



Australian Government

# Fair Work OMBUDSMAN

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## ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Kal'ang Respite Care Centre Aboriginal Corporation

(ABN: 27 013 354 600)

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:  
  
Kal'ang Respite Care Centre Aboriginal Corporation (ABN: 27 013 354 600)  
  
(**the Corporation**),  
  
for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Commencement of Undertaking**

2. This Undertaking comes into effect when;
  - (a) the Undertaking is executed by the Corporation; and
  - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, the Corporation undertake to assume obligations set out below.

**Background**

4. The Corporation is a body corporate, registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth). The Corporation provides care services in Queensland.
5. The Corporation has received funding from the Queensland and Commonwealth governments to provide services which accommodate for the in-house care of the elderly, disabled and those in need of social and community care. A portion of these services are delivered to Aboriginal and Torres Strait Islanders within the state of Queensland.
6. In July 2015, the FWO commenced an investigation of the Corporation following ten requests for assistance made by former employees of the Corporation. These employees are set out in **Attachment A** to the Undertaking and will be referred to as Employee A to J (**the Employees**).
7. Five of the ten Employees identify as Aboriginal or Torres Strait Islander and were employed to assist members of the local community. The Corporation does not operate an aged care facility but instead delivers services to clients who live independently or with family.
8. The terms and conditions of the Employees' employment were governed by the FW Act and the *Social, Community, Home Care and Disability Services Industry Award 2010* [MA000100] (**the Modern Award**). All Employees were engaged on a part time basis.
9. The Employees performed work in the home care sector and the social and community services sector as provided for in the Modern Award. They were employed under various classifications under the following streams: Social and Community Services; Home Care; and Office Administration (one being a trainee).
10. The FWO's investigation identified contraventions of section 44 of the FW Act as set out in paragraph 12 of this Undertaking amounting to \$82,637.38 (less taxation). Nine of the Employees are owed more than \$5,000 in termination entitlements (three being in excess of \$10,000) as outlined in **Attachment B**.
11. The Board of the Corporation has sought to rectify the underpayments outlined in

Attachment B through a payment plan set out in paragraph 15.

### **Contraventions**

12. The FWO has determined, and the Corporation admits, that the Corporation has contravened section 44 of the FW Act, which provides a person must not contravene a provision of the National Employment Standards (**NES**). Those contraventions were as follows:
  - (a) Section 117(2)(b) by failing to provide notice of termination or payment in lieu of notice;
  - (b) Section 90(2) by failing to pay annual leave and annual leave loading on termination; and
  - (c) Section 119(1)(b) by failing to pay redundancy entitlements.

#### **(Contraventions)**

13. As a result of contravening section 44 of the FW Act, an underpayment of \$82,637.38 (less taxation) was determined as owing as outlined in Attachment B. On 19 September 2016, the Corporation made part payment of \$33,000.00 (less taxation) towards resolution of the total underpayment to the Employees as outlined in **Attachment C**.

### **Undertakings**

14. For the purposes of section 715 of the FW Act, the Corporation undertakes to:

#### ***Rectify Underpayments***

15. Pay the remaining balance to the Employees by making eighteen monthly payments as set out in Attachment C to the Employees, less taxation:
  - (a) The first monthly payments will be made within 30 days of signing this undertaking.
  - (b) The Corporation will provide proof of such payment to the FWO on the day each of the monthly payments are made.

#### ***FWO My Account Registration***

16. Within 14 days of the execution of this undertaking the Corporation will:
  - (d) Register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and complete the profile, minimum pay rates and award options; and
  - (e) Provide to the FWO the Corporations 'My Account' registration number.

#### ***Future Workplace Relations Compliance***

17. Ensure compliance at all times and in all respects with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the FW Act and the Modern Award, by developing systems and processes to ensure ongoing compliance with those requirements.
18. Where contacted by current or former employees not included in this Undertaking alleging that their lawful entitlements have not been met, the Corporation agrees to:
  - (a) notify the FWO within 7 days of receiving the allegation detailing the nature and content of the allegation;
  - (b) within 28 days of receiving the allegation, take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act has occurred, and where such contraventions are found, rectify those contraventions within 28 days after receipt of the allegation;



- (c) within 7 days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other allegations identified have been resolved; and
  - (d) should an allegation not be resolved, notify the FWO why the allegation could not be resolved within 28 days of receipt of the allegation.
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19. The Corporation will create a specific email address [enquiries@kalang.org.au](mailto:enquiries@kalang.org.au) to correspond with former and current Employees in relation to this Undertaking and workplace disputes generally.
20. In addition to providing a copy of the Fair Work Information Statement as required by law, the Corporation will provide to each new employee at the commencement of their employment:
- (a) The name of the applicable industrial instrument that applies to the employee and information about where the employee can access or view a copy of the instrument;
  - (b) Details of the specific email address created as per paragraph 19 (above) for employees to raise any concerns or workplace disputes.

