



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Saffron Indian Gourmet Pty Ltd (ABN 38 165 344 874)

and

Sridhar Penumechchu

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) Saffron Indian Gourmet Pty Ltd Trading as Saffron Indian Gourmet ABN 38 165 344 874/ ACN 165 344 874 (the **Company**) of Shop 8, 22 Surf Parade Broadbeach QLD 4218 and;
 - b) Mr Sridhar Penumechchu, Director of the Company.

BACKGROUND:

2. The Company was registered on 16 August 2013 and is carrying on a business within the Restaurant Industry. Mr Sridhar Penumechchu is the Director and day-to-day manager of the Company and its business.
3. The Company employs approximately 23 people and is covered by the *Restaurant Industry Award 2010* (**Modern Award**).
4. On 4 April 2018, the FWO received information, provided on a confidential basis, which alleged the underpayment of employee entitlements in accordance with the Modern Award.
5. The FWO commenced an audit on 4 April 2018. The audit included 23 employees (the **Employees**) and covered the period 1 January 2018 – 20 May 2018.
6. The audit found that the Employees were employed in positions such as Cooks, Food and Beverage Attendants and Kitchen Hands. Four were employed on a permanent basis and 19 as casuals.
7. The audit found 22 of the Employees had been underpaid wages. 19 of the Employees were visa holders; 14 held (subclass 500) student visas and five held (subclass 417) temporary work visas.
8. The FWO has determined and the Company and Sridhar Penumechchu admit that the Company contravened:
 - a. Section 45 of the FW Act by failing to comply with the following terms of the



Modern Award:

- i. Clause 13.1 by failing to pay the Employees a casual loading of 25%;
- ii. Clause 13.5 by failing to pay the Employees overtime rates;
- iii. Clause 20.1 by failing to pay the Employees applicable minimum wages;
- iv. Clause 24.2 by failing to pay the Employees a split shift allowance;
- v. Clause 34.1 by failing to pay the Employees penalty rates for working weekends and public holidays;
- vi. Clause 34.2(a)(i) by failing to pay the Employees penalty rates for working 10pm to midnight Monday to Friday;
- vii. Clause 34.2(a)(ii) by failing to pay the Employees penalty rates for working midnight to 6 am Monday to Friday; and
- viii. Clause 33.2(a) to (c) by failing to pay the permanent Employees overtime penalty rates.

b. The underpayments arising because of these contraventions total \$54,469.90 to 22 employees.

9. Mr Sridhar Penumechchu admits and agrees that:

- a) He has been the Director of the Company since 16 August 2013;
- b) Because of his office as Director he was ultimately responsible for the overall direction, management and supervision of the operations at the Company in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment;
- c) Because of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Company complied with its legal obligations.

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

10. This enforceable undertaking comes into effect when:

- a) the enforceable undertaking is executed by the Company and Sridhar Penumechchu;
and
- b) the FWO accepts the enforceable undertaking so executed.

ENFORCEABLE UNDERTAKING

11. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company and Sridhar Penumechchu undertake the following:

11.1 Rectify underpayments

- a) Rectify the underpayments listed at Annexure A in line with the agreed payment plan contained in Annexure A within six months of the date of execution of this Undertaking.
- b) Provide to FWO evidence of payments made to Employees within one day of payments being made until all underpayments are rectified.
- c) If any of the Employees cannot be located, within seven months of the execution of this Undertaking, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund (CRF). The Company will complete the required documents supplied by the FWO. (Any employees that have underpayments paid into the CRF can contact the FWO to claim the money).

11.2 FWO My account registration

- a) Within 21 days of the execution of this undertaking:
 - i. register with the FWO My account portal at www.fairwork.gov.au/register and fully complete the My account profile, including information about the business and award/agreement coverage, through this portal;
 - ii. using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My account;
 - iii. provide to the FWO the 'My account' Customer Registration Number (CRN);
- b) Within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an officer of the FWO, knowledge of the use of my account, including saving information within my account from the website and relevant FWO online tools. Demonstrate how the use of this saved information will contribute toward their compliance with workplace obligations including payment to employees of the correct minimum pay rates and public holiday penalty rates;
- c) Within 28 days of the execution of the Undertaking, subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription:

- i. Subscribe to the FWO's 'Subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>;
- ii. Choose the relevant State/s and industry, selecting information updates on the following options:
 - pay rates and entitlements;
 - new products and resources;
 - about us and our work;
 - updates in my industry; and
 - tailored information that's relevant to me.

