

\$146,000 in penalties imposed in precedent-setting Court judgment against Yogurberry chain

3 November 2016

The master franchisor of the Yogurberry frozen yoghurt chain in Australia has been penalised over the exploitation of four Korean workers at one of its Sydney outlets in a precedent-setting Federal Court judgment.

The judgment – which includes \$146,000 in penalties and an order for a national audit of the Yogurberry chain – is the first time the Fair Work Ombudsman has secured penalties against a master franchisor for being an accessory to the exploitative practices of one of its associated companies.

Significantly, almost half of the total penalties were imposed against companies in the Yogurberry Group for being accessories to the exploitation of the workers and the national audit requires the master franchisor to take extensive steps to ensure future compliance.

The four exploited workers were paid as little as \$8 an hour while working at a Yogurberry outlet at the World Square Shopping Centre in the Sydney CBD, leading to total underpayments of \$17,827.

They were in Australia on 417 working holiday visas at the time and spoke little English.

Justice Geoffrey Flick found that the head Australian company and master franchisor of the Yogurberry chain, YBF Australia Pty Ltd, was directly involved in establishing pay rates and other practices at the store – and that the exploitation occurred despite prior warnings from the Fair Work Ombudsman.

Justice Flick also found the Yogurberry master franchisor and its associated companies had deliberately not disclosed information about their financial status to the Fair Work Ombudsman.

Justice Flick found that this was for the purpose of “withholding from scrutiny their true financial position, potentially including the extent to which their contraventions have improved their financial position”.

Fair Work Ombudsman Natalie James says the Court’s decision sends a strong signal to franchisors that they can be held accountable for exploitation in their networks, even if they use corporate structures to try to legally hold themselves at arms-length from practices in their outlets.

“The result of this matter sends a clear warning to the operators of franchise networks in Australia that refusing to take responsibility for addressing exploitation in their networks is not a viable option,” Ms James said.

“If you operate a company in Australia and your business model involves exploitation of vulnerable workers, you can expect to face harsh scrutiny and serious punishment.

“Yogurberry finds itself in this situation - penalised and publicly shamed - because it ignored our clear warnings that it needed to address exploitation occurring in its stores.

“The outcome of this matter, along with other recent scandals, clearly illustrates the consequences for companies who fail to meet their legal obligations and community expectations in relation to treatment of vulnerable workers in their networks.”

The four Korean workers, two of them aged just 19 and 20 at the time, were underpaid between July, 2014 and May last year.

The three companies penalised in Court are all part of the Yogurberry Group of companies operated by the same family:

- Yogurberry World Square Pty Ltd, which directly employed the workers, was penalised \$75,000,
- YBF Australia Pty Ltd was penalised \$25,000, and
- The Yogurberry Group’s payroll company, CL Group Pty Ltd, was penalised \$35,000.

In addition, YBF Australia part-owner Soon Ok Oh was penalised \$11,000 for her involvement in exploiting the workers.

In addition to the penalties, the Fair Work Ombudsman secured a Court Order requiring the Yogurberry Group of companies to commission a professional external audit of all Yogurberry stores in Australia within the next two months and to rectify any underpayments discovered.

The Court also ordered the companies and Ms Oh to commission workplace relations training for managers and to pay the Fair Work Ombudsman's legal costs, to be quantified at a later date.

The four Korean workers were paid just \$8 an hour for up to six hours training, before being paid flat rates as low as \$11 an hour.

Under the Fast Food Industry Award, they should have been paid between \$14.82 and \$18.52 an hour for ordinary hours.

The workers also did not receive a special clothing allowance or superannuation entitlements and three had unlawful deductions made from their wages.

Workplace laws relating to minimum shifts and classifications were also contravened and there were serious contraventions of record-keeping and pay-slip laws. Individual underpayments ranged from \$1926 to \$6380.

The employees have now been back-paid in full.

The Fair Work Ombudsman investigated after an employee lodged a request for assistance – and the involvement of overseas workers and the fact that YBF Australia had previously been put on notice of the need to ensure employees were paid their lawful minimum entitlements were significant factors in the decision to commence legal action.

The Fair Work Ombudsman has investigated a number of underpayment allegations dating back to 2013.

It has previously issued YBF Australia with a Letter of Caution and two Infringement Notices (on-the-spot fines) and requested the company back-pay a number of employees.

During the Fair Work Ombudsman's latest investigation, the Yogurberry companies advised that wage records were not available for the relevant period because they were "missing due to the change of the internal accountant".

However, Justice Flick found the Yogurberry companies had deliberately refrained from keeping records to frustrate any attempts by the Fair Work Ombudsman to monitor its payment practices and for "the objective of gaining personal financial benefit by cloaking the quantum of payments made to employees from scrutiny".

Justice Flick said that the conduct of the companies leads to the conclusion that they "simply regard the prospect of a penalty being imposed as the 'cost of doing business'."

"That approach to their business undertakings should be firmly rejected," Justice Flick said.

"Warnings previously given by the office of the Fair Work Ombudsman have not been met with any apparent change in attitude."

Ms James says that in an environment of increasing scrutiny, it is crucial that franchise operations are proactive about ensuring they have systems in place to promote compliance in their networks.

Ms James says the Fair Work Ombudsman is keen to work with businesses that want to make compliance with workplace laws part of their brand.

"With the Government proposing new laws to capture franchisors that fail to deal with exploitation of workers by their franchisees, the Fair Work Ombudsman would be pleased to work with any franchise ready to take action to show it takes compliance with workplace laws throughout its network seriously," she said.

In a recent speech to the Franchising Council of Australia's national convention, Ms James highlighted that in an environment of increasing scrutiny of franchises, McDonald's is an example of a company staying "ahead of the curve" by publicly demonstrating its strong commitment to compliance through a Compliance Partnership with the Fair Work Ombudsman.

The speech is available [on the speeches page \(www.fairwork.gov.au/about-us/news-and-media-releases/speeches/speeches\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/speeches/speeches) .

Other franchises to enter into Compliance Partnerships with the Fair Work Ombudsman include McDonald's, La Porchetta, Dominos, JB Hifi, the Coffee Club and Breadtop.

The Fair Work Ombudsman is also currently in discussions with a number of other large franchisors about arrangements to improve their systems to encourage compliance.

Ms James said her Agency is also committed to improving compliance in the hospitality industry.

The Fair Work Ombudsman's three-year National Hospitality Industry Campaign, finalised earlier this year, resulted in more than \$582,000 being recovered for underpaid employees at take-away food outlets across Australia.

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An interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

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