

Degani Bakery Café - compliance activity report

August 2018

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Summary

In response to a high number of requests for assistance from workers alleging underpayment by the Degani Bakery and Café (Degani) service network, the Fair Work Ombudsman (FWO) commenced a targeted Compliance Activity (the Activity)¹.

The Activity involved the examination of 16 Degani outlets operating under either a licensee or a franchisee arrangement.

The network of Degani cafes was founded in Victoria in 1999. Outlets differ in format and size, from small kiosks and espresso bars to larger cafes and restaurants. The cafes are located in shopping centres or street front locations. The Activity did not include any kiosk or espresso bar style stores, as FWO intelligence indicated underpayment issues were more prevalent at the larger sites.

The Activity found evidence of serious non-compliance with the *Fair Work Act 2009* (the Act), with only one store audited meeting its workplace obligations. It also found that non-compliance was more prevalent within stores operating under a licensee arrangement, as opposed to franchises.

Of the 15 stores found to be non-compliant, the Activity found:

- eight were non-compliant with record-keeping
- nine were non-compliant with weekend and public holiday penalty rates
- eight were non-compliant with base rate of pay
- one provided false or misleading records²
- one failed to comply with a Notice to Produce records.

These findings resulted in issuing:

- five infringement notices, equating to a total of \$5400 in penalties for a range of record making and record-keeping breaches
- eight compliance notices, and
- ten formal cautions.

The findings also led to the owners of one outlet entering into an enforceable undertaking³ (signed in November 2017) and the FWO commencing legal proceedings⁴ against another Victorian outlet (December 2017).

¹ Between 1 July 2014 and 31 October 2016, the FWO completed 40 requests for assistance and received 119 enquiries on the Fair Work Infoline related to Degani cafes.

² [FWO Media release: Court action for alleged underpayments, false records at Degani café](#), 26 February 2018

Background - business model

The first Degani Bakery Café was established in 1999 by Mr George Pezaros, located in Clifton Hill, Melbourne.

Mr George Vasiliadis and Mr Pezaros have grown the Degani brand and network of cafes under various licensing arrangements to almost 60 stores across Melbourne.

In summary:

- In December 2012, Brisbane-based private equity firm NBC Capital Pty Ltd (NBC Capital) [ACN: 080 784 014] invested an undisclosed stake with a view to further expansion of the network across Australia and established Degani Australia Pty Ltd (Degani) [ACN: 161 084 62]⁵.
- NBC Capital used its investment fund, NBC Fund III, to buy into Degani⁶.
- The Directors of Degani are Bruce Scott and Shane Lawrence.
- Bruce Scott is the current controller of Degani via directorship and majority shareholding in the ultimate holding company, Fusion Food Group Pty Ltd (Fusion Food Group) [ACN: 160 348 809]⁷.
- Fusion Food Group shares are held equally by two companies, NBC Capital and NBC Nominees Pty Ltd [013 866 587]. Bruce Scott is the sole director of each entity.
- The Fusion Food Group represents brands such as Degani and (formerly) Eagle Boys.

For the purposes of this Activity, Degani was the franchisor and license holder of the Degani brand.

³ [FWO Media release: Degani café underpays young workers](#), 1 February 2018

⁴ [FWO Media release: Court action for alleged underpayments, false records at Degani café](#), 26 February 2018

⁵ Mr Vasiliadis was a Director of Degani Australia Pty Ltd until February 2015 and Mr Pezaros was a Director of Degani Australia Pty Ltd until April 2016. Mr Vasiliadis held shares in Degani Australia Pty Ltd until 19 January 2018.

⁶ NBC Capital has two member shareholders; Tara Group Pty Ltd [067 868 946] and James McDonald, ATF The Stapleton Family Asset Trust. The Directors and shareholders of Tara Group Pty Ltd are Bruce Scott and Yvonne Hauschild-Scott.

⁷ Shane Lawrence was also a Director of Fusion Food Group Pty Ltd until 14 March 2018.

As at the time of this Report, the Degani network had over 70 sites (café's, restaurants and kiosks) throughout Victoria, Queensland, Western Australia and New South Wales with the majority of outlets in Victoria. Sites are located in central business districts, suburban and regional locations⁸.

