

## ENFORCEABLE UNDERTAKING

This undertaking is **given** by On the Run Pty Ltd (ACN 638 356 466) and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 11 of this undertaking.

## ENFORCEABLE UNDERTAKING

### PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by On the Run Pty Ltd (**OTR**), 270 The Parade, Kensington, South Australia 5068.

### COMMENCEMENT

2. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by OTR; and
  - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

### BACKGROUND

3. OTR is an Australian private company that derives revenue from the operation of service stations and convenience retail sites. Across approximately 200 sites, OTR employs around 4,500 employees.
4. In November 2021, the FWO commenced a proactive investigation into OTR due to the extensive number of queries received by the FWO over a long period.
5. On 9 and 10 March 2022, the FWO conducted site inspections at 15 OTR sites, interviewed 52 employees and managers and obtained time and wage records.
6. During the investigations, the FWO identified that OTR had not been accruing or paying an additional week of annual leave to employees who were shiftworkers.
7. OTR calculated that a total of \$979,818.60 in annual leave entitlements (including leave loading and interest) was to be paid to 934 of its former employees, and 43,936.90 hours in accrued annual leave (equating to approximately \$1.4 million in entitlements as of 23 June 2023) was to be credited to 590 current employees in relation to the period 1 July 2018 to 14 February 2023 (**Relevant Period**).
8. Prior to the execution of this Undertaking, OTR had made remediation payments totalling \$888,152.28 in annual leave entitlements and interest to 813 former employees and credited any outstanding annual leave accruals to all current

employees. OTR has been unable to contact a remaining 121 former employees, who are owed a total of \$91,666.32 in annual leave entitlements and interest.

9. On 30 June 2023, OTR notified FWO that it had instructed Piper Alderman to retain PricewaterhouseCoopers (**PwC**) to conduct a proactive compliance review of employees engaged between 1 July 2018 and 14 February 2023.
10. On 20 October 2023, OTR indicated to the FWO that the review being conducted by PwC was ongoing and advised monthly updates would be provided to the FWO as to PwC's progress.

## **ADMISSIONS**

11. The FWO has a reasonable belief, and OTR admits, that OTR contravened section 44 of the FW Act during the Relevant Period:
  - (a) by failing to credit to each of the employees identified in Schedule A to this Undertaking (**Affected Employees**) an additional week of annual leave in accordance with section 87(1)(b)(i) of the FW Act, resulting in the Affected Employee being under-credited the amount of annual leave identified in Column B of Schedule A to this Undertaking (**Under-crediting**);
  - (b) by failing to pay to Affected Employees who ceased employment with OTR during the Relevant Period the full amount owed under section 90(2) of the FW Act, resulting in those Affected Employees being underpaid the amount identified in Column C of Schedule A to this Undertaking (**Underpayment**).
12. For the contraventions admitted in clause 11, the FWO has a reasonable belief, and OTR admits, that during the Relevant Period each of the Affected Employees were defined or described as a 'shiftworker' for the purposes of the National Employment Standards (**NES**) by:
  - (a) clause 29.7 of the *Vehicle Repair, Services and Retail Award 2010*;
  - (b) clause 29.11 of the *Vehicle Repair, Services and Retail Award 2020 (VRSRA)*;
  - (c) clause 32.2 of the *General Retail Industry Award 2010*; or
  - (d) clause 28.2 of the *General Retail Industry Award 2020 (GRIA)*.

(Collectively, the **Awards**)

13. The contraventions identified in clause 11 of this Undertaking do not include:

- (a) any contraventions which relate to or arise as a consequence of OTR failing to correctly apply the NES or Awards to any employee not listed in Schedule A to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid or under-credited leave as a result of OTR failing to correctly apply the NES or Awards and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence or otherwise of any contravention because of any such underpayment or under-crediting; or
- (b) any contraventions which have not yet occurred at the date that this Undertaking is offered by OTR (whether or not those contraventions are identified in the Independent Audit described at clause 20 below, or the PwC investigation referred to in clauses 9–10 above). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by OTR and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## **UNDERTAKINGS**

14. OTR will take the actions set out at clauses 15 to 39 below.

### **Review and rectification of underpayments**

15. Within 90 days of the Commencement Date, OTR will:

- (a) confirm that each of the Affected Employees still employed by OTR has been credited the amount of annual leave in Column B of Schedule A to this Undertaking, and
- (b) confirm that all reasonable steps have been made to pay each of the Affected Employees no longer employed by OTR any outstanding underpayment under section 90(2) arising from the Under-crediting, including interest calculated based on the Federal Court of Australia's published pre-judgement interest rates.

