

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Marriott Airport Concessions Pty Ltd (ACN 054 578 273)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Marriott Airport Concessions Pty Limited (ACN 054 578 273) (**Company**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The company is in the business of operating food, beverage and retail services for travellers through outlets located at Newcastle Airport, Williamtown New South Wales and it engages employees to assist in offering these services. The outlets operated by the Company at Newcastle Airport trade under the names 'Sports Bar and Bistro' (**Sports Bar**) and 'Hungry Jacks' (**Hungry Jacks**).
3. The Sports Bar is a sports-themed bar, offering alcoholic and non-alcoholic beverages and what is described as a 'casual food menu', with a designated seating area for the consumption of beverages and food services.
4. Hungry Jacks offers a range of fast food items packaged for takeaway consumption.
5. From 1 July 2010, the Company was bound by the terms of the *Restaurant Industry Award 2010* (MA000119) (**Restaurant Award**) with respect to casual employees working in the Sports Bar and by the *Fast Food Industry Award 2010* (MA000003) (**Fast Food Award**) with respect to casual employees working in Hungry Jacks.
6. On 4 December 2013 the FWO received a complaint from a former employee (**Complainant**) alleging that she was paid a flat rate of pay for all hours of work and did not receive casual loadings and weekend and public holiday penalty rates.
7. The FWO's investigation of the complaint established that:
 - (a) the Complainant was engaged by the Company at the Sports Bar on a casual basis from 15 November 2010 until 15 November 2013;
 - (b) the Complainant was employed to perform duties that included customer service, dispensing liquor and other beverages, receipt of monies, general waiting duties and general cleaning in the designated 'front of house' area;
 - (c) the Complainant's employment was covered by the Restaurant Award;
 - (d) the Complainant's classification under the Restaurant Award was food and beverage attendant grade 2;
 - (e) the Complainant was entitled to be paid the following minimum rates of pay during her employment; and

Period Commencing	Casual hourly rate	Saturday	Sunday	Public Holiday	Early work
01/07/2010	\$23.08	\$29.48	\$33.66	\$42.83	\$24.61
01/07/2011	\$23.04	\$29.02	\$33.28	\$43.52	\$24.87
01/07/2012	\$22.89	\$28.39	\$32.74	\$44.04	\$25.06
01/07/2013	\$22.66	\$27.67	\$32.08	\$44.45	\$25.20

 - (f) the Complainant was paid at a flat rate of \$20.48 per hour for all hours worked from 15 November 2010 to 11 January 2013 and a flat rate of \$22.05 per hour from 12 January 2013 to 15 November 2013 for all hours of work.
8. The Company identified the total underpayment owed to the Complainant during the period of her employment to be \$15,596.97.

9. Following a further investigation, the FWO determined that the Company failed to pay all casual employees who had performed work at the Sports Bar or Hungry Jacks:
 - (a) casual loading for every hour they worked; and
 - (b) the applicable penalty rates for work performed on Saturdays, Sundays and public holidays.
10. The contraventions arose because the Company paid its casual employees pursuant to the *Marriott Airport Concessions Pty Ltd Certified Agreement 2006 (Agreement)*, which only applies to the Company's full time and part time employees, not casual employees.
11. On 7 May 2014, the FWO issued the Company with a Contravention Letter in relation to the contraventions described in paragraph 9 and required the Company to calculate the amount of the underpayments owing to its casual employees.
12. The Company subsequently determined that it had underpaid 123 employees (**Employees**) a total of \$472,258.39 gross in the period 1 July 2010 to 10 January 2014, as set out in Attachment A to this Undertaking.
13. The Company has at all times co-operated with the FWO and participated fully in the FWO's investigation.

