



Australian Government

Fair Work OMBUDSMAN

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Attic Protective Services Pty. Ltd. (ACN 115 134 604) (**Attic**); and
 - (b) Mr Ghulam Akbar (**Mr Akbar**);for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

COMMENCEMENT OF UNDERTAKING

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Attic and Mr Akbar; and
 - (b) the FWO accepts the Undertaking so executed (as evidenced by the FWO's endorsement below).

BACKGROUND

3. Attic is in the business of providing security guards to service client sites in Sydney.
4. During the period from 5 August 2012 to 3 March 2013, Attic employed 24 casual security guards (**Employees**). A list of Employees is provided at **Attachment A**.
5. The Employees at various times performed one or more of the following duties:
 - (a) basic crowd control (Security Officer Level 1 - applicable to Security Officers with less than 12 months experience);
 - (b) crowd control (Security Officer Level 2); and / or
 - (c) operating a centralised closed circuit television monitoring room and associated security systems (Security Officer Level 4).

Mr Akbar

6. Mr Akbar is and was:
 - (a) at all material times the sole director and company secretary of Attic;
 - (b) at all material times principally responsible for the overall direction, management and supervision of the operations of Attic in relation to industrial instruments and arrangements, setting and adjusting pay rates and determining wages and conditions of employment;

- (c) the person who made decisions on behalf of the Attic, or who was ultimately responsible for Attic's decisions, in relation to:
- (i) the recruitment or engagement of the Employees;
 - (ii) the terms and conditions upon which Employees would be engaged;
 - (iii) payments made to the Employees in relation to the performance of work; and
 - (iv) the work to be performed by Employees;
- (d) at all material times by reason of the matters set out at 6(a) to (c) above, responsible in a practical sense for ensuring that Attic complied with its legal obligations to its employees

Minimum hourly rates of pay

7. During the period from 5 August 2012 to 3 March 2013, Attic paid the Employees a flat hourly rate of pay for all hours of work performed. The flat rates paid to the Employees ranged from \$20.00 per hour to \$40.00 per hour as listed at **Attachment A**.
8. During the period from 5 August 2012 to 3 March 2013, pursuant to clause A.2.5 and clause A.5.4 of the *Security Services Industry Award 2010 (Modern Award)*, the Employees were entitled to receive the following minimum hourly rates of pay and casual loadings (respectively):

Classification	Base hourly rate	Transitional casual loading (21 %)	Total casually loaded hourly rate
Security Officer Level 1	\$17.93	\$3.77	\$21.70
Security Officer Level 2	\$18.44	\$3.87	\$22.31
Security Officer Level 4	\$19.07	\$4.01	\$23.08

Additional monetary entitlements - allowances, minimum shift engagements penalty rates and overtime rates of pay

9. In addition to the minimum hourly rates of pay set out at paragraph 8 above, in appropriate circumstances, the Employees were also entitled to receive the following additional entitlements:
- (a) pursuant to clause 15.6 and subclause 15.1(a) of the Modern Award - a broken shift allowance of 1.62 per cent of the standard rate (that is, \$11.55) for each occasion where the Employee was required to work a rostered shift in two periods of duty (excluding crib breaks);
 - (b) pursuant to subclause 21.2(a)(i) of the Modern Award – a minimum of four ordinary hours of work (or otherwise a minimum of four hours' pay) per shift;
 - (c) pursuant to clause 22.3 of the Modern Award (as affected by the transitional provisions at

clause A.7.3 of Modern Award) – a loading of 13.02 per cent on top of their respective ordinary time rates of pay for work performed between the hours of midnight to 6:00 am or 6:00 pm midnight Monday to Friday (**night shift work**);

