



Australian Government

# Fair Work

## OMBUDSMAN

### ENFORCEABLE UNDERTAKING

This undertaking is **given** by Crown Melbourne Limited (ACN 006 973 262) and Burswood Resort (Management) Limited (ACN 009 396 945) and **accepted** by the Fair Work Ombudsman pursuant to s715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clauses 18 to 21 of this undertaking.

## 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:
  - (a) Crown Melbourne Limited, ACN 006 973 262, "Crown Towers" Level 3, 8 Whiteman Street, Southbank Victoria 3006 (**Crown Melbourne**); and
  - (b) Burswood Resort (Management) Limited, ACN 009 396 945, 201 Great Eastern Highway Burswood Western Australia 6100 (**Crown Perth**).(collectively, the **Crown Entities**)

### COMMENCEMENT

2. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by each of the Crown Entities; and
  - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

### BACKGROUND

3. The Crown Entities own or operate the Crown Melbourne and Crown Perth entertainment complexes. Crown Resorts Limited (**Crown Resorts**) is the parent company of the corporate group (**Crown Group**) and indirectly owns Crown Melbourne and Crown Perth. Crown Melbourne is the owner and operator of the Crown Melbourne complex and principal employer of staff at the complex. Crown Perth is the principal employer of staff at the Crown Perth complex.
4. As at 30 April 2023, the Crown Entities employed approximately:
  - (a) Crown Melbourne — 7,481 employees; and
  - (b) Crown Perth — 4,673 employees.
5. On 27 March 2020, Crown Resorts notified the FWO that:
  - (a) in May 2019 it had engaged Deloitte to undertake a review of its payroll systems and processes, with a particular focus on employees with annualised salaries to determine if those salaries were sufficient to cover underlying award entitlements (**Initial Review**);
  - (b) the Initial Review identified deficiencies in time keeping records for certain salaried employees, for which Crown Resorts implemented processes to rectify;

- (c) in October 2019, Crown Resorts expanded the scope of its Initial Review to include comprehensive instrument mapping and payroll assessment covering all employee positions (including salaried, award and enterprise agreement covered employees), also engaging Mapien Workplace Strategists (**Mapien**) and Corrs Chambers Westgarth (**Internal Review**); and
  - (d) the Internal Review was expected to be completed within 3 to 6 months, and Crown Resorts would promptly notify the FWO of any material issues identified by the Internal Review.
6. On 15 November 2020, Crown Resorts notified the FWO that:
- (a) the Internal Review had been completed in relation to the period of 1 May 2019 to 22 March 2020 (**Internal Review Period**), noting the Crown Melbourne and Crown Perth complexes were closed due to COVID-19 from 23 March 2020;
  - (b) the Internal Review had identified that within the Internal Review Period:
    - (i) some roles within the Crown Entities had been incorrectly treated as award free or mapped to the incorrect modern award or classification; and
    - (ii) salaries paid to 147 employees working certain patterns of work were not sufficient to compensate for all entitlements under the relevant modern award;
  - (c) the Internal Review had identified, within the Internal Review Period, that:
    - (i) no underpayments had been identified to Crown Resorts employees;
    - (ii) 117 employees of Crown Melbourne had been underpaid a total of \$156,064, plus \$14,826 in superannuation; and
    - (iii) 97 employees of Crown Perth had been underpaid a total of \$115,774, plus \$10,999 in superannuation;
  - (d) applying the findings of the Internal Review within the Internal Review Period, Crown Resorts estimated a total underpayment over a 6-year period of \$2,143,176 (including superannuation);
  - (e) Crown Resorts was working to identify impacted former employees and intended to notify impacted employees and the United Workers Union (**UWU**), and commence back payments as soon as possible; and
  - (f) Crown Resorts had undertaken a review of its existing systems to identify steps needed to be taken to achieve compliance with the applicable legislation and industrial

instruments. Crown has agreed to continue to take steps as referred to in clause 25 to achieve ongoing compliance.

7. On 15 January 2021, Crown Resorts:
  - (a) provided further details of the issues and contraventions identified by the Internal Review within the Internal Review Period;
  - (b) stated that it was proposing to complete the rectification of underpayments to both current and former employees by 30 June 2021; and
  - (c) welcomed an opportunity to meet with the FWO to discuss the Internal Review, including the steps taken and changes made to systems and processes to achieve compliance.
  
8. On 28 July 2021, following further analysis, Crown Resorts:
  - (a) provided an updated assessment of the total number of employees underpaid and the total underpayments. Crown Resorts' updated assessment and calculation was that the 200 affected employees had been underpaid a total of \$819,268.46, plus \$85,604.89 in superannuation. As at the Commencement Date, Crown Resort's further assessment of the total underpayments and calculation was that the 200 affected employees had been underpaid a total of \$1,025,378.29 plus \$107,212.16 in superannuation as set out in Schedules A and B;
  - (b) stated that it was making an additional 10% payment to impacted employees, totalling \$81,926.85. As at the Commencement Date, Crown Resort's additional 10% payment to the 200 affected employees totalled \$94,303.06 as set out in Schedules A and B; and
  - (c) stated that it had back paid 185 of the impacted employees and had attempted to contact the remaining 15 employees. As at the Commencement Date Crown Resorts has back paid 192 affected employees and has attempted to contact the remaining 8 employees.
  
