



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

Arora Business Investment Pty Ltd

(ACN 169 556 290)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by Arora Business Investment Pty Ltd trading as Pizza Hut Mango Hill 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. Arora Business Investment Pty Ltd, a franchise of Pizza Hut was selected as part of the Activity.
7. Arora Business Investment Pty Ltd was registered on 15 May 2014 and is a family owned business. Sorabh Arora was appointed a Director of the company on 15 May 2014 and Supriya Dutta was appointed a Director of the company on 15 March 2015.
8. Arora Business Investment Pty Ltd commenced operating Pizza Hut Mango Hill on 31 September 2014. Prior to 31 September 2014, Pizza Hut Mango Hill was owned and operated by George Phoenix Newman as Trustee for the G & S Newman Family Trust (ABN 11 266 089 054) (**Previous Owner**).
9. During the period from 29 December 2015 to 1 February 2016 (**Assessment Period**) the FWO conducted an audit of the payments (**Audit**) made to five delivery drivers engaged by Arora Business Investment Pty Ltd as independent contractors. The delivery drivers were paid from \$6.50 to \$8.00 per delivery. The five delivery drivers being:
  - (a) [REDACTED]
  - (b) [REDACTED]
  - (c) [REDACTED]
  - (d) [REDACTED]
  - (e) [REDACTED]
10. [REDACTED] is a holder of a Student (class TU) Higher Education Sector visa (subclass 573). [REDACTED] is from a non-English speaking background and he is an Indian citizen.
11. As a result of the Audit, the FWO determined that:
  - (a) the delivery drivers engaged by Arora Business Investment Pty Ltd who were the subject of the Audit, were, in fact and in law, employees and not independent contractors (**Employees**);

- (b) Arora Business Investment Pty Ltd was the true employer of the Employees;
- (c) a transfer of business as per section 311 of the FW Act took place between Arora Business Investment Pty Ltd and the Previous Owner;
- (d) the Previous Owner was named within Schedule 3 of the *Pizza Hut Queensland- SDA Employee Relations Agreement 2014 (Agreement)*. Two of the Employees ( [REDACTED] and [REDACTED] ) were transferring employees and their employment was governed by the Agreement as a transferable instrument (as per section 313(1) of the FW Act);
- (e) the terms and conditions of the remaining Employees' employment was governed by the *Fast Food Industry Award 2010 (Modern Award)*;
- (f) the appropriate classification of the Employees covered by the Modern Award was casual Fast Food Employee Level 1;
- (g) the appropriate classification of the Employees covered by the Agreement was casual Customer Service Attendant Grade 3;
- (h) the Employees had been underpaid by reference to the work performed under the Modern Award and the Agreement; and
- (i) the Employees had been underpaid the amount of \$3,276.85 gross for work performed during the Assessment Period.

## Contraventions

12. The FWO has determined, and Arora Business Investment Pty Ltd admits, that Arora Business Investment Pty Ltd contravened:

- (a) section 45 of the FW Act by failing to comply with the following provisions of the Modern Award:
  - i. clause 13.2 by failing to pay casual employees the ordinary hourly rate paid to a full-time employee and an additional 25% of the ordinary hourly rate for a full-time employee for the hours worked;
  - ii. clause 13.4 by failing to pay the minimum daily engagement of 3 hours to casual employees;
  - iii. clause 21 by failing to pay superannuation;
  - iv. clause 25.5(b) by failing to pay the Saturday penalty rate of an additional 25% on top of the casual rate;
  - v. clause 25.5(c) by failing to pay the Sunday penalty rate of an additional 75% loading for all hours of work on a Sunday for casual employees (inclusive of the casual loading); and
  - vi. clause 30.3 by failing to pay public holiday penalty rate of 275% for casual employees
- (b) section 50 of the FW Act by failing to comply with the following provisions of the Agreement:
  - i. clause 7.1.3(b) by failing to pay casual employees the ordinary hourly rate plus an additional casual loading of 25%;
  - ii. clause 15 by failing to pay superannuation; and
  - iii. clause 18.5 by failing to pay the public holiday penalty of 200% of the ordinary hourly classification rate for work on the day for casual employees.
- (c) section 535 of the FW Act for failing to make and keep employee records for the employees as prescribed by sub regulation 3.33(2) of the *Fair Work Regulations 2009 (FW Regulations)*; Infringement Notice 20559 was paid on 28 September 2016; and
- (d) section 536 of the FW Act for failing to issue pay slips in a form prescribed by the FW Regulations; Infringement Notice 20560 was paid on 28 September 2016.

