



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Dated *2nd July* 2012

Given by

**Holtham Family Pty Ltd as trustee for the Holtham Family Unit Trust, trading
as The Soup Box**

ACN: 135 689 593

to

The Commonwealth of Australia

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

concerning contraventions of the *Fair Work Act 2009* (Cth)

PART ONE: DETAILS

Parties	FWO and Holtham Family Pty Ltd	
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FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43 884 188 232
	Address	The Fair Work Ombudsman GPO Box 9887 Melbourne Victoria 6001
	Telephone	03 9954 2998
	Fax	02 6123 6802
	Attention	Greg Robertson, Acting Executive Director, Complex Investigations and Innovation, Fair Work Ombudsman

Holtham Family Pty Ltd	Name	Holtham Family Pty Ltd as trustee for the Holtham Family Unit Trust, trading as The Soup Box
	ACN	135 689 593
	Address	Holtham Family Pty Ltd 318 Archer Street Shepparton VIC 3630
	Telephone	03 8508 7800
	Fax	03 8508 7859
	Attention	Mr Kevin HOLTHAM

Recitals	A	On 10 August 2011 the Fair Work Ombudsman (FWO) commenced an investigation into allegations that Holtham Family Pty Ltd as trustee for the Holtham Family Unit Trust, trading as The Soup Box (The Soup Box) had breached the <i>Fair Work Act 2009</i> (Cth) (FW Act).
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- B** By reason of the matters set out in Attachment "A" (**Background**), the FWO has determined, and The Soup Box acknowledges, that The Soup Box contravened the FW Act in relation to an employee, [REDACTED]
- C** The parties have agreed to resolve the contraventions without the need to resort to civil penalty litigation by way of this Enforceable Undertaking (**EU**), which is made pursuant to section 715 of the FW Act.

Governing Law Federal

Date of agreement See signing page

PART TWO: GENERAL TERMS

1 Admission and contraventions

By reason of the matters described in the Background to this EU, which are admitted without demur by the Soup Box, the Soup Box admits that the Soup Box contravened the FW Act as set out in Attachment "B" (**Contraventions**).

2 Limit of Admission

2.1 The FWO acknowledges that the terms of this EU:

- (a) are solely for the purposes of resolving the FWO investigation into the Contraventions; and
- (b) must not be interpreted as an admission by The Soup Box of liability for any matter other than as expressly provided in this EU.

2.2 No assertion or matter in this EU may be relied upon as an admission by any person to support a cause of action in any other civil penalty proceeding.

2.3 However, this term does not prevent any matter in this EU being relied upon in future proceedings in order to inform a relevant Court of tribunal of the details of the conduct that was the evidentiary foundation for The Soup Box entering into this EU.

2.4 This means that the FWO reserves the right to rely on the terms of this EU and the admissions in respect of any future proceedings brought by the FWO against The Soup Box in relation to any future contraventions of Commonwealth workplace laws.

3 **Enforceable undertakings**

The Soup Box **NOW UNDERTAKES** that, in consideration of the FWO agreeing not to apply for any orders under Division 2 of Part 4-1 of the FW Act in relation to the Contraventions (as evidenced by the FWO's acceptance of this EU endorsed below); The Soup Box must do and perform the agreed matters set out in Attachment "C" (**Enforceable Undertakings**).

4 **Commencement of enforceable undertaking**

This EU comes into effect when:

- (a) this document is executed by The Soup Box; and
 - (b) the FWO accepts the EU executed by The Soup Box (as evidenced by the FWO's acceptance of this EU endorsed below).
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5 **Acknowledgements**

5.1 The Soup Box acknowledges that:

- (a) the undertakings it has given in this EU are reasonable in the circumstances;
- (b) this EU is given to and accepted by the FWO pursuant to section 715 of the FW Act;
- (c) the FWO may:
 - i. make this EU (and any of the Attachments) available for public inspection, including by posting it on the FWO internet site at www.fwo.gov.au (subject to the FWO taking any necessary steps to the redaction of the names of any person affected by the contraventions);
 - ii. release a copy of this EU (and any of the Attachments) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - iii. issue a media release in relation to this EU;
 - iv. from time to time, publicly refer to this EU (and any of the Attachments) and its terms; and
 - v. rely upon the admissions made by The Soup Box in clause 1 above in respect of any decision about enforcement action to be taken in respect of any future non-compliance by The Soup Box with Commonwealth workplace relations obligations.
- (d) consistent with the Note to section 715(4) of the FW Act, this EU in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this EU; and
- (e) if The Soup Box contravenes any of the terms of this EU:

- 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;
- ii. this EU may be provided to the Court as evidence of the admissions made by The Soup Box in clause 1 above, and also in respect of the question of costs; and
- iii. this EU is taken as having been withdrawn from by The Soup Box for the purposes of section 715(3) of the FW Act if the FWO gives its written consent (in which case the FWO may apply for orders against The Soup Box under Division 2 of Part 4-1 of the FW Act).

6 **No Inconsistent Statements**

The Soup Box:

- (a) must not; and
- (b) must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the admissions or acknowledgements contained in this EU.

7 **Termination by the FWO**

At any time, the FWO may, by notice in writing, terminate this EU (that is, immediately and without further notice), if The Soup Box commits, in the opinion of the FWO, a serious or persistent contravention or non-observance of a term or terms of this EU.

8 **Withdrawal from or variation to this EU**

Consistent with section 715(3) of the FW Act, The Soup Box may withdraw from or vary this EU at any time, but only with the consent of the FWO.

9 **Continuing obligations**

9.1 **General survival**

Any provision of this EU remaining to be performed or observed by The Soup Box or having effect after the cessation of this EU for whatever reason (including termination by the FWO or withdrawal by The Soup Box) remains in full force and effect and is binding on The Soup Box after this EU ends.

9.2 **Survival**

Without limiting the generality of clause 9.1 above, the following clauses survive termination of this EU for whatever reason (including termination by the FWO or withdrawal by The Soup Box):

- (a) clause 1 (Admissions and contraventions); and

- (b) clause 6 (No inconsistent statements).

10 Legally binding agreement

The terms of this document are intended to have immediate effect on all parties upon acceptance by the FWO of this EU (as evidenced by the FWO's acceptance of this EU endorsed below).

11 Entire agreement

11.1 This EU constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

11.2 No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this EU; or
- (b) constitutes any collateral agreement, warranty of understanding between the FWO and The Soup Box.

12 No representations or warranties

The Soup Box and the FWO acknowledge that in entering into this EU they have not relied on any representations or warranties about the subject matter of this EU except as provided in this EU.

13 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this EU or any part of it.

14 Costs

The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this EU and other related documentation.

15 Severance

If the whole or any part of a provision of this EU is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this EU has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this EU or is contrary to public policy.

16 Competency

The Soup Box acknowledges that:

- (a) before executing this EU, The Soup Box was given the opportunity to seek independent legal and other advice of their choice;
- (b) in the light of any advice provided to The Soup Box, The Soup Box considered its position;
- (c) if The Soup Box has been advised by its solicitors, The Soup Box has been advised by them as to the terms of this EU; and
- (d) The Soup Box fully understands the effect of this EU.

17 **Governing Law**

This EU is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts in that place.

Signing Page

Dated: 30th June.....2012

EXECUTED by **HOLTHAM FAMILY PTY LTD** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):



(Signature of Secretary/Director)

(Signature of Director)

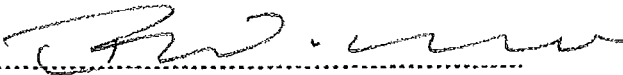
(Name of Secretary/Director in Full)

(Name of Director in Full)

HERBERT KEVIN HOLTHAM

ACCEPTED by the **FAIR WORK OMBUDSMAN**

Dated: 12th July.....2012



NICHOLAS PAUL WILSON
FAIR WORK OMBUDSMAN

or by his Delegate subject to the instrument of delegation made pursuant to section 683 of the FW Act and executed by Nicholas Paul Wilson on 2 July 2009.