- (d) pursuant to clause 22.3 of the Modern Award (as affected by the transitional provisions at clause A.7.3 of Modern Award) – a loading of 18 per cent on top of their respective ordinary time rates of pay for night shift hours performed during a roster cycle where two thirds of the employee's ordinary shifts include ordinary hours between midnight and 6:00 am (**permanent night shift work**);
 - (e) pursuant to clause 22.3 of the Modern Award (as affected by the transitional provisions at clause A.7.3 of Modern Award) – a loading of 30 per cent on top of their respective ordinary time rates of pay for hours of work performed on a Saturday;
 - (f) pursuant to clause 22.3 of the Modern Award (as affected by the transitional provisions at clause A.7.3 of Modern Award) – a loading of 60 per cent on top of their respective ordinary time rates of pay for hours of work performed on a Sunday; and
 - (g) pursuant to clause 23.3 and subclause 21.2(a)(i) of the Modern Award – overtime rates of pay when the Attic Employees worked for either more than 10 hours per shift or 38 hours per week.
10. Attic did not pay the Employees any additional amounts in respect of their entitlements to allowances, minimum shift engagements, penalty rates or overtime rates of pay as set out at paragraph 9 above.

Pay slips

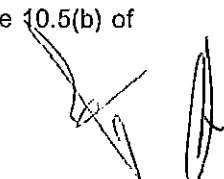
- 11. Pursuant to subsection 536(1) of the FW Act, Attic was required to provide the Employees with a pay slip within one working day of paying an amount to the Employee in relation to the performance of work.
- 12. On occasion, Attic failed to provide one or more of the Employees with a pay slip in relation to a payment made for the performance of work.

Total underpayments and rectification payments made

- 13. By paying the Employees the flat rates of pay listed at **Attachment A**, Attic caused the Employees to be underpaid \$7,058.70 during the period from 5 August 2012 to 3 March 2013.
- 14. During the period from 19 March 2013 to 28 June 2013, Attic rectified all underpayments owed to the Employees.

CONTRAVENTIONS

- 15. By reason of the matters set out in paragraphs 7 to 12 above, the FWO has determined, and Attic admits, that Attic contravened:
 - (a) section 45 of the FW Act by failing to pay casual loadings pursuant to clause 10.5(b) of the Modern Award;



- (b) section 45 of the FW Act by failing to pay broken shift allowances pursuant to clause 15.6 and subclause 15.1(a) of the Modern Award;
- (c) section 45 of the FW Act by failing to provide minimum shift durations pursuant to clause 21.2(a)(i) of the Modern Award;
- (d) section 45 of the FW Act by failing to pay penalties for night shift work pursuant to clause 22.3 of the Modern Award;
- (e) section 45 of the FW Act by failing to pay penalties for permanent night shift work pursuant to clause 22.3 of the Modern Award;
- (f) section 45 of the FW Act by failing to pay penalties for hours worked on a Saturday pursuant to clause 22.3 of the Modern Award;
- (g) section 45 of the FW Act by failing to pay penalties for hours worked on a Sunday pursuant to clause 22.3 of the Modern Award;
- (h) section 45 of the FW Act by failing to pay overtime rates of pay for overtime hours of work pursuant to clause 23.3 of the Modern Award;
- (i) subsection 536(1) of the FW Act by failing to issue payslips to employees within one working day of paying an amount to the employee in relation to the performance of work.

(collectively, the **Contraventions**).

16. By reason of the matters set out in paragraph 6 above, the FWO has determined, and Mr Akbar admits, that he was involved, within the meaning of section 550(a) or (c) of the FW Act, in the Contraventions committed by Attic.

UNDERTAKINGS

17. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, Attic and Mr Akbar, both in his role within Attic as well as in regard to any future company he may become involved in that operates within the security industry, undertake to:

Future workplace relations compliance

- (a) Ensure Attic's compliance at all times that it is trading and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and FW Act by developing systems, policies and processes to ensure ongoing compliance with those requirements;
- (b) provide to the FWO within 60 days after the date of this Undertaking, written details of the implementation of systems and processes implemented in satisfaction of the undertaking in paragraph 17(a) above designed to ensure such ongoing compliance;

Workplace relations training

- (c) within six months of the execution of this Undertaking, organise and ensure training for all persons engaged by Attic as at the date of execution of this Undertaking who have managerial responsibility for human resources, recruitment and/or payroll functions (including but not limited to Mr Akbar) (**Training**);

