



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

M Q Property Group Pty. Ltd. (ABN: 15 154 741 876)

and

Qenan Luzi

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) M Q Property Group Pty Ltd (ABN: 15 154 741 876) (**M Q Property Group**); and
 - (b) Qenan Luzi

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

Background

2. M Q Property Group trades under the name Mina Property Services Pty Ltd. The business provides commercial cleaning services. The director of M Q Property Group was Mirella Luzi until 12 May 2015, at which time Qenan Luzi was appointed the director.
3. M Q Property Group was offered and entered into an Agreement to provide cleaning services to Pioneer Contracting Services Pty Ltd (ACN 164 009 036) (**Pioneer**) to clean a number of Myer sites including Melbourne City, Doncaster, Geelong, Northland and Werribee from about November 2013.
4. Pioneer paid M Q Property Group a fixed monthly amount to complete the cleaning work at the Myer sites. When broken down by the hour, this worked out to be around \$22 per hour for all hours worked. This included work on weekends and evenings.
5. M Q Property Group engaged their workers as independent contractors (**Subcontracted Workers**) for the work completed at the Myer sites. M Q Property Group paid some of the Subcontracted Workers \$20 per hour for all hours worked.
6. The FWO determined that the Subcontracted Workers were casual employees under the *Cleaning Services Award 2010* (**Award**) as they worked irregular hours and were classified as Cleaning Services Employee Level 1 as they:
 - (a) performed the cleaning work at the times directed by M Q Property Group
 - (b) used tools and equipment supplied by Pioneer and the Subcontractor Workers did not provide any tools or equipment while performing the cleaning work;
 - (c) were supervised by Qenan Luzi and/or an employee engaged by Pioneer;
 - (d) were paid for the hours of work performed and not by the results;
 - (e) performed the work personally and did not subcontract the work;
 - (f) could not further subcontract the work due to the rates received from M Q Property Group being lower or comparable to the prescribed hourly rate under the Award for a similar type of work; and
 - (g) the work performed by the Subcontracted Workers did not require any specialised skills.

Contraventions

7. Based on the evidences received during the Investigation, the FWO determined and M Q Property Group admits, that M Q Property Group 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 12.5(a) by failing to pay casual employees the ordinary hourly rate inclusive of an additional 25% loading for the hours worked;
 - (ii) clause 24.2(f) by failing to pay the minimum engagement of 4 hours to casual employees engaged at a location with a total cleaning area of more than 5000 square metres;
 - (iii) 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;
 - (iv) clause 27.2(a) by failing to pay the Saturday penalty rate of time and one half of the ordinary hourly rate; and
 - (v) 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;
 - (c) In addition to the contraventions admitted to by the company, Qenan Luzi admits, that he was liable under section 550(2)(c) of the FW Act as an accessory.

Commencement of Undertaking

8. This Undertaking comes into effect when:
- (a) the Undertaking is executed by M Q Property Group and Qenan Luzi; and
 - (b) the FWO accepts the Undertaking so executed.
9. Upon the commencement of this Undertaking, M Q Property Group and Qenan Luzi undertake to assume the obligations set out below.

Undertakings

10. For the purposes of section 715 of the FW Act, M Q Property Group and Qenan Luzi give the following undertakings:

Rectify workers' wages and entitlements

- (a) Within 28 days of execution of this Undertaking, pay the amount of **\$11,875.47** less taxation to the workers who were underpaid during the assessment period as a result of the Contraventions referred to in paragraph 14, according to the proportions set out in **Attachment C**.
- (b) Provide evidence of rectification in relation to paragraph 10(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, M Q Property Group will change their operations so that all individuals who perform work for M Q Property Group are employed as employees and not engaged as independent contractors, and will be paid pursuant to the Award;
- (d) in accordance with the Award, M Q Property Group 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 10(c) and 10(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:
 - (i) within 7 days of the execution of this Undertaking, register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and award options; and
 - (ii) within 14 days of the execution of the Undertaking provide to the FWO the 'My Account' registration number
 - (iii) Within 90 days of the execution of this Undertaking ensure Qenan Luzi and the manager/s of M Q Property Group complete the educational activities as set out in **Attachment B** from the FWO website record the dates of when these activities are completed in **Attachment B** and provide the completed document to the FWO.

