

An Inquiry into the procurement of housekeepers by four and five-star hotel groups

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Fair Work
OMBUDSMAN

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Executive summary

The Fair Work Ombudsman (FWO) completed an Inquiry (Inquiry) into the procurement and working arrangements of housekeepers¹ at the following four and five-star hotel groups (Hotel Groups):

- Starwood Hotels and Resorts Worldwide Inc.
- The Accor Group
- Oaks Hotels & Resorts Limited.

The Inquiry revealed numerous alleged contraventions of the *Fair Work Act 2009* (FW Act) in various labour supply chains involving housekeepers, including the failure of employers to:

- classify workers correctly as employees
- pay applicable penalty rates
- reimburse employees the cost of specialist clothing
- provide a regular pattern of work for part-time employees
- apply accrual of leave entitlements.

Most contractors in labour supply chains forming part of this Inquiry were correctly engaging workers as employees, but were largely unaware of the correct industrial instrument that applied. Consequently, the FWO recovered more than \$57 000 for over 120 workers.

The only exception was Housekeepers Pty Ltd which was the sole principal contractor of Oaks Hotels & Resorts Limited. Housekeepers Pty Ltd engaged its workers as independent contractors, persons who the FWO alleges were at law employees.

We view the conduct of Housekeepers Pty Ltd and Oaks Hotels & Resorts Limited more seriously than other contractors and Hotel Groups in this Inquiry. Others applied the incorrect industrial instrument or failed to correctly apply all provisions of an industrial instrument. In contrast, Oaks Hotels & Resorts Limited and Housekeepers Pty Ltd established an independent contracting operating model. This meant workers didn't receive wages and conditions they were entitled to as employees.

¹ Housekeepers perform cleaning and housekeeping duties in hotels, motels and other commercial premises, and in private residences

Generally, businesses subject to the Inquiry worked cooperatively with the FWO by:

- providing records voluntarily
- discussing their business models
- rectifying underpayments upon request
- taking steps to proactively change workplace practices to ensure future compliance.

Oaks Hotels & Resorts Limited and Housekeepers Pty Ltd were generally cooperative with respect to participating in the Inquiry. However, they both initially declined Enforceable Undertakings in the terms offered by the FWO. They sought significantly different terms, which importantly didn't admit housekeepers were in fact employees. After notifying Housekeepers Pty Ltd of our intention to file legal proceedings, Oaks Hotels & Resorts Limited and Housekeepers Pty Ltd asked to enter into Enforceable Undertakings. The Enforceable Undertakings were ultimately agreed on the terms originally offered by the FWO.

As a result of the Inquiry, the FWO has entered into three Enforceable Undertakings, eight letters of caution, six compliance notices and two infringement notice.

We've made a number of recommendations to the subsector as a whole². In particular, that all hotel groups note development of the Cleaning Accountability Framework (Framework)³. The Framework is directed at addressing systemic non-compliance in the procurement of cleaning services, and emphasises the need for Hotel Groups to:

- ensure pricing schedules and tender documentation comply with modern award obligations and entitlements, at all levels of the supply chain and for future years
- provide principal contractors with the occupancy summary of each site to ensure compliance with rostering provisions of the applicable award
- exercise a greater degree of care in assessing the cost to deliver services offered
- seek professional advice from an appropriate workplace relations specialist/practitioner to check if engagement practices constitute lawful independent contracting.

We also recommend Starwood Hotels & Resorts Worldwide and The Accor Group publicly demonstrate their commitment to creating compliant, productive and inclusive Australian workplaces by entering into compliance partnerships with the FWO. Compliance partnerships give employers and staff certainty that systems and processes are working effectively and help build a culture of compliance. We've found that by formalising self-monitoring arrangements, compliance partnerships are particularly useful in ensuring compliance at all levels of a labour supply chain.

² The subsector is housekeeping duties within the commercial cleaning sector

³ See Appendix A

Recommendations for principal contractors and subcontractors are that they:

- comply with workplace laws to ensure they're not involved⁴ in contraventions committed by owner operators they've contracted employer responsibility to
- (if involved in establishing independent contracting relationships for housekeepers) ensure these arrangements are lawful and not actually employment relationships
- inform housekeepers of the risks of:
 - enforcement action by other Australian Government departments (e.g. Australian Taxation Office, Centrelink) for any failure to properly disclose income
 - non-protection through workers' compensation schemes
 - non-protection from public liability claims taken against them.

As a result of our Inquiry findings, the FWO will:

- offer two Hotel Groups the opportunity to enter into a compliance partnership with us
- conduct follow up inspections of the Hotel Groups, principal contractors and subcontractors subject to the Inquiry (within 12 months of publishing this report)
- request Hotel Groups to work with the Framework, utilising its resources and tools to review corporate governance structures and ensure compliance with the FW Act
- request Hotel Groups update us (within 12 months of publishing this report) on improvements to corporate governance and procedures for lawful contracting of housekeepers and compliance with the FW Act
- assess the report provided by Hotel Groups to ensure compliance with Commonwealth workplace laws
- survey workers at the Hotel Groups to assess if changes have been made to compliance governance arrangements (within two years of publishing this report).