Contraventions

14. The FWO has determined, and the Company admits, that the Company contravened section 45 of the FW Act by failing to comply with the following provisions of the Restaurant Award with respect to its casual employees engaged at the Sports Bar:
 - (a) Clause A.6.4 by failing to pay the employees a casual loading;
 - (b) Clause A.6.4 by failing to pay the employees the applicable penalty rate for hours worked on Saturdays;
 - (c) Clause A.6.4 by failing to pay the employees the applicable penalty rate for hours worked on Sundays; and
 - (d) Clause A.6.4 by failing to pay the employees the applicable penalty rate for hours worked on public holidays.
15. The FWO has also determined, and the Company admits, that the Company contravened section 45 of the FW Act by failing to comply with the following provisions of the Fast Food Award with respect to its casual employees engaged at Hungry Jacks:
 - (a) Clause A.6.4 by failing to pay the employees a casual loading;
 - (b) Clause A.6.4 by failing to pay the employees the applicable penalty rate for work performed on Saturdays;
 - (c) Clause A.6.4 by failing to pay the employees the applicable penalty rate for work performed on Saturdays; and
 - (d) Clause A.5.4 by failing to pay the employees the applicable penalty rate for work performed on public holidays.
 - (e) Clause 19.2 by failing to pay the employees an allowance to launder a special uniform.

Commencement of Undertaking

16. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by the Company; and
 - (b) the FWO accepts the Undertaking so executed.

17. Upon the commencement of this Undertaking, the Company undertakes to assume the obligations set out below in paragraph.

Undertakings

18. For the purposes of section 715 of the FW Act, the Company undertakes to:

Rectification of underpayments

- (a) pay the amounts owed to each employee as set out in Attachment A in the manner prescribed in Attachment B;
- (b) within 7 days of making a payment in compliance with subparagraph 18(a), provide evidence to the FWO that the payment was made;
- (c) use reasonable efforts to locate each employee listed in Attachment A for the purpose of complying with the undertaking in subparagraphs 18(a) and 18(b), including but not limited to:
 - (i) taking steps to ascertain the current residential address, email address, mobile telephone number and/or social media profiles of each employee; and
 - (ii) contacting each employee, using any current or last-known contact details, to advise them they are owed money and explain the process for payment of the money owed to them;
- (d) if an employee listed in Attachment A cannot be located by the date when a payment to that employee falls due according to Attachment B:
 - (i) on each of the following dates, pay to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act the amounts that were required to be paid to that employee within the preceding 6 month period but which have not been paid:
 - A. 30 April 2015;
 - B. 31 October 2015;
 - C. 30 April 2016;
 - D. 31 October 2016; and
 - E. 30 April 2017; and
 - (ii) within 7 days of each of the dates referred to in subparagraph 18(d)(i) above:
 - A. provide a report to the FWO on the attempts that were taken to locate each employee referred to in this subclause 18(d) together with details of the amount owed to them and their last known contact details; and
 - B. provide evidence to the FWO that the payments required by this subclause 18(d) were made.

Future workplace relations compliance

- (e) ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Restaurant Award, the Fast Food Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
- (f) provide to the FWO, within 28 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertakings in paragraph 18(e) above designed to ensure such ongoing compliance;

Workplace relations training

- (g) within three months of the execution of this Undertaking, organise and ensure training of all persons engaged by the Company who have managerial responsibility for human resources, recruitment or payroll functions (**Training**);
- (h) ensure the Training relates to compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act, the Restaurant Award and the Fast Food Award;
- (i) 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;
- (j) provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted;
- (k) provide evidence of attendance at the Training to the FWO within seven days of the Training being provided (including the name and position of all attendees and the date on which the Training was attended);
- (l) for a period of three years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 18(g) to 18(k) above in relation to any new or existing employees who, after the commencement of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of the Company;

Audit Activity

- (m) perform, or cause to have performed by a Certified Practising Accountant or employment law specialist, audits of the Company's compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the Restaurant Award, the Fast Food Award and the FW Act, in respect of the pay and conditions of at least 30% of all casual employees of the Company (**Audit**), for each year in a three year period as follows:
 - (i) the Audit for the calendar year 2014 is to be finalised by 28 February 2015;
 - (ii) the Audit for the calendar year 2015 is to be finalised by 31 January 2016; and
 - (iii) the Audit for the calendar year 2016 is to be finalised by 31 January 2017;
- (n) provide to the FWO, within 14 days of the completion of each Audit, details of the methodology used to conduct the Audit and the outcomes of the Audit certified as correct by a Certified Practising Accountant or employment law specialist;
- (o) in the event an Audit discloses contraventions of any applicable Commonwealth workplace laws and/or instruments, rectify all such contraventions within 14 days of the Audit being provided to the Company, including any and all underpayments to employees;
- (p) provide evidence of rectification of any contraventions disclosed by an Audit to the FWO within 14 days of rectification;

Apology

- (q) send, to each of the employees listed in Attachment A within 14 days of the execution of this Undertaking, a letter apologising for the Contraventions (**Apology Letters**) in the form of Attachment C to this Undertaking;
- (r) within seven days of the Apology Letters being sent, provide a copy of each Apology Letter to the FWO and proof of it being sent.