11.3 Workplace relations systems and processes

11.3.1 Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Modern Award.

11.3.2 Provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph (f) above. Without limitation, such systems and processes relating to:

- i. Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
- ii. Issuing payslips to employees within one (1) working day of payment;
- iii. Keeping accurate and complete records to ensure employees receive their correct wages and entitlements;
- iv. Keeping accurate records for all permanent employees of accrued annual and personal leave entitlements and accurate records of the taking of any accrued annual and personal leave.

11.4 FWO Online Training

11.4.1 Within 60 days of execution of this Undertaking ensure that all persons responsible for management, payroll (paying employee wages) and human resources complete all education courses designed for employers available on the FWO online learning centre via <http://www.fairwork.gov.au/how-we-will->

help/online-training and provide certificates of completion to the FWO;

- 11.4.2 Ensure that all persons responsible for management, payroll and human resources functions at the Company complete the educational activities on the FWO website, as set out in Annexure D;
- 11.4.3 For each person required to complete the education activities, enter all of the required information in Annexure D and provide copies of the completed Annexure to the FWO within 90 days of the execution of this Undertaking;
- 11.4.4 For a period of 1 year from the execution of this Undertaking, ensure that the educational activities are completed by any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial, payroll and human resources responsibilities; and
- 11.4.5 For any persons taking on any of these functions, complete Annexure D and submit to the FWO within 28 days of taking responsibility for these functions.

11.5 Audit Activity

- 11.5.1 Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), including but not limited to the following clauses of the Modern Award and sections of the FW Act:
 - i. Clause 13.1 Casual Loading Clause 13.5 payment of overtime for casual employees;
 - ii. Clause 20 Minimum wages;
 - iii. Clause 24.2 Payment of applicable split shift allowance;
 - iv. Clause 34.1 Payment of applicable penalty rates for working weekends and public holidays;
 - v. Clause 34.2(a)(i) Payment of the late night penalty after 10pm Monday to Friday;
 - vi. Clause 34.2.(a)(ii) Payment of the late night penalty from midnight Monday to Friday;
 - vii. Clause 33.2 (a) to (c) Payment of overtime rates to permanent employees;



viii. Section 44 National Employment Standards;

ix. Section 535 Record Keeping; and

x. Section 536 Pay slips.

11.5.2 The Audits will include the pay and conditions of all employees of the Company covered by the Modern Award.

11.5.3 21 days prior to the Audit due dates, as specified below, the Company will provide for the FWO's approval, details of the methodology to be used to conduct the Audit.

11.5.4 The Company will ensure that the following requirements are met:

I. Audit 1 is to be finalised and a report on the outcome of the audit is to be provided to the FWO by 1 August 2019. The report must include:

- An audit of six (6) full pay periods between 1 April 2019 and 30 June 2019. The pay periods must include at least one public holiday.
- The audit report must include details of the Company's compliance or non-compliance with the clauses listed in 11.5.1 (i) – (x).

II. Audit 2 is to be finalised and a report on the outcome of the audit is to be provided to the FWO by 1 August 2020. The report must include:

- An audit of six (6) full pay periods between 1 April 2020 and 30 June 2020. The pay periods must include at least one public holiday.
- The audit report must include details of the Company's compliance or non-compliance with the clauses listed in 11.5.1 (i) – (x).

11.5.5 In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions within 14 days of each of the finalisation dates specified in subclause 11.5.3 above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;

11.5.6 If requested, provide the FWO with all records and documents used to conduct the audit, including any working documents, within 7 days of such a request.

11.5.7 If any employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause 11.5.3 above, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the CRF). The Company will complete the required documents supplied by the FWO. (Any



employees that have underpayments paid into the CRF can contact the FWO to claim the money).

11.5.8 The Company and Mr Penumechchu are aware that a civil remedy may apply for giving false or misleading information or producing false or misleading documents.

