

## Malaysian restaurant operators back in Court

NOTE: On 11 December 2019, the Federal Circuit Court made declarations that the three owner-operators of Mamak were each involved in 14 contraventions of the Fair Work Act 2009 (Cth), Fair Work Regulations 2009 (Cth) and Restaurant Industry Award by Mamak. The Court did not impose any penalties.

18 May 2017

The operators of an inner Sydney restaurant who were penalised almost \$300,000 last year for exploiting overseas workers are again facing legal action, accused of further underpayments.

The Fair Work Ombudsman has commenced legal action in the Federal Circuit Court against the operators of the Mamak Malaysian restaurants, alleging they deliberately short-changed two Sydney employees and used false records to try to disguise the underpayments.

Facing Court are Joon Hoe Lee, Julian Lee and Alan Wing-Keung Au – who are the owner-operators of two Mamak restaurants in Sydney and one in Melbourne – and their company Mamak Pty Ltd.

The latest litigation relates to allegations that two workers at the Mamak restaurant at Chatswood, in Sydney, who worked between 2014 and 2016, were paid as little as \$12 and \$13 an hour, resulting in underpayments of their minimum hourly rates, casual loadings and penalty rates for weekend, public holiday and late night work.

One employee was an Australian citizen and worked as a waiter, while the other employee was a waitress from Singapore working in Australia on student and bridging visas.

The Fair Work Ombudsman investigated the complaints and now alleges Joon Hoe Lee, Julian Lee and Alan Wing-Keung Au and Mamak Pty Ltd were involved in further contravening workplace laws by providing inspectors with false records purporting to show that the two employees had been paid much higher rates than was actually the case. Contraventions of pay slip and record keeping laws are also alleged.

The litigation comes after the Fair Work Ombudsman last year secured \$294,848 in penalties against the men and their company for underpaying six employees at the Mamak restaurant at Haymarket, in Sydney. In this case the employees – including five visa-holders – were paid as little as \$11 an hour, resulting in more than \$87,000 in underpayments under the Restaurant Industry Award from 2012 to 2015.

In handing down the penalties, Judge Justin Smith said that “all of the respondents knew that there was an Award but deliberately chose to ignore it in order to maximise profit”.

The Mamak operators admitted the contraventions in the first proceedings last year, back-paid those employees and gave sworn evidence in Court that their business had changed its practices to ensure future compliance.

The Fair Work Ombudsman alleges the underpayment of the two employees occurred while the first proceedings were before the Court and alleges other contraventions; including failing to comply with notices to produce and knowingly providing false records, occurred even after the penalties were imposed.

Fair Work Ombudsman Natalie James says it is concerning that there has been cause to initiate court action for a second time against a business owner, once again alleging underpayment of vulnerable workers.

Joon Hoe Lee, Julian Lee and Alan Wing-Keung Au face penalties of up to \$10,800 per contravention and Mamak Pty Ltd faces penalties of up to \$54,000 per contravention.

The Fair Work Ombudsman is also seeking Court Orders requiring Mamak Pty Ltd to provide the Fair Work Ombudsman with accurate pay records and to rectify the underpayments.

An injunction restraining Joon Hoe Lee, Julian Lee, Alan Wing-Keung Au and Mamak Pty Ltd from underpaying workers in future is also being sought. If the injunction is granted, they could face contempt of court proceedings if further underpayments are proven in court.

A directions hearing is listed in the Federal Circuit Court in Sydney on 20 June 2017.

Ms James says her Agency is strongly committed to taking pro-active action to improve compliance in the hospitality industry, noting that the National Hospitality Industry Campaign finalised last year resulted in more than \$2 million being recovered for underpaid employees in the hospitality industry across Australia.

“We are concerned that we continue to find low rates of compliance in the hospitality industry, it is unfair to those who work in this sector and it is blatantly unfair to the businesses who do comply with the law as they are forced to compete with unprincipled operators who profit from black market wages and the exploitation of their staff,” Ms James said.

“My agency will continue to focus on addressing non-compliance in this area through our series of proactive audit campaigns and targeted investigations.

We will also continue to find innovative ways to reach hospitality operators and provide them with the resources they need to ensure they are fully aware of their rights and obligations under workplace laws,” Ms James said.

Employers who require assistance or free advice in meeting their workplace obligations can visit [www.fairwork.gov.au](http://www.fairwork.gov.au) or phone the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50.

Small businesses calling the Infoline can opt to receive priority service. Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages and is available on the website.

The Agency also has fact sheets tailored to overseas workers and international students on the website and YouTube videos in 14 languages to assist workers to understand their rights.

An Anonymous Report function ([www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-us-keep-workplaces-fair](http://www.fairwork.gov.au/how-we-will-help/how-we-help-you/help-us-keep-workplaces-fair)) enables the community to alert the Fair Work Ombudsman to potential workplace issues. Intelligence can be provided at [www.fairwork.gov.au/tipoff](http://www.fairwork.gov.au/tipoff).

Information about the Fair Work Ombudsman’s first litigation relating to Mamak is available at: Malaysian restaurant operators penalised almost \$300,000 after paying staff \$11 an hour ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160819-mamak-penalty](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/august-2016/20160819-mamak-penalty)) .

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Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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