



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

Malaysian Dining Delights Pty Ltd (ACN: 155393098 / ABN: 11155393098)

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:  
Malaysian Dining Delights Pty Ltd trading as Malaysian Dining Delights (ACN: 155393098);  
For the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Commencement of Undertaking**

2. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by Malaysian Dining Delights Pty Ltd; and
  - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, Malaysian Dining Delights Pty Ltd undertakes to assume the obligations set out below.

**Background**

4. Soon Huat Koh is a director of Malaysian Dining Delights Pty Ltd.
5. Malaysian Dining Delights Pty Ltd operates a restaurant that prepares and cooks Malaysian cuisine to dine-in and take-away customers. The restaurant is located at 111 Manning Road Bentley WA 6102. The restaurant is open Tuesday to Sunday between 11.00 am and 3.30 pm and 5.30 pm and 10.00 pm. This restaurant has been trading for approximately two years.
6. All employees of Malaysian Dining Delights Pty Ltd are covered by the terms and conditions of the *Fair Work Act 2009* (the FW Act) and the *Restaurant Industry Award 2010* [MA000119] (Award).
7. On 21 January 2015 the FWO commenced an investigation into Malaysian Dining Delights Pty Ltd to assess compliance with the Award.
8. Mr Koh maintained all employees were employed on either a permanent part-time or permanent full-time basis.
9. The FWO found that five employees of Malaysian Dining Delights Pty Ltd were underpaid their minimum entitlements against the Award.
10. Two of the five employees were employed as Kitchen Hands grade 1 (wage level 1) and three were employed as Food and Beverage Attendants grade 2 (wage level 2).
11. Malaysian Dining Delights Pty Ltd underpaid employees by failing to pay the correct rates of pay for ordinary hours, the penalty rates for work performed on Saturday and Sunday, the penalty rate for work after 10.00 pm Monday to Friday, split shift allowances for split shifts worked Monday to Friday, and overtime for time worked outside of ordinary hours, in accordance with the Award.

**Contraventions**

12. The FWO has determined, and Malaysian Dining Delights Pty Ltd admits, that Malaysian Dining Delights Pty Ltd contravened:

*Minimum Wages*

- (a) subsection 45 of the FW Act by failing to pay employees the minimum wage for ordinary hours in accordance with clause 12.8 of the Award;

#### *Saturday Penalty Rates*

- (b) subsection 45 of the FW Act by failing to pay employees penalty rates for time worked on Saturdays in accordance with clause 34.1 of the Award;

#### *Sunday Penalty Rates*

- (c) subsection 45 of the FW Act by failing to pay employees the correct penalty rates for time worked on Sundays in accordance with clause 34.1 of the Award;

(d) *Public Holiday Penalty Rates*

subsection 45 of the FW Act by failing to pay employees penalty rates for time worked on Public Holidays in accordance with clause 34.1 of the Award;

(e) *Penalty Rate for work between 10:00 pm and midnight Monday to Friday*

subsection 45 of the FW Act by failing to pay level 1 and level 2 employees penalty rates for time worked between 10:00 pm and midnight Monday to Friday in accordance with clause 34.2(i) of the Award;

(f) *Overtime*

subsection 45 of the FW Act by failing to pay employees overtime rates for time worked outside of ordinary hours in accordance with clause 33 of the Award;

(g) *Split Shift Allowance*

subsection 45 of the FW Act by failing to pay a split shift allowance for split shifts worked in accordance with clause 24.2 of the Award.

(collectively the **Contraventions**)

13. As a result of the Contraventions, five current level 1 and level 2 employees have been underpaid a total of \$4,245.24 gross. See Appendix A for the identified amounts for each employee. The FWO acknowledges that Malaysian Dining Delights Pty Ltd has since rectified the identified underpayments.

#### **Undertakings**

14. For the purposes of section 715 of the FW Act, Malaysian Dining Delights Pty Ltd undertakes to:

#### *Future workplace relations compliance*

- (a) Self-rectify, on a voluntary basis within 60 days, any additional wage disputes received by the FWO, to the satisfaction of the FWO; and
- (b) For the next 6 months, on the termination or resignation of any employee, provide to the FWO a record of the annual leave accrued, taken, and/or paid on termination; and
- (c) Complete all education courses designed for employers available on the FWO online learning centre via [www.fairwork.gov.au](http://www.fairwork.gov.au); and
- (d) Ensure compliance at all times and all respects with the FW Act, *Fair Work Regulations 2009* (Cth) and the Restaurant Industry Award 2010.
- (e) Issue pay slips to employees within one working day of paying an amount to the employee in relation to the performance of work.

