

Failure to co-operate results in penalties of \$24,990 for Sydney company and director

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A Sydney businessman and his company have been penalised almost \$25,000 for failing to co-operate with a Fair Work Ombudsman investigation.

Federal Circuit Court Judge Sylvia Emmett has handed down a penalty of \$20,400 against the Kleen Group Pty Ltd, which provides cleaning, building and facilities management and integrated property services.

Judge Emmett imposed a further penalty of \$4590 against the company's sole director, Henry Andrew Nickolls.

The Fair Work Ombudsman sought to engage with Mr Nickolls and Kleen Group after an operations manager complained about being underpaid.

When efforts to secure co-operation failed, the Fair Work Ombudsman issued a Notice to Produce (NTP) relevant employment documents within 18 days.

The company did not comply.

Under the Fair Work Act, business operators must comply with Notices to Produce issued by Fair Work inspectors or make a court application for a review if they are seeking to challenge a Notice.

"Our inspectors made repeated efforts to engage with this business operator to try to obtain the documents required for our investigation, but were not able to secure sufficient co-operation," Fair Work Ombudsman Natalie James said.

Judge Emmett says it is "imperative" that employers do their utmost to comply with Fair Work Ombudsman requests for documents.

"Notices to Produce are fundamental to the progress of any investigation of an allegation of contravention, or non-compliance, with the Act by the Fair Work Ombudsman," Judge Emmett said.

"Employees should be able to rely on their employers to keep proper records of employment as required by law. It is completely unacceptable for an employer to do otherwise."

Judge Emmett issued an Order requiring Kleen Group to produce the documents that were required under the original NTP within 28 days.

It is the first time that such a Court Order has been achieved by the Fair Work Ombudsman.

The penalty and Court Order were welcomed by Ms James today.

Ms James said enforcing compliance with Notices to Produce was fundamental to maintaining the integrity of Australia's workplace laws and enabling inspectors to conduct thorough investigations.

"Building a culture of compliance with workplace law is important, and employers should be aware that we are prepared to take action where appropriate," she said.

"The integrity of the system must be upheld."

Ms James says the penalty shows that employers cannot thwart an investigation by the Fair Work Ombudsman by failing to respond to its requests without facing significant financial consequences and subsequent publicity about their behaviour.

"Given the Court's Order for the employer to now produce documents or records sought under the NTP, we now expect the relevant material to be provided," she said.

"The decision acknowledges the power of a Fair Work inspector to seek documents and records as part of an investigation is very important.

"The penalties for contempt of court are serious, and in the event that the Order is not complied with, we will continue to pursue all options available to us."

Ms James says her Agency is working hard to ensure a level playing field for employers who are doing the right thing and meeting

their workplace obligations.

"We are committed to helping employers understand and comply with workplace laws, but operators need to make an effort to get the basics right in the first place," Ms James said.

She says Fair Work inspectors identifying issues in a workplace generally find that most employers are co-operative, engaging and willing to receive advice and assistance to rectify their mistakes and ensure future compliance.

"But we will take a dim view of those who give us the cold shoulder and refuse to work with us when we are trying to get to the bottom of an issue."

Ms James encouraged employers who had any uncertainty about their workplace practices to visit the website at www.fairwork.gov.au or phone the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50 and information on the website is translated into 27 languages.

Small business can opt to be put through to a small business helpline, which has now assisted almost 300,000 callers since it was established.

The Fair Work Ombudsman recently introduced a Pay and Conditions Tool (PACT), which provides advice about pay, shift, leave and redundancy entitlements. Free templates for pay slips and time-and-wage-records are also available on the website.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

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Since this Media Release was issued, the Fair Work Ombudsman has clarified that this was not the first time that a Court has ordered the production of documents sought under a Notice to Produce (NTP) and apologises for the original statement.

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