



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Housekeepers Pty Ltd

(ACN 134 694 465)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (**FWO**) by Housekeepers Pty Ltd (ACN 134 694 465) (**Housekeepers**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Scope of this Undertaking

2. For the purposes of this Undertaking:
 - (a) '**Services**' means the provision of cleaning services carried out by Housekeepers Pty Ltd in or in connection with premises occupied, managed or controlled by Oaks Hotels & Resorts Limited in all States and territories of Australia (**Services**); and
 - (b) '**Affected Persons**' means any individual engaged by Housekeepers pursuant to a 'Contractor Agreement' to undertake the Services at any time in the period from 1 August 2015 to the date of execution of this undertaking.

Background

3. Housekeepers Pty Ltd (**Housekeepers**) is a wholly owned subsidiary of Oaks Hotels and Resorts Limited (**Oaks**) and was registered on 19 December 2008.
4. Pursuant to a written agreement dated 21 November 2009 between Housekeepers and Oaks, Housekeepers engages persons to work as cleaners at Oaks' hotels and resorts throughout Australia.
5. During the period from 1 March 2014 to 31 August 2014 (**Assessment Period**) the FWO conducted an audit (**Audit**) of the payments made to 16 cleaners engaged by Housekeepers as independent contractors to perform work at two premises operated by Oaks, namely Oaks on William (Melbourne) and Oaks on Felix (Brisbane).
6. The 16 cleaners were paid a per room rate by Housekeepers which varied according to the type of room to be cleaned, the estimated time taken to clean each room and the days on which the work was performed.
7. The 16 cleaners were required to pay for uniforms, payroll tax, equipment and chemicals, public liability insurance, accident protection insurance and admin charges, all payments of which were deducted from their remuneration by Housekeepers.
8. The FWO determined that:
 - (a) the cleaners engaged by Housekeepers, who were the subject of the Audit, were in fact and in law employees and not independent contractor (**Employees**);

- (b) Housekeepers was the true employer of the Employees;
 - (c) the terms and conditions of the Employees' employment were governed by the *Hospitality Industry (General) Award 2010 (Hospitality Award)*;
 - (d) the appropriate classification of the Employees who were cleaning guest rooms was Level 2 – Guest Services Grade 2 under the Hospitality Award, and the appropriate classification of the Employees who were cleaning public areas was Level 1 – Guest Services Grade 1 under the Hospitality Award;
 - (e) all of the Employees were employed on a casual basis under the Hospitality Award;
 - (f) the Employees had been underpaid by reference to the work performed under the Hospitality Award and, as a consequence, had contravened the FW Act;
 - (g) Housekeepers had wrongfully deducted amounts from the remuneration paid to the Employees, contrary to the FW Act;
 - (h) the Employees had been underpaid an aggregate total of \$12,886.89 (gross) for work performed during the Assessment Period (**Underpayments**) and on 28 July 2015 issued a findings letter (**findings letter**) to this effect to Housekeepers.
9. The findings letter required Housekeepers to rectify the Underpayments to the Employees by 12 August 2015.
10. By letter dated 7 August 2015 Housekeepers, by its legal practitioner, wrote to the FWO to advise that it did not admit liability in respect of the alleged contraventions of the FW Act but had made a commercial decision to rectify the Underpayments to the Employees.

Contraventions

11. The FWO has determined, and Housekeepers now admits that, in respect of the Employees, Housekeepers contravened:
- (a) section 45 of the FW Act by failing to pay the employees the applicable casual loading as required under clause 13.1 of the Hospitality Award;
 - (b) section 45 of the FW Act by failing to pay the employees for a casual minimum engagement period, as required under clause 13.2 of the Hospitality Award;
 - (c) section 45 of the FW Act by failing to pay the minimum Saturday penalty rate as required by clause 32.1 of the Hospitality Award;
 - (d) section 45 of the FW Act by failing to pay the minimum Sunday penalty rate as required by clause 32.1 of the Hospitality Award;
 - (e) section 45 of the FW Act by failing to pay the minimum public holiday penalty rate as required by clause 32.1 of the Hospitality Award;

- (f) section 45 of the FW Act by failing to pay superannuation as required by clause 28.2 of the Hospitality Award;
- (g) section 323 of the FW Act by failing to pay wages in full;
- (h) section 535 of the FW Act for failing to make and keep employee records for the employees as prescribed by subregulation 3.33(2) of the *Fair Work Regulations 2009 (FW Regulations)*; and
- (i) section 536 of the FW Act for failing to issue pay slips in a form prescribed by the FW Regulations.

