



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

PSP International Trading Pty Ltd (ACN: 136 692 530)

and

Kumar Sundarakumar

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Commonwealth of Australia (as represented by the Fair Work Ombudsman (**FWO**)), pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**), by:
 - (a) PSP International Trading Pty Ltd (**PSP International**); and
 - (b) Kumar Sundarakumar (**Mr Sundarakumar**).

Background

2. PSP International operate a 7 Eleven convenience store franchise located at 237 Exhibition Street, Melbourne, Victoria.
3. Mr Sundarakumar admits and agrees that, at all material times, he:
 - (a) was sole director of PSP International, having been so since 21 April 2009;
 - (b) was ultimately responsible for the overall direction, management and supervision of 7 Eleven 237 Exhibition Street in relation to engaging staff and wages and conditions of employment;
 - (c) was aware that employees are entitled to be paid for work performed in accordance with applicable industrial instruments and Commonwealth workplace laws; and
 - (d) by reason of the matters set out in subparagraphs (a) and (c) was responsible in a practical sense for ensuring PSP International complied with its legal obligations.
4. on 13 September 2014, the FWO conducted a site visit to 7 Eleven, 237 Exhibition Street Melbourne, as part of a wider activity to monitor compliance of a selection of 7 Eleven stores located in Melbourne, Brisbane and Sydney. During this visit a Notice to Produce Records or Documents (the **Notice**) was served on PSP International requesting employment records for all employees for a one month period between 13 August 2014 and 13 September 2014.
5. in response to the NTP, Mr Sundarakumar made admissions to the FWO that he was not paying all employees for all hours worked. Mr Sundarakumar committed to co-operating with the FWO investigation.
6. as a result of information provided to the FWO in response to the Notice, the FWO commenced an investigation which included an audit (the **Audit**) of all employees of PSP International working in the period from 30 October 2013 until 30 October 2014 (the **Audit Period**).
7. the Audit assessed employment records provided by PSP International for the following employees;
 - (a) [REDACTED]
 - (b) [REDACTED]

- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]
- (h) [REDACTED]
- (i) [REDACTED]
- (j) [REDACTED]
- (k) [REDACTED]
- (l) [REDACTED]
- (m) [REDACTED]
- (n) [REDACTED]
- (o) [REDACTED]
- (p) [REDACTED]
- (q) [REDACTED] – (collectively; **The Employees**)

8. during the Audit Period, the Employees' terms and conditions of employment were governed by the *General Retail Industry Award 2010* (the **Retail Award**). Transitional rates of pay in the Award were calculated by reference to the *Shop, Distributive and Allied Employees Association – Victorian Shops Interim Award 2000* (the **Transitional Award**).
9. with the exception of [REDACTED], who was employed on a full time basis, the remaining Employees were employed on a part-time basis. Their duties included the basic functions of retail sales including sale of goods, receipt of monies, operation of a cash register and preparing goods for sale. The Employees' classification during the Audit Period was Retail Employee Level 1. [REDACTED], [REDACTED], [REDACTED] and [REDACTED] were employed as shift workers during the Audit Period.
10. as a result of the Audit, the FWO identified underpayments to 12 employees (collectively; the **Affected Employees**). The underpayments occurred because PSP International contravened provisions of the Retail Award and the FW Act with respect to minimum rates of pay, shiftwork rates, Saturday penalty rates, Sunday penalty rates, Public Holiday penalty rates and overtime rates.
11. the total underpayment to the Affected Employees during the Audit Period is \$30,634.91 (gross), attributable to each of the Affected Employees as follows;
 - (a) [REDACTED] \$753.81
 - (b) [REDACTED] \$5,957.34
 - (c) [REDACTED] \$5,549.06

- (d) [REDACTED] \$346.99
- (e) [REDACTED] \$558.23
- (f) [REDACTED] \$5,369.01
- (g) [REDACTED] \$1,354.26
- (h) [REDACTED] \$1,556.14
- (i) [REDACTED] \$175.04
- (j) [REDACTED] \$7,981.18
- (k) [REDACTED] \$574.16
- (l) [REDACTED] \$459.69

