

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Aboriginal Hostels Limited (ABN: 47 008 504 587) and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 12 of this undertaking.

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by Aboriginal Hostels Limited (**AHL**), 2-6 Shea Street, Phillip, ACT, 2606.

COMMENCEMENT

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by AHL; and
 - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

BACKGROUND

3. AHL is a not-for-profit, independent Commonwealth statutory corporation within the portfolio of the Department of the Prime Minister and Cabinet. AHL provides accommodation and support services to Indigenous Australians in all states and territories except Tasmania, with 45 accommodation facilities and approximately 460 employees.
4. On 5 March 2020, AHL notified the FWO that AHL identified in late 2019, that from 10 August 2017:
 - (a) there had been non-compliance with clause 5.39 of the *Aboriginal Hostels Limited Enterprise Agreement 2017 (EA)*, which included an undertaking made under section 190(3) of the *Fair Work Act 2009 (FW Act)* that an Australian Public Service Level 1 (**APS 1**) employee who works on a Sunday would be paid no less than the amount they would have been entitled to under the *Australian Public Service Enterprise Award 2015 (Award)*;
 - (b) there had been non-compliance with clause 5.44 of the EA, which included an undertaking made under section 190(3) of the FW Act that an APS 1 employee who is on annual leave would be paid no less for that period of annual leave than the amount they would have been entitled to under the Award, and
 - (c) some APS 1 employees were being paid a base rate of pay lower than that in the Award in contravention of section 206 of the FW Act because the annual salary in the Award is calculated on 36.75 ordinary hours per week, and the hourly rate of pay in the EA is calculated on 37.5 ordinary hours per week.

5. On 26 August 2020, AHL notified the FWO that:
 - (a) there had been non-compliance with clause 5.43 of the EA, which requires that any casual employee who works on a Sunday in any given pay period will be paid no less for that pay period than the amount the employee would have been entitled to under the Award; and
 - (b) clause 4.7 of the EA which provides that, if an employee is required to work more than 5 hours overtime continuous with their ordinary hours, the employee will be paid a meal allowance in accordance with AHL Policy. There was no meal allowance policy, and a number of employees were not paid a meal allowance.
6. After engaging McGrathNicol to conduct an audit of AHL's payroll system, it was identified that during the period from 10 August 2017 to 18 March 2020:
 - (a) 687 current and former employees at the APS 1 level were affected by the above contraventions; and
 - (b) as at 2 March 2021, calculations had been completed for all 687 affected employees. Payments totalling \$2,518,696.56, inclusive of interest, have now been paid to 653 of those employees. Of the remaining 34 employees, 29 were not entitled to any monies. Entitlements for a further 5 deceased employees reflect payments that are yet to be made to their estates.
 - (c) As at 2 March 2021, AHL had paid a total of \$198,043.02 in respect of superannuation entitlements and will make further payments, as required, following further assessment of deceased employee records.
7. In late 2020, AHL identified that a previous policy position to align payment of Performance Management Program (**PMP**) salary pay point progression to the first full pay period in September each year, was not in accordance with clause 6.44 of the EA, which stipulated payment from the anniversary date of the PMP. As this date is 1 August each year, an underpayment of wages occurred in respect of 2017 and 2018 PMP pay point progression payments.
8. AHL has now taken the necessary measures to identify affected employees, calculate and pay the amounts owing:
 - (a) 67 current and former employees were affected by the above policy decision;
 - (b) as at 2 March 2021, AHL had paid a total of \$10,273.90, inclusive of interest, to 65 affected employees. Entitlements for a further 2 deceased employees are yet to be made to their estates.

9. Prior to the execution of this Undertaking, AHL notified the FWO that it had:
- (a) increased the base rate of pay to reflect the rate in the Award, with effect from 8 August 2019;
 - (b) calculated and rectified the underpayments referred to in clauses 4, 5 and 7, paying each of the employees identified in column A of Schedule A to this Undertaking (**Schedule A Employees**) the amounts referred to in column B of Schedule A; and
 - (c) rectified any associated superannuation underpayments as required by law to each of the Schedule A Employees, by paying any such required superannuation contributions to the chosen superannuation fund of the employee.
10. On 17 July 2020, AHL informed the FWO it continues to conduct its internal review and will ensure all impacted employees (both current and former) are reimbursed.
11. As a part of its review, AHL has identified the further employees listed in Schedule B to this Undertaking (**Schedule B Employees**) to whom the EA applied but who were not paid by AHL in accordance with the EA. However, as these employees have deceased, AHL will now make arrangements to pay the amount of the underpayment, to the respective estate of each of the Schedule B Employees.