16. Within 90 days of the Commencement Date, OTR will provide the FWO evidence of:

- (a) all leave balance adjustments made to rectify the Under-crediting for Affected Employees still employed by OTR, and
- (b) all payments made to former employees to rectify the Under-crediting and Underpayments.

17. If any of the former employees to whom Underpayments are owed have not been located within 180 days of the Commencement Date, OTR will pay the Underpayment amounts owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. OTR will complete the required documents supplied by the FWO for this purpose.

#### Information about system improvements

18. Within three months of the Commencement Date, OTR will provide to the FWO detailed information about the upgrades, improvements or changes it has made to its time and attendance system to provide assurance that all hours worked, break times and leave balances are accurately recorded.

19. The FWO may, within 60 days of receiving the information under clause 18, seek reasonable further information regarding the time and attendance system from OTR by issuing a written notice to OTR specifying the additional information required. OTR must provide the information specified in such a notice within 14 days of receipt.

#### **Independent Audits**

20. OTR must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional (**Independent Auditor**) to conduct an audit of OTR's compliance with the FW Act and FW Regulations, in relation to the VRSRA and the GRIA, and any future enterprise agreements that displace the application of the VRSRA or the GRIA as they relate to accrued annual leave entitlements, including payment of these entitlements (**Audit**).

21. OTR will notify the FWO of its proposed Independent Auditor by no later than 1 May 2024. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require OTR to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be

approved by the FWO in writing prior to being engaged by OTR.

22. OTR must ensure that the Audit conducted by the Independent Auditor includes:

- (a) an assessment of whether the annual leave entitlements of 5% of OTR's employees to whom the VRSRA and the GRIA (or replacement instruments) apply, across a range of classifications, locations and employment types (full time and part time employment), during the relevant audit period (**Sampled Employees**) have been correctly calculated and paid by OTR;
- (b) an assessment of whether the Sampled Employees have been correctly classified by OTR with regard to employment status (full time or part time) and shiftworker status;
- (c) an assessment of whether the Annual Leave entitlements of the Sampled Employees during the relevant audit period are in compliance with the FW Act, the VRSRA and the GRIA (or replacement instruments); and
- (d) the production of a written report of the Audit setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
- (e) that the written report referred to in (d) above contains the following declarations from the Independent Auditor:
  - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
  - (ii) notwithstanding that the Independent Auditor is retained by OTR, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from OTR in preparing the report;
  - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
  - (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

### The Principal Audit

23. OTR must ensure the Independent Auditor commences the Audit by no later than 1 November 2024 (**Principal Audit**).
24. The relevant audit period for the Principal Audit must be at least two full consecutive pay periods falling within the period 1 September 2024 to 31 October 2024.
25. OTR will provide for the FWO's approval by 15 August 2024, details of the methodology to be used by the Independent Auditor to conduct the Principal Audit.
26. OTR will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Principal Audit directly to the FWO by 15 February 2025, setting out the draft Principal Audit findings, and the facts and circumstances supporting the Principal Audit findings. OTR will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to OTR without the FWO's approval.
27. OTR will use its best endeavours to ensure the Independent Auditor finalises the Principal Audit and provides a written report of the Principal Audit (**Principal Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. OTR will ensure the Independent Auditor does not provide the Principal Audit Report, or a copy of the same, to OTR without the FWO's approval.

### Outcome of Audits

28. If the Principal Audit, or any Additional Audit (as referred to in clause 32 below), identifies underpayments to any current or former employees, OTR will:
  - (a) rectify any underpayments identified in the relevant audit period; and
  - (b) conduct a reconciliation of the amounts paid and owed to those employees in the 12-month period immediately prior to the relevant audit period, and rectify any underpayments that are identified.
29. OTR will provide to the FWO evidence of such rectification within 28 days of being informed by the FWO of the requirement to undertake the reconciliation.
30. If any employees identified in an Audit as having underpayments owing to them cannot be located within 60 days of the conclusion of the Audit, OTR will pay those

amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. OTR will complete the required documents supplied by the FWO for this purpose.

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31. If the Principal Audit identifies an underpayment of annual leave entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Principal Audit are also likely to have been underpaid, OTR will engage an accounting professional approved by the FWO to conduct a further audit of all its employees to whom the VRSRA and the GRIA (or replacement instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by OTR.
32. If requested by the FWO, OTR will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 21 days of such a request.