Contraventions

12. The FWO has determined, and PSP International and Mr Sundarakumar admit, that in respect of the Audit, they contravened:
- (a) section 45 of the FW Act, by failing to comply with the following provisions of the Retail Award:
 - (i) Clause 17 and Schedule A by failing to pay the Affected Employees the minimum base rates of pay for all hours worked
 - (ii) Clause 29.4 (a) and Schedule A by failing to pay the Affected Employees the applicable rate of pay for all hours worked between 6pm and 11pm Monday to Friday
 - (iii) Clause 29.4 (b) and Schedule A by failing to pay the Affected Employees the applicable rate of pay for all hours worked on Saturdays
 - (iv) Clause 29.4 (c) and Schedule A by failing to pay the Affected Employees the applicable rate of pay for all hours worked on Sundays
 - (v) Clause 29.4 (d) and Schedule A by failing to pay the Affected Employees the applicable rate of pay for all hours worked on Public Holidays
 - (vi) Section 29.2 and Schedule A by failing to pay the Affected Employees overtime rates for hours worked outside the span of hours, or roster conditions specified in the Award.
 - (vii) Section 30.3 and Schedule A by failing to pay the Affected Employees who were employed as shift workers shiftwork rates for shifts starting on or after 6pm on one day, and before 5.00am on the following day.
 - (b) Regulation 3.44 (1) of the FW Regulations by knowingly keeping a record that is false or misleading.
13. The FWO has determined, and Mr Sundarakumar admits, that by reason of the matters set out in paragraph 3 above, he was involved in the Contraventions pursuant to section 550(2)(c) of the FW Act.

Commencement of Undertaking

14. This Undertaking comes into effect when:
- (a) The Undertaking is executed by PSP International and Mr Sundarakumar; and
 - (b) The FWO accepts the Undertaking so executed.
15. upon the commencement of this Undertaking, PSP International and Mr Sundarakumar undertake to assume the obligations set out below.

Undertakings

16. For the purposes of section 715 of the FW Act PSP International and Mr Sundarakumar give the following undertakings:

Rectify the Underpayments

- (a) by no later than 30 April 2015 pay \$5778.32 (gross) to the following Affected Employees;
- | | | |
|-------|----------------------|------------|
| i. | ████████████████████ | \$753.81 |
| ii. | ████████████████████ | \$346.99 |
| iii. | ████████████████████ | |
| | ████████████████ | \$558.23 |
| iv. | ████████████████████ | \$1,354.26 |
| v. | ████████████████████ | \$1,556.14 |
| vi. | ████████████████████ | \$175.04 |
| vii. | ████████████████████ | \$574.16 |
| viii. | ████████████████████ | \$459.69 |
- (b) by no later than 30 September 2015 pay \$24,856.59 (gross) to the following Affected Employees in accordance with the Payment Schedule set out in Attachment C (**Payment Schedule**) of this Undertaking;
- | | |
|------|----------------------|
| i. | ████████████████████ |
| ii. | ████████████████████ |
| iii. | ████████████████████ |
| iv. | ████████████████████ |
- (c) within 7 days of each payment being made to an Employee, provide reasonable evidence to the FWO that the payment has been made.

Future workplace relations compliance

- (d) develop systems and processes to promote ongoing compliance with applicable Commonwealth workplace laws and instruments, including the

Retail Award and the FW Act; and

- (e) complete all education courses designed for employers available on the FWO online learning centre from time to time via www.fairwork.gov.au or its successors.
- (f) provide to the FWO, within 28 days of the execution of the Undertaking:
 - i. written details of the systems and processes implemented in satisfaction of the Undertaking in subparagraph 16(c); and
 - ii. documentary evidence that the undertaking in subparagraph 16(d) above has been complied with.

Part time agreements

- (g) in relation to current and future employees of PSP International who are employed on a part time basis:
 - i. ensure that all part time employees have in place a written part time work agreement that satisfies the requirements as provided for under Clause 12.2 of the Retail Award;
 - ii. within 60 days of the execution of the undertaking, provide to the FWO examples of part time work agreements for five (5) part time employees.

