



Australian Government

# Fair Work OMBUDSMAN

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## **ENFORCEABLE UNDERTAKING**

Between

The Commonwealth of Australia

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

and

A&K Saana Services Pty. Ltd. (ABN: 89 160 540 518)

and

Admir Kolakovic

## Section 715 ENFORCEABLE UNDERTAKING

### Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
  - (a) A&K Saana Services Pty Ltd (ABN: 89 160 540 518) (**A&K Saana Services**); and
  - (b) Admir Kolakovic

for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

### Background

2. A&K Saana Services was incorporated on 27 September 2012 and the business is engaged in providing cleaning services. Admir Kolakovic is the director of A&K Saana Services and is authorised to make decisions on behalf of A&K Saana Services.
3. Myer Pty Limited (ABN 83 004 143 239) (**Myer**) entered into a services agreement with RCS Cleaning Services Pty Ltd as trustee for RCS Cleaning Services Unit Trust trading as Swan Hill Commercial Cleaning ABN 39 294 349 351 to provide cleaning services at Myer sites. The agreement commenced operating from 19 November 2013.
4. Pioneer Cleaning Australia Pty Ltd ACN 163 765 928 entered into a novation agreement with RCS Cleaning Services Unit Trust trading as Swan Hill Commercial Cleaning ABN 39 294 349 351 to service the contract with Myer.
5. A&K Saana Services was offered and entered into an agreement to provide cleaning services to Pioneer Contracting Services Pty Ltd (ACN 164 009 036) (**Pioneer**) for servicing the contractual cleaning work at a number of Myer sites including Knox City, Highpoint, Fountain Gate and Altona Distribution Centre from about November 2013. The agreement was executed by Admir Kolakovic on behalf of A&K Saana Services.
6. A&K Saana Services were requested to submit a yearly fixed price quote for their services. The quote was on the basis of the estimated hours of cleaning services to be provided per week per Myer site. This equated to approximately \$22 per hour.
7. A&K Saana Services were requested to complete additional hours on an ad hoc basis, which was charged at the agreed price of \$22 per hour. These additional hours included providing replacement cleaners for cleaners employed directly by Pioneer on public holidays such as ANZAC Day on 25 April 2014, Queen's Birthday on 9 June 2014 and Melbourne Cup Day on 4 November.
8. A&K Saana Services invoiced Pioneer for the services provided at the Myer sites.
9. At 6:00 am on 11 December 2014, the FWO conducted unannounced site visits at Myer Fountain Gate. Fair Work Inspectors conducted interviews with two workers who were engaged by A&K Saana Services to clean at the site. These workers are set out in **Attachment C** to the Undertaking and will be referred to as Worker A and Worker B.
10. The interviews on 11 December 2014 were in relation to an investigation that the FWO was undertaking into whether companies that provided contracted cleaning services at Myer sites complied with the FW Act (**Investigation**).

