



Australian Government

Fair Work OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

Soul Food Design Depot & Gallery Pty Ltd

(ACN: 602 253 494)

and

Melissa Jane Hamilton

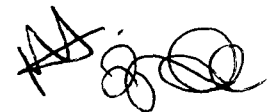
Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Soul Food Design Depot & Gallery Pty Ltd (**the Employer**); and
 - (b) Melissa Jane Hamilton (**Ms Hamilton**), Director of the Employerfor the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Employer has been registered as a Company since 9 October 2014 (ACN: 602 253 494).
3. The Employer operates in the restaurant industry, trading at 1 Dandaloo Street, Narromine, New South Wales.
4. The Employer is covered by the *Restaurant Industry Award 2010* (**the Award**).
5. Ms Hamilton admits and agrees that, at all material times, she:-
 - (a) was a director of the Employer, having been so since 9 October 2014;
 - (b) was ultimately responsible from January 2016, if not earlier, for overall direction, management and supervision of the operations at the Employer in relation to engaging staff, setting and adjusting pay rates and determining wages and conditions of employment; and
 - (c) by reason of the matters set out in subparagraphs (a) and (b) was responsible in a practical sense for ensuring the Employer complied with its legal obligations.
6. In July 2016 the Employer was subject to an Audit as part of the FWO's NSW Mid-Western Regional Campaign. An audit of the records produced found contraventions of Commonwealth workplace laws occurred between 1 July 2016 and 14 July 2016, affecting 24 current and former employees performing various duties. The names of the employees (collectively **the Employees**), Award classifications, and Amounts Owed as underpayments are as set out in **Attachment A**.
7. The Employer has advised the FWO that the Employees were engaged on a casual basis and generally worked varying hours each week.
8. The Employees were variably paid base rates between \$7.00 and \$20.00 per hour, depending on their ages. On Saturdays, the Employees were variably paid base rates between \$7.00 and \$23.00 per hour, depending on their ages.
9. The rates paid to the Employees for ordinary hours worked were at all material times less than the minimum hourly rate for ordinary hours corresponding to the relevant Award classification.
10. The rates paid to the Employees for Saturday hours worked were at all material times less than the minimum penalty rates for weekend hours corresponding to the relevant Award classification.
11. The Employer accepted the findings of the audit and calculated the quantum of underpayments for the Employees for the periods 1 July 2015 to 30 June 2016 and 1 July 2016 to 8 September 2016 (collectively the **Calculation Periods**) based on the Employer's time records.
12. The Employer provided the FWO with a copy of its calculations which showed the amount of the total underpayments to the Employees during the Calculation Periods. The FWO reviewed these calculations. The calculations as reviewed by the FWO shows the amount of the total underpayments to the Employees during the Calculation Periods to be \$22,724.60 gross. Further, the Employer seeks to rectify the underpayments to the Employees for the Amounts Owed by way of a payment plan.



13. The Employer will rectify the underpayments in accordance with the terms of this Undertaking and agrees to take additional steps to ensure future compliance with the Award and workplace laws.

Contraventions

14. 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 20 by failing to pay the Employees' correct ordinary hourly rate of pay; and
 - (b) Clause 34 by failing to pay the Employees the correct Saturday penalty rates;

Commencement of Undertaking

15. This Undertaking comes into effect when:
- (a) the Undertaking is executed by the Employer and Ms Hamilton; and
 - (b) the FWO accepts the Undertaking so executed.
16. Upon the commencement of this Undertaking, the Employer undertakes to assume the obligations set out below.

Undertakings

17. For the purposes of section 715 of the FW Act the Employer undertakes, and Ms Hamilton undertakes to cause the Employer, to:

Rectify underpayment

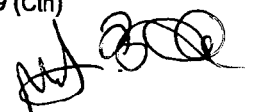
- (a) After execution of this Undertaking make payments of the Amounts Owed to each Employee in accordance with the Payments Schedule as set out in **Attachment A**.
- (b) Within 7 days of making each payment to any of the Employees, provide the FWO evidence of the payment made;
- (c) Additionally, within 7 days of any request or requests by the FWO, provide the FWO evidence of payments made as at the date to be specified by the FWO.

