

## Adelaide home care company faces Court over allegations of sham contracting

15 January 2019

Note: On 21 December 2018, this case was finalised with the Federal Circuit Court imposing penalties totalling \$216,480 on Easttrac Pty Ltd, Klemtrac Pty Ltd, Leo Welch and Peter Wallis in respect of admitted contraventions. The FWO did not proceed with its case in respect of Care Providers Pty Ltd and no declarations or orders were made against it.

20 May 2016

A major home care company in Adelaide is facing Court over allegations that its business model breaches sham contracting laws and has resulted in workers being underpaid thousands of dollars.

The Fair Work Ombudsman has commenced legal proceedings in the Federal Circuit Court against Care Providers Pty Ltd, which trades as ESAR Home Care.

Care Providers offers in-home personal care and domestic assistance services to elderly and disabled persons in Adelaide under contracts the company holds with local councils, government agencies and non-government organisations.

The Fair Work Ombudsman alleges Care Providers contravened the sham contracting provisions of the Fair Work Act by deliberately or recklessly misclassifying four employees as independent contractors and underpaying their minimum lawful entitlements.

If the Agency's allegations relating to the four workers are accepted by the Court, it will seek penalties against Care Providers as well as Court Orders requiring the company to commission a professional external audit of its workplace practices and to rectify any further underpayments of misclassified workers identified.

A Court Order requiring Care Providers to provide evidence to the Fair Work Ombudsman of steps it takes to change its business model will also be sought.

Fair Work Ombudsman Natalie James says a decision was made to commence legal action because of the serious nature of the alleged contraventions and concerns that the company's allegedly non-compliant business model is affecting a large number of workers.

In documents filed in Court, the Fair Work Ombudsman alleges Care Provider's sham contracting activity resulted in the four workers – two personal care workers and two who performed cleaning and domestic duties – being underpaid a total of \$8923 between February and September, 2015.

It is alleged that as a result of treating the workers as independent contractors, Care Providers underpaid their employee entitlements under the Social, Community, Home care and Disability Services Award, including allowances, superannuation, leave entitlements and penalty rates for overtime, weekend and public holiday work.

One of the personal care workers was allegedly underpaid \$5213.

Workplace laws relating to record-keeping, pay-slips, entering into written part-time work agreements and making unlawful deductions were allegedly also contravened.

The Fair Work Ombudsman alleges that the correct classification for the workers was as employees of Care Providers, for reasons including the high level of direction and control the company had over their work tasks and hours.

It is alleged that the contraventions were the result of Care Providers using a business model in which it purported to engage workers through two companies - Easttrac Pty Ltd and Klemtrac Pty Ltd - set up in 2014 exclusively to provide it with labour.

It is alleged that Care Providers also operated essentially the same business model prior to 2014 using labour-hire company Nortrac Pty Ltd, a company which also provided labour exclusively to Care Providers before going into liquidation.

The Fair Work Ombudsman alleges Care Providers implemented the business model involving Easttrac and Klemtrac despite having received information between 2011 and 2014 from an accountant, solicitors and a WorkCover SA investigator indicating that the

types of workers engaged by the business might be employees, and not contractors.

The Fair Work Ombudsman alleges that despite receiving the information, Care Providers failed to take any substantial action to ensure its business model complied with workplace laws.

The Fair Work Ombudsman first investigated Care Providers after receiving a referral from the administrators of Nortrac Pty Ltd.

The Fair Work Ombudsman has made a referral to the Australian Securities and Investments Commission regarding the circumstances around the liquidation of Nortrac and subsequent establishment of Easttrac and Klemtrac.

The Fair Work Ombudsman alleges that Easttrac Pty Ltd, Klemtrac Pty Ltd, Care Providers general manager Peter Wallis and Echuca man Leo Welch, who is an owner-operator of Care Providers and was the sole director of Easttrac and Klemtrac at the time of the alleged contraventions, were all involved in multiple contraventions of workplace laws by Care Providers.

Care Providers, Klemtrac and Easttrac each face maximum penalties of up to \$51,000 per contravention and Mr Wallis and Mr Welch face penalties of up to \$10,200 per contravention.

The Fair Work Ombudsman is also seeking a Court Order requiring Care Providers to back-pay the four allegedly underpaid workers in full and Orders for Care Providers, Mr Wallis and Mr Welch to undertake training on workplace relations laws.

A directions hearing is listed for July 25.

Employers and employees seeking assistance can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94.

An interpreter service is available on 13 14 50.

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](http://twitter.com/fairwork_gov_au)) or find us on Facebook [www.facebook.com/fairwork.gov.au](http://www.facebook.com/fairwork.gov.au) (<http://www.facebook.com/fairwork.gov.au>).

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