Attachment "A" Background

1. Between 10 February 2010 and 1 April 2011, [REDACTED] was employed with The Soup Box Pty Ltd, trading as The Soup Box (**The Soup Box**) as a canteen assistant and cook on a part time basis.
2. The Soup Box has the contract to operate a staff canteen providing meals, snacks drinks and catering to employees of the Campbell's Soup Factory located at 55 Lemnos Road, Lemnos, in the State of Victoria.
3. The Soup Box is operated by Mr Kevin Holtham (Mr Holtham), Mrs Janine Holtham (Mrs Holtham), Mr Herbert Holtham (Mr Holtham Senior), and Mrs Tanya Holtham. Mr Holtham Senior is the sole director and secretary of The Soup Box Pty since 4 March 2009 and a fifty per cent shareholder. Mrs Holtham performs the role of "Supervisor" on a day-to-day basis. Mr Holtham is a former director (ceased on 24 September 2009) and a 50 per cent shareholder and performs the role of "chef/manager" of the Soup Box. Mrs Tanya Holtham (Mr Holtham's wife) is an accountant and is responsible for the business record keeping and payment of wages.
4. The Soup Box failed to provide [REDACTED] with the Fair Work Information Statement before, or as soon as practicable after, [REDACTED] started employment with The Soup Box. The Soup Box also failed to enter into a written agreement for the pattern of part time hours at the time of engaging [REDACTED] (as required by the Modern Award). During the period of [REDACTED] employment, Mr Holtham was involved in the management of The Soup Box and was responsible for employing staff and determining rosters.
5. [REDACTED] responded to a vacancy advertised at her local Job Network Agency in Shepparton. She was interviewed by Mr Holtham on or around 8 February 2010 and was verbally offered the position of part-time Canteen Assistant. No written contract of employment was entered into, nor was anything put in writing detailing the days or hours that [REDACTED] would work. She was offered the position and generally worked between 15-20 hours a week until 29 May 2010.
6. In late May of 2010, with the sudden departure of the former cook (Ms Lynda Deboer), [REDACTED] began performing additional cooking tasks at short notice until a replacement cook could be hired. Some weeks later Mr Holtham offered her the position of cook on a "three month trial basis". Her hours changed and from 31 May 2010 to 6 November 2010, [REDACTED] worked from between 6 am to 7 am to 1 pm or 2 pm Monday to Friday. [REDACTED] was happy to accept these changes.
7. From 8 November 2010 to the week ending 11 December 2010, [REDACTED] hours of work were decreased, and she either worked her "breakfast cook" shift from 6 am to 1 or 2 pm or from 10 am to 1 pm or 1.30 pm Monday to Friday.
8. Shortly prior to Christmas 2010, [REDACTED] informed Mr Holtham that she was pregnant (12 weeks). [REDACTED] had the expectation that she would continue to work until commencing her unpaid parental leave. She was not advised at this point that her hours would be reduced and no definite date was set for when she would commence unpaid parental leave.

9. On 10 January 2011, Mrs Tanya Holtham arranged to place an advertisement for a "cook/canteen assistant" in the local newspaper. The advertisement appeared in the 11 January 2011 and 14 January 2011 editions of the *Shepparton News*, the 15 January 2011 edition of the *Weekend News*, and the 20 January 2011 edition of the *SN Weekly*. The advertisement did not refer to the vacant position being a maternity leave position, nor did it seek the services of a qualified chef.
10. From 7 February to 11 February 2011, ██████ took one week's annual leave that she had previously requested in August 2010. On 14 February 2011, the new part-time employee, Ms Wendy Sutton (Sutton) commenced employment at The Soup Box. Sutton was a qualified chef and ██████ was required to train Sutton to perform the cook's position.
11. ██████ worked from 6 am to 12 noon on 14, 15 and 16 February 2011. On 17 February 2011, ██████ worked from 8 am to 11.30 am, and on 18 February 2011, ██████ worked from 8 am to 11 am. (The initial reduction in her hours.) The Soup Box failed to agree with ██████ in writing about any changes to ██████ hours (as required by the Modern Award). From this point onwards ██████ was not offered the breakfast shift or the role of being cook.
12. On 21 February 2011, ██████ sent a text message to Mr Holtham, questioning the reduction in her hours of work. Inter alia, the text message states: *"I knew me (sic) hours were going to get cut back but didn't think it was going to happen so soon as I plant (sic) to be working til the start of June which is another 3 months away"*. She believed that her hours would gradually reduce later into her pregnancy.
13. From 21 February to 25 February 2011, ██████ worked the 8 am to 11 am shift, Monday to Friday - a total of 15 hours per week. For the week ending 5 March 2011, ██████ hours of work were reduced to 9 hours per week. (Second reduction in hours). The Soup Box failed to agree with ██████ in writing about any changes to ██████ hours (as required by the Modern Award).
14. From the week ending 12 March 2011 to the week ending 2 April 2011, ██████ hours of work were reduced to 3 hours per week. (The final reduction in hours). The Soup Box failed to agree with ██████ in writing about any changes to ██████ hours (as required by the Modern Award). During the period from 14 February 2011 to at least 8 April 2011, Sutton performed the breakfast shift role working from 6 am to 1.30 pm or 2 pm, Monday to Friday and the role of cook.
15. On 18 March 2011 ██████ provided a letter of resignation to Mrs Holtham, providing two weeks' notice. ██████ stated that she felt that she, *"had no choice due to my hours being cut back so dramatically so soon and I generally need more hours which you are unable to give me"*. She believed that she had no option but to resign as it was not financially viable for her to continue to work at The Soup Box when she was only being offered three hours of work per week in the final four weeks of her employment.
16. Mr Holtham has indicated that he offered ██████ some additional hours of work at his other business interest – a cafe in Shepparton – foreshadowing the possibility of some work on a Saturday or Monday, however, ██████ did not indicate an interest, citing personal reasons. Also, on 28 March 2011, Mr Holtham offered ██████ via text message some additional hours of work the following day at The Soup Box. ██████ declined as she had a prior commitment.