9. Through a course of subsequent correspondence and meetings, the FWO raised with Crown Resorts that the FWO did not agree with the approach Crown Resorts had taken in the Internal Review to annualised offsetting of underpayments against above award payments and some instances of the application of public holiday penalty rates, and calculation of annual leave payments.

10. In response, Crown Resorts notified the FWO:
  - (a) that underpayment calculations had been adjusted for impacted employees in respect of any entitlement to annual leave and annual leave loading under the applicable modern award and the National Employment Standards;
  - (b) the entitlement was calculated by reference to the employee's contractual ordinary rate of pay, with the exception of the *Hair and Beauty Award 2010*, which expressly provided that annual leave loading be calculated on the minimum rates of pay in the award; and
  - (c) it had agreed to the approach of the FWO in respect to offsetting in relation to the Affected Employees.
11. Crown Resorts subsequently provided a set of updated sample calculations to the FWO, the methodology of which was reviewed and later accepted by the FWO.
12. Prior to the execution of this Undertaking, Crown Melbourne notified the FWO that, for 1 July 2014 to 30 June 2020 (**Relevant Period**) it had:
  - (a) calculated the amount of the underpayment to each employee listed in Column B of Schedule A to this Undertaking (**Affected Crown Melbourne Employees**) to be the amount listed in Column D of Schedule A to this Undertaking (**Crown Melbourne Underpayments**);
  - (b) calculated the amount of superannuation payable to each Affected Crown Melbourne Employee to be the amount listed in Column E of Schedule A to this Undertaking (**Crown Melbourne Superannuation Underpayments**);
  - (c) calculated an additional payment (made up of interest and gratuity), calculated at 10% of each Crown Melbourne Underpayment, to be the amount listed in Column F of Schedule A to this Undertaking (**Crown Melbourne Additional Payments**); and
  - (d) made payments of the amounts referred to in Columns D, E and F to each of the Affected Crown Melbourne Employees (or their nominated superannuation fund) who are marked with a 'yes' in Column G of Schedule A to this Undertaking.
13. Prior to the execution of this Undertaking, Crown Melbourne has notified the FWO that, for the Relevant Period, it will:
  - (a) continue to investigate whether any underpayment has occurred in relation to each Crown Melbourne Employee listed in Schedule A1 (**Potentially Affected Crown**



**Melbourne Employees)** to this Undertaking;

- (b) provide the FWO with sample calculations for review by 31 August 2023;
  - (c) provide the FWO with an interim report by 31 October 2023;
  - (d) finalise this investigation by 31 January 2024, or later date as agreed upon with the FWO. FWO will not unreasonably refuse a request for an extension of time to finalise this investigation;
  - (e) remediate any underpayment by 31 March 2024, or later date as agreed upon with the FWO, including 10% interest and any relevant superannuation, and provide the FWO with a schedule evidencing the same;
  - (f) if any of the Potentially Affected Crown Melbourne Employees to whom amounts are determined to be owing cannot be located within 60 days of the finalisation date of this investigation, the Crown Entities will pay the monies determined to be owed to those Potentially Affected Crown Melbourne Employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. The Crown Entities will complete the required documents supplied by the FWO for this purpose;
  - (g) in the event that the FWO is able to locate and contact a Potentially Affected Crown Melbourne Employee to whom monies are determined to be owed, the FWO will (in addition to its obligations under s559 of the FW Act) notify the Crown Entities in writing of the name and contact details of the Potentially Affected Crown Melbourne Employee. Within 30 days of receiving any such notice the Crown Entities will:
    - (i) pay to the Potentially Affected Crown Melbourne Employee's nominated superannuation fund the relevant Superannuation Underpayment; and
    - (ii) pay to the Potentially Affected Crown Melbourne Employee the relevant Interest Payment.
14. Prior to the execution of this Undertaking, Crown Perth notified the FWO that, for the Relevant Period, it had:
- (a) calculated the amount of the underpayment to each employee listed in Column B of Schedule B to this Undertaking (**Affected Crown Perth Employees**) to be the amount listed in Column D of Schedule B to this Undertaking (**Crown Perth Underpayments**);
  - (b) calculated the amount of superannuation payable to each Affected Crown Perth Employee to be the amount listed in Column E of Schedule B to this Undertaking

