



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Romaro Holdings Pty. Ltd. (ACN: 003 717 495)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Romaro Holdings Pty. Ltd. trading as Pizza Hut Penrith for the purposes of section 715 of the *Fair Work Act 2009 (FW Act)*.

Background

2. Pizza Hut Australia (the Franchisor) was a division of Yum! Restaurants based in Frenchs Forest, NSW, a foreign owned proprietary company first registered in Australia in 1969. Yum Restaurants is an Australian subsidiary of Yum! Brands. Pizza Hut operated under a 100% franchised model with approximately 270 dine in restaurants and take-away outlets across Australia. Under the franchise agreement, franchisees pay 6% of their total sales to Pizza Hut.
3. On 6 September 2016, a subsidiary of Yum! Brands, Pizza Hut Restaurants Asia Pte Ltd, entered into a master franchise agreement with Pizza Pan Group Pty Ltd (Pizza Pan Group) under which Pizza Pan Group will act as the master franchisee for Pizza Hut in Australia.
4. Pizza Pan Group is owned by Allegro Funds Pty Ltd. Yum Restaurants' existing franchise agreements have been transferred to Pizza Pan Group
5. On 23 November 2015, Fairfax Media reported of widespread wage fraud and sham contracting in relation to the engagement of delivery drivers by Pizza Hut franchisees. The article claimed that a contract obtained by Fairfax Media demonstrated a driver was entitled to \$6 per delivery, with a maximum of two deliveries per round trip. Additionally, the contract specified that the driver was required to provide their own vehicle and was responsible for fuel, vehicle maintenance and insurance.
6. In response to the allegations in the media, the FWO commenced the Pizza Hut Delivery Drivers Compliance Activity (**Activity**), randomly selecting 38 Pizza Hut sites across Australia. Romaro Holdings Pty. Ltd. a franchise of Pizza Hut was selected as part of the Activity.
7. Romaro Holdings Pty. Ltd. was registered on 27 February 1989 and is a family owned business. Mr Elias Michael Saade and Nabil Saade were appointed as Directors of the company on 13 March 1989 and Mr Fady Saade was appointed as a Director of the company on 30 July 1999.
8. During the period from 1 January 2016 to 31 January 2016 (**Assessment Period**) the FWO conducted an audit of the payments (**Audit**) made to four delivery drivers, engaged by Romaro Holdings Pty. Ltd. as independent contractors. The delivery drivers were paid \$5.70 per delivery.
9. As a result of the Audit, the FWO determined that:
 - (a) the delivery drivers engaged by Romaro Holdings Pty. Ltd., who were the subject of the Audit, were, in fact and in law, employees and not independent contractors (**Employees**);
 - (b) Romaro Holdings Pty. Ltd. was the true employer of the Employees;
 - (c) the terms and conditions of the Employees' employment was governed by the *Pizza Hut – SDA National Employee Relations Agreement 2010 [AE880937] (Agreement)*;
 - (d) the Company was named in the Agreement as respondents
 - (e) the appropriate classification of the Employees was 'Method B' Delivery Drivers;
 - (f) the Employees were paid \$5.70 per delivery and were not paid an hourly rate of pay for deliveries;
 - (g) under the Agreement the appropriate minimum hourly rate was \$18.99 per hour for all hours worked including Saturday, Sunday, public holidays and casual loadings;
 - (h) the \$5.70 per delivery rate that the Employees were paid, did not meet the minimum hourly rate in the Agreement, therefore the Employees were underpaid;
 - (i) the Employees were underpaid the amount of \$3,284.46 gross for work performed during

the Assessment Period.

Contraventions

10. The FWO has determined, and Romaro Holdings Pty. Ltd. admits, that Romaro Holdings Pty. Ltd. contravened:

- (a) Section 50 of the FW Act by contravening a term of an Enterprise Agreement by failing to pay the minimum delivery allowance.

Commencement of Undertaking

11. This Undertaking comes into effect when:

- (a) the Undertaking is executed by Romaro Holdings Pty. Ltd.; and
- (b) the FWO accepts the Undertaking so executed.

12. Upon the commencement of this Undertaking, Romaro Holdings Pty. Ltd. undertake to assume the obligations set out below.