Commencement of Undertaking

12. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Housekeepers; and
 - (b) the FWO accepts the Undertaking so executed.

Undertakings

13. Upon the commencement of this Undertaking and, for the purposes of section 715 of the FW Act, Housekeepers undertake to:

Apology

- (a) within 28 days of the execution of this Undertaking, send a letter of apology to each of the employees whose names are listed in Attachment B in the terms set out in that Attachment; and
- (b) within 7 days of the distribution of the letters of apology to those employees provide copies to the FWO;

Changes to labour engagement practices

- (c) within 28 days of the execution of this Undertaking, provide the FWO with time and wages records that confirm Housekeepers has changed its operations so that all individuals who are engaged by Housekeepers to perform cleaning work for Oaks are engaged as employees, not as independent contractors, and are paid pursuant to the industrial instrument applicable to the work performed by such employees;
- (d) provide to the FWO written confirmation that the changes in subparagraph 13(c) above have been completed, by no later than 28 days after the execution of this Undertaking or seven days after the completion of the changes in paragraph 13(c) occurring;

Future workplace relations compliance

- (e) commit to ongoing compliance with applicable Commonwealth workplace laws and instruments, including the FW Act, by developing systems and processes to promote ongoing compliance with those requirements;
- (f) provide to the FWO, within 90 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertaking in subparagraph 13(e) above;

Designated enquiry line

- (g) for a period of 12 months after the commencement of this Undertaking, maintain a telephone hotline and designated email address for all persons engaged by Housekeepers to make enquiries or requests for assistance regarding payment of amounts to which they are or may be entitled in relation to the performance of work;
- (h) ensure that the access details, the purpose of the telephone hotline and email address are made known and accessible to all persons engaged by Housekeepers and that such requests for assistance will be investigated by it;

Resolution of new requests for assistance

- (i) within 28 days after execution of this Undertaking, engage and thereafter retain suitably qualified human resources personnel for the purpose of receiving, investigating and resolving enquiries and requests for assistance submitted via the designated enquiry line and advise the FWO of the identity, skills and qualifications of such personnel;
- (j) within 28 days after execution of this Undertaking, and from time to time in the event of personnel changes, provide the FWO with the name and contact details of the designated personnel appointed to liaise with the FWO in relation to any new requests for assistance referred by the FWO for initial assessment in accordance with paragraph 14;
- (k) within 14 days of a new workplace complaint being referred by the FWO in accordance with paragraph 14, provide a written response to the officer nominated by the FWO as the liaison officer for the purposes of this Undertaking, of the outcome of the initial assessment, including any voluntary resolution of the workplace complaint and/or the basis for any dispute of the workplace complaint;

Rectification for Affected Persons

- (l) to assess the minimum monetary entitlements of any Affected Persons calculated as if the Affected Persons were employees of Housekeepers, such assessment to:

- A. apply the following Hospitality Award and legislation, as in operation during the period of the Affected Person's engagement, as the source of the minimum monetary entitlements:
 - I. wages and work-related entitlements under the Hospitality Award applicable to the classification of Guest Service Grade 1 or Grade 2 as required by the Hospitality Award and the category of work that would be most appropriate based on the Affected Person's pattern of work; and
 - II. annual leave entitlements in accordance with section 87 of the FW Act if the Affected Person worked part time or full time;
 - B. compare, on an overall basis, the amounts each of the Affected Persons would have received under the Hospitality Award for performing the Services at any time from 1 August 2015 onwards with the net monetary amount the Affected Persons were in fact paid by Housekeepers in respect of work performed in that period, to identify any underpayment owed to them, had they been employees of Housekeepers;
- (m) within 28 days after the execution of this Undertaking, provide the FWO with a copy of the specific details of methodology to be used to conduct the assessment in the manner referred to in subparagraph 13(l) above;
- (n) within 60 days after providing the FWO with the proposed methodology for the assessment (**Specified Period**):
- A. complete the assessment of the Affected Persons referred to in subparagraph 13(l) above;
 - B. pay all amounts owed to any Affected Person identified in the assessment;
 - C. provide proof of payment of any amounts paid in accordance with subparagraph 13(n)B to the FWO within seven days of the payment(s) being made;
- (o) for the period of 12 months after the execution of this Undertaking:
- A. take reasonable steps to locate Affected Persons who could not be located within the Specified Period, including attempting to contact the Affected Persons by telephone or in writing on existing or any new contact details obtained to:
 - I. advise them they are owed money; and
 - II. explain the process for claiming the money owed to them;

- B. report to the FWO after each four months on the attempts to locate affected persons, and the payments made to any affected persons located and paid, in the preceding four month period;
- (p) within 7 days after the end of the period referred to in paragraph 13(o):
- A. pay to the Commonwealth of Australia (through the Office of the Fair Work Ombudsman) pursuant to subsection 559(1) of the FW Act, and in discharge of any liability to make further payments to the Affected Persons pursuant to this Undertaking, any amounts owed to Affected Persons who could not be located and paid within the specified period, to be held on trust for the Affected Persons; and
 - B. provide the FWO with a report on any Affected Persons who could not be located, together with details of the amount owed to them and their last known contact details;

Website notice

- (q) cause to be placed, within 28 days of the execution of this Undertaking, a notice on the website of the Housekeepers at www.housekeepers.net.au (**Website Notice**) in the form of Attachment A to this Undertaking and which:
- A. is displayed on the home page of the website in at least size 10 font;
 - B. remains on the website for a period of at least 28 days; and
 - C. contains a html link to the executed Undertaking; and
- (r) provide a copy of the Website Notice to the FWO within seven days of publication;

Public notice

- (s) within 28 days of the FWO publishing a media release on its website, place a public notice in the terms set out in Attachment A (**Public Notice**) in the Saturday editions of the following newspapers:
- A. The Australian;
 - B. The Sydney Morning Herald;
 - C. The Daily Telegraph;
 - D. The Courier Mail;
 - E. The Age;
 - F. The Herald Sun;
 - G. The Advertiser;

- H. The West Australian;
- I. The Canberra Times;
- (t) the Public Notice must:
 - A. appear within the first 5 pages of the newspaper;
 - B. bear the logo (if any) of Housekeepers;
 - C. bear the name of Housekeepers Pty Ltd;
 - D. be at least 8cm x 10cm;
- (u) provide a copy of the Public Notice to the FWO within 7 days of the publication of the Public Notice;

Workplace notices

- (v) cause to be displayed, within 28 days of the execution of this Undertaking, a notice in the form of Attachment A to this Undertaking (**Workplace Notice**):
 - A. for a period of at least 28 days in locations at which all persons engaged by Housekeepers as cleaners have access; and
 - B. in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by Housekeepers (for example, by placement on a staff noticeboard at each workplace in at least A3 size);
- (w) provide written details of the method/s of displaying or providing the Workplace Notice, to the FWO within seven days of it first being displayed;

Workplace relations training

- (x) within six months of the execution of this Undertaking, organise and ensure training for Directors and all other persons engaged by Housekeepers who have managerial responsibility for, or involvement in, the making of business decisions regarding the model of engagement of the workforce (**Training**);
- (y) ensure the Training:
 - A. addresses compliance with the FW Act and the Hospitality Award;
 - B. is conducted by a practitioner with expertise in employment law, paid for by Housekeepers;
- (z) Provide the name and qualification of the person or organisation to conduct the training and copies of the proposed training materials to the FWO no later than seven days before the Training is to be conducted;

- (aa) provide evidence of attendance at the Training to the FWO within seven days of the Training being provided (including the name and position of all attendees and the date on which the Training was attended); and
- (bb) for a period of three years from the execution of this Undertaking, ensure that Training is conducted in the manner prescribed in subparagraphs 13(x) to (z) in relation to any new or existing employees who, after the commencement of this Undertaking, acquire managerial responsibilities in relation to the making of business decisions regarding the model of engagement of the workforce on behalf of Housekeepers.

