Workplace relations training

15. Within eight weeks of the execution of the EU, organise and ensure training for any and all persons who have any managerial, human resource, recruitment or payroll function and who are employed to perform work for Gas Hair Studio Pty Ltd (the Training).
16. Ensure the Training relates to compliance with all applicable Commonwealth workplace laws and instruments which apply to the entities referred to in Undertaking 15 above, or to any employee of those entities, including but not limited to the rights and responsibilities of employers under the FW Act and the Modern Award, in particular in relation to wage rates, overtime, penalty rates, allowances, public holidays and paid training.
17. Ensure the Training is conducted by an employment law specialist; such person or organisation to be approved by the FWO and paid for by Gas Hair Studio Pty Ltd and/or the Directors.
18. Provide the training materials to be used in the Training to the FWO no later than seven days before the Training is to be conducted. The FWO must approve such training materials.
19. Provide evidence of attendance at the Training to the FWO within seven days of the Training being provided.
20. For a period of 2 years from the execution of the EU, ensure that training is conducted in the manner prescribed by Undertakings 15 to 19 (the Future Training), but the Future Training will be in relation to:
 - (a) any employees who at the time of the execution of the EU did not have but who subsequently acquire responsibilities that include managerial, human resource, recruitment or payroll functions, for example by promotion or change in duties; and
 - (b) any new employee who has responsibility for the duties referred to in Undertaking 20(a).

Apology

21. Jointly with Hennesy Lane Hair Design Pty Ltd, send a letter to the Complainant within 28 days of the execution of the EU advising her of the EU in the form of Attachment E to the EU (Apology).
22. Provide proof to the FWO of the Apology within seven days of the Apology being sent.

ATTACHMENT "D" (FORM OF PUBLIC AND WORKPLACE NOTICE)

Underpayments by Hennesy Lane Hair Design Pty Ltd & Gas Hair Studio Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Hennesy Lane Hair Design Pty Ltd and Gas Hair Studio Pty Ltd contravened Commonwealth workplace laws, in particular by failing to pay employees for time spent at training in circumstances where it was required by law to do so, or by requiring employees to owe back hours for time spent at training, and by withholding payment for annual leave on termination where hours were allegedly owed by employees.

Hennesy Lane Hair Design Pty Ltd and Gas Hair Studio Pty Ltd have formally admitted to the FWO that each company did in fact contravene Commonwealth workplace laws, and have entered into an Enforceable Undertaking with the FWO to reflect these formal admissions (available at www.fwo.gov.au). Hennesy Lane Hair Design Pty Ltd and Gas Hair Studio Pty Ltd have also rectified the underpayments to the employees.

Hennesy Lane Hair Design Pty Ltd and Gas Hair Studio Pty Ltd express their sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore, Hennesy Lane Hair Design Pty Ltd and Gas Hair Studio Pty Ltd give a commitment that such conduct will not occur again and that each entity will comply with Commonwealth workplace relations laws.

ATTACHMENT "E" (FORM OF APOLOGY)

<Company letterhead>

<Address>

<Date>

Dear [REDACTED]

Following the outcome of an investigation by the Office of the Fair Work Ombudsman (the FWO), we are writing to offer you a sincere apology on behalf of Hennesy Lane Hair Design Pty Ltd and Gas Hair Studio Pty Ltd for failing to comply with their lawful obligations to you during your period of employment with each salon.

In particular, we apologise for not providing payment for all time spent at training related to your work and for failing to pay out your accrued annual leave on termination with each company, which we now recognise was unlawful. As you are aware, Hennesy Lane Hair Design Pty Ltd and Gas Hair Studio Pty Ltd rectified the underpayments owing to you as a result of these contraventions in April 2012.

We have formally admitted to contravening Commonwealth workplace laws in relation to your employment and that you were underpaid as a result of this conduct in an enforceable undertaking entered into with the FWO, a copy of which is available at www.fairwork.gov.au.

We express our sincere regret for failing to comply with our lawful obligations during your period of employment with each company. Furthermore, we give current and prospective employees a commitment that they will not be required to attend training without pay when it is not lawful to do so.

Signed,

Craig Lane and Anne-Marie Drummond