Undertakings

13. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, Romaro Holdings Pty. Ltd., undertake the items set out in paragraphs 12 to 20.

14. Rectify the underpayments

Within 28 days of the execution of this Undertaking:

- (a) pay the amount of \$3,284.46 less taxation to the Employees who were underpaid as a result of the contraventions referred to in paragraph 8, according to the proportions set out in Attachment C;
- (b) provide to the FWO evidence of rectification within 14 days of the payments being made.

15. Implement fundamental changes to its labour engagement practices

Within 28 days of the execution of this Undertaking:

- (a) alter their operations so that all individuals who are engaged by Romaro Holdings Pty. Ltd. to perform deliveries will be engaged as employees, not as independent contractors, and will be paid pursuant to the *Pizza Hut – SDA National Employee Relations Agreement 2010*; and
- (b) provide to the FWO written confirmation that the changes in subparagraph 13(a) above have been completed, by no later than 28 days after the execution of this Undertaking or seven days after the completion of the changes in paragraph 13(a) occurring.

16. FWO MyAccount Registration

Within 14 days of the execution of this Undertaking:

- (a) register with the FWO 'My Account' portal at <https://www.fairwork.gov.au/my-account/registerpage.aspx> and have completed the profile, minimum pay rates and Modern Award options through this portal; and
- (b) provide to the FWO the Company's 'My Account' Customer Registration Number (CRN).

Within 21 days of the execution of this Undertaking, Romaro Holdings Pty. Ltd. will subscribe, and provide evidence to the FWO of subscriptions, to the following:

- (a) FWO's 'General Information' email alerts relation to the *Fast Food Industry Award 2010*, available at <https://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>; and
- (b) FWO's 'Employer Newsletter' for the relevant State and industry, available at <https://www.fairwork.gov.au/about-us/news-and-media-releases/newsletter>, selecting at least the following options:
 - i. pay updates;
 - ii. modern award updates;
 - iii. holiday entitlements;
 - iv. working hours and breaks; and
 - v. annual leave/sick leave.

17. Apology

Within 28 days of the execution of this Undertaking:

- (a) send a letter of apology as per Attachment B to the following Employees:
 - i. [REDACTED];
 - ii. [REDACTED];
 - iii. [REDACTED]; and
 - iv. [REDACTED].
- (b) within 7 days of the distribution of the letters of apology to those Employees provide copies to the FWO.

18. Workplace notices

Within 28 days of the execution of this Undertaking:

- (a) display a notice in the form of Attachment A to this Undertaking (**Workplace Notice**), in a place which is accessible by all employees for a period of 28 days; and
- (b) provide written details of the method of displaying or providing the Workplace Notice and photographic proof of its display to the FWO within 7 days of it first being displayed.

19. Public Notice

- (a) place a public notice in the Thursday edition of Penrith City Gazette newspaper (**Public Notice**) within 28 days of the FWO publishing a Media Release on its website in respect of this Undertaking which:
 - (i) appears within the first 10 pages of the Penrith City Gazette newspaper;
 - (ii) must be in the size of 8cm x 10cm; and
 - (iii) is in the form of Attachment A.
- (b) provide a copy of the Public Notice to the FWO within 7 days of the publication of the notice.

20. Future workplace relations compliance

- (a) commit to ongoing compliance with applicable Commonwealth workplace laws and instruments, including the FW Act, by developing systems and processes to promote ongoing compliance with those requirements; and
- (b) provide to the FWO, within 90 days of the execution of this Undertaking, written details of the systems and processes implemented in satisfaction of the undertaking in subparagraph 18(a) above designed to ensure such ongoing compliance.