#### Relationship with PwC Investigation

33. For avoidance of doubt, the obligations in clauses 20 to 32 above are intended to be separate and additional to OTR's commitments in respect of the PwC investigation described in clauses 9 to 10.

#### **Employee Hotline**

34. Within 7 days of the Commencement Date, at its own expense, OTR will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the VRSRA and the GRIA applies, or had applied, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.
35. The independent organisation must be approved by the FWO prior to being engaged by OTR to operate the Employee Hotline.
36. OTR will:
  - (a) ensure the Employee Hotline commences operation within seven days of the Commencement Date and remains operational for a period of 3 months;



- (b) communicate the existence and purpose of the Employee Hotline by way of letter to the last known address of all Affected Employees. OTR will:
  - (i) ensure the letter is in the form of Attachment A to this Undertaking; and
  - (ii) provide evidence to the FWO that the letter has been mailed to all required current and former employees within 45 days of the Commencement Date;
- (c) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
- (d) provide a de-identified list of enquiries received by the Employee Hotline to the FWO every three months from the establishment of the Employee Hotline.

#### **Contribution Payment**

- 37. Within 28 days of the Commencement Date OTR will make a contribution payment to the Consolidated Revenue Fund of \$150,000.
- 38. OTR will provide evidence to the FWO of the contribution payment within 14 days of making payment to the Consolidated Revenue Fund.

#### **No Inconsistent Statements**

- 39. OTR must not, and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

#### **ACKNOWLEDGEMENTS**

- 40. OTR acknowledges that:
  - (a) the FWO may;
    - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
    - (ii) release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act*

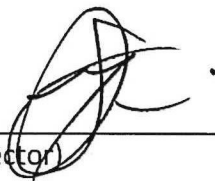
1982 (Cth);

- (iii) issue a media release in relation to this Undertaking;
  - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
  - (v) rely upon the admissions made by OTR set out in clause 11 above in respect of decisions taken regarding enforcement action in the event that OTR is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by OTR to comply with its obligations under this Undertaking;
- (b) 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 herein;
- (c) consistent with section 715(3) of the FW Act, OTR may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if OTR contravenes any of the terms of this Undertaking:
- (i) 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; and
  - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by OTR in clause 11 above, and also in respect of the question of costs.

**Executed as an undertaking**

EXECUTED by On the Run Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

(Signature of director)



**YASSER SHAHIN**

(Name of director)

27 March 2024

(Date)

in the presence of:

(Signature of witness)

**NATALIE DALBO**

(Name of witness)

(Signature of director/company secretary)



**KHALIL SHAHIN AO**

(Name of director/company secretary)

27 March 2024

(Date)

in the presence of:

(Signature of witness)

**NATALIE DALBO**

(Name of witness)

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

(Signature of Mark Scully)

Mark Scully  
Deputy Fair Work Ombudsman  
Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

(Signature of witness)



(Date)

3 April 2024

(Name of Witness)

**FRANCESCO BALDO**

## **SCHEDULE A – Affected Employees and Contraventions**

*Refer to Schedule A in the attached Schedule*

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## Attachment A – Letter to employees

Dear <insert name >

As you may be aware, On the Run Pty Ltd (**OTR**) has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by under crediting and underpaying current and former employees covered by the *Vehicle Repair, Services and Retail Award 2010* and *2020* and *General Retail Industry Award 2010* and *2022*, and classified as Shiftworkers under those awards, in relation to their additional shiftworker annual leave entitlements between 1 July 2018 to 14 February 2023.

OTR has formally admitted to the FWO that OTR 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 will be available 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, including a future audit of OTR's compliance with its annual leave obligations.

OTR understands that you may have questions and concerns relating to this and other employment issues. To address these concerns a hotline has been established for all employees to access. The hotline is being operated by the Australasian Convenience and Petroleum Marketers Association (**ACAPMA**), an independent party that can assist you with your enquiries. ACAPMA can be contacted on <insert contact number> or at <insert email address> and, if required, on a confidential basis.

Should you wish to discuss your concerns directly with OTR you can contact our enquiry line on <insert telephone number/ email address>. We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry. You can contact OTR enquiry line via <insert email address or telephone call>.

Alternatively, anyone can contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.

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

Yours sincerely

<Employer name>