- (d) ensure the Training relates to compliance with the FW Act and, all applicable Commonwealth workplace laws and instruments, including in particular the rights and responsibilities of employers under the Modern Award;
- (e) ensure the Training is conducted by an accredited workplace trainer; such person or organisation to be approved by the FWO and paid for by Attic;
- (f) provide copies of the training materials to the FWO for approval no later than seven days before the Training is to be conducted; and
- (g) provide evidence of attendance at the Training to the FWO within seven days of the Training being provided (including the name and position of all attendees and the date on which the Training was attended);
- (h) for a period of three years from the execution of this Undertaking, ensure that Training is conducted in the manner prescribed in paragraphs 17(c) to (g) in relation to any new or existing employees or contractors who, after the commencement of this Undertaking, acquire responsibilities that include managerial, human resources and/or recruitment functions on behalf of Attic;

Audits

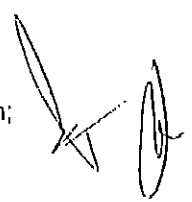
- (i) within twelve weeks of the execution of this Undertaking, cause to have performed at their own expense by either an accounting professional (for example, a Certified Practising Accountant or Chartered Accountant) or employment law specialist an audit (**Audit**) of Attic's compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and FW Act, relating to the pay and conditions of employees of Attic for the period from 4 March 2013 to the date of execution of this Undertaking (**Audit Period**);
- (j) provide a copy of the Audit to the FWO within seven days of the Audit being provided to Attic;
- (k) 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 Attic, including rectification of any and all underpayments to employees during the Audit Period;
- (l) provide evidence of rectification of any amounts to employees pursuant to the Audit to the FWO within seven days of the rectification occurring;
- (m) if Attic continues or recommences trading and/or employing staff on or after the date of execution of this Undertaking, cause to have performed at their own expense by either an accounting professional (for example, a Certified Practising Accountant or Chartered Accountant) or employment law specialist a further three audits (**Future Audits**) of Attic's compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and FW Act, relating to the pay and conditions of employees of Attic, with each audit period commencing on the anniversary of the

execution of this Undertaking and covering the preceding 12 month period (**Future Audit Periods**);

- (n) provide a copy of the Future Audits to the FWO within seven days of the Future Audits being provided to Attic;
- (o) in the event that the Future Audits disclose contraventions of any applicable Commonwealth workplace laws and instruments, rectify all such contraventions within 28 days of the Future Audits being provided to Attic, including rectification of any and all underpayments to employees during the Future Audit Periods; and
- (p) provide evidence of rectification of any amounts to employees pursuant to the Future Audits to the FWO within seven days of the rectification occurring;
- (q) in relation to any other business/s owned and/or operated by Mr Akbar in the security industry (**Akbar's other business/s**):
 - (i) cause to have performed at Akbar's other business/s own expense by either an accounting professional (for example, a Certified Practising Accountant or Chartered Accountant) or employment law specialist three audits (**Other Audits**) of compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Modern Award and FW Act, relating to the pay and conditions of employees of Akbar's other business/s, with each audit period commencing on the anniversary of the execution of this Undertaking and covering the preceding 12 month period (**Other Audit Periods**);
 - (ii) provide a copy of the Other Audits to the FWO within seven days of the Other Audits being provided to Akbar's other business/s or Mr Akbar;
 - (iii) in the event that the Other Audits disclose contraventions of any applicable Commonwealth workplace laws and instruments, rectify all such contraventions within 28 days of the Other Audits being provided to Akbar's other business/s or Mr Akbar, including rectification of any and all underpayments to employees during the Other Audit Periods; and
 - (iv) provide evidence of rectification of any amounts to employees pursuant to the Other Audits to the FWO within seven days of the rectification occurring;