11. Worker A stated to the FWO that she believed she was an independent contractor, invoiced A&K Saana Services at the rate of \$17 per hour inclusive of weekend work, and was paid in accordance with her invoiced amount.
12. Worker B was engaged as an employee, was paid fortnightly, received pay slips, worked regular hours on weekdays and was paid at the rate of \$17 per hour.
13. On 19 December 2014, the FWO wrote to A&K Saana Services regarding the Investigation and requested documents from A&K Saana Services.
14. On 13 January 2015, the FWO received evidence relevant to the Investigation from Admir Kolakovic on behalf of A&K Saana Services.
15. On 18 February 2015, Fair Work Inspectors met with Admir Kolakovic, Adnan Kolakovic who is the Business Manager for A&K Saana Services and the Tax Accountant for A&K Saana Services. Further evidence and information was provided to the FWO during this meeting, with additional records supplied on 27 February 2015 and 6 March 2015.
16. As a result of the Investigation the FWO formed the view and notified A&K Saana Services on 10 April 2015 that workers who were purportedly engaged as independent contractors (**Subcontracted Workers**) by A&K Saana Services should have been engaged as employees on the basis that they:
  - (a) performed the cleaning work at the times directed by A&K Saana Services and supervisors on site to meet the contractual arrangements entered into between Pioneer and A&K Saana Services;
  - (b) used tools and equipment supplied by Pioneer pursuant to the contract between Pioneer and A&K Saana Services, and the Subcontracted Workers did not provide any tools or equipment while performing the cleaning work;
  - (c) were supervised by Admir Kolakovic, Adnan Kolakovic and/or an employee engaged by Pioneer;
  - (d) were paid for the hours of work performed and not by the results;
  - (e) were covered by A&K Saana Services' insurance cover for the risk associated with the performance of their work;
  - (f) performed the work personally and did not delegate or subcontract the work;
  - (g) were paid hourly rates by A&K Saana Services that could not meaningfully be further subcontracted as the hourly rates were lower than the prescribed hourly rate under the *Cleaning Services Award 2010 (Award)* for a similar type of work; and
  - (h) the work performed by the Subcontracted Workers did not require any specialised skills.
17. On 28 April 2015, A&K Saana Services accepted the FWO determination the Subcontracted Workers should have been engaged as employees despite their purported engagement as independent contractors.
18. At all relevant times the terms and conditions of employment were governed by the Award.
19. The FWO determined that the Subcontracted Workers were casual employees as they worked irregular hours and were classified as Cleaning Services Employee Level 1 as per the Award.

20. The Investigation also identified Worker B, who was engaged as a part-time employee due to the regular hours that he worked, was governed by the Award and classified as Cleaning Services Employee Level 1 under the Award.
21. As a result of the Investigation, the FWO determined that A&K Saana Services contravened provisions of the Award and the FW Act.
22. On 6 May 2015, Fair Work Inspectors met with Adnan Kolakovic, and the Tax Accountant for A&K Saana Services to provide education on the employer's obligations, the application of the Award and the FW Act, including the rates of pay for employees performing cleaning services from 1 July 2013 onwards.

### **Contraventions**

23. Based on the evidences received during the Investigation, the FWO determined and A&K Saana Services admits, that A&K Saana Services has contravened:
  - (a) section 357(1) of the FW Act by representing to the Workers that the contract of employment under which each worker was employed was a contract for services for work as an independent contractor;
  - (b) section 45 of the FW Act by failing to comply with the following provisions of the Award:
    - (i) clause 12.4(b)(iii) by failing to pay a part-time employee the hourly rate inclusive of the 15% allowance for the hours worked;
    - (ii) clause 12.5(a) by failing to pay casual employees the ordinary hourly rate inclusive of an additional 25% loading for the hours worked;
    - (iii) clause 17.1 by failing to pay the broken shift allowance of 0.458% of the standard rate per day where an employee worked in two separate periods of duty on any day within a maximum spread of thirteen 13 hours and where the break between periods exceeds one hour;
    - (iv) clause 24.2(f) by failing to pay the minimum engagement of 4 hours to part-time and casual employees engaged at a location with a total cleaning area of more than 5000 square metres;
    - (v) clause 27.1(a) by failing to pay an additional 15% of the ordinary hourly rate for shifts that started before 6am or finished after 6pm on a Monday to Friday;
    - (vi) clause 27.2(a) by failing to pay the Saturday penalty rate of time and one half of the ordinary hourly rate;
    - (vii) clause 27.2(b) by failing to pay the Sunday penalty rate of double the ordinary hourly rate;
    - (viii) clause 27.3 by failing to pay the public holiday penalty rate of double time and one half of the ordinary hourly rate; and
    - (ix) clause 28.2 by failing to pay overtime rate of time and a half for the first two hours and double time thereafter for work from midnight Sunday to midnight Saturday that is beyond the ordinary hours;
  - (collectively the **Contraventions**).
  - (c) the FWO has determined, and Admir Kolakovic admits, that by reasons of the

matters set out in paragraph 2 and 5, he was involved in the Contraventions pursuant to section 550(2)(c) of the FW Act.

### **Commencement of Undertaking**

24. This Undertaking comes into effect when:
- (a) the Undertaking is executed by A&K Saana Services and Admir Kolakovic; and
  - (b) the FWO accepts the Undertaking so executed.
25. Upon the commencement of this Undertaking, A&K Saana Services and Admir Kolakovic undertake to assume the obligations set out below.