ADMISSIONS

12. The FWO has a reasonable belief, and AHL admits, that AHL contravened:
- (a) section 50 of the FW Act between 10 August 2017 and 16 September 2020 (**Relevant Period**) by:
 - (i) contravening clause 4.7 of the EA by, in respect of each Schedule A Employee and Schedule B Employee identified as being relevant to this contravention, failing to pay a meal allowance;
 - (ii) contravening clause 5.39 of the EA by, in respect of each Schedule A Employee and Schedule B Employee identified as being relevant to this contravention, failing to pay APS 1 employees who worked on a Sunday in any given pay period no less than the amount they would have been entitled to under the Award;
 - (iii) contravening clause 5.43 of the EA by, in respect of the Schedule A Employees and Schedule B Employees identified as being relevant to this contravention, failing to pay a casual employee who works on a Sunday in

any given pay period no less for that pay period than the amount the employee would have been entitled to under the Award;

- (iv) contravening clause 5.44 of the EA by, in respect of each of the Schedule A Employees and Schedule B Employees identified as being relevant to this contravention, failing to pay APS 1 employees on annual leave no less for that period of annual leave than the amount they would have been entitled to under the Award; and
 - (v) contravening clause 6.44 of the EA by, in respect of Schedule A and B Employees identified as being relevant to this contravention, failing to pay Performance Management Program salary pay point progression from the required dates of 1 August 2017 and 1 August 2018.
- (b) section 206 of the FW Act by paying some APS 1 and casual employees a base rate of pay which was less than the base rate of pay under the Award.

13. The contraventions identified in clause 12 of this Undertaking do not include:

- (a) any contraventions which relate to or arise as a consequence of AHL failing to correctly apply the EA to any employee not listed in Schedule A or B to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of AHL failing to correctly apply the EA and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or
- (b) any contraventions which have not yet occurred at the date that this Undertaking is offered by AHL (whether or not those contraventions are identified in the Independent Audits described at clause 29 below). For the avoidance of doubt, this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by AHL and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

UNDERTAKINGS

14. AHL will take the actions set out at clauses 15 to 63 below.

Review and rectification of underpayments

15. By 28 June 2021, AHL will:

- (a) calculate the quantum of any underpayments, including any superannuation entitlements payable on those amounts, to each of the Schedule A Employees and Schedule B Employees under the EA during the Relevant Period (**Underpayments**); and
- (b) pay each of the Schedule A Employees and Schedule B Employees to whom the Underpayments relate:
 - (i) any outstanding underpayment amount owing to them;
 - (ii) any superannuation payments which may be required by law, by making payment to their chosen superannuation fund; and
 - (iii) interest on the amount referred to in (i), calculated:
 - A. using an interest rate that is 4% above the cash rate published by the RBA at the end of the last financial year;
 - B. based on year end balances of underpayments; and
 - C. using simple interest.

16. By 28 June 2021, AHL will provide the FWO evidence of all payments made to current and former employees to rectify the Underpayments.

17. If any of the current or former AHL employees to whom Underpayments are owed cannot be located by 28 June 2021, AHL will pay the underpayment amounts owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. AHL will complete the required documents supplied by the FWO for this purpose.

18. In the event that the FWO is able to locate and contact any AHL employees to whom Underpayments are owed, the FWO will (in addition to its obligations under s 559 of the FW Act) notify AHL in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice AHL will pay the current or former employee interest on the amount already paid by AHL to the Commonwealth of Australia in respect of that employee, calculated for each financial year from the date that the employee first became entitled to that amount until the date on which that amount is paid, using an interest rate that is 4% above the cash rate published by the RBA at the end of the last financial year.