The Degani network has offered franchise arrangements since 2013. The main difference between a licensing and franchise model is that under the former, licensees have greater autonomy in relation to implementing their own marketing and operating systems. Under a franchising model, there is a common marketing plan for all franchisees and the franchisor determines the methods and systems for operation under the franchise agreement.⁹

Franchisees can select from a variety of business models and locations¹⁰, with Degani currently offering the following four business models:

Degani franchise business models

1. Espresso Bar (20m² - 35m²)

Situated in high customer-traffic zones, such as shopping centres, retail strips, or train station foyers.

2. Kiosk (30m² - 60m²)

Situated in high customer-traffic locations, outlets offer some seating and similar menu to a café.

3. Café (100m² - 200m²)

Situated in malls and shopping centres, specialising in offering seated breakfast and lunch options.

4. Restaurant (200m² - 400m²)

Offering a sit-down option, providing full table service, with some restaurants holding liquor licences, extended menu and trading hours.

On average, a Degani franchise costs between \$300 000 and \$500 000¹¹ to purchase. Franchisees pay an ongoing 5% franchise fee and a 2% marketing fee calculated as a percentage of gross profit.

Degani provides the following support to store operators:

- an operations manual containing information on employer obligations under the *Fair Work Act 2009* (the Act).

⁸ [Degani website](#)

⁹ [Legal vision - what is the difference between a licence and franchise agreement?](#)

¹⁰ [Franchisor Buyer, Vol 4, Issue 2, 2016](#) (accessed 12 August 2016).

¹¹ [Seek business website - Degani Cafe opportunities](#)

- (from January 2017), payment for all storeowners (including licensees and franchisees) to become members of the Australian Retailers' Association (ARA), and
- access to a Human Resource Information System - *Enable HR*.

While franchisees are required to purchase products, such as milk, from approved suppliers, all stores are required to sell the Degani signature blend of coffee with the franchisee either paying a fee or royalty on sales.

Degani also allocates a Business Development Manager (BDM) to each store. While the BDMs visit stores regularly to conduct site reviews, the Activity did not find any evidence that site reviews include checking if employees are paid in accordance with workplace laws, or if employers are complying with record-keeping obligations.

Market setting

The majority of eating venues in Australia are fast food, restaurants, cafes, pubs, bars and clubs¹².

The hospitality industry employs over 830 000 workers in Australia across more than 82 000 businesses. Annual revenue of \$101.3 billion is earned across accommodation and food and beverage services¹³ industry sectors.

There has been solid revenue growth across the food and beverage services industry over the past five years. This is largely due to changing consumer trends such as busy lifestyles, diminishing leisure time and demand for quality food and dining experiences. The average Australian eats out two to three times per week¹⁴.

Price and quality are the primary areas of competition, and most consumer reviews on social media platforms highlight these areas¹⁵. In a heavily contested market, the Degani network offers a diverse and comprehensive all-day menu (breakfast, lunch and dinner options) at middle-range price points¹⁶.

Restaurant Industry Award

The *Restaurant Industry Award 2010* (Restaurant award) applied to all stores included in the Activity. Most stores were applying the Restaurant award. One store incorrectly applied the *Fast Food Industry Award 2010* and another was paying employees under an Enterprise Agreement that had not been approved by the Fair Work Commission at the time of the Activity.

At the time of this Report's publication, rates of pay for ongoing part-time or full-time adult employees were \$19.47 per hour (Level 1) and \$20.22 per hour (Level 2).

Junior rates of pay vary depending on the age of the individual, for example, rates range from:

- \$9.74 per hour (Level 1) to \$10.11 per hour (Level 2) for a 16 year old
- \$16.55 per hour (Level 1) to \$17.19 per hour (Level 2) for a 19 year old.

Casual employees receive a 25% casual loading on top of these base rates.

Saturday rates of pay incur a 25% penalty loading, while Sunday rates incur a 50% loading. Public Holidays incur a 125% loading.

¹² [Eating out in Australia 2017, Hospitality Magazine](#)

¹³ [IBISworld – Accommodation and Food Services – Australia – Market Research Report](#)

¹⁴ [Eating out in Australia 2017, Hospitality Magazine](#)

¹⁵ IBISworld – Industry Report - H4511a Restaurants in Australia, March 2018

¹⁶ [Degani \(Casey\) menu](#)

Overtime rates apply at various times during the week depending on the time and number of hours worked. Some overtime rates can be double time.