⁴ Section 550, *Fair Work Act 2009* (Cth)

Background

IBISWorld estimates that the hospitality sector, which includes hotels and resorts, will account for 8.0% of the commercial cleaning industry revenue in 2015-16.⁵

The FWO initiated an Inquiry into the procurement of housekeepers by certain four and five-star Hotel Groups following receipt of information from the public and within the industry. This information indicated housekeepers were being paid per room cleaned, instead of an hourly award rate as full-time, part-time or casual employees.

A number of industry participants advised that the practice of paying workers per room cleaned is not only a common practice, but often indicative of sham arrangements. Businesses engaging in this practice may possess an unfair competitive advantage without regulatory oversight.

For the purposes of the Inquiry, the FWO selected three Hotel Groups operating across Australia with a considerable presence in the Sydney, Melbourne and Brisbane markets. They were selected following analysis of requests for assistance by housekeepers over the past five years, intelligence from workers in the industry, and market research and reports. The Inquiry aimed to identify non-compliance and the reasons for non-compliance.

What are misclassification and sham arrangements?

Independent contracting or a 'contract for service' is a lawful work arrangement that many people and businesses choose. It's different from employment and distinguishable based on criteria that are well established by the Courts. The Fair Work Ombudsman is responsible for regulating employment relationships, not independent contractors who aren't covered by the FW Act.

When a relationship is described as a contract for service but doesn't meet criteria established by the Courts, it may at law be an employment relationship. This can occur inadvertently when both parties intended to establish a contract for service, but didn't meet the court established requirements. When this happens, we regard this arrangement as misclassification.

⁵ IbisWorld, *IBISWorld Industry Report N7311 Commercial Cleaning Services in Australia*, 2015, p. 16

Misclassification contrasts with sham contracting, where an employer **deliberately** attempts to disguise an employment relationship as an independent contracting relationship to undercut minimum entitlements. Businesses engaging in this practice are often seeking to gain an unfair competitive advantage against other employers who are complying with their legal requirements.

Fig 1: Sham contracting or misclassification



Employers are legally bound to engage workers correctly. The FWO especially expects established and profitable businesses take ownership of their supply chains and ensure lawful arrangements are in place.

An employer misrepresenting employment as an independent contracting arrangement might seek to avoid paying entitlements such as minimum hourly wages, overtime, penalty rates and allowances. Employees may also have been denied access to leave payments, superannuation and tax exemptions.

Misclassification and sham contracting can also result in contraventions of employee records and pay slips obligations, exposing employers to an infringement notice⁶ or litigation.

Our Inquiry was designed to test assertions by members of the public that housekeepers were improperly engaged as independent contractors.

⁶ Section 558(1), *Fair Work Act 2009* (Cth)

What is the nature of the industry?

According to the IBISWorld Industry Report H4401 Hotels and Resorts in Australia, hotels and resorts are estimated to earn \$6.3 billion in revenue in 2015-2016 with an annual growth of 2.9% over the coming years⁷.

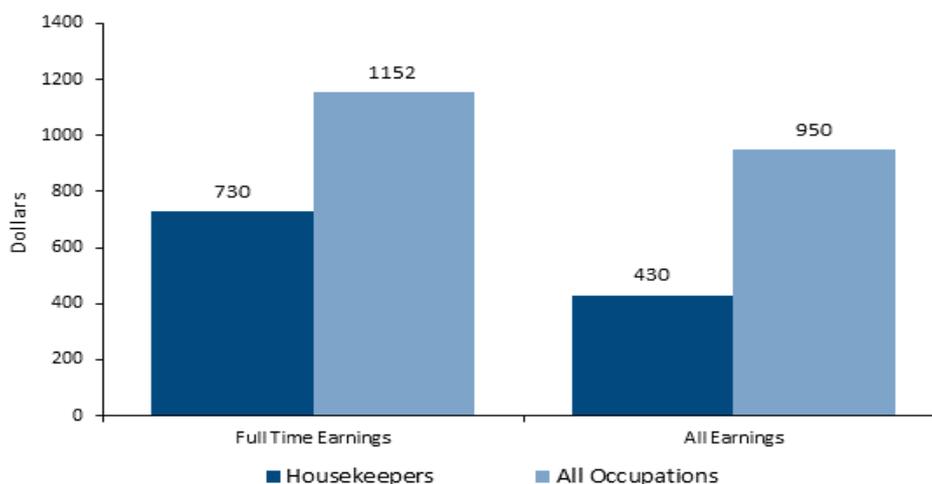
Hotel and resort star ratings depend on the quality of rooms, facilities and services. Four and five-star rooms make up about 55% of total hotel rooms in 2015-16 and account for 55% of industry revenue⁸. Rooms rated three-stars or less account for 11% of industry revenue in 2015-16. This has declined during the past five years due to increased competition from alternative accommodation such as motels and serviced apartments⁹.