Future reporting to the FWO

- (g) cause to have performed by an accounting professional (e.g. Certified Practising Accountant) at M Q Property Group 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 M Q Property Group employees, for the pay period spanning and inclusive of 1 July 2015 to 30 June 2016, which is to be finalised by 31 July 2016;
- (h) provide to the FWO, by 15 June 2016 the methodology to be used for the Audit for approval by the FWO;
- (i) provide to the FWO, by 15 August 2016, details of the outcomes of the Audit;
- (j) in the event the Audit discloses contraventions of any applicable Commonwealth workplace relations laws, rectify all such contraventions including rectification of any and all underpayments to employees and provide evidence of the rectification by 31 August 2016;

Apology

- (k) 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**;
- (l) within 7 days of the distribution of the Apology Letters to the Workers provide copies of the Apology Letters to the FWO;

Workplace relations training

- (m) within 90 days of the execution of this Undertaking M Q Property Group must organise and ensure that Qenan Luzi and the manager/s of M Q Property Group attend a training course which deals with the rights and responsibilities of an employer under the FW Act (**Training Course**);
- (n) ensure the Training Course is conducted by an accredited workplace trainer who is approved by the FWO and paid for by M Q Property Service;
- (o) 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;
- (p) provide evidence of attendance and payment for the Training Course to the FWO within 7 days of the training being provided;

Recordkeeping – Fair Work Information Statement

- (q) 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;
- (r) ensure that all future employees are provided with a copy of the Fair Work Information Statement and that M Q Property Group maintains records of this activity;
- (s) within 14 days of the execution of this Undertaking provide the FWO with a document evidencing the actioning of paragraphs 10(q) and 10(r) above;

Broader community workplace relations education

- (t) 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
- (u) provide proof of the payment referred to in 10(t) to the FWO within 7 days of it being made.

Acknowledgements


11. M Q Property Group and Qenan Luzi 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 M Q Property Group or Qenan Luzi;

- (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 M Q Property Group and/or Qenan Luzi 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, M Q Property Group and/or Qenan Luzi may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by M Q Property Group (ABN: 15 154 741 876) and Qenan Luzi in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/ company secretary)

QENAN LUZI

(Name of director)

(Name of director/ company secretary)


28-8-2015

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)


(Signature of witness)

EDWARD MARTIN 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

7 SEPTEMBER 2015

(Date)

in the presence of:



(Signature of witness)

FAY PILICOURIS

(Name of Witness)

Attachment A – Letter of Apology

<Date>

<Name>

<Employee Address>

Dear <Name>

I am writing to apologise on behalf of M Q Property Group 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 M Q Property Group Pty Ltd has contravened the Cleaning Services Award 2010 and Fair Work Act 2009 by:

1. failing to pay casual employees the correct minimum wage;
2. failing to pay casual employees the minimum engagement of 4 hours;
3. failing to pay employees the applicable penalty rates for working on shifts that start before 6am or finish after 6pm on a Monday to Friday;
4. failing to pay employees the applicable penalty rates for working on a Saturday; and
5. failing to pay employees the overtime rates for working beyond the ordinary hours.

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

M Q Property Group 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.

M Q Property Group Pty Ltd has formally admitted to the FWO that M Q Property Group 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.

As part of the Enforceable Undertaking, M Q Property Group Pty Ltd have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

M Q Property Group 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>

Qenan Luzi
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 – Schedule of underpayment to employees

Employees	Amount Owed	Assessment Period
██████████	\$2,296.71	1 July 2014 to 15 August 2014
██████████	\$2,395.37	1 July 2014 to 15 August 2014
██████████	\$3,002.23	1 July 2014 to 15 August 2014
██████████	\$4,181.16	1 July 2014 to 15 August 2014
TOTAL	\$11,875.47	