11.6 Matters Notified to the FWO

11.6.1 Where the FWO receives a request for assistance regarding non-compliance with a modern award or registered agreement, the Employer and its officers undertake to fully co-operate with the FWO to ensure compliance. This includes:

- Providing all requested employment records and other documentation to the FWO relevant to the request for assistance
- Participating fully in any subsequent requests for information relevant to the request for assistance, and
- Co-operation in FWO's processes employed to resolve the request for assistance.

11.7 Apology

11.7.1 Send a letter of apology (**Apology Letter**) to the Employees listed in Annexure A in the form of Annexure C to this undertaking and provide copies to the FWO within 14 days of the execution of this Undertaking;

11.7.2 The Apology Letter must be provided to the employees in their preferred language. The Company is responsible for any costs incurred translating the Apology Letter.

11.8 Website Notice

11.8.1 The Company will place a (**Website Notice**) on the front page of its website within 28 days of, but not prior to the FWO publishing a Media Release on its website which will:

- be in the form of the Website Notice set out at Annexure B;
- be displayed in at least size 10 font; and
- remain on the website for a period of 6 months.

11.8.2 The Company will provide evidence of the placement of the Website Notice to the FWO on the date it is published.



11.9 Workplace Notice

11.9.1 Within 28 days of the execution of this Undertaking, cause to be displayed within all workplace(s) controlled by Saffron Indian Gourmet Pty Ltd a notice in the form of Annexure B to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display and the location of the notice in the workplace. The Workplace Notice must be:

- i. Printed in at least A3 size and is clearly displayed
- ii. In a location to which all employees who work for Saffron Indian Gourmet Pty Ltd have access;
- iii. In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard);
- iv. For a period of 28 continuous days.

11.9.2 At the end of the period of 28 days, provide confirmation to the FWO that the Workplace Notice has been continuously displayed for the required period.

11.10 Record Keeping

11.10.1 Within 28 days of the execution of this Undertaking provide to the FWO a copy of time and wage records and payslips for one employee for the first full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth workplace laws.

11.11 Broader Community workplace relations education

11.11.1 Within 28 days make a donation of \$25,000 to the Gold Coast Community Legal Centre and Advice Bureau (ABN 29 559 147 600) located at 18 Bay Street Southport QLD with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the community and provide evidence of the donation to FWO.

11.12 Reporting

11.12.1 Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu will notify the FWO of any changes of circumstances that could potentially affect Saffron Indian



Gourmet Pty Ltd.'s ability to comply with the undertakings contained in this Enforceable Undertaking, as soon as it becomes aware of such circumstances.

Such circumstances shall include but not be limited to:

- 11.12.1.1** Sale or potential sale of the business, or part of the business;
- 11.12.1.2** Change of or change in details of company directors, or other officeholder positions;
- 11.12.1.3** Change in engagement of workers, for example engaging contractors, labour hire or family members in lieu of employees;
- 11.12.1.4** The Company or its Directors opening any new establishments or businesses, or acquiring any existing businesses establishments, whether alone or in partnership with another entity;
- 11.12.1.5** Ceasing or an expectation of ceasing to trade;
- 11.12.1.6** Business going in to administration or liquidation.

11.13 No Inconsistent Statements

The Company and Sridhar Penumechchu:

- 11.13.1** must not; and
- 11.13.2** must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

12 ACKNOWLEDGEMENTS

The Company and Sridhar Penumechchu acknowledge that:

- 12.1.1** The FWO may;
 - 12.1.1.1** make this Undertaking (and any of the Annexures hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - 12.1.1.2** release a copy of this Undertaking (and any of the Annexures hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - 12.1.1.3** issue a media release in relation to this Undertaking;
 - 12.1.1.4** from time to time, publicly refer to the Undertaking (and any of the Annexures hereto) and its terms; and rely upon the admissions made by Saffron Indian Gourmet Pty Ltd set out in paragraphs 5 and 6 above in



respect of decision making concerning any future non-compliance with Saffron Indian Gourmet Pty Ltd's workplace relations obligations;

12.1.2 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;

12.1.3 Consistent with section 715(3) of the FW Act, the Company and Sridhar Penumechchu may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and

12.1.4 If the Company and/or Sridhar Penumechchu contravenes any of the terms of this Enforceable Undertaking:

12.1.4.1 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

12.1.4.2 This Enforceable Undertaking may be provided to the Court as evidence of the admissions made by the Company and Sridhar Penumechchu in paragraphs 5 and 6 above, and in respect of the question of costs.