Wages are the industry's largest cost at approximately 36.5%¹⁰. Wages have declined as a share of revenue over the past five years, with industry operators incorporating streamlined booking and guest management systems to enhance employee efficiency¹¹.

The graph below shows housekeepers' median weekly earnings (before tax) compared to the median of all occupations.

Fig 2: Median earnings for housekeepers

Source: Department of Employment, Australian Government Job Outlook¹²



⁷ IbisWorld, *IBISWorld Industry Report H4401 Hotels and Resorts in Australia*, 2016, p. 4

⁸ *Ibid*, p. 13

⁹ *Ibid*, p. 14

¹⁰ *Ibid*, p. 22

¹¹ *Ibid*, p. 7

¹² Department of Employment, Australian Government Job Outlook, <http://joboutlook.gov.au/occupation.aspx?code=81114&search=keyword&Tab=stats&graph=EA>, accessed 25 February 2016

The FWO regards the Hotel Groups as industry ‘price-makers’ for the outsourcing of cleaning services, whereas cleaning industry participants (contractors and workers) are ‘price-takers’.

Within the commercial cleaning industry, profit margins have decreased in the past five years due to a combination of pricing pressures, lower margins, and high competition¹³.

A key success factor in commercial cleaning is the ability to compete on tender, by preparing professional cleaning service quotes, tenders and contracts and matching required service standards..

The Inquiry found the structure of Hotel Groups appears to be following the industry shift from owning hotel property to hotel management. Beneath the Hotel Group (chief owners and/or operators), is a larger number of companies owning individual property or groups of properties. Some individuals appear to be involved in many related businesses with the Hotel Groups, and are or have been directors of both the hotels and contracted companies.

What are worker demographics?

Housekeepers are also referred to in the industry as room attendants. The primary role of housekeepers is cleaning guest rooms. Their duties include vacuuming, turning down beds, cleaning surfaces, attending to bathrooms, washing linen and stocking consumables such as soaps and shampoos.

Industry statistics indicate the majority of employees in the commercial cleaning industry are employed on a casual or part-time basis, are female, and have low educational attainment levels. The Inquiry found that a relatively high proportion of these workers are also born overseas in non-English speaking countries.

2014 and 2015 FWO data, capturing the demographics of workers who lodged requests for assistance alleging non-compliance, indicates the most frequently held visa type was the TZ 417 working holiday visa¹⁴.

The principal contractors and the subcontractors informed the Inquiry that the majority of their workforce comprises student and working holiday visa holders. The most common nationalities were Korean and Chinese.

¹³ IbisWorld, *IBISWorld Industry Report N7311 Commercial Cleaning Services in Australia*, 2015, p. 7

¹⁴ The working holiday visa (subclass 417) is a temporary visa for young people holidaying and working in Australia for twelve months, with an option for a second year subject to various conditions. It's a temporary visa that encourages cultural exchange and closer ties between Australia and eligible countries.

The Inquiry found workers were primarily recruited through word of mouth or online applications through principal contractor and subcontractor websites.

Who are the main industry bodies?

The peak industry body in this sector is the Australian Hotels Association (AHA)¹⁵. In its 2013 policy document¹⁶ the AHA state the “*Australian hotel is more than just the focal point of its local community; it is a major economic driver at a local, state and national level. Collectively, hotels employ around 300,000 people in over 6,000 Australian hotels and generate between \$11 billion and \$14 billion per year in domestic economic activity*”.

United Voice is a registered organisation representing over 120 000 workers in the hospitality industry as well as health and aged care, manufacturing, mining and miscellaneous, property services and children’s services. United Voice is a member of the Cleaning Accountability Framework Steering Committee.

The Building Services Contractors Association of Australia (BSCAA) is Australia’s peak industry representative body for the building services industry¹⁷. BSCAA members include contractors for cleaning, security, facilities management and ground maintenance.

Starwood Hotels & Resorts Worldwide Inc.

Starwood Hotels & Resorts Worldwide Inc. (Starwood) is one of the leading hotel and leisure companies in the world with nearly 1 300 properties in some 100 countries and approximately 188 000 employees at its owned and managed properties. Starwood is a fully integrated owner, operator and franchisor of hotels, resorts and residences under the renowned brands: St. Regis®, The Luxury Collection®, W®, Westin®, Le Méridien®, Sheraton®, Tribute Portfolio™, Four Points® by Sheraton, Aloft®, Element®, along with an expanded partnership with Design Hotels™.

¹⁵ The FWO has a Memorandum of Understanding (MoU) with the Australian Hotels Association, which provides a framework to enhance relationships and work together to improve compliance with Commonwealth workplace laws through provision of accessible, reliable and credible information to workplace participants - see <http://www.fairwork.gov.au/About-us/news-and-media-releases/2014-media-releases/May-2014/20140520-aha-mou>

¹⁶ The Australian Hotels Association, AHA National Policy Platform, <http://aha.org.au/wp-content/uploads/2013/07/AHA-National-Policy-Platform-2013.pdf>, 2013, accessed 3 October 2014

¹⁷ BSCAA is a member of the Cleaning Accountability Framework Steering Committee

The Inquiry involved the following Starwood entities:

- EP2 Management Pty Limited [ACN 149 908 289] trading as Four Points by Sheraton Darling Harbour Sydney
- Spruce Australia Pty Ltd [ACN 601 542 134] trading as Sheraton on the Park
- Ausco Martin Pty Ltd [ACN 100 242 368] trading as Westin Sydney
- Felicity Hotel Pty Ltd [ACN 149 786 729] trading as Four Points by Sheraton Brisbane
- Golden Age Little Collins Development Pty Ltd [ACN 138 184 460] trading as Sheraton Melbourne Hotel.