Donation

- (cc) within 28 days of the execution of this Undertaking, make a donation of \$20,000 to the Cleaning Accountability Framework to fund education about workplace rights under the FW Act; and
- (dd) provide proof of payments referred to in subparagraph 13(cc) to the FWO within 7 days of their being made.

Referral of New Requests for Assistance

14. To assist Housekeepers to meet the obligation in subparagraphs 13(i) to 13(k) above, the FWO agrees:
 - (a) that new requests for assistance received on or after the commencement of this Undertaking by a person engaged by Housekeepers who undertook the Services, but who is not an Affected Person within the meaning of paragraph 2 above, will be referred to Housekeepers for initial assessment and resolution prior to the FWO referring the matter to a resolution process facilitated by the FWO or commencing an investigation; and
 - (b) within 14 days of the commencement of this Undertaking (and from time to time in the event of a change in personnel), to nominate a liaison officer for the purposes of any new requests for assistance referred to in paragraph 14(a) above.

Acknowledgements

15. Housekeepers acknowledges that:
 - (a) this Undertaking may be withdrawn from by Housekeepers for the purposes of section 715(3) of the FW Act only if the FWO gives its written consent (in which case the FWO may apply for orders against Housekeepers, in respect of the contraventions admitted in paragraph 11);

- (b) the FWO reserves the right to refer to this Undertaking, its contents and admissions in respect of any future proceedings brought by the FWO against Housekeepers in relation to any future contraventions of Commonwealth workplace laws;
- (c) it will not, and will take reasonable steps to ensure that its respective officers, employees or agents do not, make any statement, orally or in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the terms of this Undertaking;
- (d) 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);
- (e) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (f) 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;
- (g) consistent with the Note to subsection 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; and
- (h) if the FWO considers that Housekeepers has contravened any of the terms of this Undertaking the FWO may apply to any of the Courts set out in subsection 715(6) of the FW Act for orders under subsection 715(7) of the FW Act.

Executed as an undertaking

Executed by Housekeepers Pty Ltd (ACN 134 694 465) in accordance with subsection 127(1) of the *Corporations Act 2001*:

(Signature of director)

(Name of director)

(Date)

in the presence of:

(Signature of witness)

(Name of witness)

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

JANINE WEBSTER, CHIEF COUNSEL
[Insert name and role of Delegate]

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

Eric Leahy
(Signature of witness)

Mike Odeh
(Signature of director/company secretary)

MICHAEL FRANCIS ANDERSON
(Name of director/company secretary)

6 MAY 2016
(Date)

in the presence of:

Jaimie Lee Sooen-Taylor
(Signature of witness)

JAIMIE LEE SOOEN-TAYLOR
(Name of witness)

9/5/2016
(Date)

Eric Leahy
(Name of Witness)

ATTACHMENT A: FORM OF PUBLIC NOTICE, WEBSITE AND WORKPLACE NOTICE

Enforceable Undertaking with the Fair Work Ombudsman

In 2014 the Fair Work Ombudsman (FWO) conducted an audit of Housekeepers Pty Ltd (Housekeepers) to establish whether or not Housekeepers' practices with respect to the recruited cleaners was compliant with Commonwealth workplace law. The audit was conducted in respect of cleaning staff engaged at Oaks William (Melbourne) and Oaks Felix (Brisbane).

The audit identified a number of significant contraventions of Commonwealth workplace law. In particular, it identified that Housekeepers purported to engage cleaners as "independent contractors" when they were in fact and in law employees. This misclassification of the cleaners resulted in significant breaches of the *Fair Work Act*, the *Fair Work Regulations* and the *Hospitality Industry (General) Award 2010*, resulting in underpayments to the cleaners and non-payment of superannuation entitlements.