Executed as an undertaking

EXECUTED by Saffron Indian Gourmet Pty Ltd (ABN 38 165 344 874) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

SRIDHAR . PENUMECHU.

(Name of director)

(Name of director/company secretary)

22/1/2019.

(Date)

(Date)

in the presence of:



(Signature of witness)

in the presence of:


(Signature of witness)

SUCHITRA NAMBIAR

(Name of witness)

(Name of witness)

EXECUTED by Sridhar Penumechchu :



[insert party]

22/1/2019.

(Date)

in the presence of:




(Signature of witness)

SUCHITRA NAMBIAR

(Name of witness)

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



Lynda McAleer Smith

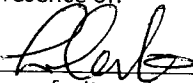
11/3/2019

(Date)

Executive Director Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

LOUISE CATO

(Name of Witness)



Annexure – Form of Public and Workplace Notice

1: FORM OF PUBLIC AND WORKPLACE NOTICE

2: Contravention of Fair Work Act by Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by:

- Failing to correct rates of pay to employees
- Failing to pay correct overtime rates of pay to employees
- Failure to pay Penalty Rates to employees for working on weekends and public holidays
- Failure to pay split shift Allowances
- Providing false and misleading records to the Fair Work Ombudsman

Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments or paying compensation to the employee affected by the contraventions and making a donation of \$25,000 to fund education about workplace rights.

Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu expresses its sincere regret and apologises for the conduct, which resulted in the contraventions. Furthermore, Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

Use the following passage in Public Notices

If you worked for Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu and have queries or questions relating to your employment, please contact Sridhar Penumechchu on [REDACTED] Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Annexure C – Letter of Apology

FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu had contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by:

- Failing to correct rates of pay to employees
- Failing to pay correct overtime rates of pay to employees
- Failure to pay Penalty Rates to employees for working on weekends and public holidays
- Failure to pay split shift Allowances
- Providing false and misleading records to the Fair Work Ombudsman

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

Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu is taking steps to remedy the contraventions, including by rectifying the underpayments to all employees who worked between 1 January 2018 and 20 May 2018 and making a donation of \$25,000 to fund education about workplace rights. [If applicable]: You will/have receive/d this payment on by 31 December 2018 and will be provided with a payment advice regarding the payment.

Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu have formally admitted to the FWO that they did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the FWO website at www.fairwork.gov.au. As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Saffron Indian Gourmet Pty Ltd and Sridhar Penumechchu expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [party to include contact details].

Yours sincerely

[Chief Executive Officer]

Annexure D

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ (Enter name and position in the organisation)

have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date _____ completed: _____

- Hiring employees date completed: _____
- Managing employees date completed: _____
- Managing performance date completed: _____
- Diversity and discrimination date completed: _____
- Workplace flexibility date completed: _____
- Record-keeping and pay slips date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Introduction to the Pay and Conditions Tool date completed: _____
- PACT – Award classifications date completed: _____
- PACT – Pay summary date completed: _____
- PACT – Penalty rates date completed: _____
- PACT – Allowances date completed: _____
- PACT – Award Coverage date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Contractors and employees – what’s the difference? date completed: _____

Read information on the following:

• ***Pay Overview***

- Minimum wages Page Ref No. _____ date completed: _____
- Penalty rates & allowances Page Ref No. _____ date _____ completed: _____

• ***Leave Overview***

- Annual leave Page Ref No. _____ date completed: _____
- Sick & carer’s leave Page Ref No. _____ date completed: _____

• ***Ending Employment Overview***

- Notice & final pay Page Ref No. _____ date _____ completed: _____
- Unfair dismissal Page Ref No. _____ date completed: _____

• ***Employee Entitlements Overview***

- Types of employees Page Ref No. _____ date completed: _____
- National Employment Standards Page Ref No. _____ date completed: _____

• ***Awards & Agreements Overview***

- Awards Page Ref No. _____ date completed: _____

- Date and signature: _____