Self- audit and reporting

- (h) cause to have an audit performed by an external accounting professional (e.g Certified Practising Accountant), audit specialist or employment law specialist, at PSP International's expense, an audit of PSP International's compliance with Commonwealth workplace laws and instruments, including but not limited to, the Retail Award and the FW Act, relating to pay and conditions of employment of all employees of PSP International, for the period 1 July 2015 to 30 June 2016 (the **Self Audit**);
- (i) by no later than 1 October 2016 provide the FWO with details of the methodology used to conduct the audit and a copy of the certified audit report;
- (j) in the event the Self Audit discloses contravention of any applicable Commonwealth workplace laws or instruments by PSP International, rectify all such contraventions by 31 October 2016; and
- (k) provide evidence of rectification of all contraventions disclosed by the Self Audit to the FWO within 14 days of rectification.

Workplace notice

- (l) cause to be displayed at 7 Eleven, 237 Exhibition Street a notice in the terms set out in Attachment A to this Undertaking (**Workplace Notice**) printed in at least size 20 font on A3 size paper
 - (i) for a period of at least 28 days;
 - (ii) clearly displayed in a location to which all employees who work at 7 Eleven, 237 Exhibition Street have access; and

- (iii) in a manner which is reasonably capable of drawing the Workplace Notice to the attention of all employees who work at 7 Eleven, 237 Exhibition Street (e.g. by placement on a staff noticeboard).

Apology

- (m) within 14 days of the commencement of this Undertaking, provide a letter of apology to each of the Employees affected by the contraventions in the form set out in Attachment B to this Undertaking (**Letter of Apology**);
- (n) provide a Letter of Apology to any other affected Employees disclosed by the Audit, within 14 days of such disclosure, in the form set out in Attachment B to this Undertaking; and
- (o) provide reasonable evidence to the FWO of delivery of the Letters of Apology within 7 days of the each Letter of Apology being sent.

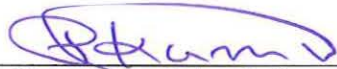
Acknowledgements

17. PSP International and Mr Sundarakumar acknowledge that;

- (p) 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);
- (q) the FWO may release a copy of this Undertaking pursuant to any relevant request under the Freedom of Information Act 1982 (Cth);
- (r) 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;
- (s) 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 PSP International and Mr Sundarakumar;
- (t) 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;
- (u) if the FWO considers that PSP International and Mr Sundarakumar has contravened any of the terms of this 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;
- (v) consistent with section 715(3) of the FW Act, PSP International and Mr Sundarakumar may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (w) PSP International and Mr Sundarakumar must not, and must ensure that their respective employees or agents do not, make any statement, orally or in writing, or otherwise, which reasonably conveys or implies anything inconsistent with the acknowledgements contained in this Undertaking.

Executed as an undertaking

EXECUTED by **PSP International Trading Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

KUMAR. SUNDARAKUMAR

(Name of director)

(Name of director/company secretary)

12-03-2005

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

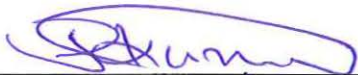
(Signature of witness)

KERRYIN SHACKLOCK

(Name of witness)

(Name of witness)

EXECUTED by **Kumar Sundarakumar**:



(Signature of Kumar Sundarakumar)

KUMAR SUNDARAKUMAR 12-03-15

(Date)

in the presence of:

in the presence of:

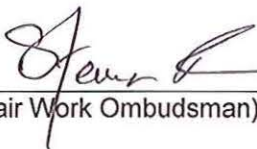


(Signature of witness)

KERRYIN SHACKLOCK

(Name of witness)

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

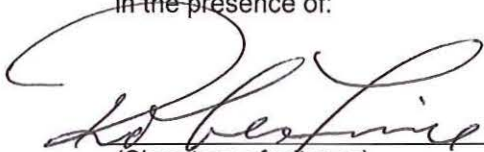


pro (Fair Work Ombudsman)

13 MARCH 2015

(Date)

in the presence of:



(Signature of witness)

ROBERT PRICE

(Name of Witness)

Attachment A – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* by

**PSP International Trading Pty Ltd trading as 7 Eleven, 237 Exhibition Street,
Melbourne**

We refer to an audit conducted by the Office of the Fair Work Ombudsman (FWO) of the time and wage records of PSP International Pty Ltd (PSP International) for the 30 October 2013 to 30 October 2014.

