



Australian Government

# Fair Work

## OMBUDSMAN

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### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Luxottica Retail Australia Pty Ltd (trading as Sunglass Hut)

ABN 26 000 025 758

## 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) Luxottica Retail Australia Pty Ltd ABN: 26 000 025 758 (trading as Sunglass Hut) (**SGH**).

### BACKGROUND:

2. SGH is a privately owned company first registered on 16 November 1932, with the associated international eyewear group being founded in 1961. Company headquarters are in Milan, with the company operating under a vertically integrated business model, responsible for the value chain from start to finish including design, product development, manufacturing, logistics and distribution. The ultimate holding company for SGH is EssilorLuxottica, a business listed on Euronext Paris. In Australia, SGH operates 260 “Sunglass Hut” retail stores (**Stores**) employing 1282 retail staff (as at 30 April 2019).
3. In March 2017, SGH voluntarily approached the FWO and self-reported that since the commencement of the *General Retail Industry Award 2010* (**Modern Award**) on 1 January 2010 until October 2016, they had failed to pay part-time non-management retail employees (**retail employees**) engaged in the Stores overtime penalty rates of pay, for hours worked outside the regular pattern of hours agreed with employees as required by clause 12 of the Modern Award.
4. SGH informed the FWO that the error arose from a poor understanding of the application of the Modern Award and a reliance on practices provided for by collective agreements applicable to SGH’s related businesses prior to the Modern Award commencement. This resulted in SGH paying part-time retail employees at the ordinary hourly rate of pay for all hours worked (with the exception that hours worked in excess of 38 hours received a loading).
5. SGH self-identified the error in August 2016 via an internal audit. In October 2016 SGH made changes to adhere to the Modern Award by implementing a document that recorded the agreement of part-time employees’ hours in accordance with clause 12.2

- of the Modern Award.
6. The FWO has determined, and SGH acknowledges, that SGH contravened section 45 of the FW Act in relation to the following terms of the Modern Award:
    - a) **Clause 12.2:** At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:
      - I. the hours worked each day;
      - II. which days of the week the employee will work;
      - III. the actual starting and finishing times of each day;
      - IV. that any variation will be in writing;
      - V. minimum daily engagement is three hours;
      - VI. the times of taking and the duration of meal breaks;
    - b) **Clause 12.3:** Any agreement to vary the regular pattern of work will be made in writing before the variation occurs;
    - c) **Clause 12.7:** All time worked in excess of the hours as agreed under clause 12.2 or varied under clause 12.3 will be overtime and paid for at the rates prescribed in clause 29.2 – Overtime;
    - d) **Clause 29.2(b):** Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3 will be paid at time and a half for the first three hours and double time thereafter.
  7. This error affected approximately 603 former and 17 current part-time retail employees (as at March 2019), resulting in a total underpayment of approximately \$2,294,496. In October 2016 SGH commenced contacting former and current part-time retail employees regarding the error, and commenced back paying relevant employees monies owed.
  8. As at March 2019, all 17 current employees have been paid a total of approximately \$74,833 and 435 of the 603 former employees have been paid a total of approximately \$1,409,055. Total back payments to date for former and current employees total \$1,483,888. Total outstanding back payments owing to former and current employees total \$817,093.
  9. SGH expressed genuine remorse for its mistake and agreed to enter into an enforceable undertaking with the FWO. The Undertaking will ensure the rectification of any remaining monies owed to affected part-time retail employees (former and current) and ensure future compliance with Australian workplace laws via the various undertakings contained below.

10. The FWO recognises that SGH has voluntarily undertaken the following corrective action prior to the execution of this Undertaking:
- a) implementing changes to adhere to clause 12.2 of the Modern Award when the contraventions were first identified, by agreeing in writing on a regular pattern of work with all current part-time retail employees, and commencing payment of overtime penalty rates of pay in accordance with the Modern Award;
  - b) writing to all affected employees (former and current) to notify them about the error; and
  - c) rectifying a total underpayment of approximately \$1,483,888 to 17 current employees and 435 former employees.