Public notice

- (r) cause to be placed, within 28 days of the execution of this Undertaking a notice in the Manly Daily newspaper (**Public Notice**) which:
 - (i) bears the name of Attic Protective Services Pty. Ltd.;
 - (ii) bears the logo of Attic;
 - (iii) is located within the first 5 pages of the newspaper; and
 - (iv) is in the form of **Attachment B** to this undertaking.
- (s) provide a copy of the Public Notice to the FWO within seven days of the publication;



Workplace notice

- (t) cause to be displayed a notice in the form of **Attachment B** to this Undertaking (**Workplace Notice**):
 - (i) within 28 days of the execution of this Undertaking; or
 - (ii) if Attic has no employees as at the date of the execution of this Undertaking, within 28 days of the commencement of employment of any new employees;
 - (iii) for a period of at least 28 days in locations to which all employees of Attic have access; and
 - (iv) in a manner which is reasonably capable of drawing the notice to the general attention of all employees of Attic (for example, by placement on a staff noticeboard in at least A3 size or in a staff newsletter);
- (u) for employees who are not based at an office location, or who work at premises not owned or controlled by Attic, ensure that a copy of the Workplace Notice is made available to the employees by email and/or post;
- (v) provide evidence to the FWO of the distribution of the Workplace Notice within seven days after its distribution;

Apology


- (w) send to all Employees listed in **Attachment A**, within 14 days of the execution of this Undertaking, a letter apologising for the Contraventions (**Apology Letters**);
- (x) within seven days of the Apology Letters being sent, provide proof to the FWO;

ACKNOWLEDGEMENTS

18. Attic and Mr Akbar acknowledge that:

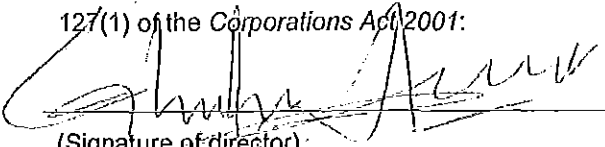
- (a) the FWO may:
 - (i) make this Undertaking (including any attachments) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
 - (ii) issue a media release in relation to this Undertaking;
 - (iii) release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iv) from time to time, publicly refer to this Undertaking and its terms;
 - (v) rely upon the admissions made in this Undertaking 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 Attic or Mr Akbar;

- (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 Attic and/or Mr Akbar has contravened any of the terms of this this 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;
 - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by Attic and Mr Akbar in paragraphs 15 and 16 above, and also in respect of the question of costs; and
 - (iii) this Undertaking is to be taken as having been withdrawn by Attic and/or Mr Akbar 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 Attic and/or Mr Akbar under Part 4-1 of the FW Act).
- (d) Consistent with section 715(3) of the FW Act, Attic and/or Mr Akbar may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.
- (e) No assertion or matter in this Undertaking may be relied upon as an admission by any other person to support a cause of action in any other civil penalty proceeding. However, this term does not prevent any matter in this Undertaking 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 Attic and/or Mr Akbar entering into this Undertaking.
- (f) The FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against Attic and/or Mr Akbar in relation to any future contraventions of Commonwealth workplace laws.
- (g) Attic and/or Mr Akbar:
- (i) must not; and
 - (ii) must ensure that their respective 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 acknowledgements contained in this Undertaking.



EXECUTED AS AN UNDERTAKING

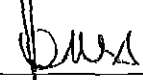
EXECUTED by Altic Protective Services Pty. Ltd. (ACN 115 134 604) in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

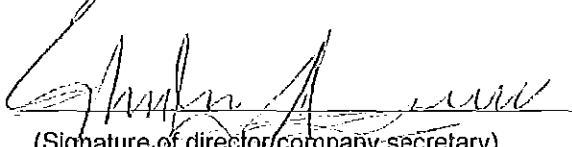
GHULAM AKBAR
(Name of director)

16/12/13
(Date)

in the presence of:


(Signature of witness)

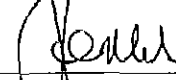
JOHN TOMARAS
(Name of witness)


(Signature of director/company secretary)

GHULAM AKBAR
(Name of director/company secretary)

16/12/13
(Date)

in the presence of:


(Signature of witness)

