



Australian Government

Fair Work  
OMBUDSMAN

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**ENFORCEABLE UNDERTAKING**

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

Ausnutrie Pty Ltd (ACN: 137 111 687)

Austrirocks Pty Ltd (ACN: 159 206 505)

## Section 715 ENFORCEABLE UNDERTAKING

### Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by;
  - (a) Ausnutrie Pty Ltd (ACN: 137 111 687) (**Ausnutrie**); and
  - (b) Austrirocks Pty Ltd (ACN: 159 206 505) (**Austrirocks**),for the purposes of section 715 of *the Fair Work Act 2009* (**FW Act**).

### Commencement of Undertaking

2. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by Ausnutrie and Austrirocks; and
  - (b) the FWO accepts the Undertaking so executed.
3. Upon the commencement of this Undertaking, Ausnutrie and Austrirocks undertakes to assume the obligations set out below.

### Background

4. Ausnutrie and Austrirocks operate two (2) Muffin Break franchise stores in the eastern Melbourne suburbs of Doncaster and Ringwood selling coffee and café style food to retail customers.
5. In or about November 2009, Ausnutrie took over its first existing Muffin Break franchise store at Westfield Doncaster Shopping Centre (**Doncaster**), located at 619 Doncaster Road, Doncaster, Vic, 3108.
6. In or about August 2012, Austrirocks took over the existing Muffin Break franchise store at Eastland Shopping Centre (**Eastlands**) located at 171 – 175 Maroondah Highway, Ringwood, Vic, 3134.
7. Ausnutrie and Austrirocks employed the Complainant between 2 January 2012 and 29 September 2013.
8. The Complainant was employed as a casual employee working at both the Doncaster and Eastlands stores. Her duties included clearing and cleaning tables, washing dishes, general cleaning, food and beverage preparation, making coffee, assisting other staff, customer service, order taking and taking customer payments.
9. The Complainant worked at the Doncaster store between 2 January 2012 and 12 September 2013 (last shift) and at the Eastlands store between 25 August 2013 (first shift) and 29 September 2013 when the employment ended.
10. Ausnutrie and Austrirocks operate the two (2) Muffin Break stores seven (7) days per week including public holidays. The Complainant worked a combination of shifts across the operating hours. The operating hours are:
  - (a) Doncaster - Monday to Wednesday 9.00 am to 5.30 pm, Thursday and Friday 9.00 am to 9.00 pm, Saturday 9.00 am to 6.00 pm and Sunday 10.00 am to 5.00 pm; and
  - (b) Eastlands - Monday to Wednesday 9.00 am to 5.30 pm, Thursday and Friday 9.00 am to 9.00 pm, Saturday 9.00 am to 5.00 pm and Sunday 10.00 am to 5.00 pm.
11. Ausnutrie and Austrirocks underpaid the Complainant for her work at Doncaster and Eastlands by failing to pay the correct minimum hourly rates of pay. The underpayments arose as a result of paying various flat rates of pay for all hours worked on week days, Saturday, Sunday and Public Holidays.

### Contraventions - Doncaster

12. The FWO has determined, and Ausnutrie admits, that Ausnutrie contravened:

*Wages*

- (a) subsection 45 of the FW Act by failing to pay the Complainant her correct minimum base hourly rate of pay in accordance with clause 20.1 *Restaurant Industry Award 2010 (Restaurant Award)*.

*Casual Loading*

- (b) subsection 45 of the FW Act by failing to pay the Complainant a casual loading in accordance with clause 13.1 of the Restaurant Award.

*Saturday Penalty Rates*

- (c) subsection 45 of the FW Act by failing to pay the Complainant penalty rates for time worked on Saturdays in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

*Sunday Penalty Rates*

- (d) subsection 45 of the FW Act by failing to pay the Complainant penalty rates for time worked on Sundays in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

*Public Holiday Sunday Penalty Rates*

- (e) subsection 45 of the FW Act by failing to pay the Complainant penalty rates for time worked on Public Holidays in accordance with clause 34.1 and clause A.5 of Schedule A of the Restaurant Award.

