

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

KPG Au Group Pty Ltd (ACN: 161 045 147)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) KPG Au Group Pty Ltd (ACN: 161 045 147) (the **Company**)for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Company operates a Korean BBQ restaurant located at Level 1, 396 Pitt Street Sydney New South Wales (NSW).
3. Three employees requested assistance from the FWO on 05 November 2014.
4. One employee withdrew her request for assistance on 24 February 2015.
5. The Company employed the two (2) employees (listed in **Attachment D**) for the period between 15 December 2013 and 29 June 2014.
6. The employees were employed as waitresses on a casual basis. Their employment was covered by the *Restaurant Industry Award 2010* [MA000119] (the **Restaurant Award**).

Contraventions

7. The FWO has determined, and the Company admits, that:
 - (a) The Company contravened section 45 of the FW Act by failing to comply with the following provisions of the Restaurant Award;
 - (i) clause 34.1 by failing to pay the employees penalty rates;
 - (b) The Company contravened section 536 (1) of the FW Act by failing to give a pay slip to its employees within one working day of paying an amount to the employee in relation to the performance of work.

Commencement of Undertaking

8. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by the Company; and
 - (b) the FWO accepts the Undertaking so executed.
9. Upon the commencement of this Undertaking (the **Commencement Date**), the Company undertake to assume the obligations set out below.

Undertakings

10. For the purposes of section 715 of the FW Act:

Rectify Underpayments

- (a) The Company undertakes to pay the amount of \$1,304.12 less taxation to the employees who were underpaid as a result of the Contraventions referred to in paragraph 7 (**Affected Employees**), according to the proportions set out in **Attachment C**, within 28 days of the execution of the Commencement Date;
- (b) The Company undertakes that, in relation to any future requests for assistance

received by the FWO relating to contraventions of Commonwealth workplace laws or instruments, the Company will:

- (i) use all reasonable endeavours to resolve the request, including rectifying any identified contraventions, within 60 days of being notified by the FWO of the request for assistance;
- (ii) where a request for assistance has been resolved, provide the FWO with evidence of resolution and
- (iii) where a request for assistance has not been resolved by agreement with the requester within the period specified in subparagraph 15(d)(i), report to the FWO about the nature of the matter and the steps taken to try to resolve it;

Workplace Notices

(c) the Company undertakes to:

- (i) within 28 days of the Commencement Date, place a notice (**Workplace Notice**) within the restaurant in a location which is accessible to all persons employed at the restaurant in the terms set out in Attachment A in both English and Korean, such notice to remain in place for a total period of 7 consecutive days; and
- (ii) provide a copy of the Workplace Notice and photographic evidence of its display to the FWO within 7 days of the display of the notice;

Apology

(d) the Company undertakes to:

- (i) within 7 days of the Commencement Date, send an apology to each of their affected Employees in English and Korean the terms set out in Attachment B, signed on behalf of the company (**Apology**); and
- (ii) provide a copy of each Apology sent by the company to the FWO within 7 days of sending such Apology;

FWO My Account Registration

(e) the Company undertakes to:

- (i) within 7 days of the Commencement Date, register with the FWO 'My Account' portal at www.fairwork.gov.au and complete the profile, minimum pay rates and Award options;
- (ii) within 14 days of the Commencement Date, provide to the FWO their respective 'My Account' registration numbers; and
- (iii) within 21 days of the Commencement Date, demonstrate to a FWO Fair Work Inspector via www.fairwork.gov.au 'My Account' knowledge of the current Restaurant Award minimum and penalty rates of pay;

Future Workplace Relations Compliance

(f) the Company undertakes to:

- (i) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Restaurant Award;
- (ii) implement systems and processes to ensure ongoing compliance with the obligations referred to in paragraph 15(j)(i) above, including obligations relating to rates of pay, loadings, penalties, taxation, superannuation and record keeping; and

- (iii) provide to the FWO, within 28 days of the Commencement Date, details of systems and processes implemented in satisfaction of the undertakings in paragraphs 10 (h)(i) and (ii) above;

Self-audits and Reporting

(g) the Company undertakes:

- (i) to have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at the Company's expense, an audit (**Audit**) of compliance with Commonwealth workplace laws and instruments, including but not limited to the FW Act and the Restaurant Award, in respect of pay, conditions and record keeping in relation to all of the relevant Company's employees, according to the following schedule:
 - i. an Audit of the first complete pay cycle following 1 July 2015, which is to be finalised within 28 days of the last day of the pay cycle;
 - ii. an Audit of the first complete pay cycle following 1 January 2016, which is to be finalised within 28 days of the last day of the pay cycle;
- (ii) within 7 days of the completion of each Audit, to provide the FWO with details of the methodology used to conduct the Audit and a copy of the certified audit report;
- (iii) in the event that an Audit discloses contraventions of any applicable Commonwealth workplace laws or instruments, to rectify all such contraventions within 14 days of receipt of the Audit results; and
- (iv) to provide evidence of rectification of all contraventions disclosed by an Audit to the FWO within 14 days of rectification;

