

## **\$80,000 in penalties against two Han's Café franchisees after vulnerable workers underpaid**

20 March 2018

The Fair Work Ombudsman has secured a total of \$80,000 in penalties against the franchisees of two Han's Café outlets in Perth after vulnerable staff were underpaid almost \$100,000.

The penalties are the result of the Fair Work Ombudsman taking legal actions in response to 27 staff at the Han's outlet in Armadale being underpaid \$67,161 and 22 staff at the Han's outlet in Rockingham being underpaid \$27,920.

Phua and Foo Pty Ltd has been penalised \$35,000 in relation to underpayments at the Armadale outlet and Tac Pham Pty Ltd has been penalised \$37,500 over the underpayments at the Rockingham outlet.

In addition, the general manager of the Rockingham outlet, Cuc Thi Thu Pham, has been penalised \$7500 for her role in the non-compliance at that outlet.

The penalties have been imposed in the Federal Court in Perth.

Fair Work Ombudsman inspectors audited the Armadale outlet during a proactive auditing campaign in Perth's south – and a tip-off during the campaign led inspectors to audit the Rockingham outlet.

The underpayments at the two outlets occurred at various times between December 2014 and December 2015.

The underpaid employees at the Rockingham outlet included nine juniors aged between 17 and 19 and seven overseas workers, mostly international students, from Vietnam.

Underpaid employees at the Armadale outlet included one junior aged 18-19.

Most of the underpaid workers were employed as kitchen attendants, cooks and food-and-beverage attendants.

Staff at both outlets were paid flat rates which were below the minimums in the Restaurant Industry Award 2010.

Employees were underpaid minimum rates for ordinary hours, penalty rates and other entitlements.

Pay slip laws were also contravened at the Rockingham outlet.

All workers were back-paid in full last year.

Justice Siopis found that the underpayments at the Armadale outlet were the product of a deliberate decision by Phua and Foo Pty Ltd, through store part-owner Tye Kin 'Philip' Phua, "to pay a flat hourly rate, notwithstanding that he was conscious of the fact that weekend penalty rates existed and would have imposed a higher cost for labour for his business".

Justice Siopis said that the underpaid employees at the Armadale outlet "were low paid employees and the underpayment would have had a more profound impact upon persons whose base rate of pay was low".

The underpayments at the Rockingham outlet occurred despite the Fair Work Ombudsman having advised Mrs Pham and Tac Pham Pty Ltd in 2013 about minimum lawful Award wage rates after receiving an underpayment allegation from a worker.

Justice Siopis found that Mrs Pham's lack of English fluency and alleged lack of comprehension of the advice provided by the Fair Work Ombudsman were not satisfactory explanations for the underpayments.

"It was also open to (Mrs Pham), if she was not able fully to understand the content or gravamen of her dealings with the FWO in 2013, to have obtained professional advice on this issue," Justice Siopis said.

Justice Siopis found that Mrs Pham "simply chose to disregard her dealings with the FWO in November 2013 and continued to operate the defective wages payment system which she had inherited, recklessly indifferent as to whether she was, thereby, compliant with the Restaurant Award conditions."

Justice Siopis said the penalties imposed should deter other operators in the restaurant and café industry from similar conduct.

"It is important for employers in the restaurant/café industry to appreciate that serious consequences will attend a failure to meet Restaurant Award conditions," Justice Siopis said.

Justice Siopis also ordered Tac Pham and Phua and Foo Pty Ltd to commission workplace relations training for managerial staff.

The penalties come after the Fair Work Ombudsman last year secured \$37,500 in penalties in Court against the operator of the Han's Café chain (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/june-2017/20160601-hans-cafe-penalty>), Tram Hoang Han, and two associated companies for record-keeping practices that were so poor they prevented the Fair Work Ombudsman from determining the full extent of underpayments of vulnerable overseas workers.

Fair Work Ombudsman Natalie James says the penalties reflect the seriousness of employers failing to place a priority on ensuring they pay staff correctly.

"Employers have a lawful responsibility to ensure they are aware of the minimum wage rates and entitlements that apply and that they pay them in full to all employees," Ms James said.

"We go to great lengths to promote compliance in Australian workplaces and claiming ignorance of workplace laws is no excuse.

"We appreciate that employers from culturally and linguistically diverse backgrounds face challenges in navigating Australia's workplace laws.

"However, it is not acceptable for employers to fail to make a reasonable effort to determine the correct pay rates for their staff.

"We have a particularly low tolerance for employers who fail to take action to rectify non-compliance issues even after we have informed them of their obligations and put them on notice to comply in future."

Ms James says it is now easier than ever for linguistically diverse communities to find out about their workplace rights and obligations, with the Fair Work Ombudsman's website now accessible in 40 languages other than English.

Visitors to [www.fairwork.gov.au](http://www.fairwork.gov.au) can now instantly translate website content, including fact sheets and information guides, with just the click of a button.

"We want to ensure that all employers in Australia, regardless of which language they speak, have easy access to the information they need to comply with workplace laws," Ms James said.

Ms James said addressing exploitation of workers in franchises and tackling the persistent underpayment of young workers in the restaurant industry would continue to be focuses for her agency.

"Employers should be aware that we treat cases involving underpayment of young and migrant workers particularly seriously because we are conscious that they can be vulnerable due to a lack of awareness of their entitlements and a reluctance to complain," she said.

"It should also be noted that under the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017, obligations extending liability for underpayment and other breaches in franchise and subsidiary networks to head offices have now come into effect."

Employers and employees can seek assistance at [www.fairwork.gov.au](http://www.fairwork.gov.au) or contact the Fair Work Infoline on 13 13 94. A free interpreter service is available on 13 14 50.

Resources on the website include a Pay and Conditions Tool (PACT) that employers can use to determine the pay rates applicable to their employees, including base pay rates, allowances, overtime and penalty rates.

The Fair Work Ombudsman's 'Record My Hours' smartphone app (<https://www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app>) is aimed at tackling the persistent problem of underpayment of vulnerable workers by using geofencing technology to provide workers with a record of the time they spend at their workplace. The app can be downloaded from the App Store and Google Play.

The Fair Work Ombudsman's popular Anonymous Report function (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool>), available in 16 languages other than English, allows visa-holders to report workplace concerns anonymously to the agency in their own language.

The Fair Work Ombudsman recently launched six in-language videos (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/november-2017/02112017-in-language-resources-mr>) aimed at raising awareness of Australian workplace laws amongst visa-holders.

Ms James last year wrote an open letter (<https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/sep-tember-2017/20170925-international-students-release>) to international students urging them to speak up if they have any concerns in relation to their employment.

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Media inquiries:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

[ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au) (<mailto:ryan.pedler@fwo.gov.au>)

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Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

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

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