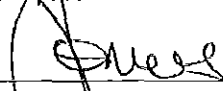
JOHN TOMARAS
(Name of witness)

EXECUTED by Mr Ghulam Akbar:


Ghulam Akbar

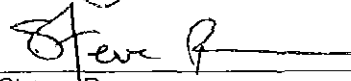
16/12/13
(Date)

in the presence of:


(Signature of witness)

JOHN TOMARAS
(Name of witness)

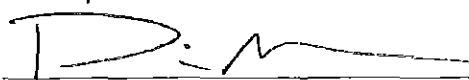
ACCEPTED by the Fair Work Ombudsman pursuant to section 715(2) of the Fair Work Act 2009 on:


Steven Ronson
Executive Director – Dispute Resolution and Compliance

19/12/2013
(Date)

For Natalie James, Fair Work Ombudsman, as her delegate subject to the instrument of delegation made pursuant to section 683 of the FW Act and executed by Nicholas Paul Wilson on 30 January 2013

in the presence of:

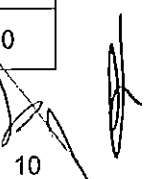

(Signature of witness)

Pia Morgan
(Name of Witness)

LIST OF EMPLOYEES AND PAY RATES

Employee name	Classification	Flat rate of pay received	Base hourly rate of pay payable	Transitional casual loading payable (21%)	Total casually loaded hourly rate payable
[REDACTED]	1	\$20.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$20.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$20.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$20.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$22.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$25.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$23.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$23.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$30.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$25.00	\$17.93	\$3.77	\$21.70
[REDACTED]	2	\$22.00	\$18.44	\$3.87	\$22.31
[REDACTED]	2	\$25.00	\$18.44	\$3.87	\$22.31
[REDACTED]	1	\$25.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$20.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$25.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$40.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$20.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$25.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$25.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$20.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$20.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$25.00	\$17.93	\$3.77	\$21.70
[REDACTED]	1	\$22.00	\$17.93	\$3.77	\$21.70
[REDACTED]	4	\$22.00	\$19.07	\$4.01	\$23.08
[REDACTED]	1	\$22.00	\$17.93	\$3.77	\$21.70

10



FORM OF PUBLIC AND WORKPLACE NOTICE

Underpayments by Attic Protective Services Pty. Ltd.

The Office of the Fair Work Ombudsman (FWO) has completed an investigation into the compliance of Attic Protective Services Pty. Ltd. (ACN: 115 134 604) (**Attic Protective Services**) with the *Fair Work Act 2009* (FW Act).

As a result of an investigation relating to the period from 5 August 2012 to 3 March 2013, the FWO identified that Attic Protective Services had underpaid 24 employees their employee entitlements under the *Security Services Industry Award 2010* (Modern Award) in the amount of \$7,058.70.

Attic Protective Services has formally admitted to FWO that it contravened the FW Act by failing to correctly apply the Modern Award in relation to casual loadings, broken shift allowances, minimum casual engagements, penalty rates and overtime rates of pay as well as by failing to issue payslips (**Contraventions**). During the period from 19 March 2013 to 28 June 2013, Attic Protective Services rectified the identified underpayments relating to the period from 5 August 2012 to 3 March 2013.

Attic Protective Services and director, Mr Ghulam Akbar, have entered into an Enforceable Undertaking with the FWO, committing to a number of measures, including future compliance and auditing activities to be undertaken. A copy of the Enforceable Undertaking is available at www.fairwork.gov.au.

Attic Protective Services expresses its sincere regret and apologises to its employees for the Contraventions. Furthermore, Attic Protective Services commit to current and prospective employees that they will comply with all requirements of the Modern Award, the FW Act and all other applicable Commonwealth workplace relations laws and instruments in the future.

If you worked for Attic Protective Services and have queries or questions relating to your employment or if you are unsure if you were paid correctly, please contact <insert details of internal contact>. Alternatively, anyone can contact the FWO via its website at www.fairwork.gov.au or the Infoline on 13 13 94.