## Commencement of Undertaking

13. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by Arora Business Investment Pty Ltd; and
  - (b) the FWO accepts the Undertaking so executed.
14. Upon the commencement of this Undertaking, Arora Business Investment Pty Ltd undertake to assume the obligations set out below.

## Undertakings

15. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act Arora Business Investment Pty Ltd undertake the items set out in paragraphs 16 to 24.

### 16. Rectify underpayments

Within 28 days of the execution of this Undertaking:

- (a) pay the amounts owed in respect of each employee set out in Attachment A and provide evidence to the FWO of the date, gross and net amounts of each payment; and
- (b) within one day of making a payment in compliance with subparagraph 16(a), issue a FW Act compliant payslip to the employee to whom the payment was made;

Within 12 months of the execution of this Undertaking:

- (c) use reasonable efforts to locate all former Employees listed in Attachment A for the purpose of complying with the Undertaking in subparagraph 16(a), including but not limited to:
  - i. taking steps to ascertain the current residential address, email address, mobile telephone number and/or social media profile of each former employee; and
  - ii. contacting each former employee, using any current or last known contact details, to advise that they are owed money and explain the process for payment;
- (d) pay any amounts owed to former Employees who could not be located within the 12 month period to the Commonwealth (as represented by the FWO), pursuant to section 559 of the FW Act and in discharge of the Company's liability to make further payments to those Employees; and
- (e) report to the FWO on the former Employees who could not be located including details of the amount owed to them, their last known contact details, date of birth, details of the bank account into which they last received wages, visa details (if any).

### 17. 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 Arora Business Investment Pty Ltd to perform deliveries will be engaged as employees, not as independent contractors, and will be paid pursuant to the *Fast Food Industry Award 2010*; and
- (b) provide to the FWO written confirmation that the changes in subparagraph 17(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 17(a) occurring.

### 18. 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 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, Arora Business Investment 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. award updates;
  - iii. holiday entitlements;
  - iv. working hours and breaks; and
  - v. annual leave/sick leave.

#### 19. **Apology**

Within 28 days of the execution of this Undertaking:

- (a) send a letter of apology as per Attachment C to the following employees:

- i. [REDACTED]
- ii. [REDACTED]
- iii. [REDACTED]
- iv. [REDACTED]
- v. [REDACTED]

- (b) within 7 days of the distribution of the letters of apology to those employees provide copies to the FWO.

#### 20. **Workplace notices**

Within 28 days of the execution of this Undertaking:

- (a) display a notice in the form of Attachment B 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.

#### 21. **Public Notice**

- (a) place a public notice in the Saturday edition of North Lakes Times (**Public Notice**) within 28 days of the FWO publishing a Media Release on its website in respect of this Undertaking, as per the terms set out in Attachment B; and
- (b) provide a copy of the Public Notice to the FWO within 7 days of the publication of the notice.

#### 22. **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 22(a) above designed to ensure such ongoing compliance.

**23. 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 commence 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"

**24. 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

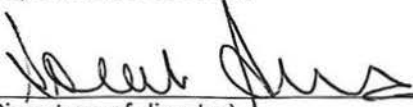
**Acknowledgements**

25. Arora Business Investment 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](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 Arora Business Investment 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 Arora Business Investment Pty Ltd 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;
- (g) consistent with section 715(3) of the FW Act, [insert party] may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

EXECUTED by Arora Business Investment Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:

  
\_\_\_\_\_  
(Signature of director)

\_\_\_\_\_  
(Signature of director/company secretary)

SORABH ARORA  
\_\_\_\_\_  
(Name of director)


\_\_\_\_\_  
(Name of director/company secretary)

1/11/2016  
\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:

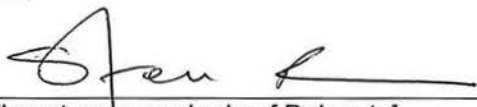
  
\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of witness)

CRESTA NICKL  
\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(Name of witness)

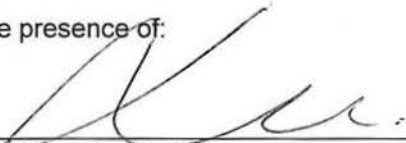
ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the Fair Work Act 2009 on:

  
\_\_\_\_\_  
[Insert name and role of Delegate]

3 NOVEMBER 2016  
\_\_\_\_\_  
(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

LISA-MARIE OLIVER  
\_\_\_\_\_  
(Name of Witness)

**Attachment A – Wage Underpayments**

<b>Employee</b>	<b>Amount owed</b>
[REDACTED]	\$561.87
[REDACTED]	\$237.59
[REDACTED]	\$171.19
[REDACTED]	\$1253.25
[REDACTED]	\$1052.95



## Attachment B – Form of Public and Workplace Notice

### Contravention of *Fair Work Act 2009* by Arora Business Investment Pty Ltd trading as Pizza Hut, Mango Hill.

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 Arora Business Investment Pty Ltd with the *Fair Work Act 2009* (**FW Act**).

