



Australian Government

# Fair Work

## OMBUDSMAN

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### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

HAPPYTEL RETAIL GROUP PTY LTD (ABN 44 169 697 938 / ACN 169 697 938)

and

PHONE ADORE PTY LTD (ABN 61 150 840 216 / ACN 150 840 216)

and

PHONE MANIA PTY LTD (ABN 49 115 746 113 / ACN 115 746 113)

and

Ms Elizabeth Ryu

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (FWO) by:
  - (a) Happytel Retail Group Pty Ltd (**Happytel**);
  - (b) The associated entities:
    - (i) Phone Adore Pty Ltd (ACN: 150 840 216); and
    - (ii) Phone Mania Pty Ltd (ACN: 115 746 113);
  - (collectively the **Entities**) and
  - (c) Ms Elizabeth Ryu (**Ms Ryu**), Director, Happytel Retail Group Pty Ltd and the Entities;for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Background**

2. Happytel operates a chain of retail mobile phone accessories stores in Australia, New Zealand and the United States under the Happytel Group.
3. Happytel and the Entities operate from the same central headquarters in Sydney. Oscar Mobile Pty Ltd provides management, administration, HR and payroll services for Happytel and the Entities at the same Sydney location.
4. Ms Ryu admits and agrees that, at all material times, she:
  - (a) Is a director of:
    - (i) Happytel since May 2014;
    - (ii) Phone Adore Pty Ltd since May 2011 and
    - (iii) Phone Mania Pty Ltd since August 2005.
  - (b) was ultimately responsible for overall direction, management and supervision of the operations at Happytel and the Entities 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 Happytel and the Entities complied with its legal obligations.
5. The FWO commenced an investigation (the **Investigation**) in January 2016 after it received a Request for Assistance (**RFA**) regarding allegations of underpayments by Happytel and the Entities. A second RFA was received in April 2016. The allegations concerned underpayments of wage entitlements by Happytel and the Entities to the former employees (the **Employees**) identified in Schedule A.
6. The Employees were foreign nationals working in Australia under working holiday visas.
7. The Investigation into the allegations identified contraventions of the *General Retail Industry Award 2010* (the **Retail Award**) and the FW Act.
8. The Employees were employed on both a casual and a part time basis. The duties performed by the Employees included but were not limited to, serving customers, stock checking and re-shelving. The Employees' classification under the Retail Award was Retail Employee Level 1.
9. The FWO identified contraventions for the period 25 November 2013 to 30 December 2015. Happytel and the Entities underpaid the Employees by failing to pay annual leave and annual leave loading, evening penalty entitlements and not paying for all time worked. Further underpayments arose from failure to pay the casual loading penalty.
10. Happytel and the Entities have now rectified the underpayment of the Employees' entitlements.

11. The FWO has determined, and Happytel and the Entities admit, that they have contravened:

- (a) Section 45 of the FW Act, which states a person must not contravene a term of a modern award. Those contraventions were as follows:

Retail Award:

- Failure to enter into a part time hours agreement (cl. 12.2);
- Failure to pay for all hours worked (cl. 23);
- Failure to pay overtime rates (cl. 29.2); and
- Failure to pay evening penalty rates (cl.29.4(a)).

- (b) Section 44 of the FW Act, which states a person must not contravene a provision of the National Employment Standards (NES). Those contraventions were as follows:

- Failure to pay annual leave and annual leave loading upon termination (s 90(2)); and
- Failure to provide a Fair Work Information Statement at the start of employment (s 125).

### Commencement of Undertaking

12. This Undertaking comes into effect when:

- (a) the Undertaking is executed by Happytel and the Entities; and  
(b) the FWO accepts the Undertaking so executed.

Upon the commencement of this Undertaking, Happytel and the Entities undertake to assume the obligations set out below.

### Undertakings

13. For the purposes of section 715 of the FW Act, Happytel and the Entities undertake to:

#### Public Notice

- (a) Place a public notice on the Home page of the Happytel website (**Public Notice**) within 28 days of the FWO publishing a Media Release on its website which:
- (i) Bears the name and logo of Happytel
  - (ii) Appears no less than 80 mm square in area;
  - (iii) Is in the form set out in Schedule B; and
  - (iv) Public Notice to remain on the Happytel website for 14 days;

#### Employee Notification

- (b) Send notification to current employees (**Employee Notice**) either by email or by Deputy Newsfeed<sup>1</sup> within 28 days of the execution of this Undertaking in both Korean and English and in the terms set out in Schedule C;
- (c) Provide a copy of the **Employee Notice** and written details of how the **Employee Notice** has been disseminated within 7 days of publication of the notices;

#### Apology

- (d) Send a letter of apology (**Apology Letter**) to the Employees, via the FWO, in the form of **Schedule D** to this undertaking within 14 days of the execution of this Undertaking;
- (e) The Apology Letter is to be provided to the FWO in the first instance. The FWO will then forward the Apology Letter to the Employees on behalf of Happytel and the Entities;