PSP International owns and operates the 7 Eleven convenience store located at 237 Exhibition Street, Melbourne Victoria.

The FWO has found that PSP International contravened section 45 of the FW Act by failing to comply with the following provisions of the *General Retail Industry Award 2010* in relation to the employment of 12 employees:

- Clause 17 and Schedule A by failing to pay minimum base rates of pay for all hours worked
- Clause 29.4 (a) and Schedule A by failing to pay applicable penalty rate for all hours worked between 6pm and 11pm Monday to Friday
- Clause 29.4 (b) and Schedule A by failing to pay the applicable penalty rate for all hours worked on Saturdays
- Clause 29.4 (c) and Schedule A by failing to pay the applicable penalty rate for all hours worked on Sundays
- Clause 29.4 (d) and Schedule A by failing to pay the applicable penalty rate for all hours worked on Public Holidays
- Section 29.2 and Schedule A by failing to pay overtime rates for hours worked outside the span of hours, or roster conditions specified in the Award.
- Section 30.3 and Schedule A by failing to pay employees who were employed as shift workers the shiftwork rates for shifts starting on or after 6pm on one day, and before 5.30am on the following day.

The FWO also found that PSP International deliberately paid some employees for fewer hours than they actually worked for a 12 month period commencing September 2013. PSP International has formally admitted to the FWO that these contraventions occurred, has undertaken to rectify the underpayments to employees affected and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to ensure that there are no further contraventions, including changing workplace processes and practices.

PSP International expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, PSP International gives a commitment that such conduct will not occur again and that it will comply with all requirements of Commonwealth workplace relations laws and instruments in the future.

If you worked for PSP International and have queries or questions relating to your employment, please contact Mr Kumar Sundarakumar.

Anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94 to check their rates of pay and the terms and conditions of the Retail Award.

Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of PSP International Trading Pty Ltd, trading as 7 Eleven, 237 Exhibition Street, Melbourne, for non-compliance with Commonwealth Workplace laws.

A recent Audit by the Office of the Fair Work Ombudsman (**FWO**) determined that PSP International Trading Pty Ltd contravened the *Fair Work Act 2009* by failing to provide the correct rates of pay and penalty rates under the *General Retail Industry Award 2010* for all hours worked by employees at 7 Eleven 237 Exhibition Street, Melbourne.

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

We are working with the FWO to remedy the contraventions, including by rectifying the amount that you were underpaid, undertaking a broader audit of our compliance with Commonwealth workplace laws, and taking steps to ensure our future compliance with workplace laws.

We have formally admitted to the FWO that PSP International Trading Pty Ltd 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.

We express our sincere regret and apologise to you for failing to comply with our lawful obligations.

Should you have any questions, please contact **<PSP International Trading Pty Ltd contact details>**.

Yours sincerely

Mr Kumar Sundarakumar

Director – PSP International Trading Pty Ltd.

Attachment C – Payment Schedule

	by no later than 30-May 2015	by no later than 30-Jun 2015	by no later than 30-Jul 2015	by no later than 30-Aug 2015	by no later than 30-Sep 2015
██████████	\$1,191.47	\$1,191.47	\$1,191.47	\$1,191.47	\$1,191.47
██████████	\$1,109.81	\$1,109.81	\$1,109.81	\$1,109.81	\$1,109.81
██████████	\$1,073.80	\$1,073.80	\$1,073.80	\$1,073.80	\$1,073.80
██████████	\$1,596.24	\$1,596.24	\$1,596.24	\$1,596.24	\$1,596.24
Total	\$4,971.32	\$4,971.32	\$4,971.32	\$4,971.32	\$4,971.32