



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Ambeshwar Pty Ltd (ACN: 605 636 119)

and

Mr Bhavinkumar Patel (Director)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Ambeshwar Pty Ltd (ACN: 605 636 119) trading as Pizza Hut Newcastle (**the Employer**); and
 - (b) Mr Bhavinkumar Patel (**Mr Patel**) as a Director of the Employer.for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. Pizza Hut Australia (the Franchisor) was a division of Yum! Restaurants Australia Pty Limited based in Frenchs Forest, NSW, a foreign owned proprietary company first registered in Australia in 1969. Yum! Restaurants is an Australian subsidiary of Yum! Brands. Pizza Hut operated under a 100% franchised model with approximately 270 dine in restaurants and take-away outlets across Australia. Under the franchise agreement, franchisees pay 6% of their total sales to Pizza Hut.
3. On 6 September 2016, a subsidiary of Yum! Brands, Pizza Hut Restaurants Asia Pte Ltd, entered into a master franchise agreement with Pizza Pan Group Pty Ltd (Pizza Pan Group) under which Pizza Pan Group acts as the master franchisee for Pizza Hut in Australia.
4. Pizza Pan Group is owned by Allegro Funds Pty Ltd. Yum! Restaurants' existing franchise agreements have been transferred to Pizza Pan Group.
5. On 9 and 10 May 2016, six employees of the Employer visited the Newcastle FWO office alleging underpayment of minimum entitlements and non-provision pay slips.
6. In response to these allegations, the FWO commenced an audit of the Employer.
7. The Employer was registered as a company with the Australian Securities and Investments Commission on 4 May 2015. Mr Patel and Ms Tanvi Prajapati were appointed as Directors of the company on this same date. Mr Patel is the on-site store manager at Pizza Hut Newcastle.
8. Mr Patel admits and agrees that, at all material times, he:
 - (a) was the a director of the Company, having been so since 4 May 2015;
 - (b) was ultimately responsible for overall direction, management and supervision of the operations at the Employer in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment; and
 - (c) by reason of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Employer complied with its legal obligations.
9. The FWO's audit related to the period on or around 2 November 2015 to 9 May 2016 (**Audit Period**).

10. As a result of the audit, FWO determined that:

- (a) the terms and conditions of employees' employment was governed by the *Pizza Hut – SDA National Employee Relations Agreement 2009* [AE877415] (**the Agreement**);
- (b) the Agreement applied to the Employer following a transfer of business from Agreement respondent Dazmak Pty Ltd (ACN: 122 079 654) that occurred on or around 2 October 2015;
- (c) the covering award is the *Fast Food Industry Award 2010* (**the Award**);
- (d) the Employer paid employees flat hourly rates of pay that were under the minimum prescribed rate of pay in the Agreement and the covering Award;
- (e) The Employer failed to pay employees who worked in excess of their ordinary hours the overtime rates of pay as prescribed by the Agreement;
- (f) The Employer failed to pay public holiday rates of pay as prescribed by the Agreement;
- (g) The Employer did not give pay slips within one working day of employees being paid;
- (h) The Employer produced an inaccurate and misleading pay slip for an employee who requested to be given pay slips;
- (i) A total of \$19,762.74 was calculated as being underpaid by the Employer to 24 employees (**affected Employees**) during the Audit Period;
- (j) To date, the Employer has paid \$9,608.64 to affected employees. There remains \$10,154.10 outstanding which the Employer has agreed to pay to the employees via a payment plan over a maximum period of 8 months.

Contraventions

11. The FWO has determined, and the Employer admits, that the Employer contravened:

- (a) **Section 50** of the FW Act by contravening a term of an Enterprise Agreement by failing to:
 - (i) pay the rates of pay as prescribed by Clause 9 Rates of Pay of the Agreement for Adult Customer Service Attendants;
 - (ii) pay rates of pay as prescribed by Clause 10 Junior Employees of the Agreement for Junior Customer Service Attendants;
 - (iii) pay casual employees who worked overtime at the rate of time and a half for the first two hours and double time thereafter as prescribed by Clause 14 Overtime of the Agreement;
 - (iv) pay rates of pay as prescribed by Clause 18 Public Holidays of the Agreement for worked performed by employees on Public Holidays at the rate of 200%.
- (b) **Section 206** of the FW Act by failing to pay base rates of pay not less than the base rate of pay that would be payable to employees under the Award.
- (c) **Section 535** of the FW Act by failing to make and keep accurate employee records that indicate the actual hours worked by employees;
- (d) **Section 536** of the FW Act by failing to give a pay slip to employees within one working day of paying an amount to employees in relation to the performance of work.

