

Albury retirement village operator fined for underpaying caretaker

27 July 2012

Note: Reference to prosecution in this media release is a general reference to the FWO commencing proceedings for the imposition of civil penalties and should not be taken to be a reference to criminal proceedings.

A NSW retirement village operator that displayed “carelessness” and “disregard” in underpaying a caretaker has been fined \$22,000 and ordered to make more than \$23,000 in back-payments.

The Federal Magistrates Court in Sydney has imposed the penalties against Kensington Management Services Pty Ltd, which operates the Kensington Gardens retirement village in Albury.

The decision follows an investigation and prosecution by the Fair Work Ombudsman.

Federal Magistrate Matthew Smith imposed the penalty after finding that the company underpaid the caretaker a total of \$22,987 between January and April, 2009.

The caretaker’s partner, who performed a small amount of relief work, was found to have been underpaid \$351.

In addition to the fine imposed, Federal Magistrate Smith has ordered Kensington Management Services to fully rectify the underpayments within 28 days.

Kensington Management Services required the caretaker to be at the retirement village for more than 120 hours a week - but paid him a weekly wage of only \$115.

Federal Magistrate Smith found that the caretaker should have been paid more than \$2000 a week because he was entitled to receive more than \$19 an hour for all time he was required to be at the village.

Federal Magistrate Smith said the penalty imposed should “convey a deterrent message to Kensington, and to encourage its board and managers to perform a proper review of the legality of its remuneration practices in relation to its employed caretakers and other employees”.

“I consider that the circumstances also require a strong deterrent message to other similar employers, who might be tempted to imitate Kensington in its disregard of the legal entitlements of its employees and its carelessness as to compliance with industrial legislation,” Federal Magistrate Smith said.

Acting Fair Work Ombudsman Mark Scully says the Court’s decision sends a strong message that carelessly underpaying staff is a serious matter.

“Successful prosecutions such as this also benefit employers who are complying with workplace laws because it helps them to compete on a level playing field,” Mr Scully said.

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Media inquiries:

Ryan Pedler, Assistant Director, Media & Stakeholder Relations
(03) 9954 2561, 0411 430 902
ryan.pedler@fwo.gov.au

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