Arora Business Investment Pty Ltd owns a Pizza Hut store located at 2/2 Halpine Drive, Mango Hill QLD 4509 and no previous contraventions of Commonwealth workplace laws have been determined against Arora Business Investment Pty Ltd. The FWO determined that Arora Business Investment Pty Ltd has contravened:

- (a) section 45 of the FW Act by failing to comply with the following provisions of the *Fast Food Industry Award 2010*:
  - i. Underpayment of casual ordinary hourly rate of pay (clause 13.2);
  - ii. Non-payment of minimum daily engagement of 3 hours to casual employees (clause 13.4);
  - iii. Non-payment of Superannuation (clause 21);
  - iv. Underpayment of Saturday penalty rates (clause 25.5(b));
  - v. Underpayment of Sunday penalty rates (clause 25.5(c)); and
  - vi. Underpayment of Public Holiday penalty rates (clause 30.3).
- (b) section 50 of the FW Act by failing to comply with the following provisions of the *Pizza Hut Queensland- SDA Employee Relations Agreement 2014*:
  - i. Underpayment of casual ordinary hourly rate of pay (clause 7.1.3(b));
  - ii. Non-payment of superannuation (clause 15); and
  - iii. Underpayment of Public Holiday penalty rates (clause 18.5).
- (c) section 535 of the FW Act for failing to make and keep employee records for the employees as prescribed by sub regulation 3.33(2) of the Fair Work Regulations 2009 (FW Regulations);
- (d) section 536 of the FW Act for failing to issue pay slips in a form prescribed by the FW Regulations.

(collectively known as the **Contraventions**)

Arora Business Investment 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](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions.

Arora Business Investment Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Arora Business Investment 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 Arora Business Investment 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](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

## ATTACHMENT C – Letter of Apology

<Date>

<Name>

<Employee Address>

Dear<Name>

I am writing to apologise on behalf Arora Business Investment Pty Ltd trading as Pizza Hut Mango Hill for non-compliance with Commonwealth workplace relation laws.

In response to allegations raised in the media, the Fair Work Ombudsman (FWO) commenced the Pizza Hut Delivery Drivers Compliance Activity (**Activity**), randomly selecting 38 Pizza Hut sites across Australia. Arora Business Investment 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 Arora Business Investment Pty Ltd, who were the subject of the audit, were, in fact and in law, employees and not independent contractors, as a result the FWO determined that Arora Business Investment Pty Ltd has contravened:

- (a) section 45 of the FW Act by failing to comply with the following provisions of the *Fast Food Industry Award 2010*:
  - i. Underpayment of casual ordinary hourly rate of pay (clause 13.2);
  - ii. Non-payment of minimum daily engagement of 3 hours to casual employees (clause 13.4);
  - iii. Non-payment of Superannuation (clause 21);
  - iv. Underpayment of Saturday penalty rates (clause 25.5(b));
  - v. Underpayment of Sunday penalty rates (clause 25.5(c)); and
  - vi. Underpayment of Public Holiday penalty rates (clause 30.3).
- (b) section 50 of the FW Act by failing to comply with the following provisions of the *Pizza Hut Queensland- SDA Employee Relations Agreement 2014*:
  - i. Underpayment of casual ordinary hourly rate of pay (clause 7.1.3(b));
  - ii. Non-payment of superannuation (clause 15); and
  - iii. Underpayment of Public Holiday penalty rates (clause 18.5).
- (c) section 535 of the FW Act for failing to make and keep employee records for the employees as prescribed by sub regulation 3.33(2) of the Fair Work Regulations 2009 (FW Regulations);
- (d) section 536 of the FW Act for failing to issue pay slips in a form prescribed by the FW Regulations.

(collectively known as the **Contraventions**)

Regrettably, the investigation determined that you were affected by the above Contraventions. Arora Business Investment Pty Ltd is taking steps to remedy the Contraventions.

Arora Business Investment Pty Ltd has formally admitted to the FWO that Arora Business Investment 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](http://www.fairwork.gov.au). As part of the Enforceable Undertaking, Arora Business Investment Pty Ltd have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws. Arora Business Investment 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