**(Crown Perth Superannuation Underpayments);**

- (c) calculated an additional payment (made up of interest and gratuity), calculated at 10% of each Crown Perth Underpayment, to be the amount listed in Column F of Schedule B to this Undertaking (**Crown Perth Additional Payments**); and
  - (d) made payments of the amounts referred to in Columns D, E and F to each of the Affected Crown Perth Employees (or their nominated superannuation fund) who are marked with a 'yes' in Column G of Schedule B to this Undertaking.
15. Prior to the execution of this Undertaking, Crown Perth has notified the FWO that, for the Relevant Period, it will:
- (a) continue to investigate whether any underpayment has occurred in relation to each Crown Perth Employee listed in Schedule B1 (**Potentially Affected Crown Perth Employees**) to this Undertaking;
  - (b) provide the FWO with sample calculations for review by 31 August 2023;
  - (c) provide the FWO with an interim report by 31 October 2023;
  - (d) finalise this investigation by 31 January 2024, or later date as agreed upon with the FWO. FWO will not unreasonably refuse a request for an extension of time to finalise this investigation;
  - (e) remediate any monies determined to be owed to Potentially Affected Crown Perth Employees by 31 March 2024, or later date as agreed upon with the FWO, including 10% interest and any relevant superannuation, and provide the FWO with a schedule evidencing the same;
  - (f) if any of the Potentially Affected Crown Perth Employees to whom monies are determined to be owed cannot be located within 60 days of the finalisation date of this investigation, the Crown Entities will pay the monies determined to be owed to those Potentially Affected Crown Perth Employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. The Crown Entities will complete the required documents supplied by the FWO for this purpose;
  - (g) in the event that the FWO is able to locate and contact a Potentially Affected Crown Perth Employee to whom monies are determined to be owed, the FWO will (in addition to its obligations under s559 of the FW Act) notify the Crown Entities in writing of the name and contact details of the Potentially Affected Crown Perth Employee. Within 30 days of receiving any such notice the Crown Entities will:

- (i) pay to the Potentially Affected Crown Perth Employee's nominated superannuation fund the relevant Superannuation Underpayment; and
- (ii) pay to the Potentially Affected Crown Perth Employee the relevant Interest Payment.

16. In this Undertaking:

- (a) the **Affected Crown Melbourne Employees** and the **Affected Crown Perth Employees** are, collectively, the **Affected Employees**;
- (b) the **Potentially Affected Crown Melbourne Employees** and the **Potentially Affected Crown Perth Employees** are, collectively, the **Potentially Affected Employees**;
- (c) the **Crown Melbourne Underpayments** and the **Crown Perth Underpayments** are, collectively, the **Underpayments**;
- (d) the **Crown Melbourne Superannuation Underpayments** and the **Crown Perth Superannuation Underpayments** are, collectively, the **Superannuation Underpayments**; and
- (e) the **Crown Melbourne Interest Payments** and the **Crown Perth Interest Payments** are, collectively, the **Interest Payments**.

17. During the period of 1 July 2014 to 30 June 2020, the Crown Entities were covered by the industrial instruments identified in Schedule C to this Undertaking (the **Instruments**).

## **ADMISSIONS**

### ***Crown Melbourne***

18. The FWO has a reasonable belief, and Crown Melbourne admits, that during the Relevant Period Crown Melbourne contravened:

- (a) subsection 44(1) of the FW Act by failing to pay the Affected Crown Melbourne Employees at the employees' correct base rate of pay for their ordinary hours of work during periods of annual leave as required by section 90(1) of the FW Act;
- (b) subsection 323(1)(a) of the FW Act by failing to pay the Affected Crown Melbourne Employees in full;
- (c) section 45 of the FW Act by:
  - (i) failing to pay each of the Affected Crown Melbourne Employees marked with "HB Award" in Column H to Schedule A to this Undertaking, the amount or amounts



to which that employee was entitled under each of the clauses of the *Hair and Beauty Industry Award 2010 (HB Award)* identified in Column H to Schedule A to this Undertaking;

(ii) failing to pay each of the Affected Crown Melbourne Employees marked with "HIG Award" in Column H to Schedule A to this Undertaking the amount or amounts to which that employee was entitled under each of the clauses of the *Hospitality Industry (General) Award 2010 (HIG Award)* identified in Column H to Schedule A to this Undertaking;

(iii) failing to pay each of the Affected Crown Melbourne Employees marked with "GRI Award" in Column H to Schedule A to this Undertaking on a weekly or fortnightly basis in accordance with the clause 23 of the *General Retail Industry Award 2010 (GRI Award)*;

(d) section 535 of the FW Act by:

(i) failing to keep records of the kind prescribed by regulation 3.33(2) of the *Fair Work Regulations 2009 (FW Regs)* in relation to each of the employees listed in Column B to Schedule A to this Undertaking and marked with "Reg 3.33" in Column I to Schedule A to this Undertaking; and

(ii) failing to keep records of the kind prescribed by regulation 3.34 of the FW Regs in relation to each of the employees listed in Column B to Schedule A to this Undertaking and marked with "Reg 3.34" in Column I to Schedule A to this Undertaking.

19. The FWO has a reasonable belief, and Crown Melbourne admits, that during the Relevant Period, Crown Melbourne may have contravened the FW Act, the FW Regs, or the Instruments listed in Schedule C in relation to the Potentially Affected Crown Melbourne Employees.