Provision of information to the FWO

19. By 14 July 2021, AHL will provide the FWO with any full and non-redacted reports it has received from McGrathNicol in relation to the underpayments identified at clauses 4 and 5 (the **McGrathNicol report(s)**).
20. The FWO requires the following information:
 - (a) methodology adopted in relation to the calculation of underpayments by McGrathNicol;
 - (b) actions (including remediation) taken by AHL;
 - (c) findings in relation AHL's non-compliance made by McGrathNicol; and
 - (d) recommendations made by McGrathNicol.
21. If the McGrathNicol report(s) provided to the FWO under clause 19 does not already include the information required by the FWO in clause 20 above, AHL agrees that upon a written request by the FWO it will provide any specific additional information set out at clauses 20(a) to (d) requested.
22. If AHL does not have the information set out at clauses 20(a) to (d), AHL must, in response to a request by the FWO, obtain such information as necessary from McGrathNicol to provide to the FWO and provide this information to the FWO within any reasonable timeframes specified by the FWO.
23. The McGrathNicol report(s) may identify each Schedule A and Schedule B Employee by a unique, anonymous identifier.
24. The FWO may request the contact details of Schedule A or Schedule B Employees from AHL for the purposes of assessing a request for assistance by a Schedule A or Schedule B Employee for alleged non-compliance with respect to that employee's entitlements. If the FWO makes a request under this clause, AHL must within ten business days:
 - (a) provide the FWO with the contact information of the Schedule A or Schedule B Employee, where the Schedule A or Schedule B Employee has consented to their personal information being provided to the FWO; or
 - (b) notify the FWO that the Schedule A or Schedule B Employee does not consent to their personal information being disclosed to the FWO; or
 - (c) notify the FWO that it has not been able to contact the relevant Schedule A or Schedule B Employee and provide details of the mechanisms used to contact the Schedule A or Schedule B Employee (i.e. whether contact has been made by

telephone, email, post or other means, and the dates on which the attempts at contact were made).

Alternative timeframes to those set out in this clause may be agreed in writing between AHL and the FWO.

25. By 14 July 2021, AHL will provide to the FWO information about the new systems and processes it has put in place to ensure compliance with its obligations under clauses 5.39, 5.44, 5.43 and 4.7 of the EA and section 206 of the FW Act.
26. If the information provided by AHL is determined by the FWO to be insufficient to satisfy the FWO that the new systems and processes are compliant with AHL's obligations under clauses 4.7, 5.39, 5.43 and 5.44 of the EA and section 206 of the FW Act, AHL must, in response to a request by the FWO, provide further information as requested by the FWO within any reasonable timeframes specified by the FWO.

Letter of Assurance

27. By 14 July 2021 AHL will provide the FWO a Letter of Assurance signed by the Appointed Chief Executive Officer in the terms as set out at Attachment A.
28. The FWO will accept the Letter of Assurance, the McGrathNicol report(s) (and other information provided under clauses 19 to 26 above) and information about the new systems and processes (referred to in clauses 25 and 26 above) in lieu of requiring AHL to be subject to an independent assessment of AHL's quantification and rectification of underpayments to the Schedule A and Schedule B Employees and AHL's new systems and processes for ensuring future compliance.

Independent Audits

29. AHL must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits of AHL's compliance with the FW Act and *Fair Work Regulations 2009 (FW Regs)*, in relation to the EA, and any future enterprise agreements that replace the EA (**Audits**).
30. AHL will notify the FWO of its proposed Independent Auditor by no later than 14 June 2021. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require AHL to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be approved by the FWO in writing prior to being engaged by AHL.

31. AHL must ensure that each of the Audits conducted by the Independent Auditor includes the specific information required by the FWO for the First Audit and the Second Audit as set out below at clauses 32 to 43 respectively, and the following:
- (a) an assessment of whether a statistically valid sample of employees, the sample size of which is approved by the FWO, to whom the EA applies (**Sampled Employees**) have been correctly classified by AHL. For the purpose of this clause, the Sampled Employees may be up to 10 per cent of employees to whom the EA applies;
 - (b) that the Sampled Employees were paid correctly, including in accordance with clauses 4.7, 5.39, 5.43 and 5.44 of the EA and s 206 of the FW Act;
 - (c) direct contact, including contact via telephone or video, with an agreed number of the Sampled Employees to ensure accuracy of hours worked and amounts paid;
 - (d) the production of a written report on each of the Audits setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO;
 - (e) that each of the written reports referred to in (d) above contains the following declarations from the Independent Auditor:
 - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - (ii) notwithstanding that the Independent Auditor is retained by AHL, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from AHL in preparing the report;
 - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
 - (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

The First Audit

32. AHL must ensure the Independent Auditor commences the first of the Audits by no later than 30 June 2021 (**First Audit**).
33. For the First Audit, the relevant pre-audit period to assess Sampled Employees is 12 months.
34. The relevant audit period for the First Audit must be at least two full pay periods falling within the period 15 March 2021 to 14 June 2021.

