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Submission to the Senate Standing Committee on Education, Employment and Workplace Relations

Inquiry into the Fair Work Bill 2008



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6 January 2009

Committee Secretary
Senate Education, Employment and Workplace Relations Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

By Email only: eewr.sen@aph.gov.au

Dear Committee Secretary

Inquiry into the Fair Work Bill 2008

Yum! Restaurants Australia Pty Limited and its franchisees employ approximately 32,000 people in Australia in two brands – KFC and Pizza Hut. Over 80% of these employees are young people.

Each brand operates under its own consent award and certified agreement with the SDA. These consent awards and agreement with the SDA cover Yum and its franchisees as a single business. We want these arrangements to continue.

There appear to be two challenges to the continuation of these arrangements: first, the potential for the awards to be rationalised into a general industry award as part of award modernisation; and, second, the potential for the splintering of employment terms and conditions if the enterprise awards do not apply to all outlets operating as KFC or Pizza Hut.

Award Modernisation

The Transition to Forward with Fairness Amendments for award modernisation excluded enterprise awards from the process enabling our awards to continue to operate (s.576V (3)). In our view, this is a sensible approach. Our awards have been negotiated with the SDA, are suited to our business and are protective of our employees.

We note that the definition of 'enterprise award' in s.576U, its reference to 'single business' and the meaning of 'common enterprise' in s.322 of the Act has caused some confusion. While we are of the view that Pizza Hut and KFC operate as a common enterprise we have no particular issue with the legislation describing enterprise awards using more readily understood concepts. We make this concession on the proviso that these awards remain excluded from general industry modern awards.

We note that the Bill makes no reference to enterprise awards. We ask that the Government make it clear in any transitional provisions that an enterprise award, such as the KFC and Pizza Hut Award, are excluded from modern industry awards. Alternatively, if it is intended that 'enterprise awards' are to be deemed 'named employer awards' under the Bill, we ask that this be expressly stated in the transitional provisions.



Application of our enterprise awards

While the vast majority of Pizza Hut and KFC outlets were covered by the respective enterprise awards, this changed due to Work Choices, particularly the transmission of business legislation.

A number of franchises have changed hands since WorkChoices was introduced (in excess of one hundred in Pizza Hut alone). As a result, the employers and employees in these Pizza Hut outlets have lost coverage (after the 12 month transmission period) under the enterprise award and have generally been left with no coverage by an industrial instrument.

We note that, in relation to named employer awards, clause 312 of the Bill enables application to be made pursuant to clause 159(1)(c) of the Bill for a named employer award apply where there is a transfer of business. This seems like an appropriate way to deal with this issue.

However, we are concerned that the stores that have lost coverage due to transmission of business may not be able to access this provision because the businesses have transferred prior to the new legislation. We note that previous transmission of business provisions of the Act extended to transmission of business “whether immediate or not” (see, for example, the now repealed s.149 of the Act). To avoid doubt, we ask that a similar formulation be adopted in this legislation.

We also note that where a new store is opened there may not be a transfer of business as such. Nevertheless we ask that there be the capacity under the legislation to include any new employers operating a KFC or Pizza Hut under the respective enterprise award.

Another area which presents difficulty is the operation of the enterprise awards in Queensland. Our operations in Queensland have been traditionally covered by State Awards (now NAPSAs) which will now be defunct. In KFC our franchisees in Queensland are operating under a NAPSA as they are not respondents to the KFC Award. In the Pizza Hut Award, there is exclusion for Queensland to allow the NAPSA to apply. We would like there to be the capacity to also include Queensland KFC and Pizza Hut outlets under their respective enterprise award.

A simple approach to overcoming these issues would be to allow enterprise awards or named employer awards to apply to all employers who operate a Pizza Hut or KFC outlet without having to name individual respondent employers operating those outlets.

Yum would be pleased to appear before the Committee if required. We thank the Committee for the opportunity to make this submission.

Yours faithfully



Amanda Fleming
Chief People Officer
Yum! Restaurants Australia Pty Limited

cc: Nick Bryden, Chief Legal Officer, Yum Restaurants International
Richard Wallis, Employee Relations Director, Yum Restaurants International