13. As a result of the Contraventions, the Complainant was underpaid \$18,579.76.

**Contraventions - Eastlands**

14. The FWO has determined, and Austrirocks admits, that Austrirocks contravened:

*Wages*

- (a) subsection 45 of the FW Act by failing to pay the Complainant her correct minimum hourly rate of pay in accordance with clause 17 of the *Fast Food Industry Award 2010 (Fast Food Award)*;

*Casual Loading*

- (b) subsection 45 of the FW Act by failing to pay the Complainant a casual loading in accordance with clause 13.2 and clause of the Fast Food Award;

*Saturday Penalty Rates*

- (c) subsection 45 of the FW Act by failing to pay the Complainant penalty rates for time worked on Saturdays in accordance with clause 25.5(b) and clause A.5 of Schedule A of the Fast Food Award;

*Sunday Penalty Rates*

- (d) subsection 45 of the FW Act by failing to pay the Complainant penalty rates for time worked on Sundays in accordance with clause 25.5(c) and clause A.5 of Schedule A of the Fast Food Award;

(collectively the **Contraventions**)

15. As a result of the Contraventions, the Complainant was underpaid \$769.93.

**Undertakings**

16. For the purposes of section 715 of the FW Act, Ausnutrie and Austrirocks undertake to:

*Rectify Underpayments*

- (a) Ausnutrie pay the amount of \$18,579.76 less taxation to the Complainant arising from the Contraventions within 28 days of the execution of this Undertaking;
  - (i) within 28 days of the execution of this Undertaking, provide evidence of payment to the FWO.
- (b) Austrirocks pay the amount of \$769.93 less taxation to the Complainant arising from the Contraventions within 28 days of the execution of this Undertaking;
  - (i) within 28 days of the execution of this Undertaking, provide evidence of payment to the FWO.

*Public Notices*

- (c) place a notice within the Doncaster and Eastlands workplaces which is accessible to all employees (**Workplace Notice**) within 28 days of the execution this Undertaking for a total consecutive period of seven (7) days in the terms set out in Attachment A;
- (d) provide a copy of the **Workplace Notice** and photographic evidence of its display to the FWO within seven (7) days of the display of the notice;

*Apology*

- (e) send an apology to the Complainant in the terms set out in Attachment B;

*Future Workplace Relations Compliance*

- (f) provide the FWO, within 28 days of the date of the execution of this Undertaking, details of systems and processes already in place or to be implemented to ensure ongoing compliance with Commonwealth workplace laws and instruments, including but not limited to the *Fair Work Act 2009*, *Restaurant Industry Award 2010* and the *Fast Food Industry Award 2010*;
- (g) develop and implement within 28 days of the execution of this Undertaking demonstrable systems and processes in relation to payroll to ensure ongoing compliance in relation to the contraventions including rates of pay, loadings, penalties, taxation and superannuation;

*Self-audits and Reporting*

- (h) have completed by an external accounting professional (e.g. Certified Practicing Accountant), audit specialist or employment law specialist (at Ausnutrie's and Austrirocks' own expense), six (6) monthly for two (2) years of the execution of this Undertaking, an audit of its compliance with Commonwealth workplace laws. Specifically:
  - (i) Ausnutrie and Austrirocks must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
  - (ii) each audit is to include the first full single pay period at the commencement of each six (6) monthly period; and
  - (iii) Ausnutrie and Austrirocks must provide a copy of the audit to the FWO within seven (7) days of its completion;

*Workplace Relations Training*

- (i) provide or design and implement within 90 days of the commencement of this Undertaking, an ongoing training program so that all persons responsible, either directly or indirectly, are made aware of Ausnutrie's and Austrirocks' obligations under Commonwealth workplace laws;
- (j) provide training material to participants in the training including material on:

- (i) compliance with the FW Act, Fair Work Regulations, Restaurant Award and Fast Food Award;
- (ii) employer obligations in respect to employee record keeping and pay slips;
- (iii) options available to persons to make complaints and FWO contact information; and
- (iv) access to FWO resources to calculate rates of pay.

## Acknowledgements

17. Ausnutrie and Austrirocks acknowledge that:

- (k) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at [www.fairwork.gov.au](http://www.fairwork.gov.au) (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (l) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (m) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (n) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Ausnutrie and/or Austrirocks;
- (o) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
- (p) if the FWO considers that Ausnutrie and/or Austrirocks has contravened any of the terms of this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
- (q) consistent with section 715(3) of the FW Act, Ausnutrie and/or Austrirocks may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

## Executed as an undertaking

EXECUTED by Ausnutrie Pty Ltd (ACN: 137 111 687) in accordance with section 127(1) of the *Corporations Act 2001*:

_____ (Signature of director)	_____ (Signature of director)
_____ (Name of director)	_____ (Name of director)
_____ (Date) in the presence of:	_____ (Date) in the presence of:
_____ (Signature of witness)	_____ (Signature of witness)
_____ (Name of witness)	_____ (Name of witness)