#### **Crown Perth**

20. The FWO has a reasonable belief, and Crown Perth admits, that Crown Perth contravened:

(a) subsection 44(1) of the FW Act during the Relevant Period by failing to pay the Affected Crown Perth Employees at the employees' correct base rate of pay for their ordinary hours of work during periods of annual leave as required by section 90(1) of the FW Act;

(b) subsection 323(1)(a) of the FW Act during the Relevant Period by failing to pay the Affected Crown Perth Employees in full;

- (c) section 45 of the FW Act during the Relevant Period by:
  - (i) failing to pay each of the Affected Crown Perth Employees marked with “HB Award” in Column H to Schedule B to this Undertaking the amount or amounts to which that employee was entitled under each of the clauses of the HB Award identified in Column H to Schedule B to this Undertaking;
  - (ii) failing to pay each of the Affected Crown Perth Employees marked with “HIG Award” in Column H to Schedule B to this Undertaking the amount or amounts to which that employee was entitled under each of the clauses of the HIG Award identified in Column H to Schedule B to this Undertaking;
  - (iii) failing to pay each of the Affected Crown Perth Employees marked with “Misc Award” in Column H to Schedule A to this Undertaking the amount or amounts to which that employee was entitled under clause 22.1 of the *Miscellaneous Award 2010*;
- (d) section 50 of the FW Act:
  - (i) between 24 October 2016 and 27 February 2020 by failing to pay each of the Affected Crown Perth Employees marked with “2016 EA” in Column H to Schedule B to this Undertaking the amount or amounts to which that employee was entitled under clauses 7.4 and 7.5 of the *Hospitality Sector WA United Voice – Crown Perth Enterprise Agreement 2016*;
  - (ii) between 28 February 2020 and 30 June 2020 by failing to pay each of the Affected Crown Perth Employees marked with “2019 EA” in Column H to Schedule B to this Undertaking the amount or amounts to which that employee was entitled under clauses 7.4 and 7.5 of the *Hospitality Sector WA United Workers Union – Crown Perth Enterprise Agreement 2019*; and
- (e) section 535 of the FW Act during the Relevant Period by:
  - (i) failing to keep records of the kind prescribed by regulation 3.33(2) of the FW Regs in relation to each of the employees listed in Column I to Schedule B to this Undertaking and marked with “Reg 3.33” in Column I to Schedule B to this Undertaking;
  - (ii) failing to keep records of the kind prescribed by regulation 3.34 of the FW Regs in relation to each of the employees listed in Column I to Schedule B to this Undertaking and marked with “Reg 3.34” in Column I to Schedule B to this

### Undertaking.

21. The FWO has a reasonable belief, and Crown Perth admits, that during the Relevant Period, Crown Perth may have contravened the FW Act, the FW Regs, or the Instruments listed in Schedule C in relation to the Potentially Affected Crown Perth Employees.
22. The contraventions identified in clauses 18 to 21 of this Undertaking do not include:
  - (a) any contraventions or potential contraventions which relate to or arise as a consequence of the Crown Entities failing to correctly apply the Instruments to any employee not listed in Schedule A, Schedule A1, Schedule B or Schedule B1 to this Undertaking (**Non-schedule A, A1, B or B1 Employees**). For the avoidance of doubt this Undertaking is provided in relation to all Schedule A, A1, B or B1 Employees but is not given in respect of any Non-schedule A, A1, B or B1 Employees who were underpaid as a result of the Crown Entities failing to correctly apply the Instruments and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or
  - (b) any contraventions or potential contraventions which relate to or arise as a consequence of the Crown Entities failing to keep required records in relation to an employee not listed in Schedules A, A1, B and B1 to this Undertaking (**Non-schedule A, A1, B and B1 Employees**). For the avoidance of doubt this Undertaking is given in relation to Schedule A, A1, B, or B1 Employees but is not given in respect of any Non-schedule A, A1, B and B1 Employees in relation to whom the Crown Entities failed to keep required records and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention of s535 of the FW Act; or
  - (c) any contraventions which had not yet occurred on 1 July 2020 (whether or not those contraventions are identified in the Independent Audits described at clause 34 to 53 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which had not yet occurred on 1 July 2020 and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

### UNDERTAKINGS

23. The Crown Entities will take the actions set out at clauses 25 to 73 below.
24. Where a clause refers to the Crown Entities, each of the Crown Entities separately undertake

to comply with that clause. Crown Resorts, or a single Crown Entity, may complete an undertaking on behalf of the Crown Entities where they have the express or implied authority of the other Crown Entities to do so. However, each Crown Entity remains responsible for each undertaking it provides.

#### **Agreed steps**

25. The Crown Entities will keep the FWO informed of progress against implementation of actions described in this clause as listed below:
  - (a) introduction and implementation of an internal reconciliation process to ensure that employees are correctly paid;
  - (b) in the event that the reconciliation process shows that any employee has not been paid in full, the Crown Entities will notify the FWO in a timely fashion of this occurrence and will pay each employee an amount to rectify any shortfall;
  - (c) implementation of an enterprise solution to allow for accurate recording of time and attendance and to facilitate rostering and workforce planning;
  - (d) the finalisation of the investigations referred to in clauses 13 and 15, and any necessary remediation in relation to the Potentially Affected Employees; and
  - (e) quarterly reports on the progress of these remediations, with the first report to be provided to the FWO no later than 30 September 2023, and quarterly thereafter for the duration of the remediation process.
26. The FWO acknowledges that these investigations referenced in clauses 13 and 15 for Potentially Affected Employees form part of the terms of this Undertaking, and that any resulting monies determined to be owed from these investigations will be rectified by the Crown Entities through this Undertaking process. This includes in relation to the Instruments, or any replacement instruments, in relation to any of the agreed steps.