### **Workplace Notice**

21. Within 28 days of the execution of this Undertaking the Corporation will:
- (a) Display within the workplace a notice in the form of **Attachment D (Workplace Notice)** and provide photographic evidence of its display;
  - (b) Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
    - (i) In a location to which all employees who work at the Corporation have access;
    - (ii) In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard); and
    - (iii) For a period of 14 continuous days.

### **Apology**

22. Within 14 days of the execution of this Undertaking send a letter of apology (**Apology Letter**) to each of the Employees in the terms set out in **Attachment E**.
23. Within seven (7) days of the Apology Letter being sent provide to the FWO a copy of the Apology Letter.

### **Workplace Relations Training**

24. Within 120 days of the execution of this Undertaking, organise and ensure training is provided to all persons who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
25. 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 and the Modern Award;
26. Ensure the Training is conducted by an accredited workplace law trainer, such person or organisation to be approved by the FWO and paid for by the Corporation;
27. 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;
28. Provide evidence of attendance at the Training to the FWO within 7 (seven) days of the

Training being provided (including the name and position of all attendees and the date on which the training was attended);

29. For a period of 3 (three) years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 25 - 26 in relation to any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Corporation.

#### **Community Event**

30. As an acknowledgement of respect to the Elders of this land; past, present and future and the significant contribution they have made in shaping the identity of the Fraser Coast, the Corporation will undertake steps to organise a community event as an opportunity for bringing communities together, celebrating the region's diversity, and fostering a shared sense of place for the region. The Corporation will:
- (a) Register with the Fraser Coast Regional Council, by submitting a registration form for this event to Council for the event within 60 days of the execution of this Undertaking;
  - (b) Provide proof of registration as referred to in paragraph 30(a) above within one day to the FWO;
  - (c) Ensure the admission to the community event is free of charge;
  - (d) Ensure the event takes place within 12 months of the execution of this Undertaking.

#### **Acknowledgements**

31. Kal'ang Respite Care Centre Aboriginal Corporation acknowledge that:
- i. the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at <http://www.fairwork.gov.au> (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
  - ii. the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
  - iii. 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;
  - iv. 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 Kal'ang Respite Care Centre Aboriginal Corporation;
  - v. 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;
  - vi. if the FWO considers that Kal'ang Respite Care Centre Aboriginal Corporation 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;
  - vii. consistent with section 715(3) of the FW Act, Kal'ang Respite Care Centre Aboriginal Corporation may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.
32. Kal'ang Respite Care Centre Aboriginal Corporation:


- i. must not; and
  - ii. 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 admissions or acknowledgements contained in this Undertaking.
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**Executed as an undertaking**

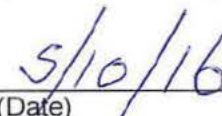
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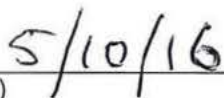
  
(Signature of director)

  
(Signature of director/company secretary)

  
(Name of director)


  
(Name of director/company secretary)

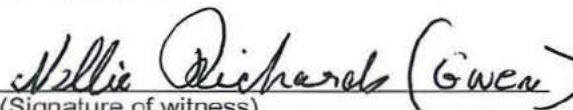
  
(Date)

  
(Date)


in the presence of:

in the presence of:

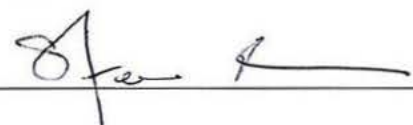
  
(Signature of witness)

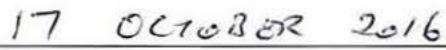
  
(Signature of witness)

  
(Name of witness)

  
(Name of witness)

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

  
(Signature of Steve Ronson)

  
(Date)


Steve Ronson


Executive Director

Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
(Signature of witness)

  
(Name of Witness)

Attachment A – Employees

Name	Employee Reference	Employment Period
	Employee A	11 January 2010 and 30 June 2015
	Employee B	13 August 2010 and 30 June 2015
	Employee C	7 April 2014 and 30 June 2015
	Employee D	29 April 2013 and 30 June 2015
	Employee E	17 October 2012 and 30 June 2015
	Employee F	30 July 2014 and 30 June 2015
	Employee G	20 May 2013 and 30 June 2015
	Employee H	28 November 2012 and 30 June 2015
	Employee I	16 June 2014 and 30 June 2015
	Employee J	7 October 2011 and 30 June 2015