21. Employee education

- (a) issue information packs containing current versions of the FWO fact sheets listed below and a Fair Work Information Statement to all new employees on commencement with the Company:
 - (i) Fact sheet "About the Fair Work Ombudsman"
 - (ii) Fact sheet "Employer obligations in relation to employee records and pay slips"
 - (iii) Fact Sheet "Fair Work Information Statement"

22. Record Keeping

Within 28 days of the execution of this Undertaking:

- (a) provide to the FWO a copy of time and wage records and payslips for one employee that performs delivery duties for the first full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth workplace laws

Acknowledgements

23. Romaro Holdings Pty. Ltd. 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 Romaro Holdings Pty. Ltd.;
- (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 Romaro Holdings Pty. Ltd. 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, Romaro Holdings Pty. Ltd. may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by Romaro Holdings Pty. Ltd. (ACN: 003 717 495) in accordance with section 127(1) of the Corporations Act 2001:

N. Saade
(Signature of director)

NABIL SAADE
(Name of director)

8/11/16
(Date)

in the presence of:

R. Herro [Signature]
(Signature of witness)

RAVEN HERRO
(Name of witness)

[Signature]
(Signature of director/company secretary)

ELIAS SAADE
(Name of director/company secretary)

8/11/16
(Date)

in the presence of:

[Signature]
(Signature of witness)

RAVEN HERRO
(Name of witness)

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

[Signature]
[Insert name and role of Delegate]

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

[Signature]
(Signature of witness)

11 NOVEMBER 2016
(Date)

LISA-MARIE OLIVER
(Name of Witness)

Attachment A – Form of Public and Workplace Notice

Contravention of *Fair Work Act 2009* by Romaro Holdings Pty. Ltd. trading as Pizza Hut, Penrith.

We refer to the recent Compliance Activity (the **Activity**) conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations raised regarding widespread wage fraud and sham contracting in relation to the engagement of delivery drivers by Pizza Hut franchisees.

As a part of the Activity, the FWO completed an Audit into the compliance of Romaro Holdings Pty. Ltd. with the *Fair Work Act 2009* (**FW Act**).

Romaro Holdings Pty. Ltd. owns a Pizza Hut store located at Shop 150, corner Blaikie and Mulgoa Road, Penrith, NSW 2750 and no previous contraventions of Commonwealth workplace laws have been determined against Romaro Holdings Pty. Ltd.

The FWO determined that Romaro Holdings Pty. Ltd:

- (a) Contravened section 50 of the FW Act by contravening a term of an Enterprise Agreement by failing to pay the minimum Delivery Allowance; and
- (b) Is required to pay the amount of \$3,284.46 less taxation to the Delivery Drivers who were underpaid as a result of the Contraventions.

Romaro Holdings Pty. Ltd. has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions.

Romaro Holdings Pty. Ltd. expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Romaro Holdings Pty. Ltd. gives 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 Romaro Holdings Pty. Ltd. and have queries or questions relating to your employment, please contact [party to include contact details].

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

<Date>

<Name>

<Employee Address>

Dear<Name>

I am writing to apologise on behalf of Romaro Holdings Pty. Ltd. trading as Pizza Hut Penrith for non-compliance with Commonwealth workplace relation laws.

On 23 November 2015, Fairfax Media reported of widespread wage fraud and sham contracting in relation to the engagement of delivery drivers by Pizza Hut franchisees. Acting proactively in response to said allegations in the media, the FWO commenced the Pizza Hut Delivery Drivers Compliance Activity (**Activity**), randomly selecting 38 Pizza Hut sites across Australia. Romaro Holdings Pty. Ltd. a franchise of Pizza Hut was selected for audit as part of the Activity.

As a result of the Audit, the FWO determined that the delivery drivers engaged by Romaro Holdings Pty. Ltd., who were the subject of the audit, were, in fact and in law, employees and not independent contractors, which is a contravention of:

- (a) Section 50 of the FW Act by contravening a term of an Enterprise Agreement by failing to pay the minimum delivery allowance.

Regrettably, the investigation determined that you were affected by the above Contraventions and are entitled to \$XXX.XX gross. Romaro Holdings Pty. Ltd. is taking steps to remedy the Contraventions.

Romaro Holdings Pty. Ltd. has formally admitted to the FWO that Romaro Holdings Pty. Ltd. 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 Romaro Holdings Pty. Ltd. have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Romaro Holdings Pty. Ltd. expresses their sincere regret and apologises to you for failing to comply with its lawful obligations.

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

Yours sincerely

<signature>

<insert name>

Director

Attachment C – Rectify the underpayments

Employee	Amount owed
[REDACTED]	\$682.02
[REDACTED]	\$913.66
[REDACTED]	\$937.80
[REDACTED]	\$750.98