

Crust pizza franchisee allegedly discriminated against migrant workers

23 October 2018

The Fair Work Ombudsman has commenced legal action against the operators of a Crust Gourmet Pizza franchise outlet in Hobart, alleging they discriminated against four overseas workers by paying them much less than Australian employees.

Facing the Federal Circuit Court is QHA Foods Pty Ltd, which operates the Crust outlet on Elizabeth Street in North Hobart. Also facing Court are two of the company's directors and shareholders, Anandh Kumarasamy and Haridas Raghuram, who were involved in managing the outlet.

The Fair Work Ombudsman alleges QHA Foods, Mr Kumarasamy and Mr Raghuram committed several breaches of workplace laws, including the provision of the Fair Work Act that makes it unlawful to discriminate against employees on the basis of their nationality.

The discrimination allegation relates to three Bangladeshi nationals and one Indian national who were allegedly underpaid a total of \$9,926 for work performed at the Crust Hobart outlet between January and July 2016. Mr Kumarasamy and Mr Raghuram are also Indian migrants.

The four workers, who were in Australia on student visas at the time, performed duties including making and garnishing pizzas, delivery driving, serving customers and cleaning.

It is alleged the four workers were paid a flat hourly rate of \$12 for all hours worked, plus \$1 per pizza delivery, resulting in significant underpayment of the ordinary hourly rates, casual and evening loadings and penalty rates for weekend and public holiday work they were entitled to under the Fast Food Industry Award.

It is also alleged that the four workers were paid in cash and were not provided with pay slips, in breach of workplace laws.

In contrast, it is alleged that Australian employees at the Crust Pizza outlet were paid higher minimum rates of pay and penalty rates, including being paid penalty rates for weekend and public holiday work and a cents-per-kilometre rate for deliveries.

Six of the adult Australian employees were paid ordinary rates of more than \$18 an hour and three were paid penalty rates of up to \$46.31 on public holidays. The Australian workers were allegedly also paid into their bank accounts and provided with pay slips.

However, it is alleged that the incorrect application of some provisions in the Award resulted in 10 Australian workers being underpaid a total of \$6,252. The foreign workers and all Australian workers have been back-paid in full.

QHA Foods, Mr Kumarasamy and Mr Raghuram allegedly also breached workplace laws during the investigation by providing inspectors with records that had been altered by the deletion of the record of hours worked by the four overseas workers.

Fair Work Ombudsman Sandra Parker says the regulator investigated after receiving a request for assistance from an overseas worker.

"We allege that four migrant workers were paid significantly less than other staff at a Crust pizza franchisee because they were not Australian. Migrant workers have the same rights and entitlements as Australian workers and must be paid according to our national awards," Ms Parker said.

Ms Parker said it was concerning that the case again involved operators allegedly breaching the workplace rights of an employee from the same cultural background.

"Employers should note that we are prioritising matters involving requests for assistance from migrant workers as they can be particularly vulnerable in the workplace and reluctant to complain. We encourage any workers with concerns about their wages or entitlements to contact the Fair Work Ombudsman," Ms Parker said.

QHA Foods Pty Ltd faces maximum penalties of up to \$54,000 per breach and Mr Kumarasamy, Mr Raghuram face penalties of up to \$10,800 per breach.

The Fair Work Ombudsman is also seeking a Court Order requiring QHA Foods to commission workplace relations training for managerial staff.

A directions hearing is listed in the Federal Circuit Court in Hobart on November 23.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

It is the second time the Fair Work Ombudsman has taken legal action against an employer for allegedly discriminating against employees on the basis of their nationality, with the first matter also relating to migrant workers in Tasmania (see [More than \\$200k in penalties in FWO's first racial discrimination case](https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/may-2018/20180528-yenida-penalty) (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/may-2018/20180528-yenida-penalty>)).

It is also the second time the Fair Work Ombudsman has commenced legal action against the operators of a Crust outlet. Last week, the Fair Work Ombudsman announced it had commenced legal action against a Crust franchisee in Melbourne, alleging it underpaid seven employees a total of \$35,725 (see [FWO takes Crust pizza franchisee to Court](https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/october-2018/20181004-desire-food-litigation-mr) (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/october-2018/20181004-desire-food-litigation-mr>)). This matter is before the Federal Circuit Court.

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Media inquiries:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (<mailto:ryan.pedler@fwo.gov.au>)

Page reference No: 8721

Contact us

Fair Work Online: www.fairwork.gov.au

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