17. Mr Holtham, Mrs Holtham and Mrs Tanya Holtham have stated that [REDACTED] hours of work were reduced because they could not afford to employ two cooks (once the replacement cook Ms Sutton was employed and trained) and also because of [REDACTED] poor attitude.
18. Mr Holtham has stated that the replacement employee was engaged early "*just in case she didn't work out and we had to advertise again*".
19. [REDACTED] hours of work were intentionally reduced with the effect of reducing her pay significantly. This intention is demonstrated by The Soup Box systematically reducing her hours from an average of 25 hrs per week to a mere three per week during the last four weeks of her employment, despite [REDACTED] being ready and willing to perform the duties of cook/canteen assistant, and her reasonable expectation of some certainty about expected income as a permanent part-time employee.
20. [REDACTED] last day of work at The Soup Box was 1 April 2011, where she worked from 11 am to 2 pm. She then sought the assistance of the FWO and lodged a complaint on 15 April 2011.
21. [REDACTED] is entitled to compensation for the lost wages of \$2083.90 incurred as a direct result of her reduced hours during the period of 18 February 2011 until the end of her employment on 1 April 2011. (Being 6.5 hrs per day x \$16.03 p/hr x 20 days = \$ 2083.90).
22. After being informed of the complaint by [REDACTED] to the FWO, The Soup Box has fully cooperated with the FWO in relation to the FWO's investigation into this matter. The Soup Box subsequently has paid to [REDACTED] the amount of \$2083.90 gross, being the amount calculated to compensate [REDACTED] for lost income due to the above reduction in hours of work, and, in this regard, being compensation for economic loss suffered by [REDACTED].

The Contraventions

The Soup Box admits that it contravened section 351(1) (Discrimination) of the FW Act by taking adverse action against [REDACTED] for reasons including because of [REDACTED] pregnancy and that it contravened section 340(1)(a)(i)&(ii) (Protection) of the FW Act by taking adverse action against [REDACTED] for reasons including because [REDACTED] had and proposed to exercise a workplace right, with the adverse action being that pursuant to section 342(1) Item 1(a), (b),(c) and (d) of the FW Act, The Soup Box took adverse action by:

- (a) Constructively dismissing [REDACTED] due to the following conduct;
- (b) Injuring [REDACTED] in her employment, altering the position of [REDACTED] to her prejudice and discriminating between [REDACTED] and another employee of The Soup Box by;
 - i. changing [REDACTED] duties of work and no longer offering her the breakfast/cooking shifts and duties, in particular because they were given to the new employee (who was engaged for reasons including because of [REDACTED] pending parental leave) four months before [REDACTED] was due to commence parental leave,
 - ii. by increasingly reducing her hours from an average of 25 hours a week to 3 hours per week over the period of about 18 February 2011 until 1 April 2011.