### **COMMENCEMENT OF ENFORCEABLE UNDERTAKING**

11. This Enforceable Undertaking comes into effect when:
- a) the Enforceable Undertaking is executed by SGH; and
  - b) the FWO accepts the Enforceable Undertaking so executed.

### **ENFORCEABLE UNDERTAKING**

12. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, SGH undertakes the following:

#### **Rectify underpayments**

- a) Within three months of the execution of this Undertaking, rectify the contraventions as identified in paragraph 6(a) to (d) by paying all affected employees back payments owing and providing evidence to the FWO that the payments were made by the same date;
- b) Within three months of the execution of this Undertaking, take all reasonable steps to locate any affected former employees including, but not limited to, attempting to contact them via telephone, post, email or social media to:
  - I. advise them that they are owed money by SGH; and
  - II. explain the process for claiming the money owed to them; and
- c) Within four months of the execution of this Undertaking SGH will:
  - I. report to the FWO on SGH's attempts to locate former affected employees as per 12 (b)I & II;
  - II. 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 for any affected employees that cannot be located. SGH will complete the required documents supplied by the FWO;

### **FWO My account registration**

- d) Within 21 days of the execution of this Undertaking SGH will with respect to the Stores:
  - (i) register with the FWO My account portal at [www.fairwork.gov.au/register](http://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; and
  - (iii) provide to the FWO the 'My account' Customer Registration Number (CRN);
- e) 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. SGH will also demonstrate how its use of this saved information will contribute toward compliance with workplace obligations including payment to employees of the correct minimum pay rates and public holiday penalty rates;
- f) Within 21 days of the execution of the Undertaking, SGH will 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:
    - i. pay rates and entitlements;
    - ii. new products and resources;
    - iii. about us and our work;
    - iv. updates in my industry; and
    - v. tailored information that's relevant to me;

### **Apology**

- g) Send a letter of apology (**Apology Letter**) to all affected employees (former and

current) in the form of Attachment A to this undertaking, and provide copies to the FWO within three months of the execution of this Undertaking;

### **Audit Activity**

- h) Cause to have performed by an external accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at SGH's expense, audits of SGH's compliance with all Commonwealth workplace laws and instruments (**Audits**), including but not limited to the following clauses and sections of the Modern Award and FW Act:
  - I. Clause 11 Full time employees;
  - II. Clause 12 Part-time employees;
  - III. Clause 13 Casual employees;
  - IV. Clause 17 Minimum weekly wages;
  - V. Clause 18 Junior rates;
  - VI. Clause 29 Overtime and penalties;
  - VII. Section 535 Employer obligations in relation to employee records;
  - VIII. Section 536 Employer obligations in relation to pay slips;
- i) The Audits will include the pay and conditions of 5% of all employees in the Stores, include one full pay period, include a range of classifications and employment types (full time, part time and casual employees), and will include employees from a range of the Stores as follows:
  - I. One complete pay period in January 2020 to be finalised by 30 April 2020;
  - II. One complete pay period in January 2021 to be finalised by 30 April 2021;
  - III. One complete pay period in January 2022 to be finalised by 29 April 2022;
- j) SGH will ensure that the following requirements are met:
  - I. 21 days prior to the Audit start dates, as specified in 12(i) I to 12(i) III, SGH will provide for the FWO's approval, details of the methodology to be used to conduct the Audit;
  - II. The Audits are to be finalised and a report on the outcomes of the Audits are to be provided to the FWO within 14 days of the Audit due dates referred to in 12(i) I to 12(i) III. The report must include details of SGH's compliance or non-compliance with the Modern Award and the FW Act including 12(h) I to 12(h) VIII as above;
- k) In the event an Audit discloses contraventions of any applicable Commonwealth

workplace law and/or instruments, use reasonable efforts to rectify all such contraventions within 14 days of each of the finalisation dates specified in subclause 12(i) I to 12(i) III above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;

- l) If requested, provide the FWO with all records and documents used to conduct the Audits, including any working documents, within seven days of such a request;
- m) 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 12(i) I to 12 (i) III 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 Commonwealth Revenue Fund. SGH will complete the required documents supplied by the FWO;
- n) In the event that an enterprise agreement (**EA**) applies to SGH and its retail employees from the execution of this undertaking until April 2022, the Audits of SGH compliance with workplace laws and instruments (referred to in 12(h) above) will include all clauses of any such future EA.