The Accor Group

The Accor Group (Accor) operates over 3 800 hotels in 96 countries around the world. Accor operates over 200 properties in Australia and provides an extensive range of accommodation including complementary brands from luxury to economy.

The Inquiry involved the brands Ibis and Ibis budget hotels in New South Wales. The FWO recognises the Ibis and Ibis budget hotels are not four and five-star hotels, but they are a part of the wider Accor Group.

Oaks Hotels & Resorts Limited

Oaks Hotels & Resorts Limited [ACN 113 972 366] (Oaks) is one of Australia's largest apartment accommodation providers currently incorporating a portfolio of 43 Australian properties.

Specialising in affordable 4.5 star apartment accommodation, Oaks also operates a number of overseas properties in popular locations including New Zealand, the United Arab Emirates and Thailand, with China soon to join the portfolio.

The Inquiry involved Housekeepers Pty Ltd [ACN 134 694 465] which provides the housekeeping services to Oaks. The two companies share a common director.

What award covers the Industry?

The Hospitality Award covers employers throughout Australia in the hospitality industry, and their employees.

The Hospitality Award covers any employer who supplies labour in classifications covered by the award, both on an employment basis and through subcontracting arrangements. There are a number of exclusions found in the award, the most commonly applied relating to contract cleaning companies that don't operate exclusively in hospitality.

If a single employing entity operates in the hospitality industry and any other form of general cleaning they are covered under the Cleaning Award. The Cleaning Award covers employers throughout Australia in the contract cleaning services industry and their employees to the exclusion of any other modern award.

All principal contractors examined in this inquiry were covered by the Hospitality Award because they operated exclusively in the hospitality industry. All subcontractors were covered by the Cleaning Award because they did not operate exclusively in the hospitality industry.

How was the Inquiry conducted?

The Inquiry focused on procurement of housekeeping services, employment practices and whether Hotel Groups' arrangements and business models resulted in non-compliance with the FW Act.

The FWO exercised statutory functions as set out in subsections 682(1)(a), (b) and (c) of the FW Act to inquire into the subsector between 2014 and 2015.

During the course of the Inquiry we undertook a number of activities including:

- meeting with representatives from the Hotel Groups to seek cooperation and obtain an understanding of procurement processes in their labour supply chain
- discussions with principal contractors providing housekeeping services about tendering processes, including how they price quotes
- discussions with subcontractors about tendering processes, including assessment of quotes
- unannounced visits to the Hotel Groups to talk to housekeepers about their employment and understanding of minimum entitlements
- a review of time and wage records for a one-month sample period
- analysis of contractual documents.

Evidentiary challenges

The Inquiry encountered a number of challenges including, but not limited to:

- a general lack of understanding by principal contractors and subcontractors of lawful employment practices
- the general failure by principal contractors and subcontractors to maintain a record of the status of employees
- a general lack of knowledge of the applicable award amongst housekeepers, principal contractors and subcontractors
- hours of work records often non-existent or insufficient to establish regular patterns of work for part-time employees; with rosters not specifying start and finish times, meaning ordinary and overtime hours couldn't be distinguished.

Example - General Manager from ATM Cleaning Management Pty Ltd

"All of my employees are part-time, but they don't get sick leave or annual leave. Actually, what is the difference between a part-time employee and a casual? I just pay them the base rate from the modern award. I didn't know there was a different rate for casual employees."

Summary of preliminary findings

The Inquiry found:

- a range of operating models relying upon outsourcing labour through a supply chain
- a low level of understanding of Commonwealth workplace laws among principal contractors, subcontractors and housekeepers
- a lack of specific reference to the relevant award and the obligations of the principal contractor to comply with the relevant terms and conditions
- a general lack of record keeping relating to regular patterns of work and roster documents
- one principal contractor was a member of an industrial association while the remaining principal contractors had assistance from other forms of employment professionals
- none of the subcontractors were members of an industrial association, nor did they have assistance from other forms of employment professionals
- very low union membership by employees
- subcontractors were reliant on guidance and support from principal contractors
- all subcontractors appeared unaware they were covered by the Cleaning Award and were instead applying provisions in the Hospitality Award, including the rates of pay
- the operating model used by all of the Hotel Groups was heavily influenced by the need to adjust the supply of labour based on hotel occupancy
- principal contractors tendered for contracts based on a 'rate per room' basis
- some principal contractors were penalised with discounts for quality below expected service standards, which sometimes led to financial losses to principal contractors
- principal contractors dictated the rates subcontractors received, which was on an hourly rate basis
- principal contractors provided with a summary of hotel occupancy were generally more compliant with rostering provisions, and able to effectively manage the payroll of their direct employees only, not subcontractors
- housekeepers generally didn't receive their full entitlements, including penalties and allowances
- a number of subcontractors made unauthorised wage deductions for lost equipment or failure to complete six months' continuous service
- no principal contractor or subcontractor was found to be compliant with the regular pattern of work clauses contained in the applicable award.