Housekeepers has admitted that the business model formerly engaged in is not compliant with Commonwealth workplace law. Housekeepers has changed its business model to ensure that its cleaners are now engaged as employees and receive wages and conditions applicable under Commonwealth workplace law. This change has been completed.

Housekeepers and Oaks have entered into separate Enforceable Undertakings with the FWO (available at www.fairwork.gov.au) and have committed to:

- reviewing the entitlements of cleaners purportedly engaged as independent contractors by Housekeepers since 1 August 2015 and making payment of any identified underpayments;
- implementing a telephone hotline and designated email address for persons engaged by Housekeepers to make enquiries or requests for assistance and Housekeepers will investigate such enquiries and requests for assistance and report the outcome to the Fair Work Ombudsman; and
- complying with all requirements of the Commonwealth workplace law.

If you were engaged as an independent contractor by Housekeepers at any time from 1 August 2015 onwards and are unsure if you were paid correctly, please contact [*contact name to be inserted*] at Housekeepers Pty Ltd. Alternatively, you can contact the FWO via its website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment B – List of employees and form of letter of Apology

Dear

I am writing on behalf of Housekeepers Pty Ltd (Housekeepers) to apologise for Housekeepers' failure to comply with Australian workplace law.

On 28 July 2015 the Fair Work Ombudsman (FWO) wrote to Housekeepers referring to an audit that had been conducted at premises conducted by Oaks Hotels & Resorts Limited in Melbourne and Brisbane. That letter set out findings that had been made by the FWO which involved breaches by Housekeepers of the *Fair Work Act 2009* (FW Act), the *Fair Work Regulations 2009* and the *Hospitality Industry (General) Award 2010* (Hospitality Award).

A central finding by the FWO was that cleaners engaged by Housekeepers were in fact and in law employees of Housekeepers and not independent contractors.

The FWO's letter required Housekeepers to take corrective action that involved rectifying the specific breaches that had been identified. These breaches were:

- (a) Contravention of s 45 of the FW Act by failing to pay the employees the applicable casual loading as required under clause 13.1 of the Hospitality Award;
- (b) Contravention of s 45 of the FW Act by failing to pay the employees for a casual minimum engagement period, as required under clause 13.2 of the Hospitality Award;
- (c) Contravention of s 45 of the FW Act by failing to pay the minimum Saturday penalty rate as required by clause 32.1 of the Hospitality Award;
- (d) Contravention of s 45 of the FW Act by failing to pay the minimum Sunday penalty rate as required by clause 32.1 of the Hospitality Award;
- (e) Contravention of s 45 of the FW Act by failing to pay the minimum public holiday penalty rate as required by clause 32.1 of the Hospitality Award;
- (f) Contravention of s 45 of the FW Act by failing to pay superannuation as required by clause 28.2 of the Hospitality Award;
- (g) Contravention s 323 of the FW Act by failing to pay wages in full;
- (h) Contravention of s 535 of the FW Act for failing to make and keep employee records for the employees as prescribed by regulation 3.33(2) of the Fair Work Regulations 2009 (FW Regulations); and
- (i) Contravention of s 536 of the FW Act for failing to issue pay slips in a form prescribed by the FW Regulations.

Regrettably, the audit determined that you were affected by the above contraventions

Housekeepers has taken, and is continuing to take, steps to remedy the contraventions and will pay to you all amounts identified as owing to you by reason of the audit. You will also be provided with a reconciliation of the amounts due to you and the amounts paid.

Housekeepers has formally admitted to the Fair Work Ombudsman that it has failed to comply with its obligations under Commonwealth workplace law and has entered into an Enforceable Undertaking with the Fair Work Ombudsman, a copy of which is available on the Housekeepers' and the Fair Work Ombudsman's Web sites.

As part of the Enforceable Undertaking, Housekeepers have committed to a number of measures to ensure future compliance with Commonwealth workplace law.

Housekeepers expresses its sincere regret and apologises to you for failing to comply with its

lawful obligations.

Should you have any inquiries about any matter referred to in this letter, please contact
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Yours sincerely,

Housekeepers employees to whom this letter of apology is to be sent:

Oaks William (Melbourne)

Oaks Felix (Brisbane)