**Attachment B – Schedule of underpayments to employees**

<b>Name</b>	<b>Total Underpayment</b>
Employee A	\$11,069.47( less taxation)
Employee B	\$15,026.84 (less taxation)
Employee C	\$5,401.51 (less taxation)
Employee D	\$8,886.06 (less taxation)
Employee E	\$6,766.83 (less taxation)
Employee F	\$676.46 (less taxation)
Employee G	\$12,048.94 (less taxation)
Employee H	\$9,662.08 (less taxation)
Employee I	\$5,261.03 (less taxation)
Employee J	\$7,838.16 (less taxation)

**Attachment C – Payment plan**

<b>Name</b>	<b>Already paid</b>	<b>Monthly Instalments</b>
Employee A	\$4,419.55	369.44
Employee B	\$5,998.52	\$501.57
Employee C	\$2,157.91	\$180.20
Employee D	\$3,548.34	\$296.54
Employee E	\$2,702.79	\$225.78
Employee F	\$272.68	\$22.43
Employee G	\$4,810.06	\$402.16
Employee H	\$3,858.04	\$322.45
Employee I	\$2,101.91	\$175.51
Employee J	\$3,130.20	\$261.55

## Attachment D – Workplace Notice

### Contravention of *Fair Work Act 2009* by Kal'ang Respite Care Centre Aboriginal Corporation.

Kal'ang Respite Care Centre Aboriginal Corporation (**Kal'ang**) operates in the home care sector and the social and community services sector in Queensland

As a result of a review of our wage records, Kal'ang has identified some circumstances in which it failed to provide the correct termination payment to employees. These underpayments amount to contraventions of the *Fair Work Act 2009* (Cth) and the *Social, Community, Home Care and Disability Services Industry Award 2010*.

Kal'ang has formally admitted to the Fair Work Ombudsman (**FWO**) that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (which will be available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions, including:

- rectifying the underpayments by making an initial payment of approximately 40% of the amounts arising from the Contraventions to the Employees and fulfilling the remaining balance over an 18 month payment plan;
- organising a community event;
- providing training to ensure employees are paid correct in accordance with the *Fair Work Act 2009*; and
- creating a point of contact for all past and present employees to raise any concerns of underpayment.

Kal'ang expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Kal'ang Respite Care Centre Aboriginal Corporation note that the current board were not in place at the time the contraventions occurred and that the current board is committed to rectifying the contraventions committed under the previous board and is equally committed to ensuring future compliance with Commonwealth workplace relations laws.

If you are a current or former employee of Kal'ang and you have questions regarding this notice, please contact us via [enquiries@ Kal'ang.org.au](mailto:enquiries@kalang.org.au).

If you have general questions regarding conditions of employment, please refer to the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or call the Infoline on 13 13 94.



## Attachment E - Apology Letter

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Name>

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<ADDRESS>

Dear <Name>

I am writing to apologise on behalf of Kal'ang Respite Care Centre Aboriginal Corporation for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Kal'ang Respite Care Centre Aboriginal Corporation had contravened the *Fair Work Act 2009* the *Social, Community, Home Care and Disability Services Industry Award 2010* by:

- failing to provide notice of termination or payment in lieu of notice;
- failing to pay annual leave and annual leave loading on termination; and
- failing to pay redundancy entitlements.

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

Kal'ang Respite Care Centre Aboriginal Corporation is taking steps to remedy the contraventions. An initial amount of \$[insert first payment amount] was paid to you on [insert date]. Kal'ang has undertaken to making 18 further monthly payments of \$[insert amount] to you to rectify the total underpayment in your entitlements. The total amount outstanding to you (including what has already been paid) is \$[insert amount].

Kal'ang Respite Care Centre Aboriginal Corporation have formally admitted to the FWO that Kal'ang Respite Care Centre Aboriginal Corporation did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy will be available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au). Kal'ang Respite Care Centre Aboriginal Corporation wish that it is acknowledged that the current board were not in place at the time the contraventions occurred and that the current board is committed to rectifying the contraventions committed under the previous board and is equally committed to ensuring future compliance. As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Kal'ang Respite Care Centre Aboriginal Corporation expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [party to include contact details].

Yours sincerely

Kal'ang Respite Care Centre Aboriginal Corporation