Price point competition combined with low profit margins and high costs has tempted some employers to explore ways to reduce labour costs.

Compliance activity methodology

The objective of the Activity was to test compliance levels of a select number of Degani sites, with a focus on the following provisions of the Act:

- Section 44 – Contravening a term of the National Employment Standards
- Section 45 – Contravening a term of a modern award
- Section 535 – Employer obligations in relation to employee records
- Section 536 – Employer obligations in relation to pay slips.

The Activity relied on powers contained in subsections 682(1) (b) and 1(c) of the Act to examine the individuals and businesses involved.

These provisions allow Fair Work Inspectors (Inspectors) to conduct monitoring (auditing) and investigation activities as per sections 708, 709, 711, 712 and 714 of the Act. This includes conducting interviews and issuing notices to produce records or documents.

Inspectors conducted unannounced visits at 12 Degani stores across Melbourne, and two outlets in Rockhampton. In addition, Inspectors audited the records of two stores in Frankston and Mornington, in outer Melbourne.

Twelve of the stores were selected due to allegations contained in requests for assistance previously made to the FWO by employees, and the remaining four were selected randomly.

The on-site component of the Activity involved Inspectors speaking to employees, owners and managers and checking available employment records kept on site. A sample of records was requested for a three-month period (Activity Period) via a Notice to Produce Records or Documents (Notice) as per section 712 of the Act.

Of the 16 stores that formed part of the Activity, seven were franchisees, and nine operated under a licensee arrangement.

The stores included in the Activity employed between one and 20 employees. In total, 121 employees were included in the Activity, of which, 41 were under 21 years of age (33.8%) and 12 were visa holders¹⁷ (9.92%).

Figure 2: Infographic summarising compliance activity results



¹⁷ The visas identified included: student, vocational education and training sector, temporary skilled work, and resident return visa holders.

Activity findings

The FWO was only able to assess 15 of the 16 stores initially identified as part of the Activity. Of these, only one store was compliant with its obligations under the Act and Restaurant award.

One of the stores (a licensee in Templestowe, Victoria) visited could not be fully assessed due to the business failing to comply with a Notice to Produce records. The FWO considered commencing legal proceedings as a result of the non-compliance with a FWO statutory notice, however, due to insufficient evidence to establish underpayments, the business was issued with a formal caution for failing to comply with a notice under the Act. The notice provided that the FWO would closely monitor the business and conduct a future inspection. Degani also issued the licensee with a breach notice and advised it was considering discontinuing the licensee arrangement. In July 2017, the business lost its license and no longer operates under the Degani brand. In late 2017, the business stopped trading and the store closed.

More than \$44 000 was recovered for 86 employees through the audit. The underpayment amount per store varied considerably. Three stores owed less than \$1000 and the largest amount owing was just over \$12 500 for 15 employees over a two-month period, from 13 September 2016 until 15 November 2016.

It is important to note that the underpayments relate to the sample period only, however it is indicative that underpayments had been occurring for some time prior to the Activity and the intervention of the FWO.

The most common issue identified was underpayment or non-payment of penalty rates for weekend and public holiday work.

The Activity also identified issues in relation to employment status. At four stores, it was found that employees engaged on a part time basis were being treated as casual employees. They were not receiving regular hours of work or pro-rata entitlements such as paid annual and personal leave. In the FWO's experience, this arrangement is common in the hospitality industry with employers seeking to get the 'best of both worlds' by paying lower part time pay rates as well as benefiting from the flexibility of a casual workforce. This practice is unlawful and provides employers with an unfair competitive advantage as well as disadvantaging workers.

The Activity found employees at three stores paid at the incorrect classification level based on their qualifications and duties performed, specifically:

- employees paid at the introductory level classification despite more than three months' industry experience, and
- wait staff paid at the Food and Beverage Attendant Grade 1 classification rather than the correct Grade 2 classification level.

Eight stores were found to not be meeting their record-keeping obligations. In five of the eight stores, inspectors were hindered in their ability to establish underpayment amounts owing to employees during the Activity Period. Three stores were not issuing pay slips.

The Activity found non-compliance more prevalent within stores operating under a licensee arrangement, as opposed to franchises.