#### **Review and rectification of underpayments**

27. Within 180 days of the Commencement Date:
  - (a) Crown Melbourne will pay to the relevant Affected Crown Melbourne Employees (or their nominated superannuation fund) any outstanding Crown Melbourne Underpayments, Crown Melbourne Superannuation and Crown Melbourne Interest;
  - (b) Crown Perth will pay to the relevant Affected Crown Perth Employees (or their nominated superannuation fund) any outstanding Crown Perth Underpayment, Crown

Perth Superannuation and Crown Perth Interest; and

- (c) the Crown Entities will provide to the FWO evidence of all payments made to the Affected Employees to rectify the Underpayments, Superannuation Underpayments and Interest Payments.

28. If any of the Affected Employees to whom Underpayments are owed cannot be located within 210 days of the Commencement date, the Crown Entities will pay the Underpayments owing to those Affected Employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. The Crown Entities will complete the required documents supplied by the FWO for this purpose.
29. In the event that the FWO is able to locate and contact an Affected Employee to whom Underpayments are owed, the FWO will (in addition to its obligations under s 559 of the FW Act) notify the Crown Entities in writing of the name and contact details of the Affected Employee. Within 30 days of receiving any such notice the Crown Entities will:
  - (a) pay to the Affected Employee's nominated superannuation fund the relevant Superannuation Underpayment; and
  - (b) pay to the Affected Employee the relevant Interest Payment.

**No limitation on use of information**

30. Clauses 31 to 33 apply to any documents or information which the Crown Entities have provided to the FWO in the course of, or in connection with, their disclosure to the FWO of the contravening conduct described in clauses 18 to 21 above, or in the course of, or in connection with, their taking of the steps set out in clauses 5 to 17 above (**Crown Entities Information**).
31. The Crown Entities hereby confirm to the FWO that any limitation or qualification on how the FWO may use Crown Entities Information does not limit or prevent the FWO in the lawful performance of its statutory functions and powers and will take all reasonable measures to ensure other members of the Crown Group do not assert, or seek to assert, such limitations.
32. Nothing in clause 31 to 33 otherwise affects or limits the Crown Entities' rights to assert any claim it may have in respect of any Crown Entities Information that such information:
  - (a) was provided to the FWO confidentially; or
  - (b) is commercial-in-confidence.
33. In recognition of the Crown Entities' rights under clause 31 to 32, to the extent that it is legally



permitted to, the FWO will inform the relevant Crown Entity of any lawful request or requirement it receives from a third party for provision of any Crown Entities Information and provide the relevant Crown Entity with a reasonable opportunity (having regard to any time frame which may be imposed by statute) to be heard before the FWO makes a decision to provide such information in response to that request or requirement.

### **Independent Audits**

34. The Crown Entities must, at their own cost, engage an appropriately qualified, experienced, external and independent accounting professional or employment law specialist (**Independent Auditor**) to conduct two audits of the Crown Entities' compliance with the FW Act and FW Regulations, in relation to the Instruments, or any replacement instruments (**Audits**).
35. The Crown Entities will notify the FWO of their proposed Independent Auditor by no later than 30 June 2024. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require the Crown Entities to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be approved by the FWO in writing prior to being engaged by the Crown Entities.
36. The Crown Entities must ensure that each of the Audits conducted by the Independent Auditor includes:
  - (a) an assessment of 5% of all employees (as at the commencement date of each of the Audits) to whom the Instruments apply, across a range of classifications, locations and employment types (full time, part time and casual employment) and proportionately split between employees of Crown Melbourne and Crown Perth and across the Instruments, during the relevant audit period (**Sampled Employees**) in respect of their employment by the Crown Entities; and
  - (b) an assessment of whether the Crown Entities have correctly:
    - (i) identified the instrument which applies to each Sampled Employee; and
    - (ii) classified each Sampled Employee under the relevant instrument; and
  - (c) an assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period are in compliance with the FW Act and the Instruments (or replacement instruments); and
  - (d) direct contact with Sampled Employees by way of site visits to at least 3 different sites, to ensure accuracy of hours worked;

- (e) the production of a written report on each of the Audits setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
- (f) that each of the written reports referred to in (e) above contains the following declarations from the Independent Auditor:
  - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
  - (ii) notwithstanding that the Independent Auditor is retained by the Crown Entities, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from the Crown Entities in preparing the report;
  - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
  - (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

#### The First Audit

- 37. The Crown Entities must ensure the Independent Auditor commences the first of the Audits by no later than 30 November 2024 (**First Audit**).
- 38. For employees on an hourly rate of pay, the relevant audit period for the First Audit must be at least two full pay periods falling within the period of 1 April to 30 September 2024, and must contain at least one public holiday.
- 39. For employees on an annualised salary, the relevant audit period for the First Audit must be the full reconciliation of their annualised salary at the end of the most recent 12 month reconciliation period designated by Crown.
- 40. By 31 May 2024, the Crown Entities will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 41. The Crown Entities will use their best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 30 May 2025, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. The Crown Entities will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to the Crown Entities, or any other member of the Crown Group, without the FWO's approval.

42. The Crown Entities will use their best endeavours to ensure the Independent Auditor finalises the First Audit and provides a finalised written report of the First Audit (**First Audit Report**) directly to the FWO within one month of the FWO providing any comments on the draft report to the Independent Auditor. The Crown Entities will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to the Crown Entities, or any other member of the Crown Group, without FWO's approval.

