



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

COMPREHENSIVE CLEANING PTY LTD (ACN 117 835 784)

1 Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Comprehensive Cleaning Pty Ltd ACN 117835784 (**the Company**);
for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Company is in the labour hire industry and employs mainly s417 visa holders on short term (up to 6 months) engagements. The Company supplies workers to the Derby Industries Pty Ltd Linley Valley Pork abattoir in Wooroloo, Western Australia.
3. The abattoir is a meat "processing" business as defined in clause 3 of the *Meat Industry Award 2010 (MA000059)* (**the MA**).
4. On receipt of a Request for Assistance by a former employee the FWO conducted an investigation.
5. The Company's employees are engaged in meat packing and storage.
6. During the period 1 July 2014 to 2 August 2015 the Company engaged employees (listed in **Attachment A**) as casual meat processing workers. The employees commenced at Meat Industry Level 1 classification and progressed to the Meat Industry Level 3 classification after 3 months of on the job training.
7. From 1 January 2010 the terms and conditions of the Employee's employment were governed by MA the and the *Fair Work Act 2009* (**FW Act**)
8. Derby Industries maintained electronic time records for the employees.
9. The Company maintained pay records for the employees.
10. The FWO found that 27 employees of the Company were underpaid minimum entitlements in the MA. Total underpayments are \$35,077.99 (gross)
11. The Company underpaid employees by failing to pay the correct rates of pay for ordinary hours, the casual loading, the afternoon shift penalty rates for work performed after 2 pm and finishing at or before midnight Monday to Friday, the night shift penalty rates for work performed after midnight and finishing at or before 9 am Monday to Friday, the penalty rates for work performed on Saturday and Sunday, the penalty rate for work performed on public holidays, and overtime for time worked outside of ordinary hours, in accordance with the MA.
12. The underpayments occurred because the Director of Comprehensive Cleaning incorrectly believed his employees could be paid according to the terms of an Enterprise Agreement which only covered the employees of Derby Industries Pty Ltd.
13. The Director acknowledges the error, has adopted the terms and conditions in the MA, and accepts the need for rectification of award underpayments.

Contraventions

14. The FWO has determined, and the Company admits, that the Company contravened:

Minimum Wages

- (a) subsection 45 of the FW Act by failing to pay employees the minimum wage for ordinary hours for a casual employee in accordance with clause 19.1 and clause 15.9(b) of the MA;

Afternoon shift penalty rate for work commencing after 2 pm and finishing at or before midnight Monday to Friday

- (b) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked on a shift commencing at or after 2 pm and finishing at or before midnight Monday to Friday in accordance with clauses 33.8(a) and 33.9(a) of the MA

Night shift penalty rate for work finishing subsequent to midnight and at or before 9 am Monday to Friday

- (c) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked on a shift that finishes subsequent to midnight and at or before 9 am Monday to Friday in accordance with clauses 33.8(b) and 33.9(b) of the MA.

Saturday Penalty Rates

- (d) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked from midnight Friday and midnight Saturday in accordance with clause 31.2(f)(iii) of the MA;

Sunday Penalty Rates

- (e) subsection 45 of the FW Act by failing to pay employees the correct penalty rates for time worked from midnight Saturday and midnight Sundays in accordance with clause 31.2(f)(iii) of the MA;

Public Holiday Penalty Rates other than Christmas Day and Anzac Day

- (f) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked on Public Holidays other than Christmas Day and Anzac Day in accordance with clause 40.2(c) of the MA;

Christmas and Anzac Day Public Holiday Penalty Rates

- (g) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked on Christmas Day and Anzac Day in accordance with clause 40.2(a) of the MA;

Overtime

- (h) subsection 45 of the FW Act by failing to pay employees overtime rates for time worked outside of ordinary hours in accordance with clause 36 of the MA;

(collectively the **Contraventions**)

Commencement of Undertaking

15. This Undertaking comes into effect when:
- (a) the Undertaking is executed by the Company; and
 - (b) the FWO accepts the Undertaking so executed.

Undertakings

16. For the purposes of section 715 of the FW Act, the Company undertakes to:

Rectify Underpayments

- (a) pay the amounts owed in respect of each employee set out in Attachment A within 28 days of the date of signing of this Enforceable Undertaking;
 - (b) within 7 days of making a payment in compliance with subparagraph 14 (a), provide evidence to the FWO that payments have been made;
 - (c) use reasonable efforts to locate each former employee listed in Attachment A for the purpose of complying with the undertaking in subparagraph 14 (a), including but not limited to:
 - (i) taking steps to ascertain the current residential address, email address, mobile telephone number and/or social media profile of each former employee; and
 - (ii) contacting each former employee, using any current or last known contact details, to advise them they are owed money and explain the process for payment;
 - (d) If a former employee listed in Attachment A cannot be located by the date when a payment is due:
 - (i) within 30 days of the date when the payment to the former employee fell due, provide a report to the FWO on the attempts to locate the former employee together with details of the amount owed to them and their last known contact address; and
 - (ii) within 7 days of submitting the date of the report detailed in subparagraph 13(d) (i) make application to pay the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act the amounts that were required to be paid to the former employee but which have not been paid due to the inability to locate the former employee. The Company will complete documents provided by the FWO.
17. Upon the commencement of this Undertaking the Company undertakes to assume the obligations set out below.

FWO MyAccount Registration

- (e) within 14 days of the execution of this Undertaking, register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and have completed the profile, minimum pay rates and MA options.
 - (i) within 15 days of the execution of the Undertaking provide to the FWO the Company's 'My Account' registration number.

- (ii) within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector through MyAccount, knowledge of the current MA minimum pay rates, Saturday, Sunday and Public Holiday penalty rates, and allowances.