The Soup Box further acknowledges that by taking adverse action against [REDACTED], as outlined above, for reasons including because of her pregnancy and workplace rights, [REDACTED] sustained economic losses consisting of lost wages from the time [REDACTED] employment duties changed and her hours were reduced.

23. The Soup Box admits that it contravened section 44(1) of the FW Act by:

- (a) Failing to provide an employee the with the Fair Work Information Statement before, or as soon as practicable after, the employee starts employment as required under s 125(1) of the FW Act.

24. The Soup Box admits that it contravened section 45 of the FW Act by:

- (a) Contravening a term in a modern award, the Hospitality (General) Award 2010, being that The Soup Box failed to enter into a written agreement for the pattern of part time hours at the time of engaging the former employee as required in clause 12.3 of the Award, and failing to agree in writing to any variation to hours as required in clause 12.4 of the Award.

Attachment "B" Contraventions

In, from or about February to April 2011, The Soup Box contravened section 351(1) (Discrimination) of the FW Act by taking adverse action against [REDACTED], for reasons including because of [REDACTED] pregnancy, with the adverse action being pursuant to section 342(1) Item 1(a), (b),(c) and (d) of the FW Act, by:

- (a) Constructively dismissing [REDACTED] due to the following conduct;
- (b) Injuring [REDACTED] in her employment, altering the position of Good to her prejudice and discriminating between [REDACTED] and another employee of The Soup Box by;
 - i. changing [REDACTED] duties of work and no longer offering her the breakfast/cooking shifts and duties, in particular because they were given to the new employee (who was engaged for reasons including because of [REDACTED] pending parental leave) four months before [REDACTED] was due to commence parental leave,
 - ii. by increasingly reducing her hours from an average of 25 hours a week to 3 hours per week over the period of about 18 February 2011 until 1 April 2011.

In from or about February to April 2011, The Soup Box contravened s 340(1)(a)(i)&(ii) (Protection) of the FW Act by taking adverse action against [REDACTED], for reasons including because [REDACTED] had and proposed to exercise a workplace right, that workplace right being that [REDACTED] was entitled to the benefit of a workplace law pursuant to section 341(1)(a) of the FW Act (being [REDACTED] entitlement to take parental leave under the NES of the FW Act), with the adverse action being pursuant to section 342(1) Item 1(a), (b),(c) and (d) of the FW Act, by:

- (a) Constructively dismissing [REDACTED] due to the following conduct;
- (b) Injuring [REDACTED] in her employment, altering the position of [REDACTED] to her prejudice and discriminating between [REDACTED] and another employee of The Soup Box by;
 - i. changing [REDACTED] duties of work and no longer offering her the breakfast/cooking shifts and duties, in particular because they were given to the new employee (who was engaged for reasons including because of [REDACTED] pending parental leave) four months before [REDACTED] was due to commence parental leave,
 - ii. by increasingly reducing her hours from an average of 25 hours a week to 3 hours per week over the period of about 18 February 2011 until 1 April 2011.

On or about 8 February 2010, The Soup Box contravened section 44(1) of the FW Act by:

- (a) Failing to provide [REDACTED] with the Fair Work Information Statement before, or as soon as practicable after, [REDACTED] started employment with The Soup Box in contravention of section 125(1) of the FW Act.

On or about 8 February 2010, The Soup Box contravened section 45 of the FW Act by;

- (a) Contravening a term in a modern award, the Hospitality (General) Award 2010, being that The Soup Box failed to enter into a written agreement for the pattern of part time hours at the time of engaging [REDACTED] in contravention of clause 12.3 of the Award, and failing to agree in writing to any variation to hours in contravention of clause 12.4 of the Award.

Attachment "C" Enforceable Undertakings

The Soup Box Pty Ltd undertakes to:

1 Ensure future workplace relations compliance

- (a) Ensure that it complies at all times and in all respects with the FW Act and the Hospitality (General) Award 2010 by developing and implementing policies and processes, including issues of discrimination, to ensure ongoing compliance with Commonwealth workplace laws.

