

# Pizza Hut franchisee delivery drivers: Compliance Activity Findings

A report by the Fair Work Ombudsman under the *Fair Work Act 2009*

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# PIZZA HUT FRANCHISEE DELIVERY DRIVERS: COMPLIANCE ACTIVITY FINDINGS



## 34 FRANCHISEES AUDITED

24 NON-COMPLIANT



6 REQUIRE FURTHER ACTION BEFORE COMPLETION



2 DON'T ENGAGE DELIVERY DRIVERS



2 COMPLIANT



## FINDINGS



DELIVERY DRIVERS MISCLASSIFIED AS INDEPENDENT CONTRACTORS NOT EMPLOYEES



UNDERPAYMENTS OF \$12,086



FRANCHISEES APPLYING THE INCORRECT AWARD OR AGREEMENT



FRANCHISEES RELYING ON INCOMPLETE PAY SUMMARIES



## ENFORCEMENT ACTIONS



3

ENFORCEABLE UNDERTAKINGS



11

INFRINGEMENT NOTICES



11

COMPLIANCE NOTICES



17

LETTERS OF CAUTION

# Background

Since its inception, the Fair Work Ombudsman (FWO) has received a number of requests for assistance from Pizza Hut employees. Between 1 June 2010 and 6 January 2016, the FWO completed 144 requests for assistance involving a workplace dispute in relation to Pizza Hut franchisees, recovering more than \$91,000 of unpaid monies.

Further to this, media coverage in November 2015 alleged underpayments of Pizza Hut workers. One media article alleged drivers were underpaid minimum hourly rates (in some cases as low as \$12 per hour or \$6 per delivery with drivers required to provide the car, fuel, vehicle maintenance and insurance) and some were improperly engaged as independent contractors when they were more likely to be employees.

As the allegations contained in the media reports were consistent with the FWO's concerns about levels of compliance, the FWO initiated a compliance activity (the Activity) into Pizza Hut's workplace arrangements with its delivery drivers.

During the Activity, Pizza Hut Australia (the franchisor) was a division of Yum Restaurants [ACN 000 674 993] and based in Frenchs Forest, NSW. Yum Restaurants is a foreign-owned proprietary company first registered in Australia in 1969. It is an Australian subsidiary of Yum! Brands.

Pizza Hut was operated under a 100% franchised model with approximately 270 dine-in restaurants and take away outlets across Australia. Under the franchise agreement, it is understood franchisees pay 6% of their total sales to Pizza Hut.

On 6 September 2016, a subsidiary of Yum! Brands, Pizza Hut Restaurants Asia Pte Ltd, entered into a master franchise agreement with Pizza Pan Group Pty Ltd (Pizza Pan Group) under which Pizza Pan Group will act as the master franchisee for Pizza Hut in Australia.

Pizza Pan Group is owned by Allegro Funds Pty Ltd [ACN 128 866 053]. Yum Restaurants' existing franchise agreements have been transferred to Pizza Pan Group.

# Compliance activity

The Activity aimed to determine the level of compliance by the franchisor and franchisees that engage workers (employees and/or purported contractors) to provide pizza delivery services.

The Activity focussed on whether the franchisees had complied with the following provisions of the *Fair Work Act 2009* (FW Act):

- Section 44 – Contravening the National Employment Standards
- Section 45 – Contravening a modern award
- Section 50 – Contravening an enterprise agreement
- Section 535 – Employer obligations in relation to employee records
- Section 536 – Employer obligations in relation to pay slips
- Section 357 – Misrepresenting employment as independent contracting arrangement.

In February 2016, notification letters were sent to 38 stores in all States and the ACT. The letters requested records from January 2016 for employees and purported independent contractors engaged for the purpose of food delivery.

Of the 38 stores written to, two were no longer trading. The remaining 36 stores were operated by 34 franchisees as two of the franchisees operated two stores each.

## Findings

The Activity identified that of the 34 franchisees:

- two franchisees were compliant with the FW Act
- two franchisees did not engage delivery drivers
- six franchisee audits require further action before completion
- 24 franchisees were non-compliant.

Of the 24 non-compliant franchisees the Activity found:

- seven had misclassified delivery drivers as independent contractors
- a total of \$12,086 in underpayments was owed to employees, predominantly for underpayments of minimum hourly rates and allowances (eg. laundry)
- some of the underpayments were a consequence of the franchisee applying the wrong industrial instrument or failing to increase rates in line with the Fair Work Commission minimum wage decisions each financial year.

The FWO has concerns about the records provided by one franchisee and is continuing its investigation into whether this franchisee has falsified pay slips and rosters.

In July 2009, Pizza Hut engaged the services of an employee relations advisory business to prepare pay summaries for a number of State-based industrial instruments which may have governed the terms and conditions of a franchisee's work force. Once prepared, Pizza Hut's practice was to forward the summaries to the franchisees.

Different industrial instruments could apply at different franchises. The pay summary documents prepared by the employee relations advisory business and relied upon by Pizza Hut franchisees did not contain any guidance about how a franchisee could determine the applicable industrial instrument which applied to its particular operation.

The Activity found:

- Pizza Hut did not have any process or system in place to test whether its franchisees were following the pay summaries or applying the relevant industrial instrument correctly
- pay summaries did not contain all relevant information, for instance, summaries for WA, TAS and NT did not make any reference to the applicable laundry allowance
- Pizza Hut did not seek to test or determine whether its franchisees could remain profitable whilst complying with the relevant industrial instrument.

In April 2016, the FWO met with Pizza Hut's National Human Resources Manager to outline some of the Activity's preliminary findings and obtain copies of employment agreements. During this meeting FWO raised concerns about the misclassification of delivery drivers as independent contractors.

Despite these concerns being raised in April 2016, the FWO identified that in August 2016, some franchisees' online job advertisements continued to make representations to prospective drivers that, if successful, they would be engaged on a purported independent contracting basis.

The Activity did not find sufficient evidence of Pizza Hut's involvement in any contraventions arising within its network. However, the findings of this Activity put Pizza Hut and the new owner, Allegro Funds, as well as all franchisees, on notice of non-compliant practices in their business, and should they fail to address these practices, they are at risk of being held accountable as accessories under the FW Act in any subsequent contraventions committed by its franchisees.

# Enforcement outcomes

The following enforcement actions have been taken against the 24 non-compliant franchisees:

- three Enforceable Undertakings have been issued upon:
    - Surmin Pty Ltd as The Trustee for Surmin Family Trust, trading as Pizza Hut Surry Hills, Sydney
    - Romaro Holdings Pty Ltd, trading as Pizza Hut Penrith, Sydney, and
    - Arora Business Investment Pty Ltd, trading as Pizza Hut Mango Hill, Queensland
- These Undertakings were issued as the franchisees misclassified delivery drivers as independent contractors when they were actually employees. The employers had paid their workers on a per delivery basis at rates ranging between \$5.70 and \$8.00. Consequently, a number of workers were underpaid. All three employers failed to issue pay slips and keep proper records.
- 11 Infringement Notices were issued to franchisees (equating to a total of \$6,300 in penalties) for a range of record making and record keeping contraventions. These include failure to provide pay slips, pay slips not provided in the prescribed form, not providing the prescribed information, failure to record the name and number of the superannuation fund, and not keeping records for seven years (eg. recording start and finish times).
  - 11 Compliance Notices were issued to franchisees for underpaying minimum hourly rates, penalty rates, allowances or failing to create regular pattern of work documents for part-time employees.
  - 17 Letters of Caution requiring action to rectify non-compliance were issued to franchisees for a range of workplace contraventions.