#### The Second Audit

43. The Crown Entities must ensure the Independent Auditor commences the second of the Audits by no later than 31 October 2025 (**Second Audit**).
44. For employees on an hourly rate of pay, the relevant audit period for the Second Audit must be at least two full pay periods falling within the period of 1 July to 30 September 2025, and must contain at least one public holiday.
45. For employees on an annualised salary, the relevant audit period for the Second Audit must be the full reconciliation of their annualised salary at the end of the most recent 12 month reconciliation period designated by Crown.
46. By 30 September 2025, the Crown Entities will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
47. The Crown Entities will use their best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 30 April 2026, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. The Crown Entities will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to the Crown Entities, or any other member of the Crown Group, without the FWO's approval.
48. The Crown Entities will use their best endeavours to ensure the Independent Auditor finalises the First Audit and provides a finalised written report of the Second Audit (**Second Audit Report**) directly to the FWO within one month of the FWO providing any comments on the draft report to the Independent Auditor. The Crown Entities will ensure the Independent Auditor does not provide the Second Audit Report, or a copy of the same, to the Crown Entities, or any other member of the Crown Group, without FWO's approval.

#### **Outcome of Audits**

49. If any of the Audits identify underpayments to any current or former employees, the Crown Entities will:

- (a) rectify any underpayments identified in the relevant audit period; and
  - (b) conduct a reconciliation of the amounts paid and owed to those employees in the 12 month period immediately prior to the relevant audit period, and rectify any underpayments that are identified.
50. The Crown Entities will provide to the FWO evidence of such rectification within 28 days of being informed by the FWO of the requirement to undertake the reconciliation.
51. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of each Audit, the Crown Entities will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. The Crown Entities will complete the required documents supplied by the FWO for this purpose.
52. If any of the Audits identify an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, the Crown Entities will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the Instruments (or replacement instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by the Crown Entities.
53. If requested by the FWO, the Crown Entities will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 30 days of such a request.

#### **Employee Hotlines and Notices – Internal and External**

54. Within 14 days of the Commencement Date, the Crown Entities will establish a dedicated telephone number and email address for all current and former employees who were employed by the Crown Entities during the Relevant Period, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.
55. The Crown Entities acknowledge that the United Workers Union (**UWU**) will operate a hotline for current and former employees of the Crown Entities to make enquiries in relation to their entitlements, underpayments or related employment concerns (**UWU Hotline**).
56. The Crown Entities will:
- (a) ensure the Employee Hotline remains operational for a period of 3 months;

- (b) ensure that the telephone number and email address for the Employee Hotline and the details of the UWU Hotline are included on the public notice (see clauses 57 - 59), the workplace notice (see clauses 60 - 63), the website notice (see clauses 64 - 66) and the social media notice (see clauses 67 - 69);
- (c) communicate the existence and purpose of the Employee Hotline and UWU Hotline by way of letter or email to the last known address or email address of all current and former employees of the Crown Entities within the Relevant Period. The Crown Entities will:
  - (i) ensure the letter or email is in the form of Attachment A to this Undertaking;
  - (ii) provide evidence to the FWO that the letter has been mailed or email has been sent to all required current and former employees within 45 days of the Commencement Date;
- (d) take steps to respond to each telephone and email enquiry, or any enquiry received by the UWU Hotline and referred to the Crown Entities by the UWU, and seek to resolve any issues within 45 days and notify the FWO of any issues that are not resolved within 60 days;
- (e) provide a de-identified list of enquiries received by the Employee Hotline, or received by the UWU Hotline and referred to the Crown Entities by the UWU, to the FWO at the end of the 3 month period referred to in clause 56(a), above. If any enquiries remain outstanding at the end of the 3 month period, the Crown Entities will continue to report on those enquiries until each enquiry is concluded; and
- (f) exercise reasonable endeavours to support and facilitate the effective operation of the UWU Hotline.

#### Public Notice

- 57. Within 45 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, the Crown Entities will place a notice in *The Australian* and the *Australia Financial Review* (**Public Notice**).
- 58. The Public Notice must:
  - (a) bear the names and logo of the Crown Entities;
  - (b) appear within the first 5 pages of *The Australian* and the *Australia Financial Review*;
  - (c) be at least 10 cm x 8 cm; and



(d) contain wording in the form of Attachment B.

59. The Crown Entities will inform the FWO when the Public Notice will be published and provide a copy to the FWO within 7 days of its publication.

#### Workplace Notice

60. Within 14 days of the Commencement Date, the Crown Entities will cause to be displayed within each of their Australian worksites where the current Affected Employees work a notice in the form of Attachment B to this Undertaking (**Workplace Notice**).
61. The Crown Entities must ensure the Workplace Notice is:
- (a) at least A3 size;
  - (b) clearly displayed in a location to which all employees have access (for example, by placement on a staff noticeboard); and
  - (c) displayed for a period of 28 continuous days.
62. Within 7 days of first displaying the Workplace Notice, the Crown Entities will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of its worksites.
63. At the end of the 28 day period referred to in paragraph 61 above, the Crown Entities will provide confirmation to the FWO that the Workplace Notice has been continuously displayed at each location for the required period.

