

## \$120,000 in penalties for “reckless or careless” retailer who underpaid three workers \$90,000

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The operators of an Australian-themed retail outlet in Melbourne have been penalised more than \$120,000 for underpaying three shop assistants more than \$90,000 over five years.

Something Aussie Pty Ltd has been penalised \$101,400 and its sole director, Mr Kuan Kok Kan, a further \$20,280 in the Federal Circuit Court in Melbourne following legal action by the Fair Work Ombudsman.

Something Aussie and Mr Kan paid the employees flat rates as low as \$16 and \$17 an hour, underpaying their minimum hourly rates, weekend and public holiday penalty rates and casual loadings as prescribed by the General Retail Industry Award 2010.

In her judgment, Judge Norah Hartnett said the penalty should deter other employers in the retail industry from engaging workers at illegally low flat rates.

“There is clearly a need for general deterrence in this case in the sense that other employers do not adopt a flat hourly rate of pay in the retail industry.”

The business also failed to engage the employees for minimum shifts of three hours per day, failed to provide adequate meal breaks and failed to pay one of the employees her annual leave and leave loading on termination of employment.

The contraventions resulted in underpayments of approximately \$30,000 for each employee, resulting in a collective underpayment of \$91,238.

The underpayments were fully rectified by the business in December 2015.

Fair Work Ombudsman Natalie James says a decision was made to commence litigation against Something Aussie Pty Ltd and Mr Kan because of the seriousness of the alleged contraventions and because the agency has previously provided education materials to Mr Kan on his workplace obligations.

In imposing the penalties the Court took into consideration that Mr Kan had shown a genuine commitment to change by co-operating fully with the Fair Work Ombudsman and engaging an external consultant to ensure that future employment practices were compliant with Australian workplace laws.

However, Judge Hartnett imposed penalties equal to 26 per cent of the maximum penalties available because of the significant sums that were underpaid and because of Mr Kan’s previous history with the Fair Work Ombudsman.

Judge Hartnett recognised that relevant information about workplace laws was readily available to Mr Kan, should he have chosen to read it.

“I do not find [Mr Kan’s] conduct deliberate. It was reckless or careless,” Judge Hartnett said.

Fair Work Ombudsman Natalie James said the fact that Something Aussie and Mr Kan continued to underpay entitlements even after being put on notice in 2012 was completely unacceptable and the Court’s decision in this matter sends a message that this sort of conduct will not be tolerated.

“The Court’s decision in this matter sends a message that this sort of conduct will not be tolerated. Minimum wage rates apply to all employers in Australia and they are not negotiable,” Ms James said.

Employers and employees seeking assistance regarding their workplace rights and obligations can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94.

An interpreter service is available on 13 14 50 and information on the website is translated into 27 different languages.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork\\_gov\\_au](https://twitter.com/fairwork_gov_au) ([http://twitter.com/fairwork\\_gov\\_au](http://twitter.com/fairwork_gov_au)) or find us on Facebook [www.facebook.com/fairwork.gov.au](http://www.facebook.com/fairwork.gov.au) (<http://www.facebook.com/fairwork.gov.au>).

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