



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Oaks Hotels & Resorts Limited (ACN 113 972 366)

Section 715 ENFORCEABLE UNDERTAKING

Parties

This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Oaks Hotels & Resorts Limited (ACN 113 972 366) (**Oaks**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

1. Oaks is one of Australia's largest hotels and resorts operators. It operates 44 hotels and resorts throughout Australia.
2. Pursuant to a written agreement with Housekeepers Pty Ltd (ACN 134 694 465) (**Housekeepers**) dated 21 November 2009, Oaks has subcontracted the provisions of cleaning services at all of its hotels and resorts to Housekeepers, which engages workers to provide those cleaning services.
3. Housekeepers is a wholly owned subsidiary of Oaks.
4. In the period from 19 December 2008 to 2 July 2015 Brett Pointon (**Pointon**) was a director of Housekeepers and Chief Executive Officer of Oaks. Pointon was responsible for establishing Housekeepers in 2008 and managing the supply chain, and relationship, between Oaks, Housekeepers and Housekeepers' workers.
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 in Melbourne and Oaks on Felix in Brisbane.
6. As a result of that Audit, the FWO determined that (relevantly):
 - (a) the cleaners engaged by Housekeepers, who were the subject of the Audit, were, in fact and in law, employees and not independent contractors (**Employees**);
 - (b) Housekeepers was the true employer of the Employees;
 - (c) the terms and conditions of the Employees' employment was governed by the *Hospitality Industry (General) Award 2010* (**Hospitality Award**);
 - (d) the Employees had been underpaid an aggregate total of \$12,886.89 (gross) for work performed during the Assessment Period (**Underpayments**); and
 - (e) Housekeepers had contravened the FW Act.

7. On 28 July 2015, the FWO issued a findings letter to Housekeepers, advising of its findings and requesting that Housekeepers rectify the Underpayments by 28 August 2015 (**Findings Letter**). The Findings Letter was addressed to Housekeepers C/o Oaks.
8. On 7 August 2015, the legal practitioner for Housekeepers and Oaks wrote to the FWO to advise that Housekeepers did not admit liability to the alleged contraventions of the FW Act but had made a commercial decision to rectify the underpayments to the Employees. Those underpayments have since been rectified.
9. On 5 November 2015, the FWO conducted a site visit at Oaks on Felix in Brisbane, and established that Housekeepers was continuing to engage cleaners as purported independent contractors rather than employees.

Commencement of Undertaking

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

Undertakings

11. Upon the commencement of this Undertaking and, for the purposes of section 715 of the FW Act, Oaks undertakes to:

Implement fundamental changes to its labour engagement practices

- (a) within 28 days of the execution of this Undertaking, provide FWO with time and wages records that substantiate that Housekeepers has changed its operations so that all individuals who are engaged by any subcontractors of Oaks (including, but not limited to, Housekeepers) to perform cleaning work (including cleaners currently engaged and any engaged in the future) will be, or are, engaged as employees, not as independent contractors, and will be, or are, paid pursuant to the Hospitality Award or the industrial instrument applicable to the work performed by such employees;
- (b) within 28 days of the execution of this Undertaking, ensure that, to the extent possible, any workers underpaid for work performed since 1 August 2015, by reason of Oaks contracting model and business structure referred to in paragraph 13(b) below, are repaid their full entitlements; and

Publish acknowledgements

- (c) within 28 days of the execution of this Undertaking, cause a notice to be placed on the website of Oaks at <http://www.oakshotelsresorts.com/> (**Website Notice**) in the form of Attachment A to this Undertaking and which:
 - (i) is displayed on the home page of the website in at least size 10 font;
 - (ii) remains on the website for a period of at least 28 days; and
 - (iii) contains a html link to the executed Undertaking; and
- (d) provide a copy of the Website Notice to the FWO within seven days of publication;

Public notice

- (e) 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:
 - (i) The Australian;
 - (ii) The Sydney Morning Herald;
 - (iii) The Daily Telegraph;
 - (iv) The Courier Mail;
 - (v) The Age;
 - (vi) The Herald Sun;
 - (vii) The Advertiser;
 - (viii) The West Australian;
 - (ix) The Canberra Times;
- (f) the Public Notice must:
 - (i) appear within the first 5 pages of the newspaper;
 - (ii) bear the logo Oaks;
 - (iii) bear the name Oaks;
 - (iv) be at least 8cm x 10cm;
- (g) provide a copy of the Public Notice to the FWO within 7 days of the publication of the Public Notice;