#### Website Notice

64. Within 45 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, the Crown Entities will place a notice on the following websites, accessible through a clearly visible hyperlink on the front pages of:
- (a) [www.crownresorts.com.au](http://www.crownresorts.com.au);
  - (b) [www.crownmelbourne.com.au](http://www.crownmelbourne.com.au); and
  - (c) [www.crownperth.com.au](http://www.crownperth.com.au)
- (collectively, **Website Notice**).
65. The Website Notice must:
- (a) be in the form of the Website Notice set out at Attachment B;
  - (b) be displayed in at least size 10 font; and

- (c) remain on the websites for a period of 1 month.
66. Within 14 days of placing the Website Notice on their websites referred to in paragraph 64 the Crown Entities will provide to the FWO evidence of their placement.

#### Social Media Notice

67. Within 45 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, the Crown Entities will place a post on each of their Facebook pages (**Social Media Notice**).
68. The Social Media Notice must:
- (a) be posted to each of the Crown Entities' timeline, pinned to the top of the Facebook page in public view;
  - (b) remain pinned to the top of the Facebook pages for a continuous period of at least one month; and
  - (c) be in the form of the Social Media Notice set out at Attachment B.
69. Within 14 days of posting the Social Media Notice to its Facebook pages, the Crown Entities will provide to the FWO evidence of the posts.

#### **Contribution Payment**

70. Within 28 days of the Commencement Date, the Crown Entities will make a contribution payment of \$350,000.00 to the Consolidated Revenue Fund.
71. The Crown Entities are liable to pay the contribution payment in clause 70 on a joint and several basis.
72. The Crown Entities will provide evidence to the FWO of the contribution payment within 14 days of making payment to the Consolidated Revenue Fund.

#### **No Inconsistent Statements**

73. The Crown Entities must not, and must use their best endeavours to ensure that their officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

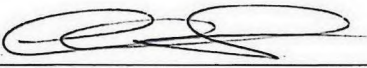
## ACKNOWLEDGEMENTS

74. The Crown Entities acknowledge that:

- (a) the FWO may:
  - (i) 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](http://www.fairwork.gov.au);
  - (ii) 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);
  - (iii) issue a media release in relation to this Undertaking;
  - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms;
  - (v) rely upon the admissions made by each Crown Entity, set out in clauses 18 to 21 above, in respect of decisions taken regarding enforcement action in the event that either Crown Entity is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by either Crown Entity to comply with its obligations under this Undertaking;
- (b) 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;
- (c) consistent with section 715(3) of the FW Act, the Crown Entities may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if either of the Crown Entities contravene 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 Crown Entity in clauses 18 to 21 above, and also in respect of the question of costs.

**Executed as an undertaking**


EXECUTED by Crown Melbourne Limited in accordance with section 127(1) of the *Corporations Act 2001*:

  
\_\_\_\_\_  
(Signature of director)

Ciarán Pearse Carruthers  
\_\_\_\_\_  
(Name of director)

14 JUNE 2023  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

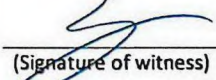
SAN WILLIAMSON  
\_\_\_\_\_  
(Name of witness)

  
\_\_\_\_\_  
(Signature of company secretary)

Alan Frank McGregor  
\_\_\_\_\_  
(Name of company secretary)

14 JUNE 2023  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

SAN WILLIAMSON  
\_\_\_\_\_  
(Name of witness)

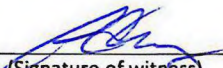
ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009*  
on:

  
Deputy Fair Work Ombudsman - Compliance & Enforcement  
\_\_\_\_\_  
[Insert name and role of Delegate]

19 June 2023  
\_\_\_\_\_  
(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

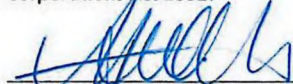
  
\_\_\_\_\_  
(Signature of witness)

RUSSELL THACKERAY  
\_\_\_\_\_  
(Name of Witness)



**Executed as an undertaking**

EXECUTED by Burswood Resort (Management) Limited in accordance with section 127(1) of the Corporations Act 2001:

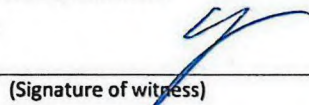
  
\_\_\_\_\_  
(Signature of director)

Alan Frank McGregor

\_\_\_\_\_  
(Name of director)

14 JUNE 2023  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

JAN WILLIAMSON  
\_\_\_\_\_  
(Name of witness)


  
\_\_\_\_\_  
(Signature of company secretary)

Adam Barry Simpson

\_\_\_\_\_  
(Name of company secretary)

14 JUNE 2023  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

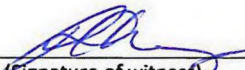
JAN WILLIAMSON  
\_\_\_\_\_  
(Name of witness)

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

  
\_\_\_\_\_  
Mark Scully – Deputy Fair Work Ombudsman,  
Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

19 June 2023  
\_\_\_\_\_  
(Date)

RUSSELL THACKERAY  
\_\_\_\_\_  
(Name of Witness)



