

Perth restaurant chain faces Court

6 July 2016

The operator of a popular restaurant chain in Perth is facing legal action and an ongoing investigation over alleged serious breaches of workplace relations laws relating to overseas workers.

Facing Court is Tram Hoang Han, who controls the Han's Café franchise and directly owns two restaurants.

Three companies of which she is currently the sole director are also facing legal proceedings - Han Investments Pty Ltd, Han's Café Management Pty Ltd and Han's Café Pty Ltd.

Several businesses were audited in 2014 during the third and final wave of the Fair Work Ombudsman's three-year National Hospitality Industry Campaign.

The Agency's litigation relates to outlets Ms Han is involved in operating at Forrest Chase in the CBD and restaurants she formerly ran at Subiaco, Hillarys and Midland.

The Fair Work Ombudsman alleges that the practices for keeping time-and-wages records were so poor that they hindered the Agency's ability to quantify and pursue enforcement outcomes for underpaid wages and entitlements.

Ms Han allegedly told Fair Work inspectors that she generally only kept time records for between two and four weeks.

Under workplace laws, employers must keep staff records for seven years.

Despite poor records, the Fair Work Ombudsman was able to calculate that 100 employees across four restaurants had been underpaid more than \$30,000 as a result of being short-changed their minimum hourly rate.

This money was back-paid to the workers – including international students, 417 working holiday visa-holders and 457 skilled worker visa-holders – by late last year.

The Fair Work Ombudsman says it is concerned that Ms Han's outlets allegedly had a standard practice to pay low, flat rates and failed to pay penalties for weekend, overtime and evening work.

Fair Work Ombudsman Natalie James says investigations into the outlets are continuing.

She says legal action has been initiated because the failure to keep proper employment records is a serious matter, particularly where vulnerable overseas workers are involved, and inspectors are hindered from upholding the employer's workplace obligations.

Fair Work inspectors advised Ms Han about the need to comply with minimum Award pay rates in 2013 when they investigated a request for assistance from an employee.

The Fair Work Ombudsman is alleging multiple record-keeping contraventions.

Ms Han faces penalties of up to \$5100 per contravention and the companies face penalties of up to \$25,500 per contravention.

The Fair Work Ombudsman is also seeking an injunction restraining Ms Han from being involved in any record-keeping contraventions in future.

If the injunction is granted, Ms Han could potentially face contempt of court proceedings for any further record-keeping contraventions proven in Court.

In addition, the Fair Work Ombudsman is seeking a Court Order requiring Ms Han and the three companies to use the educational self-help tools available for employers at www.fairwork.gov.au - including registering with the My Account service.

A case management hearing was heard in the Federal Court in Perth on July 1.

The Fair Work Ombudsman recovered more than \$2.2 million in underpaid wages and entitlements for 513 visa-holders from disputes completed by the Agency last calendar year – an average of \$4317 each.

The Agency received a total 1916 requests for assistance from visa-holders in 2015, or 12.6 per cent of the total number lodged by all workers.

Ms James says the hospitality sector, in particular the take-away food sub-sector, will remain a "priority" industry earmarked for

ongoing education and support.

"The Fair Work Ombudsman is striving to build a culture of compliance where businesses understand and comply with their lawful obligations and do not inadvertently or deliberately undercut their competitors by paying black market wage rates," she said.

"Clearly, the take-away food sector, an industry comprised largely of small businesses, is grappling with the complexity of the IR system and few it seems are joining industry bodies to seek professional help and advice.

"It is important that major players in the hospitality sector, industry groups and intermediaries such as accountants and lawyers, all play their part to help lift the levels of compliance above what we are seeing now."

Ms James said the Fair Work Ombudsman was committed to helping employers to understand and comply with workplace laws, but operators also needed to make an effort to get the basics right in the first place.

She urged hospitality businesses to use the online tools and resources available to them free of charge on the Fair Work Ombudsman's website.

Employers and employees seeking assistance can visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

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) 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 Media Director

Mobile: 0411 430 902

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

Page reference No: 6170

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.