FWO MyAccount Registration

- (d) Within 28 days of the commencement of this Undertaking, register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and complete the profile, minimum pay rates and award options through this portal;
- (e) Provide the FWO with the Company's 'My Account' registration number within 7 days of registration;
- (f) Subscribe to receive email alerts from the FWO relating to the Award, available at <https://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>;
- (g) Provide to the FWO evidence of the above subscription, including advising the FWO of the email address used to register.

Future Workplace Relations Compliance

- (h) Comply at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth)



(FW Regulations), the Award and any modern awards as they apply to any of the Employer's employees;

- (i) Provide the FWO, within 90 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with the preceding paragraph. Without limitation, such systems and processes relating to:
 - (i) Ensuring employees received the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - (ii) Issuing payslips to employees within one working day of payment as prescribed by Section 536 of the FW Act and Part 3.6 Subdivision 1 of the FW Regulations including records relating to the taking of leave and recording leave balances;
 - (iii) Making and keeping part-time work agreements for part time workers in accordance with clause 12.3 (Part-time employment) of the Award.

Workplace Notice

- (j) Within 28 days of the commencement of this Undertaking, display a notice within the workplace in a place which is accessible to all employees (**Workplace Notice**) for a period of 14 consecutive days in the terms set out in **Attachment B**;
- (k) Within 7 days of the display of the notice, provide a copy of the Workplace Notice together with photographic evidence of its display to the FWO;

Apology

- (l) Within 28 days of the commencement of this Undertaking, send or give to each of the Employees an apology (**Apology Letter**) in the form of the letter set out in **Attachment C**;
- (m) Within 7 days of the Apology Letter being sent or given, provide to the FWO a copy of each of the Apology Letters, and proof of their delivery to the Employees;

Self – Audit and Reporting Activity

- (n) Cause to have performed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Employer) future audits of the Employer's compliance with the FW Act, FW Regulations and fair work instruments, including but not limited to the Award, on the following terms:
 - (i) A first audit of all the pay periods occurring between 1 August to 31 August 2017 inclusive which must be completed, and an audit report created, by 30 September 2017 (**First Audit**);
 - (ii) A second audit of all the pay periods occurring between 1 August to 31 August 2018 inclusive which must be completed, and an audit report created, by 30 September 2018 (**Second Audit**);
 - (iii) The audits will apply to all employees employed at any time during an audit period in a classification of work of any fair work instrument applying to the Employer in that audit period;
 - (iv) The audits will assess the Employer's compliance with the following obligations according to each employee's classification of work, category of employment and hours worked during an audit period:
 - wages and work-related entitlements;
 - any accrual and payment of entitlements under the National Employment Standards in Part 2-2 of the FW Act;
 - method and frequency of payment in accordance with section 323 of the FW

Act;

- record keeping and pay slip obligations in Division 3 of Part 3-6 of the FW Act; and
- written agreements on work patterns for part-time employees, in accordance with clause 12.3 of the Award

(v) The audit report must include:

- a statement of the qualifications of the person conducting the audit;
- the methodology used to conduct the audit;
- the audit findings; and
- where an audit identifies any contravention(s) of the FW Act, FW Regulations and fair work instruments, specific details of the contravention(s) identified in the audit, including steps the Employer will take to rectify the identified contravention(s) including but not limited to rectification of underpayments to employees;

(o) Provide to the FWO:

- (i) by 15 October 2017, a copy of the audit report in relation to the First Audit;
- (ii) by 15 October 2018, a copy of the audit report in relation to the Second Audit;

(p) Where an audit identifies any contravention(s), provide to the FWO evidence of rectification of all the contravention(s):

- (i) by 30 November 2017, in relation to the First Audit; and
- (ii) by 30 November 2018, in relation to the Second Audit.