Future Workplace Relations Compliance

- (f) ensure the Company complies at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the MA;
- (g) provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph 17(f) above. Without limitation, such systems and processes relating to:
 - (i) ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates.

Public Notices

- (h) place a notice, within the host business' workplace, which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking for a total consecutive period of seven (7) days in the terms set out in Attachment B;
- (i) provide a copy of the Workplace Notice and provide photographic evidence of its display to the FWO within seven (7) days of the display of the notices;

Self- Audit and Reporting Activity

- (j) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Company), no earlier than 1 October 2016 but no later than 31 October 2016, an audit of its compliance with Commonwealth workplace laws. Specifically:
 - (i) the Company must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
 - (ii) the Company must demonstrate compliance with clause 30.2 of the MA by providing to the FWO evidence of superannuation contributions to a superannuation fund for the benefit of employees.
 - (iii) the audit is to include the two 2 full pay periods immediately prior to 1 October 2016; and
 - (iv) the Company must provide a copy of the audit, including copies of employee time records and pay advices for the audit period, to the FWO within fourteen (14) days of 31 October 2016.

No inconsistent Statements

18. The Company:

- (a) must not, and 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 admission or acknowledgements contained in this agreement.

Acknowledgements

19. The Company 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 (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 the Company;
 - (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 the Company 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, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Comprehensive Cleaning Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:

Hamilton Campbell
(Signature of director)

(Signature of director/company secretary)

HAMILTON CAMPBELL
(Name of director)

(Name of director/company secretary)

26.02.2016
(Date)

(Date)

in the presence of:

in the presence of:

Anthony Harris
(Signature of witness)

JA
(Signature of witness)

ANTHONY HARRIS
(Name of witness)

Jacqueline M. Arthur
(Name of witness)

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

Steven Ronson
Steven Ronson

21 MARCH 2016
(Date)

Executive Director Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

Pia Morgan
(Signature of witness)

PIA MORGAN
(Name of witness)

Attachment A – Affected Employees

Employee Name	Classification	Underpayment
[REDACTED]	Meat Industry (MI) Level 1 – 1 st three months / MI Level 3 thereafter	\$2,622.91 (gross)
[REDACTED]	MI Level 1 – 1 st three months / MI Level 3 thereafter	\$1,816.27 (gross)
[REDACTED]	MI Level 1 – 1 st three months / MI Level 3 thereafter	\$3,112.49 (gross)
[REDACTED]	MI Level 1 – 1 st three months / MI Level 3 thereafter	\$2,770.24 (gross)
[REDACTED]	MI Level 1 – 1 st three months / MI Level 3 thereafter	\$2,893.95 (gross)
[REDACTED]	MI Level 1 – 1 st three months / MI Level 3 thereafter	\$2,644.90 (gross)
[REDACTED]	MI Level 1 – 1 st three months / MI Level 3 thereafter	\$1,409.06 (gross)
[REDACTED]	MI Level 1	\$1,676.68 (gross)
[REDACTED]	MI Level 1	\$1,656.90 (gross)
[REDACTED]	MI Level 1	\$641.75 (gross)
[REDACTED]	MI Level 1 – 1 st three months / MI Level 3 thereafter	\$4,377.03 (gross)
[REDACTED]	MI Level 1	\$591.76 (gross)
[REDACTED]	MI Level 1	\$774.60 (gross)
[REDACTED]	MI Level 1	\$793.36 (gross)
[REDACTED]	MI Level 1	\$726.61 (gross)
[REDACTED]	MI Level 1	\$366.77 (gross)
[REDACTED]	MI Level 1	\$468.38 (gross)
[REDACTED]	MI Level 1	\$636.88 (gross)
[REDACTED]	MI Level 1	\$526.26 (gross)
[REDACTED]	MI Level 1	\$465.33 (gross)
[REDACTED]	MI Level 1	\$378.10 (gross)
[REDACTED]	MI Level 1	\$180.43 (gross)
[REDACTED]	MI Level 1	\$234.87 (gross)
[REDACTED]	MI Level 1	\$200.71 (gross)
[REDACTED]	MI Level 1	\$203.30 (gross)
[REDACTED]	MI Level 1	\$276.92 (gross)
[REDACTED]	MI Level 1 – 1 st three months / MI Level 3 thereafter	\$2,631.53 (gross)
TOTAL		\$35,077.99 (gross)

Attachment B – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Meat Industry Award 2010* [MA000059] by Comprehensive Cleaning Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Comprehensive Cleaning Pty Ltd (**Comprehensive Cleaning**) contravened the *Fair Work Act 2009* and the *Meat Industry Award 2010* [MA000059] (**MA**) by:

- failing to pay employees their lawful minimum casual hourly rates of pay for ordinary time worked;
- failing to pay employees afternoon shift penalty rates for work performed after 2 pm and finishing at or before midnight Monday to Friday;
- failing to pay employees night shift penalty rates for work performed after midnight and finishing at or before 9 am Monday to Friday;
- failing to pay employees penalty rates for time worked on Saturday;
- failing to pay employees penalty rates for time worked on Sunday
- Failing to pay employees penalty rates for work performed on public holidays other than Christmas Day and Anzac Day;
- failing to pay employees penalty rates for work performed on Christmas Day and Anzac Day public holidays;
- failing to pay employees overtime rates for time worked outside of ordinary hours.

Comprehensive Cleaning has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au). Comprehensive Cleaning has rectified the underpayments identified by payment to the employees, and has committed to a number of measures to increase its knowledge of, and compliance with, Commonwealth Workplace Laws and the Meat Industry Award 2010.

Comprehensive Cleaning expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Comprehensive Cleaning gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Comprehensive Cleaning and have queries or questions relating to your employment, please contact Mr Hamilton Campbell. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13