



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

MOS Burger Australia Pty Ltd

(ACN: 147 500 310 / ABN: 98 147 500 310)

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:
 - i. MOS Burger Australia Pty Ltd (ACN: 147 500 310/ ABN: 98 147 500 310) of 44 Murdoch Circuit, Acacia Ridge QLD 4110 (**the Company**).

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

2. This Undertaking comes into effect when:
 - i. The Undertaking is executed by the Company; and
 - ii. The FWO accepts the Undertaking so executed.
3. This Undertaking will expire on 30 June 2021.

BACKGROUND

4. The Company was registered with Australian Securities and Investments Commission (**ASIC**) on 23 November 2010.
5. The Company is an overseas-based fast food chain that sells burgers and related products in the fast food and restaurant industry within South East Queensland.
 - i. The Company has a principal place of business of 44 Murdoch Circuit, Acacia Ridge QLD 4110;
 - ii. The Company operates six (6) venues located at:
 1. Shop F015, Australia Fair Shopping Centre, 42 Marine Parade, Southport QLD 4215 (**Southport**);
 2. Shop 313, Level , Pacific Fair Shopping Centre, 2-32 Hooker Boulevard, Broadbeach, QLD 4218 (**Broadbeach**);
 3. Shop T1.05A, Soul Retail 4 The Esplanade, Surfers Paradise, QLD 4217 (**Surfers Paradise**);
 4. Shop 8, 79 Adelaide Street, Brisbane, QLD 4000 (**Brisbane**);

5. Shop 1374, Westfield Garden City, Upper Mount Gravatt, QLD 4122
(Mt Gravatt); and
6. Sunnybank Plaza (Shop 34), 358 Mains Road, Sunnybank
Queensland 4109 **(Sunnybank) (collectively – the Outlets).**
6. The Company has a workforce of around 90 employees, engaged in various positions such as, food and beverage attendants, kitchen attendants, store supervisors, store managers, office staff and management.
7. The current employee's employment is governed by the FW Act, the Fast Food Industry Award 2010 [MA000003] (**Fast Food Award**) and the Restaurant Industry Award 2010 [MA000119] (**Restaurant Award**).
8. The FWO issued the Company with a Contravention Letter on 19 July 2018 sustaining contraventions of the Fast Food Award and the FW Act as follows:

Section 45 of the FW Act by failing to comply with the following terms of the Fast Food Award;

- i. Clause 17 - Ordinary hourly rate of pay, by failing to pay 37 employees the correct base rate of pay.
- ii. Clause 13.2 - Casual Loading, by failing to pay 30 employees the correct casual loading in addition to the base rate of pay, as a result of incorrectly classifying casual employees as part time employees.
- iii. Clause 25.5(a) with respect to subclause (i) and (ii) for failing to pay 30 employees the correct permanent night shift span penalty rates.
- iv. Clause 25.5(b) - Saturday penalty rates, by failing to pay 49 employees the correct Saturday penalty rate.
- v. Clause 25.5(c) - Sunday penalty rates, by failing to pay 37 employees the correct Sunday penalty rate.
- vi. Clause 30.3 - Public Holiday penalty rates, by failing to pay 39 employees the correct Public Holiday penalty rate.

- vii. Clause 19.2(b) with respect to Laundry Allowance, the Company failed to pay the correct Laundry Allowance to 46 employees.
 - viii. Clause 13.4 with respect to minimum daily engagement for casual employees. The Company failed to provide 12 employees with a minimum of 3 hours per shift.
9. On 10 August 2018 the Company advised that they had reviewed their calculations in line with the findings of contraventions. As a result the Company had repaid a total of \$1.12 million in underpaid wages to 285 current and former staff back dating to April 2011.
10. The Company provided the FWO with evidence of the payments.

ENFORCEABLE UNDERTAKING

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

Future Payroll Audits

12. At its own expense, the Company undertakes to engage an external accounting professional (for example, a Certified Practising Accountant) or employment law specialist approved by the FWO to perform two annual audits (the Audits) of the Company's compliance with Commonwealth Workplace laws.
13. The Audits will:
- i. Review a sample totalling at least 20% of all of the workforce by the Company at the time of each audit;
 - ii. Include within each sample employees of varying locations, classifications, status (i.e. full time, part time or casual), and roster cycles; and
 - iii. Be conducted for all full pay periods where part of the period falls within the following months;
 - 1. December 2019; and
 - 2. December 2020;

- iv. Assess the Company's compliance with;
 - 1. Wages and work-related entitlements under the Fast Food Award, Restaurant Award and National Employment Standards of the FW Act;
 - 2. Record keeping and pay slip obligations within Division 3 of Part 3-6 of the FW Act and within the Fair Work Regulations 2009 (**FW Regulations**).
- 14. The Audits must be completed by and a report of the findings to be provided to the FWO by 28 February 2020 and 1 March 2021 (60 days after the end of the Audit period), which will include:
 - i. Details of any contraventions identified in the Audit.
- 15. If requested by the FWO, the Company will provide FWO with any records or documents used to conduct the each Audit, including any working documents, within 14 days of such request.
- 16. Within 60 days of the completion of the annual audits, the Company will as far as practical:
 - i. Rectify any underpayments arising from any underpayments identified;
 - ii. Provided to the FWO evidence of such rectification; and
 - iii. Make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Consolidated Revenue Fund, if any of the Employees cannot be located, within 30 days after the finalisation of the Audit dates above. The Company will complete the required documents supplied by the FWO.