### **Undertakings**

26. For the purposes of section 715 of the FW Act, A&K Saana Services and Admir Kolakovic give the following undertakings:

#### ***Rectify workers' wages and entitlements***

- (a) Within 28 days of execution of this Undertaking, pay the amount of \$6,291.93 less taxation to the workers who were underpaid during the assessment period as a result of the Contraventions referred to in paragraph 24, according to the proportions set out in **Attachment D**.
- (b) Provide evidence of rectification in relation to paragraph 26(a) above to the FWO within 14 days of the payments being made;

#### ***Changes to labour engagement practices***

- (c) within 28 days of the execution of this undertaking, A&K Saana Services will change their operations so that all individuals who perform work for A&K Saana Services are employed as employees and not engaged as independent contractors, and will be paid pursuant to the Award;
- (d) in accordance with the Award, A&K Saana Services will inform each employee of the terms of their engagement in writing including their status as full-time, part-time or casual, their usual location of work and the employee's classification;
- (e) provide to the FWO written confirmation that the changes in paragraph 26(c) and 26(d) have been completed within 7 days after the completion of the changes occurring;

#### ***Future workplace relations compliance***

- (f) take all reasonable steps to ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Award and FW Act;
- (g) implement systems and processes to ensure ongoing compliance with the obligations referred to in paragraph 26(f) including obligations relating to rates of pay, loadings, penalties, taxation, superannuation and record keeping;
- (h) provide the FWO within 28 days of the execution of the Undertaking written details of the systems and processes implemented in satisfaction of the Undertaking in paragraph 26(g);

#### ***Future reporting to the FWO***

- (i) cause to have performed by an accounting professional (e.g. Certified Practising Accountant) at A&K Saana Services expense, an audit (**Audit**) of compliance with Commonwealth workplace laws and instruments, including but not limited to the Award and FW Act, in respect of pay, conditions and record keeping in relation to all A&K Saana Services employees, according to the following schedule:
  - (i) an audit for the pay periods spanning and inclusive of 1 July 2015 to 30 September 2015, which is to be finalised by 31 October 2015;
  - (ii) an audit for the pay periods spanning and inclusive of 1 October 2015 to 31 December, which is to be finalised by 31 January 2016;
- (j) provide to the FWO, at least 14 days prior to the commencement of an Audit being undertaken, the methodology to be used for the Audit for approval by the FWO;
- (k) provide to the FWO, within 14 days of each finalised Audit, details of the outcomes of the Audit;
- (l) in the event an Audit discloses contraventions of any applicable Commonwealth workplace relations laws, rectify all such contraventions within 14 days of the finalised Audit including rectification of any and all underpayments to employees;
- (m) provide evidence of rectification in relation to paragraph 26(l) to the FWO within 14 days of the finalised Audit;

#### **Apology**

- (n) within 28 days of the execution of this Undertaking, send an apology to the employees subject to the Contraventions (**Apology Letters**) in the terms set out in **Attachment A**;
- (o) within 7 days of the distribution of the Apology Letters to the Workers provide copies of the Apology Letters to the FWO;

#### **Future complaints**

- (p) where contacted by current or former employees alleging that their lawful entitlements have not been met, A&K Saana Services agrees to:
  - (i) notify the FWO within 7 days of receiving the allegation/s;
  - (ii) within 28 days of receiving the allegation/s take all reasonable steps to ascertain whether a contravention/s of the FW Act has occurred, and where such contravention/s have been found, take immediate steps to rectify the contravention/s;
  - (iii) within 7 days of resolving the allegation/s, provide the FWO with evidence that any identified underpayments have been paid to the worker and evidence that other issues identified have been resolved;
  - (iv) should a decision be made not to rectify an issue raised by an allegation, notify the FWO within 7 days of this decision the reasons for not rectifying;