Commencement of Undertaking

12. This Undertaking comes into effect when:

- (a) the Undertaking is executed by the Employer and Mr Patel; and
- (b) the FWO accepts the Undertaking so executed.

13. Upon the commencement of this Undertaking, the Employer and Mr Patel undertake to assume the obligations set out below.

Undertakings

14. For the purposes of section 715 of the FW Act, the Employer and Mr Patel undertake to complete the items set out in paragraphs 15 to 24 below.

Rectify the underpayments

15. Within 8 months of the execution of this Undertaking:

- (a) pay the remaining amount of \$10,154.10 less taxation to the employees who were underpaid as a result of the contraventions referred to in paragraph 11, according to the proportions and methodology set out in Attachment C;
- (b) provide to the FWO evidence of monthly instalments being made in the form of bank electronic funds transfer (EFT) receipts on the day payments are made.

FWO My account registration

16. Within 21 days of the execution of this Undertaking:

- (a) 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 coverage, through this portal;
- (b) using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My account;
- (c) provide to the FWO the 'My account' Customer Registration Number (CRN).

17. Within 21 days of the execution of this Undertaking, subscribe and provide evidence to the FWO of subscriptions, to the following:

- (a) 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>
- (b) Choose the relevant State/s and industry, selecting information updates on at least 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

18. Within 28 days of the execution of this Undertaking:

- (a) send an apology letter to all affected employees in the form of the letter set out at Attachment A; and
- (b) provide to the FWO a copy of the apology letter and proof of it being sent to the affected employees within 7 days of the apology letters being sent.

Workplace notices

19. Within 28 days of the execution of this Undertaking:

- (a) display a notice in the form of Attachment A to this Undertaking (**Workplace Notice**), in a place which is accessible by all employees of the Employer for a continuous period of 28 days; and
- (b) provide written details of the method of displaying or providing the Workplace Notice and photographic proof of its display to the FWO within 7 days of it first being displayed.

Future workplace relations compliance

20. The Employer will:

- (a) commit to ongoing compliance with applicable Commonwealth workplace laws and instruments, including the FW Act, by developing systems and processes to promote ongoing compliance with those requirements; and
- (b) provide to the FWO, within 90 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertaking in subparagraph 20(a) above designed to ensure such ongoing compliance. Without limitation, such systems and processes should ensure:
 - (i) employees receive their correct base rates of pay and entitlements to penalty and overtime rates;
 - (ii) employees are given pay slips within one working day of being paid an amount for the performance of work;
 - (iii) accurate and complete employee records are made and kept, including in relation to the taking of leave and recording leave balances; and
 - (iv) part-time employees are to be engaged in accordance with clause 7.1.2 of the Agreement and any changes to rostering are to be made in accordance of 12.5 of the Agreement.

Employee education

21. The Employer will:

- (a) issue information packs containing current versions of the FWO fact sheets listed below and a Fair Work Information Statement to all new employees on commencement with the Employer:
 - (i) Fact sheet "About the Fair Work Ombudsman"
 - (ii) Fact sheet "Employer obligations in relation to employee records and pay slips"
 - (iii) Fact Sheet "Fair Work Information Statement".

Record keeping

22. Within 28 days of the execution of this Undertaking the Employer will provide to the FWO a copy of time and wage records and a pay slip for one employee that worked during the first full pay period following the execution of this Undertaking. Such records and pay slip are to comply with Commonwealth workplace laws.

Auditing and reporting to the FWO

23. By 1 September 2017 and 1 September 2018 respectively, the Employer will:

- (a) have completed at their own expense, two audits of its compliance with Commonwealth workplace laws by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist. Specifically:
 - (i) the external accounting professional, audit specialist or employment law specialist who undertakes the audit must be approved by the FWO prior to commencement of each audit;
 - (ii) the Employer must demonstrate compliance with Commonwealth Workplace Laws and Fair Work Instruments, including but not limited to the Agreement, with particular regard to classification and employment status of employees, accuracy and consistency of Employee records, wage, leave and termination payments;
 - (iii) each audit is to be conducted upon a sample of at least 50% of all employees of the Employer for a period of six (6) full pay periods, of which at least one pay period must include a public holiday occurring in 2017 and 2018. The audit methodology must be approved by the FWO and is to be submitted for approval by 1 August 2017 and 1 August 2018 respectively;
 - (iv) the Employer must provide a copy of the audit reports to the FWO by 1 October 2017 and 1 October 2018 respectively.
- (b) make available to the FWO, if requested, the records used to conduct the audits; and
- (c) provide evidence of rectification of any contraventions disclosed by the audits to the FWO by 1 November 2017 and 1 November 2018 respectively.