FWO My Account Registration

- 17. Within 14 days of the execution of the 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. Provide to the FWO the 'My Account' Customer Registration Number (CRN).

- iii. using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to My account.
18. Within 14 days of the execution of the Undertaking, subscribe to the FWO's subscription service available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates> and upon registering for the subscription service, request updates on the following:
 - 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.
19. The Company must provide evidence to the FWO that it has subscribed to the service within 14 days of the execution of the Undertaking.

Workplace Relations Compliance - Systems and Processes

20. The Company undertakes to comply at all times and in all respects with the FW Act, the Regulations, the Restaurant Award and the Fast Food Award;
21. Provide the FWO, within 60 days of the date of execution of the Undertaking, details of systems and processes already in place or to be implemented to comply with its obligations under the FW Act, the Restaurant Award and the Fast Food Award, including steps taken in relation to the introduction of an integrated payment system inclusive of timesheet recording for all of its stores. The FWO may provide feedback on the steps taken or proposed.
22. Within 90 days of the Company receiving the FWO's feedback, the Company will take all reasonable steps to incorporate such feedback into its systems and processes.

Workplace Relations Training

23. Within 180 days of the execution of this Undertaking, organise and ensure training is provided to all senior managers and other persons in human resources, recruitment

and payroll functions (Training).

24. Ensure the Training relates to compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employees under the FW Act, the Restaurant Award and the Fast Food Award.
25. Ensure a workplace trainer conducts the Training. Such person or organisation to be approved by the FWO and paid for by the Company.
26. Provide the training materials to be used in the Training to the FWO no later than 14 days prior to the Training being conducted.
27. Provide evidence of attendance at the Training to the FWO within 7 days of the provision of the Training (including the name and position of all attendees and the date on which the training was attended).

Co-operation with the FWO in Its Future Enquiries

28. The Company undertakes to co-operate with the FWO in its future enquiries or investigations in relation to request for assistance from current or former Company employees, including by:
 - i. Responding to any correspondence from the FWO within a reasonable timeframe;
 - ii. Responding to requests from the FWO to participate in records of interview or to provide information with a reasonable timeframe; and
 - iii. Responding to any other reasonable request from the FWO in relation to its investigations within a reasonable timeframe.

Matters notified to the FWO

29. Where the FWO receives a RFA from an employee or former employee of the Company regarding non-compliance with the relevant Award or legislative requirement the FWO will, at its discretion and subject to the below paragraph regarding serious non-compliance, notify the Company and its officers and provide relevant details;

30. Where a matter is notified to the Company it will undertake to fully co-operate with the FWO to ensure compliance. This includes:
- i. Determining an appropriate outcome for the matter within 45 days of notification; and
 - ii. Advising the FWO of their determination and actions in relation to the matter including:
 - i. The reasons for the determination and any compliance issues identified;
 - ii. The details of any Underpayments and amounts rectified;
 - iii. Steps taken to address compliance issues identified, including for any similarly affected Employees; and
 - iv. If any matter remains unresolved, the steps taken by the Company to facilitate the resolution of any such matter;
31. The FWO reserves the right to investigate any allegations;
32. The FWO may advise the Company of any active investigations the FWO is undertaking. If this is the case the Company undertakes to:
- i. Provide all requested employment records and other documentation to the FWO relevant to the investigation;
 - ii. Participate fully in any subsequent requests for information relevant to the investigation, including participation in any formal records of interview; and
 - iii. Fully co-operate in FWO's investigative processes.

No Inconsistent Statements

33. The Company:
- i. Must not; and
 - ii. Must ensure that its officers, employees or agents, do not, make any statement, orally, in writing or otherwise, that implies anything that is inconsistent with admission or acknowledgements contained in this agreement.

ACKNOWLEDGMENTS

34. The Company acknowledges that:

- i. The FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fairwork.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- ii. The FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- iii. The FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- iv. The admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by MOS Burger Australia Pty Ltd;
- v. 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 in this Undertaking;
- vi. If the FWO considers that MOS Burger Australia Pty Ltd has contravened any of the terms of this this Undertaking 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;
- vii. Consistent with section 715(3) of the FW Act, MOS Burger Australia Pty Ltd may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.
- viii. If the Company contravenes any of the terms of this Enforceable Undertaking:
 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

2. This Enforceable Undertaking may be provided to the Court as evidence of the admissions made by MOS Burger Australia Pty Ltd in clause 10 above, and also in respect of the question of costs.

EXECUTED AS AN UNDERTAKING

EXECUTED by MOS Burger Australia Pty Ltd (ACN: 147500310) in accordance with section 127(1) of the Corporations Act 2001:

Chi Yin Ho
(Signature of director)

Akio Fukumitsu
福光 昭夫
(Signature of director/company secretary)

CHI YIN HO
(Name of director)

AKIO FUKUMITSU
(Name of director/company secretary)

30.10.2019
(Date)

30.10.2019
(Date)

in the presence of:

in the presence of:

Ming Yao Chuang
(Signature of witness)

Ming Yao Chuang
(Signature of witness)

MING YAO CHUANG
(Name of witness)

MING YAO CHUANG
(Name of witness)

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

Michael Campbell
Michael Campbell – Deputy Fair Work

3/12/19
(Date)

Ombudsman, ~~Compliance and~~ Operations

~~Enforcement~~

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of: [Signature]
(Signature of witness)

LOUISE CATO
(Name of Witness)