#### **Workplace relations training**

- (q) within 90 days of the execution of this Undertaking A&K Saana Services must organise and ensure that Admir Kolakovic and the manager/s of A&K Saana Services attend a training course which deals with the rights and responsibilities of an employer under the FW Act (**Training Course**);

- (r) ensure the Training Course is conducted by an accredited workplace trainer who is approved by the FWO and paid for by A&K Saana Services;
- (s) provide the training materials used in the training course to the FWO no later than 14 days before the training is to be conducted and the training materials must be approved by the FWO;
- (t) provide evidence of attendance and payment for the Training Course to the FWO within 7 days of the training being provided;
- (u) Within 90 days of the execution of this Undertaking ensure Admir Kolakovic and the manager/s of A&K Saana Services review relevant education material available on the FWO website and as a minimum, complete educational activities as set out in **Attachment B** and ensure a copy of each Attachment B completed is provided to the FWO, along with requested supplementary documentation;

#### ***FWO My Account Registration***

- (v) within 7 days of the execution of this Undertaking, register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and complete the profile, minimum pay rates and award options;
- (w) within 14 days of the execution of the Undertaking provide to the FWO the 'My Account' registration number;

#### ***Recordkeeping – Fair Work Information Statement***

- (x) provide to all current employees a copy of the Fair Work Information Statement where they have yet to receive a copy. Copies of the Fair Work Information Statement in English and other languages are available on the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au);
- (y) ensure that all future employees are provided with a copy of the Fair Work Information Statement and that A&K Saana Services maintains records of this activity;
- (z) within 14 days of the execution of this Undertaking provide the FWO with a document evidencing the actioning of paragraphs 26(x) and 26(y) above;

#### ***Broader community workplace relations education***

- (aa) make a donation of \$500.00 to CLEANING ACCOUNTABILITY FRAMEWORK INC within 14 days of the execution of this Undertaking with the objective of assisting the promotion of compliance with Commonwealth of Australia Workplace Relations Laws in the cleaning industry; and
- (bb) provide proof of the payment referred to in 26(aa) to the FWO within 7 days of it being made.

#### **Acknowledgements**

27. A&K Saana Services and Admir Kolakovic acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at [www.fairwork.gov.au](http://www.fairwork.gov.au) (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request

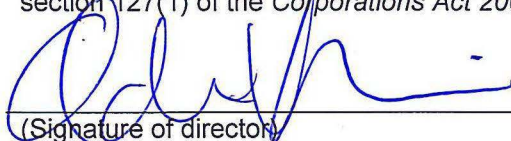
under the *Freedom of Information Act 1982* (Cth);

- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO 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 A&K Saana Services or Admir Kolakovic;
- (e) 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;
- (f) if the FWO considers that A&K Saana Services and/or Admir Kolakovic has contravened any of the terms of this Undertaking 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;
- (g) consistent with section 715(3) of the FW Act, A&K Saana Services and/or Admir Kolakovic may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.



**Executed as an undertaking**

EXECUTED by A&K Saana Services (ABN: 89 160 540 518) and Admir Kolakovic in accordance with section 127(1) of the *Corporations Act 2001*:

  
\_\_\_\_\_  
(Signature of director)

\_\_\_\_\_  
(Signature of director/ company secretary)

ADMIR KOLAKOVIC  
\_\_\_\_\_  
(Name of director)


\_\_\_\_\_  
(Name of director/ company secretary)

26/6/15  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:


  
\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of witness)

Ied Hoare  
\_\_\_\_\_  
(Name of witness)


\_\_\_\_\_  
(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 & Compliance  
Operations Group  
Delegate for the FAIR WORK OMBUDSMAN

1 JULY 2015  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

PIA MORGAN  
\_\_\_\_\_  
(Name of Witness)

## Attachment A – Letter of Apology

<Date>

<Name>

<Employee Address>

Dear <Name>

I am writing to apologise on behalf of A&K Saana Services Pty Ltd for non-compliance with Commonwealth workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that A&K Saana Services Pty Ltd has contravened the Cleaning Services Award 2010 and Fair Work Act 2009 by:

1. failing to pay part-time and casual employees the correct minimum wage;
2. failing to pay part-time and casual employees the minimum engagement of 4 hours;
3. failing to pay some employees the applicable broken shift allowance;
4. failing to pay some employees the applicable penalty rates for working on shifts that start before 6am or finish after 6pm on a Monday to Friday;
5. failing to pay some employees the applicable penalty rates for working on a Saturday, Sunday and/or public holiday, and
6. failing to pay some employees the overtime rates for working beyond the ordinary hours.