35. By 21 June 2021, AHL will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
36. AHL will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 31 July 2021, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. AHL will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to AHL without the FWO's approval.
37. AHL will use its best endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit (**First Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. AHL will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to AHL without the FWO's approval.

The Second Audit

38. AHL must ensure the Independent Auditor commences the second of the Audits by no later than 1 January 2022 (**Second Audit**).
39. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 1 January 2020 – 31 December 2021.
40. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 1 November 2021 – 31 December 2021.
41. By 1 December 2021, AHL will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
42. AHL will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 28 February 2022, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. AHL will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to AHL without the FWO's approval.
43. AHL will use its best endeavours to ensure the Independent Auditor finalises the Second Audit and provides a written report of the Second Audit (**Second Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. AHL will ensure the Independent Auditor does not provide the written report, or a copy of the same, to AHL without the FWO's approval.

Outcome of Audits

44. If any of the Audits identify underpayments to any current or former employees, AHL will conduct a reconciliation of the amounts paid to those employees during the relevant pre-audit period and rectify any underpayments that are identified. The reconciliation period for each identified employee will be from the start of the relevant pre-audit period to the end of the relevant audit period.
45. AHL will provide to the FWO evidence of such rectification within 28 days of being informed by the FWO of the requirement to undertake the reconciliation.
46. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of the Second Audit, AHL will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. AHL will complete the required documents supplied by the FWO for this purpose.
47. If any of the Audits identify an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, AHL will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the EA (or replacement instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by AHL.
48. If requested by the FWO, AHL will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 7 days of such a request.

Employee Hotline

49. By 14 June 2021, at its own expense, AHL will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the EA applies, or had applied, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.
50. The independent organisation must be approved by the FWO prior to being engaged by AHL to operate the Employee Hotline.

51. AHL will:

- (a) ensure the Employee Hotline remains operational for a period of 12 months;
- (b) ensure that the telephone number and email address are included on a communication to employees to whom the EA applies, in the form of Attachment B to this Undertaking;
- (c) communicate the existence and purpose of the Employee Hotline by way of letter to the last known address of all current and former employees to whom the EA applies, or had applied, known as at the Commencement Date, or identified during the independent assessment, and dating back to 10 August 2017. AHL will:
 - (i) ensure the letter is in the form of Attachment B to this Undertaking; and
 - (ii) provide evidence to the FWO that the letter has been mailed to all required current and former employees by 21 June 2021;
- (d) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
- (e) provide a de-identified list of enquiries received by the Employee Hotline to the FWO every three months from the establishment of the Employee Hotline.

Notices – Internal and External

Apology to Employees

- 52. AHL will send a letter of apology (**Apology Letter**) to all Schedule A Employees, by 14 July 2021. The Apology Letter will be in the form of Attachment C to this Undertaking.
- 53. AHL will provide evidence to the FWO that the Apology Letter has been sent to all affected employees by 28 July 2021.

Media Release

- 54. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking.

Workplace Notice

- 55. By 25 June 2021, AHL will cause to be displayed within each of its Australian worksites where the current Schedule A Employees work a notice in the form of Attachment D to this Undertaking (**Workplace Notice**).
- 56. AHL must ensure the Workplace Notice is:

- (a) at least A3 size;
 - (b) clearly displayed in a location to which all employees have access (for example, by placement on a staff noticeboard); and
 - (c) displayed for a period of 28 days.
57. Within 7 days of first displaying the Workplace Notice, AHL will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of its worksites.
58. At the end of the 28 day period referred to in clause 56 above, AHL will provide confirmation to the FWO that the Workplace Notice has been continuously displayed at each location for the required period.

Website Notice

59. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, AHL will place a notice on its website www.ahl.gov.au, (**Website Notice**).
60. The Website Notice must:
- (a) be in the form of the Website Notice set out at Attachment D;
 - (b) be displayed in at least size 10 font; and
 - (c) remain on the website for a period of 28 days.
61. Within 7 days of placing the Website Notice on its website, AHL will provide to the FWO evidence of its placement.