Regular pattern of work document

At the time of engagement the employer and the part-time employee will agree in writing on regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.¹⁸

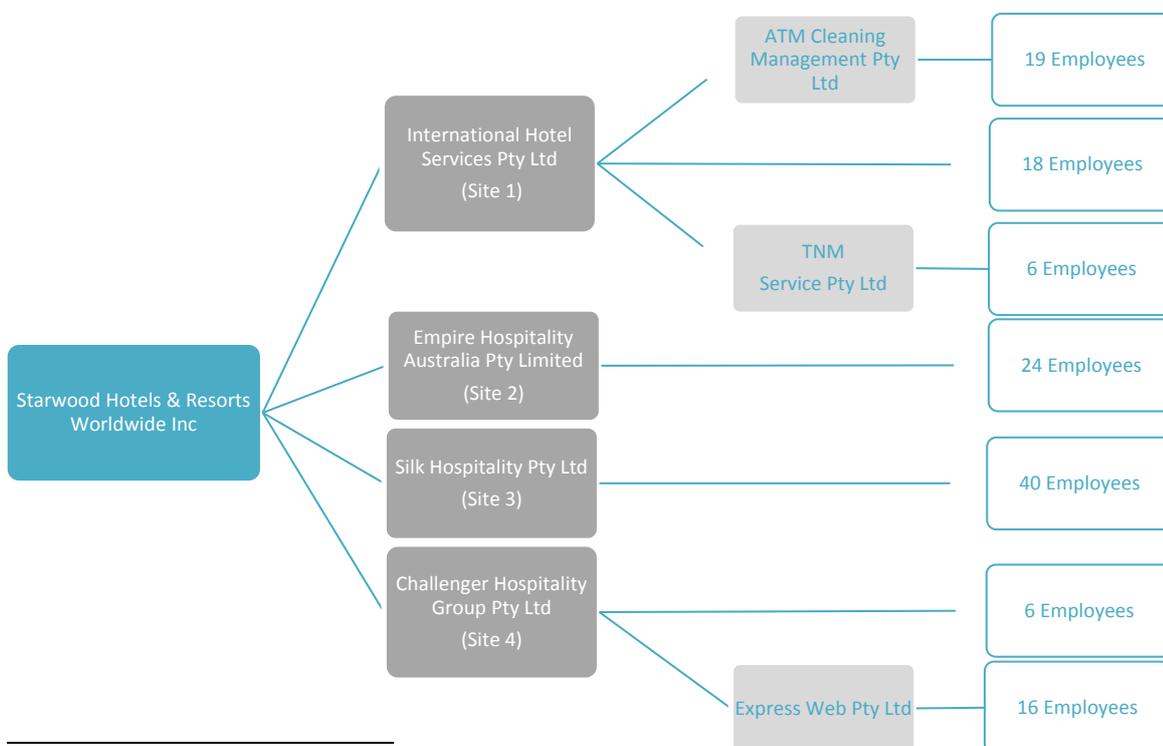
All time worked in excess of the hours as agreed will be overtime.¹⁹

Starwood Hotels & Resort World Inc.

Starwood cooperated with the Inquiry. The FWO found that Starwood lawfully engaged four principal contractors who, in turn, lawfully engaged three subcontractors.

As set out in the diagram below, the Inquiry found that each individual hotel operated by Starwood was responsible for procurement of its own contracted housekeeping service provider. Starwood did not utilise one national supplier for all of its sites.

Fig 3: Starwood supply chain



¹⁸ Clause 12.3 of the Hospitality Award

¹⁹ Clause 12.7 of the Hospitality Award

Principal contractors

International Hotel Services Pty Limited [ACN 080 511 557] (IHS) worked cooperatively with the FWO. They allegedly contravened provisions of the Hospitality Award by failing to create a regular pattern of work document for each of part-time employee and by using a non-compliant rostering system²⁰. As a result of the Inquiry, IHS has amended its practices. The FWO issued a compliance notice and a letter of caution to IHS.

Rostering system – Site supervisor from International Hotel Services Pty Ltd

“There is a list of employees’ names on the wall in the executive housekeeper’s office. Each day I highlight the names of employees that I want to work the next day. All the employees know to check the roster each day. They know if their name is highlighted, then they are required to start work the next day at 7:30am. If I know they are not working that day (so they won’t see that their name has been highlighted), I SMS them.”

Empire Hospitality Australia Pty Ltd [ACN 100 485 783] (Empire) worked cooperatively with the FWO. It allegedly contravened provisions of the FW Act and the Hospitality Award by failing to:

- accrue the annual and personal leave entitlements of their employees correctly
- apply penalty rates correctly
- meet the minimum hourly rate of pay
- create a regular pattern of work document for part-time employees
- include finish times on rosters²¹.