Workplace Relations Training

- (q) Within 60 days of the execution of this Undertaking, ensure that Ms Hamilton, and all persons engaged as at the date of execution of this Undertaking by the Employer who have responsibility for management, human resources, recruitment or payroll functions, complete the educational activities from the FWO website as set out in **Attachment D**;
- (r) Record the names and positions of those persons who have completed the educational activities and the dates the activities were completed on Attachment D and provide Attachment D to the FWO within 70 days of the execution of this Undertaking;
- (s) For a period of 2 years after the execution of this Undertaking, ensure that all future directors appointed to the Employer, and all persons engaged after the execution of this Undertaking by the Employer to assume any responsibility for management, human resources, recruitment or payroll functions, complete the educational activities from the FWO website as set out in Attachment D within 28 days of their date of appointment or engagement; and
- (t) Record the names and positions of those future directors or persons referred to in the preceding paragraph who have completed the educational activities and the dates the activities were completed on Attachment D and provide Attachment D to the FWO within 35 days of their date of appointment or engagement.

No inconsistent statements

18. The Employer and Ms Hamilton, whether jointly or separately:-



(a) Must not; and

(b) Must ensure that each of the officers, employees or agents of the Employer, do not,

Make any statement, orally or in writing or otherwise imply anything that is inconsistent with the admission or acknowledgements contained in this agreement.

Acknowledgements

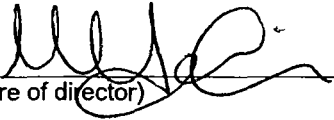
19. The Employer and Ms Hamilton acknowledge that:

- (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 (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) in the event the FWO considers that the Employer or Ms Hamilton 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;
- (g) consistent with section 715(3) of the FW Act, the Employer or Ms Hamilton may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

Executed as an undertaking

EXECUTED by **Soul Food Design Depot & Gallery Pty. Ltd.** in accordance with section 127(1) of the *Corporations Act 2001*:

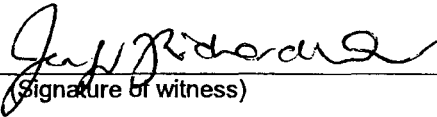


(Signature of director)

Melissa Jane Hamilton
(Name of director)

10/2/17
(Date)

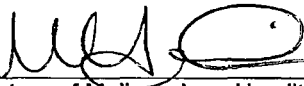
in the presence of:



(Signature of witness)

JENNIFER RICHARDSON
(Name of witness)

EXECUTED by **Melissa Jane Hamilton**:

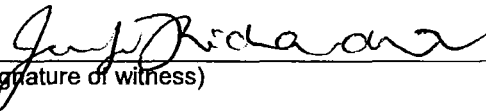


(Signature of Melissa Jane Hamilton)

Melissa Jane Hamilton
(Melissa Jane Hamilton)

10/2/2017
(Date)

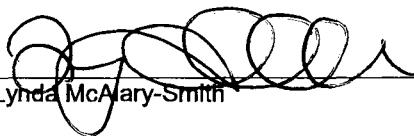
in the presence of:



(Signature of witness)

JENNIFER RICHARDSON
(Name of witness)

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




Lynda McArary-Smith

Executive Director Proactive Compliance & Education

Delegate for the FAIR WORK OMBUDSMAN

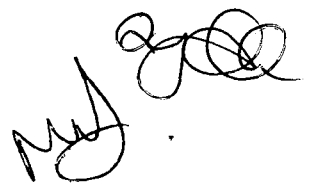
in the presence of:



(Signature of witness)

17/2/17
(Date)

LOUISE CATO
(Name of Witness)



Attachment A – Employees and Amounts Owed and Payments Schedule

Employees	Classification	Amounts Owed \$	To be paid by 15 February 2017 \$	To be paid by 15 March 2017 \$	To be paid by 15 April 2017 \$	To be paid by 15 May 2017 \$
	Grade 1	109.96	109.96			
	Grade 2	4548.21	1137.06	1137.05	1137.05	1137.05
	Grade 1	22.08	22.08			
	Grade 1	135.11	135.11			
	Grade 1	198.03	198.03			
	Grade 1	88.48	88.48			
	Grade 1	4090.48	1022.62	1022.62	1022.62	1022.62
	Grade 1	187.41	187.41			
	Grade 1	5.55	5.55			
	Grade 1	155.48	155.48			
	Grade 1	10.16	10.16			
	Grade 2	168.52	168.52			
	Grade 1	2238.07	559.51	559.52	559.52	559.52
	Grade 1	88.51	88.51			
	Grade 1	33.24	33.24			
	Grade 1	3633.91	908.47	908.48	908.48	908.48
	Grade 1	831.51	207.87	207.88	207.88	207.88
	Grade 1	1788.56	447.14	447.14	447.14	447.14
	Grade 1	4.39	4.39			
	Grade 1	1909.10	477.26	477.28	477.28	477.28
	Grade 1	10.71	10.71			
	Grade 1	818.80	204.70	204.70	204.70	204.70
	Grade 1	1455.71	363.92	363.93	363.93	363.93
	Grade 1	192.62	192.62			
TOTAL		22724.60	6738.80	5328.60	5328.60	5328.60
Employees underpaid	24					