### **Public Notice**

- o) Place a public notice (**Public Notice**) in the Australian within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking. The Public Notice must:
  - I. Bear the name of Luxottica Retail Australia Pty Ltd trading as Sunglass Hut;
  - II. Bear the logo (if any) of Sunglass Hut;
  - III. Appear within the first 5 pages of the newspaper;
  - IV. Be at least 10 cm x 8 cm;
  - V. Be in the form of Attachment B
- p) Provide a copy of the Public Notice to the FWO within seven days of the publication of the Public Notice;

### **Workplace Notice**

- q) Within 28 days of the execution of this Undertaking, cause to be displayed on the Stores' intranet site:
  - (i) a notice in the form of Attachment C to this Undertaking;
  - (ii) for a period of 28 days;
- r) At the end of the 28 days provide FWO photographic evidence of the display of the

Workplace Notice as per 12 (p) (i) and (ii);

### **Broader Community workplace relations education**

- s) Within 28 days of the execution of this Undertaking make a donation of \$50,000 to the National Association of Community Legal Centres Inc. ABN 67757001303, PO Box A2245 Sydney South NSW 1235, with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the community, and provide evidence of the donation to FWO.

### **No Inconsistent Statements**

13. SGH:

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

### **ACKNOWLEDGEMENTS**

14. SGH acknowledges 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. from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
  - IV. rely upon the acknowledgements made by SGH set out in paragraphs 6(a) to (d) above in respect of decision making concerning any future non-compliance with SGH's workplace relations obligations.
- 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, SGH may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and

d) If SGH contravenes 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 acknowledgement made by SGH in paragraphs 6(a) to (d) above, and also in respect of the question of costs.

**Executed as an undertaking**

EXECUTED by Luxottica Retail Australia Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

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

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

ALFONSO CERULLO  
\_\_\_\_\_  
(Name of director)

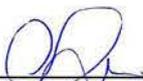
TIMOTHY WONG  
\_\_\_\_\_  
(Name of director/company secretary)

20/08/2019  
\_\_\_\_\_  
(Date)

20/08/2019  
\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:

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

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

CAMILLA DI MARCO  
\_\_\_\_\_  
(Name of witness)

CAMILLA DI MARCO  
\_\_\_\_\_  
(Name of witness)

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

  
\_\_\_\_\_  
Michael Campbell

20/9/19  
\_\_\_\_\_  
(Date)

Deputy Fair Work Ombudsman - Operations

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

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

LOUISE CATO  
\_\_\_\_\_  
(Name of Witness)

## Attachment A – 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 Luxottica Retail Australia Pty Ltd (trading as Sunglass Hut) (**SGH**) for non-compliance with Commonwealth Workplace relations laws which has resulted in you being underpaid.

You have already been advised of the underpayment in previous [emails/letters on xxx date] after an internal investigation uncovered the problem.

The underpayment was inadvertent and affected part-time retail employees only.

After it was discovered, Sunglass Hut self-reported the underpayment to the Office of the Fair Work Ombudsman (**FWO**).

Following consultation with the Office of the FWO it was determined that SGH had contravened section 45 of the Fair Work Act 2009 (**FW Act**) by not adhering to the following terms of the General Retail Industry Award 2010 (**Modern Award**) in relation to its former and current part time retail SGH employees from 1 January 2010 to October 2016:

- Clause 12.2 by failing to agree in writing, on a regular pattern of work;
- Clause 12.3 by failing to agree in writing any variations to the regular pattern of work;
- Clause 12.7 by failing to pay the prescribed overtime rates contained in clause 29.2(b) for time worked in excess of the hours agreed to in clause 12.2 or varied under clause 12.3; and
- Clause 29.2(b) by failing to pay time and a half for the first three hours and double time thereafter for work performed in excess of the agreed hours in clause 12.2 or as varied under clause 12.3.