Workplace Relations Training

62. By 30 November 2021, AHL will organise and ensure training is provided to all persons at the Executive Level 1 classification and above (or equivalent level) who have responsibility for workplace relations and payroll functions (**Training**) and:
- (a) ensure the Training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act; the EA and any other industrial awards and future enterprise agreements covering employees of AHL during the life of this undertaking;
 - (b) ensure the Training is conducted by a workplace relations professional, such person or organisation to be approved by the FWO and paid for by AHL;

- (c) provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted;
- (d) provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended, and noting that remote attendance by video or telephone conferencing is permissible); and
- (e) for a period of 2 years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 62(a) to 62(d) in relation to any new or existing relevant employees or contractors who, after the execution of this EU, acquire responsibilities that include human resources or payroll functions on behalf of AHL at the relevant classification level (or equivalent). The training must be undertaken, and evidence provided to the FWO within 90 days of the relevant employee or contractor taking on responsibility for the functions.

No Inconsistent Statements

63. AHL must not, and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

64. AHL acknowledges that:

- (a) the FWO may;
 - (i) make this Undertaking (including any of the Attachments) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking (including any of the Attachments) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this Undertaking;
 - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
 - (v) rely upon the admissions made by AHL set out in clause 12 above in respect of decisions taken regarding enforcement action in the event that AHL is found to have failed to comply with its workplace relations obligations in the

future, including but not limited to any failure by AHL to comply with its obligations under this Undertaking;

- (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 herein;
- (c) consistent with section 715(3) of the FW Act, AHL may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if AHL contravenes any of the terms of 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; and
 - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by AHL in clauses 12 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by AHL in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

Anthony Ashby

(Name of director)

10 June 2021

(Date)

in the presence of:



(Signature of witness)

Dermot Walsh

(Name of witness)



(Signature of director)

Dr Valerie Cooms

(Name of director)

10 June 2021

(Date)

in the presence of:



(Signature of witness)

Dermot Walsh

(Name of witness)

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



Mark Scully, Deputy Fair Work
Ombudsman – Compliance and
Enforcement

Delegate for the FAIR WORK
OMBUDSMAN

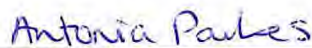
in the presence of:



(Signature of witness)

10 June 2021

(Date)



(Name of Witness)

SCHEDULE A: *BACK PAID EMPLOYEES*

(Documented separately)

SCHEDULE B: *DECEASED EMPLOYEES – YET TO BE BACK PAID*

(Documented separately)

Attachment A – Letter of Assurance

Sandra Parker
The Fair Work Ombudsman
Fair Work Ombudsman
GPO Box 9987
MELBOURNE VIC 3001

Dear Sandra

I am writing on behalf of Aboriginal Hostels Limited (AHL) in my capacity as the Appointed Chief Executive Officer. This letter follows a process where AHL self-reported that a number of underpayments had occurred in relation to a number of employees between 10 August 2017 and 16 September 2020 arising from AHL's failure to comply with clauses 4.7, 5.39, 5.43 and 5.44 of the *Aboriginal Hostels Limited Enterprise Agreement 2017 (the EA)*, and section 206 of the *Fair Work Act 2009 (FW Act)*.

As you are aware, AHL has entered into an Enforceable Undertaking with the Fair Work Ombudsman (FWO) in respect of these underpayments.

I write to provide the FWO with my assurance that I am satisfied:

- a. the process by which AHL, as assisted by McGrathNicol, calculated the underpayments to its current and former employees affected by AHL's failure to comply with clauses 4.7, 5.39, 5.43, 5.44 and 6.44 of the EA and section 209 of the FW Act was correctly undertaken, and
- b. as of [date] all former and current employees impacted by the underpayments, apart from those who have not been able to be located by AHL, have been paid their entitlements under the EA and the FW Act by AHL, including the payment of interest at a rate of 4% above the RBA cash rate.

AHL has remediated all issues as a matter of priority and is committed to minimising the risk of future non-compliance.

Sincerely

Dave Chalmers

Chief Executive Officer
Aboriginal Hostels Limited

Attachment B – Letter to employees

Dear <insert name >

As you may be aware, AHL has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) and the *Aboriginal Hostels Limited Enterprise Agreement 2017* (**the EA**) by:

- failing to pay APS 1 and some casual employees who worked on a Sunday in any given pay period no less than the amount they would have been entitled to under the *Australian Public Service Enterprise Award 2015* (**the Award**)
- failing to pay APS 1 employees on annual leave no less for that period of annual leave than the amount they would have been entitled to under the Award,
- failing to pay some employees a meal allowance;
- paying some APS 1 employees a base rate of pay which was less than the base rate of pay under the Award; and
- failing to pay some employees their pay point progression from the correct date.