(collectively the **Contraventions**).

Regrettably, the investigation determined that you were affected by the above Contraventions.

A&K Saana Services Pty Ltd is taking steps to remedy the Contraventions and will repay you any amounts identified as owing. You will be provided with a payslip regarding any payments.

A&K Saana Services Pty Ltd has formally admitted to the FWO that A&K Saana Services Pty Ltd did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

As part of the Enforceable Undertaking, A&K Saana Services Pty Ltd have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

A&K Saana Services Pty Ltd express their sincere regret and apologises to you for failing to comply with its lawful obligations.

Should you have any questions, please contact [**party to include contact details**].

Yours sincerely

<signature>

Admir Kolakovic  
Director

**Attachment B**

**TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE**

I, \_\_\_\_\_ have undertaken the following tools:

**Completed online courses\* including:**

- Difficult conversations in the workplace – manager course      date completed: \_\_\_\_\_
- Hiring employees      date completed: \_\_\_\_\_
- Managing performance      date completed: \_\_\_\_\_

*\* Please provide printout of the Statement/Certificate of Attainment for each course completed*

**Viewed Videos including:**

- Welcome to fairwork.gov.au      date completed: \_\_\_\_\_
- Finding information for your industry      date completed: \_\_\_\_\_
- My account      date completed: \_\_\_\_\_
- Introduction to the Pay and Conditions Tool      date completed: \_\_\_\_\_
- PACT – Award classifications      date completed: \_\_\_\_\_
- PACT – Pay summary      date completed: \_\_\_\_\_
- PACT – Penalty rates      date completed: \_\_\_\_\_
- PACT – Shift calculator      date completed: \_\_\_\_\_
- PACT – Allowances      date completed: \_\_\_\_\_

**Read Factsheets including:**

- Role of the Fair Work Ombudsman      date completed: \_\_\_\_\_
- Contractors and employees – what’s the difference?      date completed: \_\_\_\_\_

**Read information on the following:**

- ***Pay Overview***
- Minimum wages      Page Ref No. \_\_\_\_\_      date completed: \_\_\_\_\_

○ Penalty rates & allowances Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• ***Leave Overview***

○ Annual leave Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

○ Sick & carer's leave Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• ***Ending Employment Overview***

○ Notice & final pay Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

○ Unfair dismissal Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• ***Employee Entitlements Overview***

○ Types of employees Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

○ National Employment Standards Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• ***Awards & Agreements Overview***

○ Awards Page Ref No. \_\_\_\_\_ date completed: \_\_\_\_\_

• Date and signature: \_\_\_\_\_

**Attachment C – Workers interviewed on 11 December 2014**

<b>Worker</b>	<b>Undertaking Reference</b>
[REDACTED]	Worker A
[REDACTED]	Worker B

**Attachment D – Schedule of underpayment to employees**

<b>Employees</b>	<b>Amount Owed</b>	<b>Assessment Period</b>
██████████	\$1009.84 (less taxation)	4 May 2015 to 31 May 2015
██████████	\$952.65 (less taxation)	4 May 2015 to 31 May 2015
██████████	\$547.30 (less taxation)	4 May 2015 to 31 May 2015
██████████	\$869.54 (less taxation)	4 May 2015 to 31 May 2015
██████████	\$897.38 (less taxation)	4 May 2015 to 31 May 2015
██████████	\$533.76 (less taxation)	4 May 2015 to 31 May 2015
██████████	\$225.34 (less taxation)	4 May 2015 to 31 May 2015
██████████	\$859.56 (less taxation)	4 May 2015 to 31 May 2015
██████████	\$396.56 (less taxation)	4 May 2015 to 31 May 2015
<b>TOTAL</b>	<b>\$6,291.93</b>	