Workplace notices

- (r) cause to be displayed, within 28 days of the execution of this Undertaking, a notice in the form of Attachment D to this Undertaking (**Workplace Notice**);

- (i) for a period of at least 28 days in locations owned or controlled by Marriott Airport Concessions Pty Limited at which all persons engaged by Marriott Airport Concessions Pty Limited have access; and
- (ii) in a manner which is reasonably capable of drawing the notice to the general attention of all persons engaged by Marriott Airport Concessions Pty Limited (for example, by placement on a staff noticeboard at each workplace in at least A3 size);
- (s) provide written details of the method/s of displaying or providing the Workplace Notice, and photographic proof of their display, to the FWO within seven days of it first being displayed;

Acknowledgements

19. 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 relations obligations by the Company;
- (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) 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;
- (h) no assertion or matter in this Undertaking may be relied upon as an admission by any other person to support a cause of action in any other civil penalty proceedings. However, this term does not prevent any matter in this Undertaking being relied upon in future proceedings in order to inform a relevant Court or tribunal of the details of the conduct that was the evidentiary foundation for the Company entering into this Undertaking;
- (i) the 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;
- (j) the Company:
 - (i) must not; and
 - (ii) must ensure its respective officers, employees or agents, do not;

make any statement, orally, in writing or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with the acknowledgements contained in this Undertaking.

Executed as an undertaking


EXECUTED by **Marriott Airport Concessions Pty Limited** in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

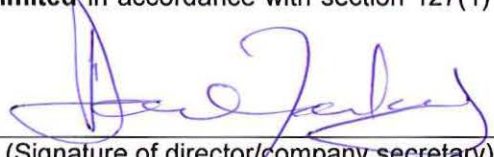
CASSANDRA IRVINE
(Name of director)

19/2/15
(Date)

in the presence of:


(Signature of witness)

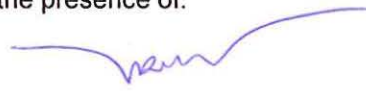
Sasha Wilson
(Name of witness)


(Signature of director/company secretary)

DAVID MACKAY
(Name of director/company secretary)

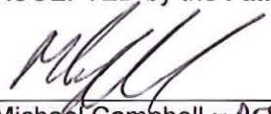
19/2/15
(Date)

in the presence of:


(Signature of witness)

NGUYEN HUYNH TRUC
(Name of witness)


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


Michael Campbell - ~~DEPUTY FAIR WORK OMBUDSMAN~~ DATE

~~Group Manager - Operations~~

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:


(Signature of witness)

LOUISE CATO
(Name of Witness)

ATTACHMENT A – UNDERPAYMENTS

Employee Name	Amount Owing
	203.61
	8,304.39
	764.75
	17,530.88
	1,871.14
	8,316.51
	269.49
	3,168.97
	24,531.73
	18,707.70
	1,036.07
	1,124.60
	2,527.97
	5,945.77
	698.30
	4,700.25
	3,341.95
	2,510.72
	1,886.00
	4,309.94
	2,214.31
	293.16
	415.42
	560.17
	20,419.56
	99.24
	45.54
	3,483.49
	62.43
	28,243.45
	10,180.79
	943.34
	5,836.60
	4,309.15
	20.14
	12,784.14
	117.40
	12,115.66
	1,699.27
	60.25
	18,782.19
	674.87
	1,828.29
	5,617.86
	2,163.20
	6,652.89