As a result of these contraventions, some employees have been underpaid from 10 August 2017 to 16 September 2020. All current and former employees who had an underpayment have now been paid, with interest.

AHL understands that you may have questions and concerns relating to this and other employment issues. To address these concerns a hotline has been established for all employees to access. The hotline is being operated by <insert entity name>, an independent party that can assist you with your enquiries. <Insert name > can be contacted on <insert contact number> or at <insert email address> and, if required, on a confidential basis.

Should you wish to discuss your concerns directly with AHL you can contact us on <insert telephone number/ email address>. We will make every attempt to resolve your enquiry within 30 days of receiving it and will maintain open communication with you about the progress of your enquiry.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.

AHL expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Yours sincerely

<Employer name>

Attachment C – Letter of Apology

FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of AHL for non-compliance with Commonwealth workplace relations laws.

AHL has formally admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) and the *Aboriginal Hostels Limited Enterprise Agreement 2017 (the EA)* by:

- failing to pay APS 1 employees who worked on a Sunday in any given pay period no less than the amount they would have been entitled to under the *Australian Public Service Enterprise Award 2015 (the Award)*;
- failing to pay APS 1 employees on annual leave no less for that period of annual leave than the amount they would have been entitled to under the Award;
- failing to pay casual employees who worked on a Sunday in any given pay period no less than the amount they would have been entitled to under the Award;
- failing to pay some employees a meal allowance; and
- paying some APS 1 employees a base rate of pay which was less than the base rate of pay under the Award;
- failing to pay some employees their pay point progression from the correct date.

Regrettably, it has been determined that you were affected by these contraventions.

AHL is taking steps to remedy the contraventions. A review has determined that you were owed an additional amount, being:

- (a) \$[insert amount] in respect of minimum entitlements;
- (b) \$[insert amounts] in respect of superannuation; and
- (c) \$[insert amount] in respect of interest.

You will/have receive/d this payment on [insert date] and will be provided with a payment advice regarding the payment.

AHL has formally admitted to the FWO that AHL 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 will be available at www.fairwork.gov.au.

As part of the Enforceable Undertaking, we have committed to a number of measures

to ensure future compliance with Commonwealth workplace relations laws.

AHL expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions or concerns about this or any other employment matter there are two options available to you to assist you with the matter:

- (a) a hotline has been established and is being operated by <insert entity name>, an independent party that can assist you with your enquiries, on a confidential basis if required. <insert entity name> can be contacted on <insert contact number> or at <insert email address>.
- (b) AHL will maintain an enquiry line that you can contact at any time to discuss your concerns. AHL will make every attempt to resolve your enquiry within 30 days of receiving it and will maintain open communication with you about the progress of your enquiry. You can contact AHL on <insert contact number> or at <insert email address>.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.

Yours sincerely

<Employer name>

Attachment D – Form of Website and Workplace Notice

AHL recently undertook a review of its payroll systems and processes and determined that it contravened the *Fair Work Act 2009* (Cth) and the *Aboriginal Hostels Limited Enterprise Agreement 2017* (the **EA**) by:

- failing to pay APS 1 and some casual employees who worked on a Sunday in any given pay period no less than the amount they would have been entitled to under the *Australian Public Service Enterprise Award 2015* (the **Award**);
- failing to pay APS 1 employees on annual leave no less for that period of annual leave than the amount they would have been entitled to under the Award;
- failing to pay some employees a meal allowance;
- paying some APS 1 employees a base rate of pay which was less than the base rate of pay under the Award; and
- failing to pay some employees their pay point progression from the correct date.

AHL has formally admitted to the Fair Work Ombudsman (**FWO**) that these contraventions have occurred and consequently a number of employees were underpaid.

AHL has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

AHL will, as a result of the Enforceable Undertaking, commit to undertaking a number of activities to ensure its ongoing compliance such as, conducting two independent audits and formally apologising to individual employees.

AHL expresses its sincerest regrets and apologises for these contraventions.

If you worked for AHL during the period 10 August 2017 to 16 September 2020 and have queries or questions relating to your employment, you may contact either:

- the hotline being operated by independent third party <insert entity name> on <contact number> or <email address>. This hotline can be contacted on a confidential basis; or
- AHL directly through their enquiry line on <insert contact number or email address>.

There are other ways in which current and former employees may report potential underpayments of employment entitlements, including by making a public interest disclosure in accordance with AHL's public interest disclosure policy [[insert hyperlink to PID Policy](#)].

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.