

Dinner by Heston statement

23 December 2019

The Fair Work Ombudsman is concerned that a significant number of employees of Topsy Cake Pty Ltd are owed back-pay after the company failed to comply with a statutory notice requiring it to calculate and back pay entitlements to workers. The final date for compliance was 20 December 2019.

On this date, the company instead brought an application to wind-up the company and was put into provisional liquidation by the Federal Court.

The FWO has already contacted the provisional liquidator and will take steps to assist employees to recover outstanding entitlements.

The Fair Work Ombudsman commenced an investigation into the company that operates the Dinner By Heston restaurant after underpayment allegations were made.

On 14 November 2019, the investigating Fair Work Inspector issued Topsy Cake a formal Compliance Notice covering the 2017 and 2018 calendar years which required the company to calculate and rectify any underpayments by 13 December 2019 and produce evidence of its compliance by 20 December 2019. Previous information provided by the company indicated that it potentially owed millions of dollars.

The Fair Work Inspector formed a reasonable belief that Topsy Cake had paid some employees at Dinner By Heston an annualised salary that was not sufficient to cover the weekend and public holiday penalty rates, annual leave loading and overtime rates they were entitled to under the Hospitality Industry (General) Award.

Where employers do not fully comply with Compliance Notices, the FWO would typically commence proceedings to seek orders for compliance with the notice and the imposition of a penalty. Where FWO's ability to do so is impacted by the winding up of a company, the regulator will explore all options, including options to assist employees and to hold those involved to account.

Fair Work Ombudsman Sandra Parker said it was disappointing that Topsy Cake was not able to resolve outstanding underpayment issues before being placed into provisional liquidation.

"Topsy Cake was aware that a significant amount of wages and entitlements were owing to many workers who had been underpaid," Ms Parker said.

"The circumstances of this matter are disappointing. The Fair Work Ombudsman will liaise with the provisional liquidator and other relevant stakeholders in order to assist the employees to recover their entitlements."

Any workers seeking advice and assistance from the Fair Work Ombudsman should visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94.

Follow the Fair Work Ombudsman [@fairwork_gov_au](https://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) .

Sign up to receive the Fair Work Ombudsman's media releases direct to your email inbox at www.fairwork.gov.au/mediareleases (www.fairwork.gov.au/mediareleases) .

Media inquiries:

Ryan Pedler, Assistant Director - Media

Mobile: 0411 430 902

ryan.pedler@fwo.gov.au (mailto:ryan.pedler@fwo.gov.au)

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.