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<sup>1</sup> Deputy Newsfeed is an employee scheduling and communication application

### Designated Enquiry Line

- (f) For a period of 12 months after the execution of this Undertaking, maintain a telephone hotline and designated email address for all persons engaged by Happytel or the Entities to make complaints regarding underpayments of amounts to which they may be entitled in relation to the performance of work;
- (g) Ensure that the access details of the telephone hotline and email address are made known and accessible by being included on the payslips given to all persons engaged by Happytel and the Entities or any other associated entities for the 12 month period;
- (h) Where contacted by current or former employees not covered by this Undertaking alleging that their lawful entitlements have not been met, Happytel and the Entities agree to:
  - (i) notify the FWO within 7 days of receiving the allegation;
  - (ii) within 7 days refer the complaint to the accountants engaged for the purposes of investigation and rectification of contraventions of the FW Act and the relevant award;
  - (iii) within 28 days of receiving the allegation report to the FWO on the findings of the investigation;
  - (iv) within 35 days of receiving the allegation, where any contraventions are found, rectify those contraventions and provide the FWO with evidence that any identified underpayments have been paid and evidence that any other issues identified have been resolved;
  - (v) within 35 days of receiving an allegation, should any issues raised remain unresolved, notify the FWO of these issues and the reasons for not rectifying;

### Self-audits and Reporting

- (i) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Happytel and the Entities' expense, audits of Happytel and the Entities' compliance with all Commonwealth workplace laws and instruments (**Audits**), relating to the pay and conditions of 20% of the employees, the sample having been selected by the FWO, according to the following schedule:
  - (i) a first Audit of the first pay cycle following 1 January 2017, which is to be finalised within 28 days of the last day of the pay cycle;
  - (ii) a second Audit of the first pay cycle following 1 August 2017, which is to be finalised within 28 days of the last day of the pay cycle;
- (j) Provide to the FWO;
  - (i) by 18 February 2017, details of the methodology used to conduct the first Audit and the outcomes of the first Audit;
  - (ii) by 23 September 2017, details of the methodology used to conduct the second Audit and the outcomes of the Audit;
- (k) In the event either the first and/or second Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, rectify all such contraventions by 28 days after the Audits are provided to Happytel and the Entities, including rectification of any and all underpayments to employees;
- (l) Provide evidence of rectification of the contraventions to the FWO no later than 35 days after the completion of;
  - (i) the First Audit (January 2017);
  - (ii) the Second Audit (August 2017);

### **Workplace relations training**

- (m) Within 60 days of the execution of this Undertaking, organise and ensure training is provided to all persons at Happytel and the Entities who have managerial responsibility for human resource, recruitment or payroll functions (**Training**);
- (i) Ensure the training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the relevant industrial instrument;
  - (ii) Ensure the training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by Happytel and the Entities;
  - (iii) 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;
  - (iv) Provide evidence of attendance at the training to the FWO within 7 days of the training being provided (including the name and position of all attendees and the date on which the training was attended);
- (n) For a period of 1 year from the execution of this Undertaking, ensure that training is conducted in the manner prescribed 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 Happytel and the Entities;
- (o) If no persons are engaged by Happytel and the Entities with the responsibilities listed in clause n within 60 days or for a period of 1 year of the execution of this Undertaking, clause (m)(i) to (m)(iv) will not apply.

### **Broader community workplace relations education**

- (p) Happytel and the Entities undertake to:
- (i) make a donation of a total of \$3,750.00 within 60 days of the Execution of this Undertaking to Asian Women at Work (ABN: 92844657217) to fund education about workplace rights under the FW Act; and
  - (ii) provide proof of the payment referred to above to the FWO on the day of the payment being made;

### **FWO My Account Registration**

- (q) Within 7 days of the execution of this undertaking, register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and have completed the profile, minimum pay rates and Award options.
- (i) Within 14 days of the execution of the Undertaking provide to the FWO the 'My Account' registration number.
  - (ii) Within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Fair Work Inspector via [www.fairwork.gov.au](http://www.fairwork.gov.au) 'My Account' current Retail Award minimum pay rates and evening, Saturday, Sunday and Public Holiday Penalty rates;

### **Future Workplace Relations Compliance – Happytel and the Entities**

- (r) Take all reasonable steps to ensure that Happytel and the Entities, comply at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Retail Award and the FW Act by developing systems and processes to promote ongoing compliance with those requirements. In particular, develop and implement demonstrable systems and processes to:

- (i) ensure employees receive the correct minimum rates of pay and entitlements;
- (ii) provide to the FWO within 60 days of the execution of this undertaking details of systems and processes implemented in satisfaction of clause 13(r).

### **No Inconsistent Statements**

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14. Happytel or any of its associated entities:
- (a) must not; and
  - (b) must ensure that each of its officers, employees or agents, do not make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this agreement.