Workplace notices

- (h) 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**):
 - (i) for a period of at least 28 days in locations at which all persons engaged by Housekeepers as cleaners to perform work at Oaks' hotel and resort sites have access; and
 - (ii) in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by Housekeepers as cleaners to perform work at Oaks' hotel and resort sites (for example, by placement on a staff noticeboard at each workplace in at least A3 size);
- (i) 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;

Identifying workers and maintaining worker records

- (j) implement systems to ensure that the hours worked by all cleaners at Oaks' hotel and resort sites, as well as the employing entity of those workers, can be readily ascertained, including by, within 28 days of the execution of this Undertaking:
 - (i) ensuring that all cleaners at Oaks' hotel and resort sites are issued with a photo identification card which identifies their full name, employing entity and the ABN of that employing entity, and requiring cleaners to carry such a card at all times while on its sites; and
 - (ii) implementing an electronic time-keeping system applying to all cleaners on all Oaks' hotel and resort sites, which enables Oaks to maintain and monitor accurate records of workers' working hours, including start and finish times;
- (k) provide to the FWO, within 60 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertaking in paragraph 11(j) above;

Ensure that cleaning subcontractors comply with Commonwealth workplace laws

- (l) take steps to ensure that each contractor and subcontractor of cleaning services:
 - (i) provides Oaks with written certification that its directors, officers and managers understand their obligations to comply with Commonwealth Workplace Laws;
 - (ii) is required by written contract to provide Oaks every six months with complete details of the terms and conditions upon which each worker is engaged, (including hours of work and rates of pay);

- (iii) enters into a written contract with Oaks regarding the engagement of workers at Oaks' sites, with Oaks to provide copies of such contracts to the FWO; and
- (iv) make payment to workers by a method that is verifiable by an independent third party;
- (m) provide the FWO with cleaning services contractor (and subcontractor) details every 3 months, and each time that a new cleaning services contractor (or subcontractor) is engaged, including the full name and contact details of all cleaners, contractors, and written contracts entered into between Oaks and each contractor who engages cleaners whether directly or through a subcontractor;
- (n) ensure that its written contracts with each contractor include express terms to the effect that Oaks and the 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 contractor on Oaks sites;
- (o) ensure that the schedule of fees contained in its written contracts with each contractor is indexed against the applicable modern award rates effective from 1 July every year;
- (p) terminate the contracts of any company it finds to have breached its obligations under the FW Act;

Workplace relations training

- (q) within six months of the execution of this Undertaking, organise and ensure training for directors and all other persons engaged by Oaks who have managerial responsibility for, or involvement in, the making of business decisions regarding the model of engagement of the workforce (**Training**);
- (r) ensure the Training:
 - (i) addresses compliance with the FW Act and the Hospitality Award; and
 - (ii) is conducted by a practitioner with expertise in employment law, paid for by Oaks;
- (s) 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;

- (t) 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
- (u) for a period of three years from the execution of this Undertaking, ensure that Training is conducted in the manner prescribed in subparagraphs 11(q) to 11(t) 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 Oaks.

12. **Donation**

- (a) make a donation of \$20,000 to the Cleaning Accountability Framework to fund education about workplace rights under the FW Act;
- (b) provide proof of payments referred to in subparagraph 12(a) to the FWO within 7 days of it being made.