Workplace Relations Training

(h) the Company undertakes to:

- i. implement within 90 days of the Commencement Date, a training program (**Training**) so that all persons responsible, either directly or indirectly, for the relevant Company's compliance with Commonwealth workplace laws and instruments, including [REDACTED] and the company Director, are made aware of the Company's obligations under Commonwealth workplace laws and instruments;
- ii. provide training material to participants in the Training including material on:
 - (i) compliance with the FW Act, Fair Work Regulations and the Restaurant Award;
 - (ii) employer obligations in respect to record keeping and pay slips;
 - (iii) options available to persons to make complaints and FWO contact information; and
 - (iv) how to access FWO resources to calculate rates of pay;
- iii. ensure the Training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by the Company;
- iv. provide the training materials to be used in the Training to the FWO no later than 7 days before the Training is to be conducted;
- v. within 7 days of the Training being conducted, provide the FWO with evidence of attendance at the Training (including the name and position of all attendees and the date on which the Training was attended); and

- vi. for a period of 18 months following the Commencement Date, ensure that Training is conducted in the manner prescribed by paragraphs 10(j)(i) to (v) above in relation to any person who acquires responsibilities that include human resource, recruitment or payroll functions for or on behalf of the Company, within 28 days of the person acquiring such responsibilities.

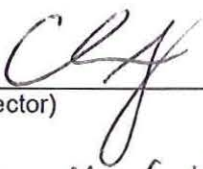
Acknowledgements

11. The Company acknowledges 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 law or instruments by either or both of the Companies;
- (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 Company has contravened any of the terms of 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) FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against the Company in relation to any future contraventions of Commonwealth workplace laws;
- (h) the Company must not, and must ensure that their respective officers, agents and employees do not, make any statements, orally or in writing or otherwise, which convey or imply anything inconsistent with the admissions and acknowledgements contained in this Undertaking; and
- (i) consistent with section 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by KPG Au Group Pty Ltd (ACN: 161 045 147) in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

CHRIS H GUON
(Name of director)

12/03/2015
(Date)

in the presence of:


(Signature of witness)


Christine Lewis
(Name of witness)


(Signature of director/company secretary)

CHRIS H GUON
(Name of director/company secretary)


12/03/2015
(Date)

in the presence of:



(Signature of witness)

Christine Lewis
(Name of witness)

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


Steven Ronson
Executive Director
Dispute Resolution & Compliance
Operations Group
Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

17 MARCH 2015
(Date)

PIA MORGAN
(Name of Witness)

Attachment A – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* (FW Act) and the *Restaurant Industry Award 2010* (Restaurant Award) by KPG Au Group Pty Ltd (the Company)

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that the Company contravened the FW Act and the Restaurant Award.

The Company operates a franchised Korean BBQ restaurant in Sydney CBD. The Company employed workers working at the restaurant. No previous contraventions of Commonwealth workplace laws have been determined against the Company.

The FWO has found that the Company contravened the FW Act and the Restaurant Award by:

1. failing to pay employees penalty rates;
2. failing to issue payslips within one day of payment.

The Company has formally admitted to the FWO that these contraventions occurred and have entered into an Enforceable Undertaking with the FWO (available at www.fwo.gov.au) committing to a number of measures to remedy the contraventions and prevent them from occurring in the future, including rectifying the underpayments to affected employees and changing workplace practices.

The Company expresses their sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore, the Company gives a commitment that such conduct will not occur again and that they will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for the Company and have queries or questions relating to your employment, please contact [redacted] in the first instance on telephone [redacted]. 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

address

Day Month Year

Dear ,

I am writing to apologise on behalf of KPG Au Group Pty Ltd (the **Company**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Company had contravened the *Fair Work Act 2009* (FW Act) and the *Restaurant Industry Award 2010* (the **Restaurant Award**).

The FWO has found that the Company contravened the FW Act and the Restaurant Award by:

1. failing to pay employees penalty rates;
2. failing to issue payslips within one day of payment.

Regrettably, the investigation determined that you were affected by the above contraventions.

The Company is taking steps to remedy the contraventions, including paying \$ (less taxation) that you have been underpaid.

The Company has formally admitted to the FWO that the Company 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 the Company has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.



The Company expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact _____ in the first instance on telephone _____ or by email _____.

Yours sincerely,

Mr Chris Guon
Director – KPG Au Group Pty Ltd

Attachment C – Employees and amounts owed

Employees	Amount Owed	Period of engagement
	\$642.36	15/12/2013 to 29/06/2014
	\$661.76	15/12/2013 to 29/06/2014