Training

24. Within 5 months of the commencement of this Undertaking the Employer will:

- (a) at its own expense, organise and ensure workplace relations training for Mr Patel and all persons engaged by the Employer who have managerial responsibility for human resources, recruitment and/or payroll functions. Specifically, the training will include at a minimum, training and information in respect of:
 - (i) the minimum entitlements of Employees under applicable Fair Work Instruments, including but not limited to the Agreement, and the FW Act;
 - (ii) employer obligations with respect to pay slips and record keeping;
 - (iii) assistance and information available for employers through the FWO;
 - (iv) the general protection provisions in the FW Act; and
 - (v) accessorial liability under the FW Act.

- (b) training is to be conducted by an accredited workplace trainer; and
- (c) within 7 days of the training being completed, the Employer will provide to the FWO evidence of the persons who attended the training (including name and position of each attendee and date(s) when training was undertaken) and a copy of the training materials that were used during the training.

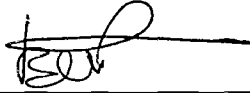
Acknowledgements

25. The Employer and Mr Patel acknowledge that:

- (a) 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);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) 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;
- (d) 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 the Employer;
- (e) 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;
- (f) if the FWO considers that the Employer 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;
- (g) consistent with section 715(3) of the FW Act, the Employer may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Ambeshwar Pty Ltd (ACN: 605 636 119) trading as Pizza Hut Newcastle in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

Bhavinkumar Patel

(Name of director)

(Name of director/company secretary)

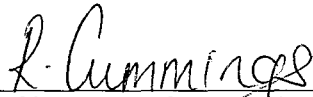
29/6/17

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

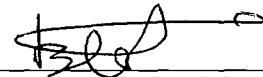
(Signature of witness)

Rebecca Cummings

(Name of witness)

(Name of witness)

EXECUTED by Mr Bhavinkumar Patel:



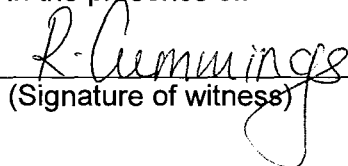
(Signature of Bhavinkumar Patel)

29/6/17

(Date)

in the presence of:

in the presence of:



(Signature of witness)

Rebecca Cummings

(Name of witness)

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



Steve Ronson - Executive Director - Dispute Resolution and Compliance

03/07/2017

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

LISA-MARIE OLIVER

(Name of witness)

Attachment A – Form of Workplace Notice

Contravention of *Fair Work Act 2009* by Ambeshwar Pty Ltd trading as Pizza Hut Newcastle.

We refer to the recent audit of Ambeshwar Pty Ltd trading as Pizza Hut Newcastle conducted by the Office of the Fair Work Ombudsman (FWO) following requests for assistance from employees alleging underpayment of hourly wage rates and not being given pay slips.

This audit focussed on the compliance of Ambeshwar Pty Ltd with the *Fair Work Act 2009* (FW Act).

Ambeshwar Pty Ltd operates a Pizza Hut store located at 684 Hunter Street, Newcastle, NSW 2300. No previous contraventions of Commonwealth workplace laws have been determined against Ambeshwar Pty Ltd.

The FWO determined that Ambeshwar Pty Ltd had contravened the following:

- (a) Section 50 of the FW Act by contravening a term of an Enterprise Agreement by failing to:
 - (i) pay the rates of pay as prescribed by Clause 9 Rates of Pay of the *Pizza Hut – SDA National Employee Relations Agreement 2009* for Adult Customer Service Attendants;
 - (ii) pay rates of pay as prescribed by Clause 10 Junior Employees of the Agreement for Junior Customer Service Attendants;
 - (iii) pay casual employees that worked in excess of hours prescribed in sub clause 14.3 of the Agreement, time and a half for the first two hours and double time thereafter;
 - (iv) pay rates of pay as prescribed by Clause 18 Public Holidays of the Agreement for worked performed by employees on Public Holidays at the rate of 200%.
- (b) Section 206 of the FW Act by paying rates of pay that were less than the Award rate of pay and failing to:
 - (i) Pay rates in accordance with Clause 9 Rates of Pay of the Agreement that prescribes that the employer will be required to pay any additional amounts required to meet the applicable modern award minimum base rate under s.206 of the *Fair Work Act 2009*.
- (c) Section 535 of the FW Act by failing to make and keep accurate employee records that indicate the actual hours worked by employees;
- (d) Section 536 of the FW Act by failing to give a pay slip to employees within 1 working day of paying an amount to employees in relation to the performance of work.