[REDACTED]	846.11
[REDACTED]	1,206.13
[REDACTED]	41.78
[REDACTED]	1,134.40
[REDACTED]	8,860.63
[REDACTED]	4,655.97
[REDACTED]	3,329.85
[REDACTED]	6,468.04
[REDACTED]	27.95
[REDACTED]	3,779.66
[REDACTED]	991.26
[REDACTED]	1,307.25
[REDACTED]	485.17
[REDACTED]	1,331.00
[REDACTED]	1,554.89
[REDACTED]	805.98
[REDACTED]	1,164.06
[REDACTED]	181.58
[REDACTED]	2,175.89
[REDACTED]	854.16
[REDACTED]	593.00
[REDACTED]	2,357.06
[REDACTED]	120.42
[REDACTED]	1,135.06
[REDACTED]	493.98
[REDACTED]	223.76
[REDACTED]	3,553.57
[REDACTED]	32.40
[REDACTED]	121.45
[REDACTED]	4,340.20
[REDACTED]	1,287.98
[REDACTED]	606.65
[REDACTED]	2,641.63
[REDACTED]	4,460.75
[REDACTED]	115.58
[REDACTED]	571.85
[REDACTED]	1,068.46
[REDACTED]	2,364.41
[REDACTED]	2,012.43
[REDACTED]	3,390.87
[REDACTED]	6,704.57
[REDACTED]	840.01
[REDACTED]	3,807.38
[REDACTED]	113.54
[REDACTED]	3,034.79
[REDACTED]	3,440.99
[REDACTED]	2,637.78
[REDACTED]	6,744.48
[REDACTED]	1,396.48
[REDACTED]	1,626.78
[REDACTED]	3,311.52

[REDACTED]	391.63
[REDACTED]	3,637.02
[REDACTED]	1,112.45
[REDACTED]	1,028.67
[REDACTED]	4,094.47
[REDACTED]	15,596.97
[REDACTED]	3,564.97
[REDACTED]	8,652.60
[REDACTED]	3.29
[REDACTED]	562.06
[REDACTED]	16,103.85
[REDACTED]	1,486.59
[REDACTED]	43.02
[REDACTED]	411.01
[REDACTED]	21,710.28
[REDACTED]	2,407.84
[REDACTED]	435.71
[REDACTED]	7,846.57
[REDACTED]	7,720.80
[REDACTED]	70.53
[REDACTED]	2,745.09
[REDACTED]	2,325.54
[REDACTED]	1,869.35
[REDACTED]	9,922.73
[REDACTED]	461.87
[REDACTED]	328.34

Total \$472,258.39

ATTACHMENT B – SCHEDULE OF PAYMENTS

Payments will be made to employees as follows:

1. Payment of \$45,157.12 to be paid to the employees listed in Column A of Table 1 (below) according to the allocations in Column B in Table 1 within 30 days of the execution of this Undertaking.
2. Payment of \$15,596.97 to be made to [REDACTED] on or before 10 January 2015. This is the total amount owed to [REDACTED]
3. Payment of the amounts in Column B of Table 2 (**Amounts Owed**) to be made to the employees in Column A of Table 2 in the following manner:
 - a. \$15,507.02 on or before 10 February 2015;
 - b. \$15,507.02 on or before 10 March 2015;
 - c. \$27,421.44 on or before 31 March 2015;
 - d. \$15,507.02 on or before 10 April 2015;
 - e. \$15,507.02 on or before 10 May 2015;
 - f. \$15,507.02 on or before 10 June 2015;
 - g. \$27,421.40 on or before 30 June 2015; and
 - h. 18 monthly payments of \$15,507.02 commencing on or before 10 July 2015.
4. Each amount in subparagraphs 3(a) to 3(h) above is to be distributed equally between each employee, except where a lesser amount is required to be paid to an employee because their respective Amount Owed is satisfied.

Table 1

Column A	Column B
[REDACTED]	203.61
[REDACTED]	764.75
[REDACTED]	1,871.14
[REDACTED]	269.49
[REDACTED]	1,036.07
[REDACTED]	1,124.60
[REDACTED]	698.3
[REDACTED]	1,886.00
[REDACTED]	293.16
[REDACTED]	415.42
[REDACTED]	560.17
[REDACTED]	99.24
[REDACTED]	45.54
[REDACTED]	62.43
[REDACTED]	943.34
[REDACTED]	20.14
[REDACTED]	117.4
[REDACTED]	1,699.27
[REDACTED]	60.25
[REDACTED]	674.87
[REDACTED]	1,828.29
[REDACTED]	846.11
[REDACTED]	1,206.13
[REDACTED]	41.78
[REDACTED]	1,134.40

