



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING Between

The Commonwealth of Australia

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

and

Sanikleen Pty Ltd [ACN: 098 037 819]

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 Sanikleen Pty Ltd [ACN: 098 037 819] (**Company**).

Commencement of Undertaking

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

Background

4. The Company provides cleaning services in the food preparation and processing industry in Victoria, New South Wales and Tasmania.
5. The Company is covered by the Cleaning Services Award 2010 [MA000020] (**Cleaning Award**) in respect of its employees who perform duties commensurate with the classification definitions set out in Schedule D to the award.
6. On 23 May 2016, the employee listed in Attachment A (**Employee**) lodged a request for assistance (**RFA**) with the FWO alleging that the Company failed to provide paid breaks and failed to pay him the correct weekend penalties as required by the Cleaning Award.
7. The FWO found that the Employee commenced employment with the Company in November 2013 and performed work at the Don KR processing plant in Castlemaine, Victoria until he was transferred to another site in March 2015. The Employee remains employed by the Company.
8. The FWO found that the Employee was employed as a Cleaning Services Employee Level 1 pursuant to Schedule D to the Cleaning Award.
9. Section 45 of the FW Act provides that a person must not contravene a term of a Modern Award. The FWO has determined, and the Company admits, that the Company contravened the following terms of the Cleaning Award in respect of the employment of the Employee:
 - a. Clause 12.2 of the Cleaning Award which provides that employers must inform employees of their employment status at the commencement of employment and then record this in the time and wages records relating to the employment of the employee;
 - b. Clause 12.4(b)(iii) of the Cleaning Award which provides for a 15% loading to be paid for part-time employees;
 - c. Clause 26.1 of the Cleaning Award which provides for paid meal breaks for shiftworkers; and
 - d. Clause 27.2(a) of the Cleaning Award which provides for penalty rates for work performed on Saturdays.
10. The FWO recognises that the Company performed calculations to determine the quantum of underpayments arising from the above listed contraventions and made a payment of \$2,856.48 (gross) to the Employee prior to the execution of this Undertaking.

The Company advised the FWO that the errors resulting in the underpayments were made inadvertently due to the changing nature of shifts of the relevant site.

11. The FWO acknowledges that the Company has cooperated with the FWO in relation to the Employee's request for assistance.

Undertakings

12. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes the following:

FWO My Account Registration

13. Within 14 days of the execution of this Undertaking:
 - a. register with the FWO My Account portal at www.fairwork.gov.au/register and fully complete the My Account profile, including information about the business and industrial instrument coverage;
 - b. using the FWO's [Pay and Conditions Tool \(PACT\)](#), calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to the Company's My Account profile; and
 - c. provide to the FWO the My Account Customer Registration Number.

Future Workplace Relations Compliance

14. The Company will ensure that it complies at all times and in all respects with the FW Act, *the Fair Work Regulations 2009* (Cth) (**FW Regulations**), the Cleaning Award and any other modern award(s) applicable to its employees.
15. Within 60 days of the execution of this Undertaking, the Company will provide to the FWO details of systems and processes already in place or to be implemented to comply with paragraph 14 above. Without limitation, such systems and processes will relate to:
 - a. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and breaks;
 - b. Ensuring that the employment status of each employee (i.e. whether they are full-time, part-time or casual) is adequately communicated to each employee at the commencement of employment; and
 - c. Ensuring that employees meet the definition of full-time, part-time and casual employees as outlined in clause 12 of the Cleaning Award.

Workplace Relations Training

16. Within 120 days of the execution of this Undertaking, the Company will:
 - a. At its own cost, organise and ensure training is provided to all persons who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
 - b. Ensure that the Training relates to compliance with applicable workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Cleaning Award; and
 - c. Ensure that the Training is conducted by a person approved by the FWO.
17. Within 7 days of the delivery of the Training, the Company will provide to the FWO:
 - a. An outline of the content of the training;
 - b. The name of the person or organisation who delivered the training;
 - c. The method of delivery of the training; and

- d. Evidence of attendance at the training, including the name and job title of all attendees and the date of attendance.

18. For a period of three years following the execution of this Undertaking, the Company will ensure that training is conducted in the manner prescribed in paragraph 16 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 Company.

Apology

19. Within 14 days of the execution of this Undertaking, the Company will send a letter of apology (**Apology Letter**) to the Employee in the form of Attachment B to this Undertaking and provide a copy to the FWO.

Audit Activity

20. The Company will cause to have performed by an external professional with qualifications in accounting or workplace relations, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of the Company's employees as follows:

- a. The Audits will assess a sample of at least 15 employees, or 20% of the Company's award covered employees at the relevant time, whichever is greater, with the sample to be representative of the different work locations, classifications and types or categories of work that apply across the Company's business;
- b. The Audits will be conducted for a full pay period where the period falls within the following dates:
 - I. 7 February 2017 to 20 February 2017 – to be finalised by 30 April 2017;
 - II. 6 February 2018 to 19 February 2018 – to be finalised by 30 April 2018; and
 - III. 5 February 2019 to 18 February 2019 – to be finalised by 30 April 2019.
- c. The Audits will assess the Company's compliance with the following obligations according to each employees classification of work, category of employment and hours worked during the Audit period:
 - I. Wages or work related entitlements under the applicable industrial instrument and the National Employment Standards; and
 - II. Record keeping and pay slip obligation listed within Division 3 of Part 3-6 of the FW Act and within the FW Regulations.