### **Acknowledgements**


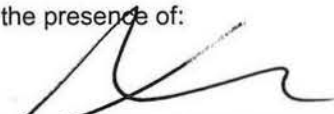
15. Happytel and the Entities acknowledge that:
- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at [www.fairwork.gov.au](http://www.fairwork.gov.au) (subject to the FWO taking any necessary steps to redact the 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 Happytel and the Entities;
  - (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 Happytel and the Entities have 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, Happytel and the Entities may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

EXECUTED by Happytel Retail Group Pty Ltd (ACN: 169 697 938), Phone Adore Pty Ltd (ACN: 150 840 216) and Phone Mania Pty Ltd (ACN: 115 746 113) in accordance with section 127(1) of the *Corporations Act 2001*:

 _____ (Signature of director)	_____ (Signature of director/company secretary)
<u>ELIZABETH KYU</u> _____ (Name of director)	_____ (Name of director/company secretary)
<u>24 NOV 2016</u> _____ (Date)	_____ (Date)
in the presence of:	in the presence of:
 _____ (Signature of witness)	_____ (Signature of witness)
<u>WON JOO SUH</u> _____ (Name of witness)	_____ (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 and Compliance Delegate for the FAIR WORK OMBUDSMAN	<u>1 DECEMBER 2016</u> _____ (Date)
in the presence of:	
 _____ (Signature of witness)	<u>LISA-MARIE OULVER</u> _____ (Name of Witness)

**Schedule A – Employees**

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Employee A	
Employee B	



## Schedule B – Form of Public Notice

### Contravention of Fair Work Act by Happytel Retail Group Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Happytel Retail Group Pty Ltd (**Happytel**) and the associated entities, Phone Adore Pty Ltd (ACN: 150 840 216) and Phone Mania Pty Ltd (ACN: 115 746 113) (collectively the **Entities**) contravened the *General Retail Industry Award 2010* and the *Fair Work Act 2009* (**Applicable Instruments**).

The FWO has found that Happytel and associated entities contravened the Applicable Instruments by:

- Failing to pay annual leave and annual leave loading upon termination
- Failing to provide a Fair Work Information Statement at the start of employment
- Failing to enter into a part time hours agreement
- Failing to pay for all hours worked
- Failing to pay overtime rates
- Failing to pay evening, Saturday, Sunday and public holiday penalty rates.

Happytel and the Entities have formally admitted to the FWO that these contraventions occurred and have entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)). Happytel and the Entities have committed to a number of measures to remedy the contraventions, including rectifying the underpayments to all employees affected and changing workplace practices.

Happytel and the Entities express its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Happytel and the Entities give 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 Happytel and have queries or questions relating to your employment, please contact the designated enquiry line on <insert details of internal contact> or by email on <insert email address>. Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

## Schedule C – Employee Notification

### Contraventions of Fair Work Act by Happytel Retail Group Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Happytel Retail Group Pty Ltd (**Happytel**) and the associated entities, Phone Adore Pty Ltd (ACN: 150 840 216) and Phone Mania Pty Ltd (ACN: 115 746 113) (collectively the **Entities**) contravened the *General Retail Industry Award 2010* and the *Fair Work Act 2009* (**Applicable Instruments**).

The FWO has found that Happytel and the Entities contravened the Applicable Instruments by:

- Failing to pay annual leave and annual leave loading upon termination
- Failing to provide a Fair Work Information Statement at the start of employment
- Failing to enter into a part time hours agreement
- Failing to pay for all hours worked
- Failing to pay overtime rates
- Failing to pay evening penalty rates.

Happytel and the Entities have formally admitted to the FWO that these contraventions occurred and have entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)). Happytel and the Entities have committed to a number of measures to remedy the contraventions, rectifying the underpayments to all employees affected and changing workplace practices including through setting up a designated employee enquiry line and email address for employees to report concerns about their wages and entitlements.

Happytel and the Entities express sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore, Happytel and the Entities give 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 have queries or questions relating to your employment, please contact the designated enquiry line on <insert details of internal contact> or by email on <insert email address>. Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

## Schedule D – Letter of Apology

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of that Happytel Retail Group Pty Ltd (**Happytel**) and the associated entities, Phone Adore Pty Ltd (ACN: 150 840 216) and Phone Mania Pty Ltd (ACN: 115 746 113) (collectively the **Entities**) for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Happytel and the Entities had contravened the *Fair Work Act 2009* by:

- Failing to pay annual leave and annual leave loading upon termination
- Failing to provide a Fair Work Information Statement at the start of employment
- Failing to enter into a part time hours agreement
- Failing to pay for all hours worked
- Failing to pay overtime rates
- Failing to pay evening penalty rates.

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

Happytel and the Entities are taking steps to remedy the contraventions, including by rectifying <insert amount> that you have been underpaid. You will/have receive/d this payment on <insert date> and will be provided with payment advice regarding the payment.

Happytel and the Entities have formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au). As part of the Enforceable Undertaking, we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Happytel and the Entities express its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact the designated enquiry line on <insert details of internal contact> or by email on <insert email address>.

Yours sincerely

[Chief Executive Officer]