These alleged contraventions resulted in wage underpayments of over \$17 000. As a result of the Inquiry, Empire has amended its practices and rectified the underpayments. Empire was issued a compliance notice and a letter of caution.

²⁰ Clause 12.3 and 25.1 of the Hospitality Award

²¹ Sections 87(2), 96(2) of the *Fair Work Act 2009* (Cth); clauses 12.3, 20, 29.2, 30.1, 32.1, 32.3 and 34.2 of the Hospitality Award

Silk Hospitality Services Pty Ltd [ACN 139 223 895] (Silk) worked cooperatively with the FWO. It allegedly contravened provisions of the Hospitality Award by failing to:

- meet the minimum rate of pay for juniors
- meet the applicable annual salary for a managerial employee
- apply penalty rates correctly
- pay overtime rates for hours worked in excess of agreed weekly hours
- create a regular pattern of work document for part-time employees²².

These alleged contraventions resulted in wage underpayments of over \$8 000. As a result of the Inquiry, Silk has amended its practices and rectified the underpayments. Silk was issued a compliance notice and a letter of caution.

Challenger Hospitality Pty Ltd [ACN 144 657 107] (Challenger) worked cooperatively with the FWO. It allegedly contravened provisions of the Hospitality Award by failing to create a regular pattern of work document for each of its part-time employees²³. As a result of the Inquiry, Challenger has amended its practices. Challenger was issued a compliance notice and a letter of caution.

Subcontractors

Express Web Pty Ltd [ACN 168 037 072] ceased operations during the Inquiry and could not be located²⁴.

ATM Cleaning Management Pty Ltd [ACN 092 601 860] (ATM Cleaning) worked cooperatively with the FWO. It contravened provisions of the FW Act and the Cleaning Award by:

- failing to create and maintain a record reflecting the status of its employees
- failing to pay the applicable casual loading
- failing to pay the applicable minimum rates of pay
- failing to apply penalty rates correctly
- making unauthorised wage deductions for lost name badges and failure to complete six months' service²⁵.

²² Clauses 12.3, 20.5, 27.1, 32.3 and 33.3 of the Hospitality Award

²³ Clause 12.3 of the Hospitality Award

²⁴ The registered office was vacated and all attempts to contact this entity by telephone and email failed to illicit a response

²⁵ Regulation 3.32(d) *Fair Work Regulations 2009* (Cth); clauses 12.5(a), 16.1, 27.2(a) and 17.11 of the Cleaning Award

As a result of the Inquiry, ATM Cleaning entered into an enforceable undertaking with the FWO, which included the back payment of over \$25 000 to affected employees²⁶.

TNM Service Pty Ltd [ACN 131 172 284] (TNM) worked cooperatively with the FWO. However, it allegedly contravened provisions of the FW Act and the Cleaning Award by failing to:

- create and maintain a record reflecting the status of their employees
- pay the applicable casual loading
- pay the applicable minimum rates of pay
- apply penalty rates correctly²⁷.

These alleged contraventions resulted in wage underpayments of over \$6 000. As a result of the Inquiry, TNM has amended its practices and rectified the underpayments. TNM was issued a compliance notice, an infringement notice and a letter of caution.

The Accor Group

Accor cooperated with the Inquiry. The FWO found that Accor lawfully engaged two legitimate principal contractors who in turn engaged employees.

Fig 4: Accor supply chain



AHS Hospitality Pty Ltd (ACN 100 437 349) (AHS) worked cooperatively with the FWO. However, it allegedly contravened provisions of the Hospitality Award by failing to create a regular pattern of work document for each part-time employee²⁸. As a result of the Inquiry, AHS has amended its practices. AHS was issued a compliance notice and a letter of caution.

²⁶ [ATM Cleaning Management Pty Ltd Enforceable Undertaking](#) Published 5 March 2015

²⁷ Regulation 3.32(d) of the *Fair Work Regulations 2009* (Cth); clauses 12.5(a), 16.1, 27.2(a) and (b) and 28.2 of the Cleaning Award

²⁸ Clause 12.3

Metro Housekeeping Pty Ltd (ACN 119 589 178) (Metro) worked cooperatively with the FWO. However, it allegedly contravened provisions of the Hospitality Award by failing to create a regular pattern of work document for each part-time employee²⁹ and recording the incorrect entity name as the employer on pay slips. As a result of the Inquiry, Metro has amended their practices. They were issued an infringement notice and a letter of caution.

Oaks Hotels & Resorts Limited

Oaks partially cooperated with the Inquiry. In 2008 Oaks, established a separate entity, Housekeepers Pty Ltd [ACN 134 694 465] to provide housekeeping services. Prior to this Oaks outsourced housekeeping services to external providers. Oaks said they established this business model in response to concerns about the quality of the housekeeping services provided.

At the time of the Inquiry, Housekeepers Pty Ltd and Oaks shared a common director. Housekeepers Pty Ltd engages approximately 600 purported subcontractors nationally, of which the FWO looked at 58.

