



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

Xin Long Pty Ltd (ACN156 574 131)

## ENFORCEABLE UNDERTAKING

### PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Commonwealth of Australia (as represented by the Fair Work Ombudsman (**FWO**)) by Xin Long Pty Ltd, (ACN156 574 131 (**the Employer**)) for the purposes of section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**).

### COMMENCEMENT OF UNDERTAKING

1. This undertaking comes into effect when:
  - a. the Undertaking is executed by the Employer; and
  - b. the FWO accepts the Undertaking so executed.
2. Upon the commencement of this Undertaking the Employer undertakes the obligations set out below.

### BACKGROUND:

3. The Employer, trading as Mr Kitchen The Pines operates a takeaway food premises located in the food court at The Pines Shopping Centre, 181 Reynolds Road, Doncaster East, Victoria. The Employer is covered by the *Fast Food Industry Award 2010* (**Award**)
4. On 13 April 2015, the FWO commenced an investigation of the Employer following the receipt of a complaint alleging the underpayment of wages from [REDACTED], an employee engaged by the Employer at its location in The Pines shopping centre.
5. During the investigation Mr Steven Zhou, Director of the Employer advised the FWO that the Employer:
  - a. did not issue payslips to its employees;
  - b. kept limited time and wages records;
  - c. paid all employees \$20 gross per hour for all hours worked;
  - d. did not pay annual leave entitlements;
  - e. did not record any accrued annual or personal leave entitlements; and
  - f. treated all its employees as casual employees.
6. The FWO determined that the Employer had contravened provisions of the Award and the FW Act with respect to the underpayment of minimum rates of pay, unpaid casual loading, penalty rates and payslip and record keeping requirements.

7. The Employer has agreed to undertake a further self-assessment of all employee wages for all periods of employment post 1 July 2014.

## **CONTRAVENTIONS**

8. The FWO has determined, and the Employer admits that the Employer contravened section 45 of the FW Act by failing to comply with the following provisions of the Award:
  - (a) clause 13.2 – casual loading;
  - (b) clause 17 – minimum wages; and
  - (c) clause 25.5 (b) – Saturday penalty rates.
9. The FWO has determined, and the Employer admits that the Employer contravened sections 535(1) of the FW Act by failing to keep employee records as prescribed in the *Fair Work Regulations 2009 (FW Regulations)*.
10. The FWO has determined, and the Employer admits that the Employer contravened section 536(1) of the FW Act by failing to give a payslip, in the form and content prescribed in the FW Regulations, to employees within one working day of paying an amount to an employee.

## **UNDERTAKINGS**

11. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, the Employer undertakes the following:

### **Self- audits and rectification of underpayments identified**

12. within 7 days of the execution of this Undertaking the Employer will commence self-audits of company employment records as follows:
  - a. An audit of all employment records for the period of employment commencing on 1 July 2014 to 19 June 2015.
  - b. An audit of all cash-in-hand payments to employees for all periods of employment where such staff were engaged from 1 July 2014 until the 19 June 2015.
13. within 28 days of the execution of this Undertaking, provide evidence of quantum of underpayments and methodology for determining those underpayments to the FWO for verification.

14. if applicable, within 28 days of the execution of this Undertaking, provide a proposed schedule of payments outlining how all underpayments determined will be rectified.
15. within 14 days of completing any agreed schedule of payments, provide evidence that all payments have occurred.

#### **Future Workplace relations compliance**

16. ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Award;
17. provide the FWO, within 28 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph 17 above. Without limitation, such systems and processes will include systems and processes relating to:
  - a. ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and allowances;
  - b. issuing pay slips to employees within 1 working day of payment; and
  - c. keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

#### **Workplace relations training**

18. within 28 days of the execution of this Undertaking, the director and any relevant payroll staff undertake external training by a workplace relations trainer focusing on the requirements of the FW Act and the Fast Food Award.
19. within 7 days of completion of the education courses, provide evidence to the FWO of the successful completion of that training.

#### **Further self – audits and reporting**

20. no earlier than 11 calendar months but not later than 12 calendar months of the execution of this Undertaking, have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Employer), an audit of its compliance with Commonwealth Workplace laws.

21. provide to the FWO, at least 14 days prior to the commencement of an audit being undertaken, the methodology to be used for the purpose of the Audit for approval by the FWO;
22. if the Audit discloses contraventions of any applicable Commonwealth workplace laws and/or instruments, rectify all such contraventions within 14 days of the Audit being provided to the Employer including rectification of any and all underpayments to employees;
23. provide evidence of rectification of the contraventions to the FWO within 14 days of the Audit being provided to the Employer.

### **Workplace Notice**

24. within 14 days of the execution of this Undertaking, the Employer will cause to be displayed a notice in the form of Attachment One to this Undertaking (**Workplace Notice**):
  - a. for a period of 28 days, at Mr Kitchen The Pines; and
  - b. ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
    - i. in a location to which all employees who work at Mr Kitchen The Pines have access;
    - ii. in a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard;
    - iii. provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

### **Record Keeping**

25. within 28 days of the date of execution of this Undertaking, provide to the FWO copies of time and wage records and payslips that comply with Commonwealth workplace laws for all periods of employment covered by the 28 days post execution.

### **FWO MyAccount Registration**

26. within 7 days of the execution of this Undertaking, register with the FWO 'MyAccount' portal at '[www.fairwork.gov.au](http://www.fairwork.gov.au)' and complete the profile, minimum pay rates and Award options through this portal. Thereafter:

- i. within 14 days of the execution of the Undertaking provide to the FWO the Company's 'My Account' registration number.
- ii. within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector your MyAccount knowledge, including in relation to accessing the current Award minimum pay rates and Public Holiday penalty rates.

## **ACKNOWLEDGEMENTS**

27. The Employer 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 the Employer;
- 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 the Employer 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; and
- g. consistent with section 715(3) of the FW Act, the Employer may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

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

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

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

\_\_\_\_\_  
(Name of director)

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

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

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

in the presence of:

in the presence of:

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

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

\_\_\_\_\_  
(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]

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

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

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

\_\_\_\_\_  
(Name of Witness)

## **Attachment A – Form of Workplace Notice**

### **Contraventions of the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by Xin Long Pty Ltd**

We refer to the audit by the Office of the Fair Work Ombudsman (FWO) of Xin Long Pty Ltd and determination of contraventions of the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by:

- failing to pay minimum wages
- failing to pay casual loading
- failing to pay Saturday penalty rate
- failing to make and keep required records
- failing to issue payslips

Xin Long Pty Ltd has formally admitted to the FWO that these contraventions have 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. These include undertaking training in workplace laws, registering for the FWO My Account, issuing payslips to employees within one day of payment, ensuring correct record keeping and undergoing further audits to monitor its compliance with workplace laws.

Xin Long Pty Ltd expresses sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Xin Long Pty Ltd gives a commitment that such conduct will not occur again and 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 [REDACTED] on [REDACTED]. 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.