	27.95
	991.26
	1,307.25
	485.17
	1,331.00
	1,554.89
	805.98
	1,164.06
	181.58
	854.16
	593
	120.42
	1,135.06
	493.98
	223.76
	32.40
	121.45
	1,287.98
	606.65
	115.58
	571.85
	1,068.46
	840.01
	113.54
	1,396.48
	1,626.78
	391.63
	1,112.45
	1,028.67
	3.29
	562.06
	1,486.59
	43.02
	411.01
	435.71
	70.53
	1,869.35
	461.87
	328.34
Total	45,157.12

Table 2:

Column A	Column B
	8,304.39
	17,530.88
	8,316.51
	3,168.97
	24,531.73
	18,707.70
	2,527.97

	5,945.77
	4,700.25
	3,341.95
	2,510.72
	4,309.94
	2,214.31
	20,419.56
	3,483.49
	28,243.45
	10,180.79
	5,836.60
	4,309.15
	12,784.14
	12,115.66
	18,782.19
	5,617.86
	2,163.20
	6,652.89
	8,860.63
	4,655.97
	3,329.85
	6,468.04
	3,779.66
	2,175.89
	2,357.06
	3,553.57
	4,340.20
	2,641.63
	4,460.75
	2,364.41
	2,012.43
	3,390.87
	6,704.57
	3,807.38
	3,034.79
	3,440.99
	2,637.78
	6,744.48
	3,311.52
	3,637.02
	4,094.47
	3,564.97
	8,652.60
	16,103.85
	21,710.28
	2,407.84
	7,846.57
	7,720.80
	2,745.09
	2,325.54
	9,922.73
Total	411,504.30

ATTACHMENT C – LETTER OF APOLOGY

<Date>

<Employee Name & Address>

Dear <Employee Name>

I am writing to apologise on behalf of Marriott Airport Concessions Pty Limited (t/as Newcastle Sports Bar & Bistro and Hungry Jacks) (**Marriott**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Marriott Airport Concessions Pty Limited contravened the *Fair Work Act 2009* by failing to pay its casual employees the following entitlements under the Restaurant Industry Award 2010 (MA000119) and the Fast Food Industry Award 2010 (MA000003):

- casual loading;
- penalty rates for work performed on a Saturday;
- penalty rates for work performed on a Sunday; and
- penalty rates for work performed on a public holiday.

The investigation determined that you were affected by the above contraventions.

Marriott is committed to, and is taking steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (Insert amount); and
- Committing to future compliance.

Marriott has formally admitted to the FWO that it 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, Marriott Airport Concessions Pty Limited has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

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

Should you have any questions, please contact [party to include contact details].

Yours sincerely

[Director/Officer]
Marriott Airport Concessions Pty Limited

Attachment D – Form of Workplace Notice

Contravention of the *Fair Work Act 2009*, the *Fast Food Industry Award 2010* and the *Restaurant Industry Award 2010* by Marriott Airport Concessions Pty Limited.

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Marriott Airport Concessions Pty Limited trading as 'Sports Bar and Bistro' and 'Hungry Jacks' operating out of the Newcastle Airport contravened the *Fair Work Act 2009*, the *Fast Food Industry Award 2010* and the *Restaurant Industry Award 2010*.

The FWO has found that Marriott Airport Concessions Pty Limited contravened the *Fair Work Act 2009*, the *Fast Food Industry Award 2010* and the *Restaurant Industry Award 2010* for Casual employees employed between 1 July 2010 and January 2014 by:

- failing to pay employees a casual loading for all hours worked;
- failing to pay employees penalty rates for time worked on a Saturday;
- failing to pay employees penalty rates for time worked on a Sunday;
- failing to pay employees penalty rates for time worked on Public Holidays.

Marriott Airport Concessions Pty Limited has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fwo.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments to the employees affected by the contraventions and changing workplace practices.

Marriott Airport Concessions Pty Limited expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Marriott Airport Concessions Pty Limited gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relation laws in the future.

If you worked for Marriott Airport Concessions Pty Limited and have queries or questions relating to your employment, please contact **[insert contact]** . Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the infoline on 13 13 94.