2 Commitment to the procurement of broader industry workplace relations advice and attendance at workplace relations training

- (a) Ensuring the Director/s of The Soup Box attend a training course in relation to;
 - i. adverse action under the FW Act, in particular, under section 351 – Discrimination of the FW Act.
- (b) Ensure that any training course is conducted by an accredited workplace trainer who is approved by the FWO and paid for by The Soup Box.
- (c) Provide the training course materials used in any training courses attended by the Director/s of The Soup Box to the FWO no later than 14 days before the training is to be conducted, and the training course materials must be approved by the FWO.
- (d) Provide evidence of attendance at (and payment of) any training courses so attended by the Director/s of The Soup Box to the FWO, within 7 days of the training being provided.
- (e) Provide evidence of the procurement of any industry or legal advice to the FWO within 7 days of such advice being supplied to the Director/s of The Soup Box.

3 Advise █████ of EU

Send to █████, a letter advising her of this EU.

4 Apology

Write and send to █████, within 14 days of executing this EU, a letter of apology in the form of Attachment "D" to this EU, signed by the Director/s of The Soup Box.

5 Place Workplace notices

- (a) Provide to all its employees within 28 days of executing this EU, the notice in the form of Attachment "E" (**Workplace Notice**) signed by the Director/s of The Soup Box.
- (b) Ensure the Workplace Notice is printed in at least A3 size and clearly displayed along with a copy of this EU at the business premises of The Soup Box for a period of at least 30 days:
 - i. in a location to which all staff at the business premises have access; and
 - ii. in a manner which is reasonably capable of drawing the Workplace Notice and this EU to the general attention of all staff (for example, by placement on a staff noticeboard).

6 **Public Notice**

- (a) Within 28 days of executing this document (or so soon afterwards as is available) cause notices to be placed in The Age newspaper.
- (b) The notice must:
 - i. bear the business name of The Soup Box;
 - ii. bear the business logo (if any) of The Soup Box;
 - iii. appear on either of pages 3, 5 or 7 of the relevant edition;
 - iv. measure at least 15 cm high x 7.4 cm wide; and
 - v. be in the form of Attachment "F" to this EU.

7 **Monetary Compensation**

The Soup Box will pay to [REDACTED] the amount of **\$2083.90** gross, being compensation for economic loss suffered by [REDACTED]. (The FWO acknowledges that the Soup Box paid this amount of **\$2083.90** gross to [REDACTED] prior to the execution of this EU.)

Attachment "D" Letter of Apology

[To go on The Soup Box letterhead]

[Date]

[Name and Address]

Dear Ms. [name],

Discrimination complaint

We refer to your complaint to the Fair Work Ombudsman (FWO) in April 2011, concerning the decisions of Holtham Family Pty Ltd trading as The Soup Box (**The Soup Box**) to reduce your hours as a result of your pregnancy and the decision to engage a "replacement" employee for your shifts and duties at least four months prior to your anticipated parental leave.

As you may be aware, the FWO has now finalised its investigation into your complaint. As a result of that investigation, the Soup Box has formally admitted that it contravened the anti-discrimination and workplace rights provisions of the *Fair Work Act 2009 (Cth)* (**FW Act**) by treating you unfairly, for reasons including because of your pregnancy and anticipated unpaid parental leave, by:

- (a) systematically reducing your hours;
- (b) changing your duties at work; and
- (c) discriminating between yourself and other employees, in particular, by giving shifts to the new part time employee instead of to you, causing you to suffer a financial injury; and
- (d) constructively dismissing you because of the above conduct.

The Soup Box has also formally admitted to the FWO that it contravened relevant provisions of the FW Act by failing to provide you with a Fair Work Information Statement around when you started your employment and by contravening terms of the Hospitality (General) Award 2010 by failing to enter into a written agreement with you for your pattern of part time hours and failing to agree with you in writing about the changes to your hours of work.

The Soup Box is also in the process of entering into an enforceable undertaking with the FWO reflecting these admissions and a copy of the final undertaking will be provided to you or can otherwise be accessed at www.fwo.gov.au The Soup Box appreciates that its contraventions of the discrimination provisions of the FW Act caused you unnecessary hurt and inconvenience. The Soup Box sincerely regrets and apologises for this. Furthermore, I have given a commitment to the FWO on behalf of the Soup Box that the prescribed conduct will not occur again.