#### *FWO My Account Registration*

- (f) within seven (7) days of the execution of this Undertaking, register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and have completed the profile, minimum pay rates and Award options:

- (i) within 14 days of the execution of the Undertaking provide to the FWO the Malaysian Dining Delights Pty Ltd 'My Account' registration number; and
- (ii) Within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to an FWO Fair Work Inspector via [www.fairwork.gov.au](http://www.fairwork.gov.au) 'My Account' current Award minimum pay rates for part time status, Overtime and Evening Work, Saturday, Sunday and Public Holiday penalty rates of pay.

#### *Workplace Notice*

- (g) place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 7 days of the execution of this Undertaking for a total consecutive period of twenty-eight (28) days in the terms set out in Attachment B;
  - i. provide a copy of the **Workplace Notice** and photographic evidence of its display to the FWO within seven (7) days of the display of the notice;

#### *Self-audits and Reporting*

- (h) have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of Malaysian Dining Delights Pty Ltd), by no earlier than 11 calendar months but no later than 12 calendar months from the execution of this undertaking, an audit of its compliance with Commonwealth workplace laws. Specifically:
  - (i) Malaysian Dining Delights Pty Ltd must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified; and
  - (ii) the audit is to include the one (1) full single pay period after the commencement of the eleventh month of the execution of this Undertaking; and
  - (iii) Malaysian Dining Delights Pty Ltd must provide a copy of the audit to the FWO within seven (7) days of its completion.

#### **Acknowledgements**


15. Malaysian Dining Delights 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); and
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth); and
- (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; and
- (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 Malaysian Dining Delights Pty Ltd; and
- (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; and
- (f) if the FWO considers that Malaysian Dining Delights Pty 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, Malaysian Dining Delights Pty Ltd may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

EXECUTED by Malaysian Dining Delights Pty Ltd (ACN: 155393098) in accordance with section 127(1) of the *Corporations Act 2001*:

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


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

Soon Heat Koh  
\_\_\_\_\_  
(Name of director)

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

8/6/2015  
\_\_\_\_\_  
(Date)

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


in the presence of:  
  
\_\_\_\_\_  
(Signature of witness)

in the presence of:  
\_\_\_\_\_  
(Signature of witness)

Russell Lee  
\_\_\_\_\_  
(Name of witness)


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

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

  
\_\_\_\_\_  
Steven Ronson  
Executive Director  
Dispute Resolution and Compliance

22 JUNE 2015  
\_\_\_\_\_  
(Date)

Delegate for the Fair Work Ombudsman

in the presence of:  
  
\_\_\_\_\_  
(Signature of witness)

Pia Morgan  
\_\_\_\_\_  
(Name of Witness)

	<b>Name</b>	<b>Position</b>	<b>Underpayment</b>
1	[REDACTED]	[REDACTED]	\$2,247.58
2	[REDACTED]	[REDACTED]	\$661.47
3	[REDACTED]	[REDACTED]	\$427.93
4	[REDACTED]	[REDACTED]	\$675.48
5	[REDACTED]	[REDACTED]	\$232.78

**Attachment B – Form of Workplace Notice**

**Contraventions of the *Fair Work Act 2009* and the**

***Restaurant Industry Award 2010* by Malaysian Dining Delights Pty Ltd**

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) that Malaysian Dining Delights Pty Ltd trading as Malaysian Dining Delights contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* (**the Award**).

Malaysian Dining Delights Pty Ltd owns Malaysian Dining Delights located at 111 Manning Road Bentley WA 6102 and no previous contraventions of Commonwealth workplace laws have been determined against Malaysian Dining Delights Pty Ltd.

The FWO has found that Malaysian Dining Delights Pty Ltd contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by:

1. Failing to pay employees the minimum wage for ordinary hours worked;
2. failing to pay employees penalty rates for time worked on Saturdays;
3. failing to pay employees the correct penalty rates for time worked on Sundays;
4. failing to pay employees penalty rates for time worked on Public Holidays;
5. failing to pay level 1 and level 2 employees penalty rates for time worked between 10:00 pm and midnight Monday to Friday;
6. failing to pay employees overtime rates for time worked outside of ordinary hours;
7. Failing to pay split shift allowances for split shifts worked.

Malaysian Dining Delights Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Malaysian Dining Delights 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 Malaysian Dining Delights Pty Ltd and have queries or questions relating to your employment, please contact Mr Soon Huat Koh in the first instance on telephone [REDACTED] or by email at [REDACTED]

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 to check their rates of pay and Award terms and conditions.

**Mr Soon Huat Koh**

**Director – Malaysian Dining Delights Pty Ltd**