Figure 3: Infographic summary of compliance and enforcement outcomes from Degani compliance activity

Compliance and enforcement outcomes

The following compliance and enforcement actions have been taken against the non-compliant stores:

Figure 3: Summary of the compliance and enforcement actions taken



- Five infringement notices were issued, equating to a total of \$5400 in penalties for a range of record making and record-keeping breaches. These included failure to provide pay slips, pay slips not providing the prescribed information, and failure to make and keep records for seven years (e.g. recording start and finish times).
- Eight compliance notices were issued for underpaying minimum hourly rates, penalty rates and allowances.
- Ten formal cautions were issued.
- One enforceable undertaking was entered into with Degani @ Bentons, Mornington Victoria¹⁸.
- The FWO commenced one litigation against a Degani Café located in Greensborough, Victoria¹⁹.

See case studies of the compliance and enforcement outcomes at **Appendix A**.

¹⁸ [FWO Media release: Degani café underpays young workers](#), 1 February 2018

¹⁹ [FWO Media release: Court action for alleged underpayments, false records at Degani café](#), 26 February 2018

Conclusion

While Degani was co-operative with the FWO throughout the Activity, and has taken steps to provide franchisees and licensees with tools and resources to assist them to be compliant with workplace laws, the findings indicate Degani needs to make a greater investment in compliance throughout its network.

The introduction of the *Protecting Vulnerable Workers Act* in 2017 has introduced higher penalties for franchisors involved in serious breaches and record-keeping failures, as well as strengthening the FWO's evidence gathering powers. These new legislative provisions have enhanced the FWO's capability to monitor brands such as Degani responsible for network operators who fail to keep or make records.

In particular, the Commonwealth's new franchisor liability laws:

- specifically hold franchisors to account for wage underpayments in their business
- require franchisors to use their influence or control to take reasonable steps to create systems and cultural settings designed to prevent non-compliance with work laws.

Anonymous reports, tip offs, requests for assistance and media reports are some of the sources which provide the FWO with intelligence as to indications of non-compliance.

The FWO will closely monitor incoming information for any reports of non-compliance in the Degani network and consider all available compliance and enforcement options if future breaches occur.

About the Fair Work Ombudsman

The FWO is an independent statutory agency, created by the Act on 1 July 2009.

The FWO supports compliant, productive and inclusive Australian workplaces. The FWO ensures compliance with Australia's workplace laws by:

- offering people a single point of contact to receive accurate and timely advice and information about Australia's workplace relations system
- educating people working in Australia about their workplace rights and obligations
- monitoring compliance with, inquiring into and investigating any act or practice that may be contrary to workplace laws, awards and agreements
- litigating to enforce workplace laws and to deter people from not complying with their workplace responsibilities.

Further information

The FWO has a range of resources and publications for employers and employees on our website at www.fairwork.gov.au, including the FWO [Strategic Intent](#) and [Compliance and Enforcement Policy](#), which explains how we approach fulfilling our role.

For more information about this report or our current compliance and enforcement activities, please email Lynda McAlary-Smith, Executive Director Compliance and Enforcement, at lynda.mcalary-smith@fwo.gov.au.

For media enquiries, email media@fwo.gov.au.

Appendix A – case studies

The following five case studies explain the types of breaches the Activity found and the compliance and enforcement outcomes that followed.

Formal caution

Formal cautions are issued when the FWO has found instances of non-compliance and it is considered appropriate to put a business on notice that future non-compliance could result in the FWO seeking financial penalties. If the FWO becomes aware of any further instances of non-compliance, the fact that the business was issued with a formal caution (in writing) will be taken into account in deciding whether to commence civil legal proceedings against the business, and it may be used as evidence in any penalty determinations. The Activity resulted in issuing ten letters of caution.

A cafe in Melbourne's North East was applying the Fast Food Industry Award 2010 (Fast Food Award) instead of the Restaurant Industry Award 2010 (Restaurant Award) as well as engaging part-time employees without providing them with a written part time work agreement specifying their hours.

The Inspector educated the employer regarding award coverage and the difference between part time and casual employees. Throughout the activity, the employer cooperated with the FWO and no underpayments were identified. As there was no history of non-compliance and the breaches resulted from lack of knowledge and experience (rather than deliberate non-compliance) the decision was made to issue the employer with a caution.