Acknowledgements

13. Oaks acknowledges that:

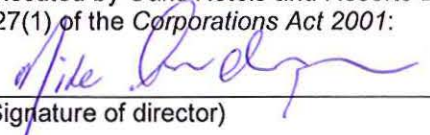
- (a) Oaks has a moral and ethical responsibility to require standards of conduct from all entities and individuals involved in the conduct of its enterprise, that:
 - (i) comply with the law in relation to all workers at all of its sites; and
 - (ii) meet Australian community and social expectations to provide equal, fair and safe work opportunities for all workers at all of its sites;
- (b) the contracting model and business structure Oaks has implemented and used with Housekeepers to engage cleaners at its hotel and resort sites led to a situation where cleaners have been highly vulnerable to exploitation, including by way of underpayment and in contravention of the FW Act (**contracting model and business model**);
- (c) this Undertaking may be withdrawn from by Oaks for the purposes of section 715(3) of the FW Act only if the FWO gives its written consent;
- (d) the FWO reserves the right to refer to this Undertaking and its contents in respect of any future proceedings brought by the FWO against Oaks in relation to any future contraventions of Commonwealth workplace laws;
- (e) Oaks will not, and will take reasonable steps to ensure that Oaks' 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;

- (f) 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);
- (g) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (h) 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;
- (i) 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
- (j) if the FWO considers that Oaks has contravened any of the terms of this 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 Oaks Hotels and Resorts Limited (ACN 113 972 366) in accordance with subsection 127(1) of the *Corporations Act 2001*:


(Signature of director)

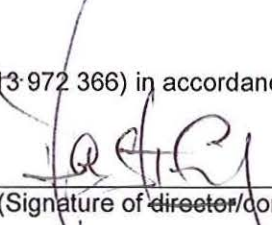
MICHAEL FRANCIS ANDERSON
(Name of director)

6 MAY 2016
(Date)

in the presence of:


(Signature of witness)

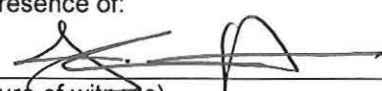
JAIMIE LEE SODEN-TAYLOR
(Name of witness)


(Signature of ~~director~~ company secretary)

DANIEL PETER HASTINGS
(Name of ~~director~~ company secretary)


6 MAY 2016
(Date)

in the presence of:


(Signature of witness)

JAIMIE LEE SODEN-TAYLOR
(Name of witness)

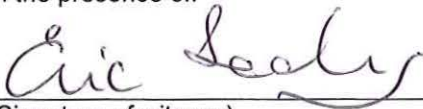
ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to subsection 715(2) of the *Fair Work Act* 2009 on:


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

9 May 2016.
(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

Eric Leahy
(Name of Witness)

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

Enforceable Undertaking with the Fair Work Ombudsman

Oaks Hotels & Resorts Limited (**Oaks**) engages Housekeepers Pty Ltd (**Housekeepers**) to provide cleaning services at its hotels and resorts throughout Australia. Housekeepers is a fully owned subsidiary of Oaks.

In 2014, the Fair Work Ombudsman (**FWO**) conducted an audit at two of Oaks' hotels over a 6 month period to establish whether or not Housekeepers' practices with respect to its cleaners were compliant with Commonwealth workplace laws.

The audit identified a number of significant contraventions of Commonwealth workplace laws. 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.

Oaks and Housekeepers have entered into separate Enforceable Undertakings with the FWO (available at www.fwo.gov.au) and have changed their business model so as to ensure that Housekeepers' now engages cleaners as employees in compliance with Commonwealth workplace laws. This change has been completed.

Oaks acknowledges that:

- it has a moral and ethical responsibility to require standards of conduct from all entities and individuals involved in the conduct of its enterprise, that:
 - comply with the law in relation to all workers at all of its sites; and
 - meet Australian community and social expectations to provide equal, fair and safe work opportunities for all workers at all of its sites;
- the contracting model and business structure it implemented and used with Housekeepers to engage cleaners at its hotel and resort sites led to a situation where cleaners have been highly vulnerable to exploitation, including by way of underpayment and in contravention of the FW Act;
- it will take steps to improve the employment practices of its contractors and subcontractors in relation to cleaning services by implementing fundamental, permanent and sustainable changes to its business to ensure that:
 - proper records are maintained for contractors and subcontractors allowing cleaners, Oaks and the FWO to verify that the workers are receiving their full entitlements;
 - it has proper governance structures in place to monitor and regulate the arrangements of subcontractors;
 - to the extent possible, cleaners who are underpaid are repaid their full entitlements; and
 - to the extent possible, current and future cleaners at each of its hotel and resort sites receive the full entitlements due to them under Commonwealth workplace laws.