**SCHEDULE A — CROWN MELBOURNE AFFECTED EMPLOYEES, UNDERPAYMENTS AND CONTRAVENTION DETAILS**

**SCHEDULE A1 —POTENTIALLY AFFECTED CROWN MELBOURNE EMPLOYEES**

**SCHEDULE B — CROWN PERTH AFFECTED EMPLOYEES, UNDERPAYMENTS AND CONTRAVENTION DETAILS**

**SCHEDULE B1 —POTENTIALLY AFFECTED CROWN PERTH EMPLOYEES**

**SCHEDULE C — INSTRUMENTS**

	<b>Instruments</b>
<b>1</b>	<i>Crown Melbourne Limited Enterprise Agreement 2016</i>
<b>2</b>	<i>Crown Melbourne Limited Enterprise Agreement 2019</i>
<b>3</b>	<i>Crown Melbourne Limited (Property Services &amp; Technicians) Enterprise Agreement 2015</i>
<b>4</b>	<i>Crown Melbourne Limited Property Services Agreement 2019</i>
<b>5</b>	<i>Crown Melbourne Limited (Table Games &amp; Cage Area Managers, Security Services Managers and Surveillance Team) Enterprise Agreement 2018</i>
<b>6</b>	<i>Hospitality Sector WA United Voice - Crown Perth Enterprise Agreement 2016</i>
<b>7</b>	<i>Hospitality Sector WA United Workers Union - Crown Perth Enterprise Agreement 2019</i>
<b>8</b>	<i>Crown Perth, CFMMEU, CEPU – Property Services Enterprise Agreement 2018</i>
<b>9</b>	<i>Air Pilots Award 2020 *</i>
<b>10</b>	<i>Aircraft Cabin Crew Award 2020 *</i>
<b>11</b>	<i>Airline Operations – Ground Staff Award 2020 *</i>
<b>12</b>	<i>Amusement, Events and Recreation Award 2020</i>
<b>13</b>	<i>General Retail Industry Award 2020 *</i>
<b>14</b>	<i>Graphic Arts, Printing and Publishing Award 2010</i>
<b>15</b>	<i>Hair and Beauty Industry Award 2010</i>
<b>16</b>	<i>Health Professionals and Support Services Award 2020 *</i>
<b>17</b>	<i>Hospitality Industry (General) Award 2020 *</i>
<b>18</b>	<i>Live Performance Award 2010</i>
<b>19</b>	<i>Manufacturing and Associated Industries and Occupations Award 2020 *</i>
<b>20</b>	<i>Miscellaneous Award 2020 *</i>

\*During the Relevant Period the Crown Entities were also covered by the previous 2010 versions of these Awards.

## Attachment A – Employee Notification

Dear <insert name >

As you have already been made aware, on 27 March 2020, Crown Melbourne Limited (ACN 006 973 262) and Burswood Resort (Management) Limited (ACN 009 396 945) (collectively, **Crown**) voluntarily disclosed contraventions of the Fair Work Act 2009 (Cth) (**FW Act**) to the Fair Work Ombudsman (**FWO**).

The errors identified relate to underpayment and breach of record keeping obligations under the FW Act with varying impacts for individual staff members.

Crown has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws. Crown will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance, such as commissioning an independent audit of employee entitlements.

If you have queries or questions relating to your employment, please contact either of the following:

- the hotline being operated by independent third-party, United Workers Union:  
VIC – (03) 8627 6200 or [vic@unitedworkers.org.au](mailto:vic@unitedworkers.org.au)  
WA – 1800 199 890 or [wa@unitedworkers.org.au](mailto:wa@unitedworkers.org.au)
- Crown directly, through our enquiry line on [pc.support@crownsresorts.com.au](mailto:pc.support@crownsresorts.com.au) or 1800 810 868.

Either of these hotlines can also be contacted on a confidential basis if required.

Alternatively, anyone can contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.

Yours sincerely

<Employer name>

## Attachment B – Form of Public, Website, Social Media and Workplace Notice

Crown Melbourne Limited and Burswood Resort (Management) Limited (**Crown**) recently undertook a review of their payroll systems and processes and determined that they contravened the *Fair Work Act 2009* (Cth) by:

- failing to identify the correct instrument or classification which applied to some of its employees, and thereby underpaying those employees by failing to comply with its obligations under those instruments;
- paying annualised salaries that were not sufficient to meet underlying award obligations; and
- failing to keep all employee records it was legally obligated to keep.

Crown has formally admitted to the Fair Work Ombudsman (**FWO**) that contraventions of Agreements had occurred and consequently a number of employees had been underpaid.

Crown has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

Crown sincerely regrets these matters have occurred and will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance, such as conducting two independent audits and formally apologising to individual employees.

If you worked for Crown during the period of 1 July 2014 to 30 June 2020 and have queries or questions relating to your employment, please contact either:

- a hotline established by Crown for all current and former employees to access. The hotline can be contacted on 1800 810 868 or at [pc.support@crowntourism.com.au](mailto:pc.support@crowntourism.com.au) and, if required, on a confidential basis; or
- a hotline established by the United Workers Union for current and former employees of Crown who have questions or concerns relating to this and other employment issues. You can contact the United Workers Union's hotline on:

VIC – (03) 8627 6200 or [vic@unitedworkers.org.au](mailto:vic@unitedworkers.org.au)

WA – 1800 199 890 or [wa@unitedworkers.org.au](mailto:wa@unitedworkers.org.au)

Alternatively, anyone can contact the FWO via <http://www.fairwork.gov.au> or on 13 13 94.