Fig 5: Oaks supply chain



The FWO considered all available evidence and gave regard to case law regarding the multi-factor test, including totality of the relationships. We formed the view that these purported subcontractors were in fact misclassified employees.

²⁹ Clause 12.3

Interview with worker at Housekeepers Pty Ltd

The FWO spoke with one housekeeper who has been performing housekeeping services at an Oaks hotel for over a year. The housekeeper heard about the job through a family member, had no prior cleaning experience and no experience operating a business. After completing four days training with a more experienced housekeeper, she was given a contract by Housekeepers Pty Ltd and asked to sign it. She was told she had to have an ABN to work for Housekeepers Pty Ltd. Like all housekeepers working for Housekeepers Pty Ltd, she was paid per room cleaned. A number of significant deductions were made from her fortnightly pay for insurances, payroll tax, administrative fees, cleaning chemicals and equipment.

Information provided by workers during the Inquiry indicates most are student visa holders with no prior experience in running or operating their own business.

By incorrectly engaging their workers, Housekeepers Pty Ltd allegedly contravened provisions of the FW Act and the Hospitality Award by failing to:

- pay the applicable casual loading
- pay the casual minimum engagement period
- pay Saturday, Sunday and public holiday penalty rates
- pay wages in full
- pay superannuation
- make and keep records for the employees
- issue pay slips to each employee.

We notified Housekeepers Pty Ltd of this finding by letter (dated 28 July 2015), and requested that they rectify the contraventions and take steps to ensure they don't occur again in future.

Housekeepers Pty Ltd responded by letter (dated 7 August 2015), informing us it had rectified the identified underpayments of \$12 886.89 to 16 workers, but made no admission of liability for the contraventions.

We conducted an unannounced site visit to an Oaks hotel in Brisbane in November 2015. We found Housekeepers Pty Ltd and Oaks were continuing to use the same operating model to engage workers as subcontractors when they were indeed employees.

Since that site visit and prior to the release of this report, Housekeepers Pty Ltd informed the FWO (by letter dated 1 March 2016), that it now engages workers directly rather than as independent contractors.

On 13 April 2016, Oaks and Housekeepers Pty Ltd were offered the opportunity to enter into Enforceable Undertakings.

On 20 April 2016, both declined Enforceable Undertakings in the terms offered by the FWO. We subsequently notified Housekeepers Pty Ltd on 22 April 2016 of our intention to file legal proceedings against Housekeepers Pty Ltd for misclassification. Both companies then stated they were willing to enter into Enforceable Undertakings on the terms offered originally³⁰.

Oaks has acknowledged through the Enforceable Undertaking that its operating model led to a situation where cleaners were highly vulnerable to exploitation. Oaks has also acknowledged that it has a moral and ethical responsibility to ensure that all entities and individuals within its supply chain comply with workplace laws.

Both Oaks and Housekeepers Pty Ltd have committed to a range of actions to sustain future compliance with workplace laws. Each entity is required to:

- repay the full entitlements of any workers underpaid for cleaning work performed since 1 August 2015
- place public notices in the Saturday editions of 9 major newspapers around Australia
- organise and ensure training for directors and others with managerial responsibility for, or involvement in, business decisions regarding workforce engagement
- donate \$20 000 to the Cleaning Accountability Framework to fund greater awareness and information about workplace rights under the FW Act in the cleaning sector.

Further, Oaks is required to:

- implement electronic time keeping systems to accurately record the hours worked by all cleaners
- issue all cleaners with a photo identification card and require them to carry it at all times while on site

³⁰ All Enforceable Undertakings are published on the FWO website: <https://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/enforceable-undertakings>

- ensure that each principal contractor and subcontractor provides Oaks with written certification that its directors, officers and managers understand their obligations to comply with Commonwealth Workplace Laws
- ensure that written contracts with principal contractors include express terms to the effect that Oaks, the principal contractor and any subcontractors are all responsible for ensuring compliance with workplace laws including the FW Act and related instruments in respect of all workers engaged by or through the principal contractor on Oaks sites
- ensure that schedules of fees contained in written contracts with principal contractors are indexed against the applicable modern award rates effective from 1 July every year
- terminate the contracts of any company it finds to have breached its obligations under the FW Act.

Housekeepers Pty Ltd is also required to send a letter of apology to certain nominated employees.

The FWO has also issued a letter of caution on a Director of Housekeepers regarding his alleged involvement in the contraventions committed by Housekeepers.

The FWO's role post Inquiry

The FWO is the independent regulator of Australian workplaces and has a responsibility to ensure that the industry adopts a sustainable compliance framework. To achieve this, the FWO will:

- conduct a follow up inspection within twelve months of the publication of this report of the Hotel Groups, principal contractors and subcontractors subject to the Inquiry
- request the Hotel Groups engage with the Framework and use the Framework's resources and tools to review their corporate governance models to ensure compliance with the FW Act
- request the Hotel Groups provide us with a report within twelve months of the publication of this report, on improvements to corporate governance models and procedures for lawful contracting and compliance with the FW Act
- assess reports provided by Hotel Groups to ensure compliance with Commonwealth workplace laws
- survey Hotel Group workers within two years of the publication of this report, to assess if the subsector has changed its governance arrangements to ensure compliance with the FW Act.