Infringement Notice

An Infringement Notice is a fine given to a business for non-compliance with record-keeping or pay slip requirements of the Act and the Regulations.

A store in Melbourne's south-eastern suburbs with six employees failed to issue pay slips within one working day of making payment to employees. The employer said that this was due to his bookkeeper not regularly issuing the pay slips. The inspector explained it was the responsibility of an employer to make sure employees were issued pay slips within one day of being paid. As a result of the breach, the employer was issued an Infringement Notice. The employer paid the Infringement Notice within the required timeframe, and committed to making sure all employees received pay slips, within one day of receiving their pay.

Compliance notice

A compliance notice is a written notice legally requiring a business to rectify breaches of the Fair Work Act 2009. Failure to comply with a compliance notice results in the FWO commencing legal proceedings. The Activity resulted in the issuing of eight compliance notices.

A cafe in Rockhampton breached the Restaurant Award by underpaying four employees over \$900 during the sample period. The underpayment occurred because the employer breached the minimum wages, casual loading, Saturday and Sunday penalty and early morning penalty provisions of the Restaurant Award. The employer also did not pay a 17.5% annual leave loading to employees when they took annual leave.

The Inspector issued the employer with a Compliance Notice, specifying the amounts owed to the three affected employees. The Employer fully cooperated with the FWO and back paid the underpaid employees within the timeframe specified in the compliance notice.

Enforceable Undertaking

An Enforceable Undertaking is a legally binding agreement between an employer and the FWO, in which the employer accepts responsibility for serious breaches of the Act. The employer agrees to pay all outstanding monies owed to their employees, and to terms that ensure future compliance, such as training sessions for senior managers, and periodic compliance reporting. Enforceable Undertakings typically operate for a period of between two to five years.

Degani @ Bentons - Mornington, Victoria

A Café, located in Mornington, Victoria was found to have been underpaying employees; many of them young workers, aged 18 -19 years of age. The Activity disclosed the business was not providing sufficient casual loadings and various weekend penalty rates to staff. Further, the business failed to: provide unpaid meal breaks for employees who worked more than five hours; roster part-time employees for at least three consecutive hours, and; provide annual leave loading.

Degani @ Bentons Pty Ltd entered into an Enforceable Undertaking with the FWO²⁰ requiring the rectification of all underpayments that occurred during the Activity Period, issuing an apology to affected employees, conducting future audits to ensure ongoing compliance, and completing designated FWO online training courses.

²⁰ [FWO Media release: Degani café underpays young workers](#), 1 February 2018

Litigation

Litigation is a legal process where the FWO files proceedings against a company and/or individual in a court seeking financial penalties against the employers for allegedly breaching the Act. Litigation is the most significant enforcement tool used by FWO and is reserved for those serious matters that are in the public interest as detailed in the [FWO Litigation Policy](#).

SHMAP Group Pty Ltd trading as Degani Café – Greensborough, Victoria

The FWO commenced proceedings against one of the Degani stores located in Greensborough, Victoria due to the seriousness of the alleged breaches identified, including underpayments and providing Inspectors with false and misleading records.

Proceedings commenced in the Federal Circuit Court on 17 December 2017 against SHMAP Group Pty Ltd, and one of its Directors, Mr Sajid Amin, who manages and part-owns the franchise outlet.

The outlet is covered by the Restaurant Industry Award 2010 and employed a number of staff at the time; including four young workers (one 15 years of age) and two adult overseas workers from China and Malaysia.

It is alleged that despite knowing about the minimum conditions contained in the Award, completing an online FWO training course and receiving advice from head office, the business and Mr Amin allegedly underpaid staff their minimum wages and penalties.

Significantly, Mr Amin and SHMAP Group Pty Ltd allegedly created false and misleading time and wage records and provided them to Inspectors, by understating hours worked or days worked by employees.

Inspectors identified just over \$12 000 in underpayments owing to 15 employees, occurring over a nine-week period between September and November 2016. The underpayments have been repaid in full to employees.

The FWO is seeking penalties against the business and Mr Amin as the Director and manager of the business²¹. The FWO is also seeking court orders for SHMAP Group Pty Ltd to commission an audit of its compliance with workplace laws and commission workplace relations training for managerial staff.

The matter is ongoing.

²¹ [FWO Media release: Court action for alleged underpayments, false records at Degani café](#), 26 February 2018