Yours sincerely,

Mr Herbert Holtham

Director

Holtham Family Pty Ltd trading as The Soup Box


Attachment "E" Workplace Notice

The Office of the Fair Work Ombudsman (FWO) recently investigated allegations that Holtham Family Pty Ltd, trading as The Soup Box (The Soup Box) contravened Commonwealth workplace laws in 2011. The allegations were that The Soup Box contravened the anti-discrimination and workplace rights provisions, specifically sections 351(1) and 340(1), of the *Fair Work Act 2009* (Cth) (FW Act) by taking adverse action against a former employee for reasons including because of her pregnancy and anticipated unpaid parental leave, in particular by:

- (a) systematically reducing the former employee's hours;
- (b) changing the former employee's duties at work;
- (c) discriminating between the former employee and other employees, in particular, by giving the cooking shifts to the new part time employee (who was engaged for reasons including because of the former employee's pending parental leave) four months before the former employee was due to commence parental leave, instead of to the former employee, causing her to suffer a financial injury; and
- (d) constructively dismissing the former employee because of the above conduct.

The Soup Box has formally admitted to the FWO that it did in fact contravene Commonwealth workplace laws as set out above.

The Soup Box has also formally admitted to the FWO that it:

- (a) contravened section 44(1) of the FW Act by failing to provide  with a Fair Work Information Statement before, or as soon as practicable after, the former employee started employment with The Soup Box in contravention of section 125(1) of the FW Act; and
- (b) contravened section 45 of the FW Act by contravening terms in a modern award, the Hospitality (General) Award 2010, being that The Soup Box:
 - i. failed to enter into a written agreement for the pattern of part time hours at the time of engaging the former employee in contravention of clause 12.3 of the Award; and
 - ii. failed to agree in writing to any variation to hours in contravention of clause 12.4 of the Award.

An Enforceable Undertaking has been given by The Soup Box to the FWO to reflect these formal admissions (available at www.fwo.gov.au).

The Soup Box expresses its sincere regret and apologises for any hurt or inconvenience this action has caused. Furthermore, The Soup Box gives its commitment that such conduct will not occur again and that it will comply with Commonwealth workplace relations laws in the future.


Attachment "F" Public Notice

The Office of the Fair Work Ombudsman (FWO) recently investigated allegations that Holtham Family Pty Ltd, trading as The Soup Box (The Soup Box) contravened Commonwealth workplace laws in 2011. The allegations were that The Soup Box contravened the anti-discrimination and workplace rights provisions, specifically sections 351(1) and 340(1), of the *Fair Work Act 2009* (Cth) (FW Act) by taking adverse action against a former employee for reasons including because of her pregnancy and anticipated unpaid parental leave, in particular by:

- (a) systematically reducing the former employee's hours;
- (b) changing the former employee's duties at work;
- (c) discriminating between the former employee and other employees, in particular, by giving the cooking shifts to the new part time employee (who was engaged for reasons including because of the former employee's pending parental leave) a significant period before the former employee would have been due to commence parental leave, instead of to the former employee, causing her to suffer a financial injury; and
- (d) constructively dismissing the former employee because of the above conduct.

The Soup Box has formally admitted to the FWO that it did in fact contravene Commonwealth workplace laws as set out above.

The Soup Box has also formally admitted to the FWO that it:

- (e) contravened section 44(1) of the FW Act by failing to provide  with a Fair Work Information Statement before, or as soon as practicable after, the former employee started employment with The Soup Box in contravention of section 125(1) of the FW Act; and
- (f) contravened section 45 of the FW Act by contravening terms in a modern award, the Hospitality (General) Award 2010, being that The Soup Box:
 - i. failed to enter into a written agreement for the pattern of part time hours at the time of engaging the former employee in contravention of clause 12.3 of the Award; and
 - ii. failed to agree in writing to any variation to hours in contravention of clause 12.4 of the Award.

An Enforceable Undertaking has been given by The Soup Box to the FWO to reflect these formal admissions (available at www.fwo.gov.au).

The Soup Box expresses its sincere regret and apologises for any hurt or inconvenience this action has caused. Furthermore, The Soup Box gives its commitment that such conduct will not occur again and that it will comply with Commonwealth workplace relations laws in the future.