Recommendations

The FWO makes the following recommendations as a result of this Inquiry:

That the Hotel Groups:

- amend their tender documents to:
 - include a specific reference that the principal contractor must be compliant with the FW Act and make reference to the relevant terms of the applicable award, including the hourly rates of pay as it applies throughout the labour supply chain
 - remove references to discounts (or penalties) being applied for failed site inspections and instead provide the principal contractor the opportunity to rectify at its own cost
 - include specific reference to the principal contractors' ongoing obligation to ensure that their subcontractors be compliant with the FW Act and the applicable award including the hourly rates of pay
- implement regular compliance auditing of principal contractors and subcontractors to ensure their ongoing compliance
- ensure that the schedule of fees contained in contracting agreements be indexed against the applicable award rates effective every 1 July
- undertake training on the provisions of the Cleaning Award and the Hospitality Award
- ensure that each site provides principal contractors with the occupancy summary to enable them to comply with rostering provisions of the applicable Award, or provide full access to the hotel's room occupancy
- provide no less than 48 hours' notice of any significant amendments (e.g. cancellations) to the occupancy summary, to allow sufficient time for principal contractors to make fair and reasonable alternate arrangements with housekeepers.

The Inquiry further recommends Starwood Hotels & Resorts Worldwide Inc. and The Accor Group enter into compliance partnerships with the FWO to formalise their commitment to compliance with workplace laws throughout their respective labour supply chains³¹.

³¹ Compliance partnerships are formalised through Proactive Compliance Deeds which are tailored to the business. Proactive Compliance Deeds are documents, signed by the FWO and the business, outlining steps each will take to ensure all entities in the labour supply chain are compliant with workplace laws – see <https://www.fairwork.gov.au/about-us/our-role/enforcing-the-legislation/compliance-partnerships>

That the principal contractors:

- amend subcontracting agreements to include specific reference to the subcontractor's ongoing obligation to be compliant with the FW Act and the applicable award
- implement regular compliance auditing of subcontractors to ensure ongoing compliance
- if they choose to continue to charge subcontractors for operational expenses such as lost name badges, this be included in the subcontracting agreement
- ensure that the schedule of fees contained in contracting agreements be indexed against the applicable award rates effective every 1 July
- undertake training on the provisions of the Cleaning Award and the Hospitality Award
- join an industrial association
- subscribe to the FWO's My account service
- subscribe to the FWO employer electronic newsletter.

That the subcontractors:

- undertake training on provisions of the Cleaning Award
- enhance their systems for accurately monitoring hours worked and record keeping
- join an industrial association
- subscribe to the FWO's My account service
- subscribe to the FWO employer electronic newsletter.

The FWO strongly recommends that all participants note the development of the Cleaning Accountability Framework (Framework)³², which aims to address systemic non-compliance in the procurement of cleaning services nationally.

The recommendations set out above align with the requirements of the Framework.

Michael Campbell
Deputy Fair Work Ombudsman - Operations
Operations Group

May 2016

³² See Appendix A

Appendix A

The Cleaning Accountability Framework (Framework) is the brings together cleaning industry participants to work on developing greater accountability in contracted cleaning services.

Industry stakeholders determined the Framework is needed to build upon work to promote fair contracting principles and decent labour standards in the property services supply chain, by:

- recognising best practice labour procurement, compliance and cleaning standards
- supporting responsible tendering and contracting of cleaning services
- creating a platform for participation and accountability for all industry stakeholders, from property investors through to cleaners
- improving transparency
- managing supply chain risk
- providing protections for one of the most vulnerable groups of workers in Australia – cleaners.

The objectives of the Framework are to:

- identify best practice tendering and compliance to support quality cleaning services, fair wages and labour standards, including through a national certification scheme
- recognise stakeholders who have implemented best practice standards.

The FWO is a member of the Framework's Steering Committee. For further information about membership, certification and resources contact Steven Ronson, Executive Director – Dispute Resolution and Compliance, Operations Group (steven.ronson@fwo.gov.au)

About the FWO

The Fair Work Ombudsman (FWO) is an independent statutory agency, created by the FW Act on 1 July 2009.

The FWO supports compliant, productive and inclusive Australian workplaces.

We ensure compliance with Australia's workplace laws by:

- offering a single point of contact for accurate, timely advice and information on Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- monitoring compliance, inquiring into and investigating any act or practice that may contravene workplace laws, awards and agreements
- enforcing workplace laws and deterring avoidance of workplace responsibilities.

For more information or media enquiries please contact FWO Media (media@fwo.gov.au).

The FWO strategic intent and Compliance and enforcement policy are available on our website www.fairwork.gov.au

For more information about our Compliance and enforcement policy please contact Steve Ronson, Executive Director – Dispute Resolution and Compliance (steven.ronson@fwo.gov.au).