Attachment B – Form of Workplace Notice

Contravention of *Fair Work Act 2009* and the Restaurant Industry Award 2010 by Soul Food Design Depot & Gallery Pty. Ltd.

A recent audit conducted by the Office of the Fair Work Ombudsman (FWO) determined that Soul Food Design Depot & Gallery Pty. Ltd. contravened the *Fair Work Act 2009* by failing to pay employees the correct entitlements under the Restaurant Industry Award 2010 as follows:

- minimum hourly rates of pay for time worked Monday to Friday; and
- penalty rates for time worked on Saturdays.

Soul Food Design Depot & Gallery Pty. Ltd. has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments.

Soul Food Design Depot & Gallery Pty. Ltd. expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore Soul Food Design Depot & Gallery 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 have queries or questions relating to your employment, please contact me, Melissa Hamilton, on (insert phone number). Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

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Attachment C – Letter of Apology

<Date>

<Employee name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Soul Food Design Depot & Gallery Pty. Ltd. for non-compliance with Commonwealth workplace relations laws. A recent audit conducted by the Office of the Fair Work Ombudsman (FWO) determined that Soul Food Design Depot & Gallery Pty. Ltd. contravened the *Fair Work Act 2009* by failing to pay employees the correct entitlements under the Restaurant Industry Award 2010 as follows:

- Minimum hourly rates of pay for work performed Monday to Friday
- Penalty rates for work performed on Saturdays

The audit determined that you were affected by the above contraventions.

Soul Food Design Depot & Gallery Pty. Ltd. is taking steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (insert amount); and
- Committing to future compliance.

You will receive this payment (by insert date/ in four instalments to be paid by 15 February 2017, 15 March 2017, 15 April 2017 and 15 May 2017) and will be provided with a payment advice regarding the payment/each payment.

Soul Food Design Depot & Gallery Pty. Ltd. has formally admitted to the FWO that it 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. As part of the Enforceable Undertaking, Soul Food Design Depot & Gallery Pty. Ltd. has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

We sincerely regret and apologise for failing to comply with our lawful obligations.

Should have any questions, please contact me, Melissa Hamilton, on (insert phone number).

Yours sincerely

(Signature)

Melissa Hamilton

Director

Soul Food Design Depot & Gallery Pty. Ltd.



TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

www.fairwork.gov.au

I, _____ have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date completed: _____
- Hiring employees date completed: _____
- Managing performance date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Introduction to the Pay and Conditions Tool date completed: _____
- PACT – Award classifications date completed: _____
- PACT – Pay summary date completed: _____
- PACT – Penalty rates date completed: _____
- PACT – Shift calculator date completed: _____
- PACT – Allowances date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Contractors and employees – what's the difference? date completed: _____

Read information on the following:

- **Pay Overview**
- Minimum wages Page Ref No. _____ date completed: _____
- Penalty rates & allowances Page Ref No. _____ date completed: _____

Attachment D (page 2 of 2)

Name of person: _____

• **Leave Overview**

- Annual leave Page Ref No. _____ date completed: _____
- Sick & carer's leave Page Ref No. _____ date completed: _____

• **Ending Employment Overview**

- Notice & final pay Page Ref No. _____ date completed: _____
- Unfair dismissal Page Ref No. _____ date completed: _____

• **Employee Entitlements Overview**



- Types of employees Page Ref No. _____ date completed: _____
- National Employment Standards Page Ref No. _____ date completed: _____

• **Awards & Agreements Overview**

- Awards Page Ref No. _____ date completed: _____

Signature: _____

Date: _____


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