SGH has taken steps to remedy the contraventions, including calculation of the underpayment owing to you.

As a result, you received a payment of \$XXXX (gross) in (month), (year). <<IF APPLICABLE A further payment of \$XXX (gross) will be paid to you within 14 days. A pay slip will be provided to you>>.

OR

As a result, you received payment of \$XXX gross in (month), (year). This represents the entire amount of the underpayment. We can confirm that no further payment is due to you.

<<For former employees IF APPLICABLE>>

Below is a form in which you can set out the relevant bank account details. Please email the completed form to the address set out at the end of this letter. We would be grateful if you would respond within 14 days.

I would like to assure you that SGH takes its responsibilities as an employer seriously and has taken steps to ensure that this does not reoccur.

SGH has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au). As part of the Enforceable Undertaking SGH has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

SGH expresses its sincere regret and apologises to you for failing to comply with our lawful obligations. Should you have any questions, please contact [SunglassHut.HR@luxottica.com.au](mailto:SunglassHut.HR@luxottica.com.au)

Yours sincerely

Bernardino Pedone

HR Director

## **Attachment B – Form of Public Notice**

### **FORM OF PUBLIC NOTICE**

Contravention of the Fair Work Act 2009 (FW Act) by Sunglass Hut\*.

Sunglass Hut acknowledges that it has contravened section 45 of the FW Act by not adhering to the following terms of the General Retail Industry Award 2010 (Modern Award) in relation to its former and current part time retail employees engaged at Sunglass Hut Retail Stores. Specifically, Sunglass Hut did not implement written part time agreements and failed to pay correct overtime entitlements to part time employees.

The contraventions arose through inadvertent errors relating to the recording of the regular pattern of hours of part-time retail employees. Upon becoming aware of the errors, Sunglass Hut took proactive steps to advise its employees and to voluntarily disclose the matter to FWO. Sunglass Hut undertook measures to remedy the contraventions, including making payments to those affected. Throughout the process Sunglass Hut cooperated with FWO.

Sunglass Hut has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)).

Sunglass Hut expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Sunglass Hut 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. As a mark of its contrition and commitment to the principle of compliance, Sunglass Hut has donated \$50,000 to National Association of Community Legal Centres Inc.

If you worked for Sunglass Hut and have queries or questions relating to your employment, please contact [SunglassHut.HR@luxottica.com.au](mailto:SunglassHut.HR@luxottica.com.au). Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

\*Luxottica Retail Australia Pty Ltd trading as Sunglass Hut

## **Attachment C – Form of Workplace Notice**

### **FORM OF WORKPLACE NOTICE**

Contravention of the Fair Work Act 2009 (FW Act) by Sunglass Hut\*.

Sunglass Hut acknowledges that it made inadvertent errors in recording the regular pattern of hours of certain of its former and current part-time retail employees. This led to contraventions of section 45 of the FW Act by not adhering to the General Retail Industry Award 2010 (Modern Award). Specifically, Sunglass Hut did not implement written part time agreements and failed to pay correct overtime entitlements to part time employees.

Upon becoming aware of the errors, Sunglass Hut took proactive steps to advise its employees and to voluntarily disclose the matter to FWO. Sunglass Hut undertook measures to remedy the contraventions, including making payments to those affected. Throughout the process Sunglass Hut cooperated with FWO.

Sunglass Hut has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)).

Sunglass Hut has expressed its sincere regret for the errors and has apologised to affected employees.

If you have any queries or questions relating to your employment you should feel free to raise them at any time by contacting [SunglassHut.HR@luxottica.com.au](mailto:SunglassHut.HR@luxottica.com.au). Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

\*Luxottica Retail Australia Pty Ltd trading as Sunglass Hut