As a result of the monetary contraventions identified above, Ambeshwar Pty Ltd is required to pay the amount of \$19,762.74 less taxation to affected employees who were underpaid.

Ambeshwar Pty Ltd has formally admitted to the 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.

Ambeshwar Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Ambeshwar Pty Ltd 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.

If you worked for Ambeshwar Pty Ltd and have queries or questions relating to your employment, please contact **Bhavinkumar Patel**

Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment B – Letter of Apology

<Date>

<Name>

<Employee Address>

Dear<Name>

I am writing to apologise on behalf of Ambeshwar Pty Ltd trading as Pizza Hut Newcastle for non-compliance with Commonwealth workplace laws.

On 9 and 10 May 2016, 6 employees visited the Newcastle office of the Fair Work Ombudsman and made allegations of not being paid their minimum rates of pay and not being given pay slips by Ambeshwar Pty Ltd.

In response to these allegations, the FWO commenced an audit of Ambeshwar Pty Ltd to determine if the business had contravened the Pizza Hut – SDA National Employee Relations Agreement 2009 Enterprise Agreement and/or the FW Act.

As a result of the Inquiry, the FWO determined Ambeshwar Pty Ltd, had contravened the following Commonwealth workplace laws:

- (a) Section 50 of the FW Act by contravening a term of an Enterprise Agreement by failing to:
 - (i) pay the rates of pay as prescribed by Clause 9 Rates of Pay of the Agreement for Adult Customer Service Attendants;
 - (ii) pay rates of pay as prescribed by Clause 10 Junior Employees of the Agreement for Junior Customer Service Attendants;
 - (iii) pay casual employees that worked in excess of hours prescribed in sub clause 14.3 of the Agreement, time and a half for the first two hours and double time thereafter;
 - (iv) pay rates of pay as prescribed by Clause 18 Public Holidays of the Agreement for worked performed by employees on Public Holidays at the rate of 200%.
- (b) Section 206 of the FW Act by paying rates of pay that were less than the Award rate of pay and failing to:
 - (i) Pay rates in accordance with Clause 9 Rates of Pay of the Agreement that prescribes that the employer will be required to pay any additional amounts required to meet the applicable modern award minimum base rate under s.206 of the Fair Work Act 2009.
- (c) Section 535 of the FW Act by failing to make and keep accurate employee records that indicate the actual hours worked by employees;
- (d) Section 536 of the FW Act by failing to give a pay slip to employees within 1 working day of paying an amount to employees in relation to the performance employees

Regrettably, the investigation determined that you were affected by the above Contraventions and are entitled to \$XXX.XX gross. Ambeshwar Pty Ltd is taking steps to remedy the Contraventions.

Ambeshwar Pty Ltd has formally admitted to the FWO that Ambeshwar Pty Ltd 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 is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking Ambeshwar Pty Ltd have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Ambeshwar Pty Ltd expresses their sincere regret and apologises to you for failing to comply with its lawful obligations.

Should you have any questions, please contact **Mr Bhavinkumar Patel**

Yours sincerely

<signature>

<insert name>

Director

Attachment C: Ambeshwar Pty Ltd Payment Plan

			Payment Month							
			Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18
Payment amount per month			\$1,270.00	\$1,270.00	\$1,270.00	\$1,270.00	\$1,270.00	\$1,270.00	\$1,270.00	\$1,264.10
Employee Name	Amount Underpaid to Employee	Amount paid as at end of May 2017	Balance outstanding as at end of May 2017	Monthly payment amount breakdown per employee						
	\$1,390.04	\$1,016.00	\$374.04	\$254.00	\$120.04					
	\$1,752.25	\$1,016.00	\$736.25	\$254.00	\$287.49	\$194.76				
	\$3,590.00	\$1,016.00	\$2,574.00	\$254.00	\$287.49	\$358.41	\$423.33	\$423.33	\$423.33	\$404.10
	\$3,710.71	\$1,016.00	\$2,694.71	\$254.00	\$287.49	\$358.41	\$423.33	\$423.33	\$423.33	\$432.95
	\$4,791.10	\$1,016.00	\$3,775.10	\$254.00	\$287.49	\$358.41	\$423.33	\$423.33	\$423.33	\$432.95
Total			\$10,154.10							