21. In the event that an Audit identifies contraventions of Commonwealth workplace laws, the Company will rectify all such contraventions and provide evidence of such rectification to the FWO.

22. The Company will provide to the FWO within 14 days of each of the finalisation dates specified in subclause 20(b):

- a. A copy of the Audit report which will include a statement of the methodology used to conduct the Audit;
- b. Details of any contraventions identified in the Audit.

23. The Company will rectify any underpayments arising from contraventions identified in the Audit within 30 days of the completion of the Audit.

24. If requested by the FWO, The Company will provide the FWO with all records and documents used to conduct the Audit, including any working documents, within 7 days of such a request.
25. If any employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause 20(b) above, the Company will make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Consolidated Revenue Fund.

Workplace Notice

26. Within 28 days of the execution of this Undertaking, the Company will:
 - a. Display within all workplaces where work is performed by its employees in a notice in the form of Attachment C to this Undertaking (**Workplace Notice**) and provide photographic evidence to the FWO of its display; and
 - b. Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed;
 - I. In a location to which all employee of the Company has 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.

Donation

27. Within 30 days of the execution of this Undertaking, the Company will:
 - a. Make a donation of \$1,000.00 to the Cleaning Accountability Framework (www.cleaningaccountability.org.au), with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the cleaning industry; and
 - b. Provide evidence of the donation to the FWO within seven days of payment.

Acknowledgements

28. The Company acknowledges that:
 - a. The FWO may make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - b. The FWO may release a copy of this Undertaking (and any of the Attachments hereto) 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 this Undertaking (and any of the Attachments hereto) and its terms; and
 - d. The FWO may rely upon the admissions made by the Company set out in paragraph 9 above in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations.
 - 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 herein;
 - f. Consistent with section 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
 - g. If the Company 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 the Company in paragraph 9 above, and also in respect of the question of costs.

No Inconsistent Statements

29. The Company:

- a. must not; and
- b. 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 admission or acknowledgements contained in this Undertaking.

Executed as an undertaking

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



(Signature of director)

(Signature of director/company secretary)

Brendan Moore

(Name of director)

(Name of director/company secretary)

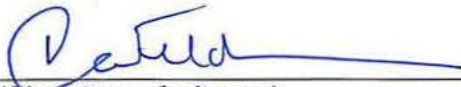
2/12/2016

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

DAN FELDMAN

(Name of witness)

(Name of witness)

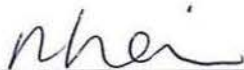
ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:



Steve Ronson
Executive Director
Dispute Resolution and Compliance
Delegate for the Fair Work Ombudsman

5 DECEMBER 2016

(Date)



(Signature of witness)

NERILLY HARRIS

(Name of Witness)

Attachment A – Employee

- [REDACTED]

Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

PRIVATE AND CONFIDENTIAL


I am writing to apologise on behalf of Sanikleen Pty Ltd (**Company**) for non-compliance with Commonwealth workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company had contravened the *Fair Work Act 2009* (Cth) and the [Cleaning Services Award 2010 \[MA000020\]](#) by:

- Failing to inform you of your employment status at the commencement of employment and recording this in the time and wages records relating to your employment;
- Failing to pay you a 15% part-time loading;
- Failing to pay you for meal breaks; and
- Failing to pay correct penalty rates for work performed on weekends

The Company has taken steps to remedy the contraventions, including by paying you \$2,856.48 (gross) and making a donation of \$1,000.00 to fund education about workplace rights and entitlements.

The Company has formally admitted to the FWO that it 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 we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

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

Should you have any questions, please contact me via email: 

Yours sincerely

Brendan Moore
Director
Sanikleen Pty Ltd

Attachment B – Workplace Notice

Contraventions of *Fair Work Act 2009* (Cth) by Sanikleen Pty Ltd

Sanikleen Pty Ltd (the Company) recently undertook a review of its wage records.

The Company has identified circumstances in which errors were made resulting in the incorrect rate of pay being paid to some employees between November 2013 and March 2015 at the Don KR Castlemaine site. These underpayments amount to contraventions of the *Fair Work Act 2009* (Cth) and the [Cleaning Services Award 2010 \[MA000020\]](#) (Cleaning Award).

The Company has formally admitted to the Fair Work Ombudsman (FWO) that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to ensure future compliance, including:

- making a donation of \$1000 to the Cleaning Accountability Framework; and
- providing training and conducting future audits, to ensure employees are paid correct rates of pay.

The Company expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, the Company gives a commitment to ensuring future compliance with Commonwealth workplace relations laws.

If you are a current or former employee of the Company and you have questions regarding this notice, please contact us via admin@sanikleen.com.au.

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