EXECUTED by Austrirocks Pty Ltd (ACN: 159 206 505) in accordance with section 127(1) of the *Corporations Act 2001*:

\_\_\_\_\_  
(Signature of director)

\_\_\_\_\_  
(Name of director)

\_\_\_\_\_  
(Date)  
in the presence of:

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of witness)

ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

\_\_\_\_\_  
Steven Ronson  
Executive Director  
Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN  
in the presence of:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of Witness)

## Attachment A – Form of Workplace Notice

### Contraventions of the *Fair Work Act 2009*,

#### *Restaurant Industry Award 2010* by Ausnutrie Pty Ltd and

#### *Fast Food Industry Award 2010* by Austrirocks Pty Ltd

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Ausnutrie Pty Ltd trading as Muffin Break Doncaster (**Ausnutrie**) and Austrirocks Pty Ltd trading as Muffin Break Eastlands (**Austrirocks**) contravened the *Fair Work Act 2009*, *Restaurant Industry Award 2010* and the *Fast Food Industry Award 2010*.

Ausnutrie and Austrirocks owns and operates two (2) Muffin Break stores located at the Westfield Shopping Centre Doncaster (**Muffin Break Doncaster**) and Eastlands Shopping Centre Ringwood (**Muffin Break Eastlands**) and no previous contraventions of Commonwealth workplace laws have been determined against Ausnutrie or Austrirocks.

The FWO has found that Ausnutrie contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* at Muffin Break Doncaster by:

- (a) failing to pay an employee their correct minimum base hourly rates of pay for time worked Monday to Friday;
- (b) failing to pay an employee a casual loading for all hours worked;
- (c) failing to pay an employee penalty rates for time worked on Saturdays;
- (d) failing to pay an employee penalty rates for time worked on Sundays; and
- (e) failing to pay an employee penalty rates for time worked on Public Holidays.

The FWO has found that Austrirocks contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* at Muffin Break Eastlands by:

- (a) failing to pay an employee their correct minimum base hourly rates of pay for time worked Monday to Friday;
- (b) failing to pay an employee a casual loading for all hours worked;
- (c) failing to pay an employee penalty rates for time worked on Saturday; and
- (d) failing to pay an employee penalty rates for time worked on Sunday.

Ausnutrie and Austrirocks has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments to the employee affected by the contraventions and changing workplace practices.

Ausnutrie and Austrirocks expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Ausnutrie and Austrirocks gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Ausnutrie or Austrirocks and have queries or questions relating to your employment, please contact Ms Cindy Wang in the first instance on telephone [REDACTED] or by email at [REDACTED]. Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.

## Attachment B – Form of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Ausnutrie Pty Ltd trading as Muffin Break Doncaster and Austrirocks Pty Ltd trading as Muffin Break Eastlands for the non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Ausnutrie and Austrirocks had contravened the *Fair Work Act 2009*, *Restaurant Industry Award 2010* and the *Fast Food Industry Award 2010*.

The FWO has found that Ausnutrie contravened the *Fair Work Act 2009* and the *Restaurant Industry Award 2010* at Muffin Break Doncaster by:

- (a) failing to pay your correct minimum base hourly rates of pay for time worked Monday to Friday;
- (b) failing to pay you a casual loading for all hours worked;
- (c) failing to pay you penalty rates for time worked on Saturdays;
- (d) failing to pay you penalty rates for time worked on Sundays; and
- (e) failing to pay you penalty rates for time worked on Public Holidays.

The FWO has also found that Austrirocks contravened the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* at Muffin Break Eastlands by:

- (a) failing to pay your correct minimum base hourly rates of pay for time worked Monday to Friday;
- (b) failing to pay you a casual loading for all hours worked;
- (c) failing to pay you penalty rates for time worked on Saturday; and
- (d) failing to pay you penalty rates for time worked on Sunday.

Regrettably, the investigation determined that you were affected by the above contraventions.

Ausnutrie and Austrirocks are taking steps to remedy the contraventions, including paying \$19,349.69 (less taxation) that you have been underpaid. You will receive this payment on **[insert date]** and will be provided with payment advice regarding the payment.

Ausnutrie and Austrirocks have formally admitted to the FWO that Ausnutrie and Austrirocks did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au). As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Ausnutrie and Austrirocks expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact me on [REDACTED].

Yours sincerely

**Ms Cindy Wang**  
**Director – Ausnutrie Pty Ltd & Austrirocks Pty Ltd**