



# 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

JCMA PTY LTD trading as Bakers Delight (ABN 18 141 770 032)

## Section 715 ENFORCEABLE UNDERTAKING

### Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by JCMA Pty Ltd trading as Bakers Delight (ABN 18141770032) (**JCMA Pty Ltd**) 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 JCMA Pty Ltd; and
  - (b) the FWO accepts the Undertaking so executed (as evidenced by the FWO's endorsement below).

### Background

3. JCMA Pty Ltd operates two Bakers Delight franchise bakeries in Bateau Bay and previously operated a Bakers Delight in Wyong, NSW.
4. The Fair Work Ombudsman undertook an audit of JCMA Pty Ltd which assessed time and wage records for employees for the period between 2 January 2014 and 5 February 2014 (assessment period).
5. In finding whether there had been a contravention of Commonwealth workplace laws, the FWO utilised time and wages records provided by JCMA Pty Ltd for the assessment period.
6. The classification and status of each of the employees as advised by JCMA Pty Ltd are listed in Appendix A.
7. From 1 July 2010, the terms and conditions of the employee's employment were governed by the *General Retail Industry Award 2010* (the Award). Please note that in certain circumstances the rates of pay and penalty rates contained in the Award are subject to transitional provisions.
8. Following the assessment, the FWO found that JCMA Pty Ltd had contravened provisions of Commonwealth workplace laws in relation to the employment of the employees as listed in Appendix A. The contraventions identified were failure to pay the correct hourly rate of pay, penalty rates and shift allowances in accordance with the Award.
9. On 16 July 2014 and 10 October 2014 JCMA Pty Ltd was notified by the FWO of the contraventions determined and was requested to complete a self audit for employees for the period 1 July 2013 – 30 June 2014 (self audit period).
10. On 17 October 2014 JCMA Pty Ltd advised the FWO of the outcome of the self audit including the quantum of underpayment assessed for each employee.
11. As a result of the self audit the FWO found that JCMA Pty Ltd had underpaid 26 employees a total amount of \$39,626.20, ranging from \$104.70 to \$3,672.42.

### Contraventions

12. The FWO has determined, and JCMA Pty Ltd admits, that JCMA Pty Ltd contravened section 45 of the FW Act by failing to comply with the following provisions of the Award:
  - a) Clause 13.2 and Schedule A – casual base rate of pay;
  - b) Clause 19.2 (a) and Schedule A – apprentice base rate of pay;
  - c) Clause 29.4 (b) and Schedule A – Saturday ordinary rate of pay;

- d) Clause 29.4 (c) and Schedule A – Sunday rate of pay; and
- e) Clause 29.4 (d) and Schedule A – public holiday rate of pay.

**Baking production shift worker employees only**

- f) Clause 30.4 (a) and Schedule A – early morning shift allowance;
- g) Clause 30.3 (b) and Schedule A – Saturday shift allowance; and
- h) Clause 30.3 (c) and Schedule A – Sunday shift allowance.

**Undertakings**

13. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, JCMA Pty Ltd undertakes to:

***Rectify the underpayments***

- a) By 16 January 2015 rectify in full the underpayments to the employees named in Appendix A for the amounts specified (less applicable taxation required by law):
  - i. Within 14 days of the rectification of the underpayments, provide evidence of payment to the FWO.

***Future workplace relations compliance***

- b) ensure compliance at all times and in all respects with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements;
- c) complete all education courses designed for employers available on the FWO online learning centre via [www.fairwork.gov.au](http://www.fairwork.gov.au); and
- d) provide to the FWO, within 28 days of the execution of the Undertaking, written detail of the systems and processes implemented and evidence gathered in satisfaction of the Undertaking in paragraph 13 (b) and (c) above designed to ensure such ongoing compliance.

***FWO My Account Registration***

- e) within seven (7) days of the execution of this undertaking, register with the FWO 'My Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and have completed the profile, minimum pay rates and Award options
  - i. within 14 days of the execution of the Undertaking provide to the FWO the 'My Account' registration number; and
  - ii. within 21 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Fair Work Inspector via [www.fairwork.gov.au](http://www.fairwork.gov.au) "My Account" current Award minimum pay rates.

***Self-audit and Reporting***

- f) cause to have performed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist, at JCMA Pty Ltd's expense, an audit of JCMA Pty Ltd's compliance with all applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the Award and the FW Act, relating to the pay and conditions of all employees of JCMA Pty Ltd, for the period 1 July 2014 to 30 June 2015 (the Audit). The Audit is to be finalised by 25 August 2015.
- g) provide a copy of the Audit to the FWO within seven days of the Audit being provided to JCMA Pty Ltd.



- h) in the event the Audit discloses contraventions of any applicable Commonwealth of Australia workplace law and instrument, rectify all such contraventions within 14 days of the Audit being provided to JCMA Pty Ltd including rectification of any and all underpayments to employees; and
- i) provide evidence of rectification of the contraventions to the FWO within 7 days of the Audit being provided to JCMA Pty Ltd.

**Workplace notice**

- j) cause to be displayed a notice in the form of Appendix B to this Undertaking (Workplace Notice):
  - i. for a period of at least 28 days, at the Bakers Delight bakery operated by JCMA Pty Ltd; and
  - ii. ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
    - i. in a location to which all employees who work at the Bakers Delight bakery have access;
    - ii. in a manner which is reasonably capable of drawing the Workplace Notice to the general attention to all employees who work at the Bakers Delight bakery (for example, by placement on a staff noticeboard);
- k) Provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

**Acknowledgements**

14. JCMA Pty Ltd acknowledges that:

- a) 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);
- b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- c) 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;
- d) 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 JCMA Pty Ltd;
- e) 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;
- f) if the FWO considers that JCMA Pty Ltd has contravened any of the terms of this 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;
- g) consistent with section 715(3) of the FW Act, JCMA Pty Ltd may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- h) JCMA Pty Ltd must not, and must ensure that its respective officers, employees or agents, do not, make any statement, orally or in writing, or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with acknowledgements contained in this Undertaking.

# Appendix A – Underpayment Amounts

	Name	Position	Underpayment
1	██████████	Casual Shop Assistant Level 1	\$1669.03
2	██████████	Casual Bakers Assistant	\$2096.30
3	██████████	Casual Bakers Assistant	\$3672.42
4	██████████	Apprentice Baker 1st year	\$1958.22
5	██████████	Apprentice Baker 2nd year	\$2880.03
6	██████████	Casual Shop Assistant Level 1	\$947.47
7	██████████	Casual Shop Assistant Level 1	\$908.75
8	██████████	Casual Shop Assistant Level 1	\$818.70
9	██████████	Casual Shop Assistant Level 1	\$1666.45
10	██████████	Casual Shop Assistant Level 1	\$1184.08
11	██████████	Casual Shop Assistant Level 1	\$614.03
12	██████████	Casual Shop Assistant Level 1	\$956.46
13	██████████	Casual Shop Assistant Level 1	\$2765.37
14	██████████	Casual Shop Assistant Level 1	\$2627.35
15	██████████	Casual Shop Assistant Level 1	\$3542.78
16	██████████	Casual Shop Assistant Level 1	\$1387.27
17	██████████	Casual Shop Assistant Level 1	\$1614.42
18	██████████	Casual Shop Assistant Level 1	\$906.96
19	██████████	Casual Shop Assistant Level 1	\$844.91
20	██████████	Casual Shop Assistant Level 1	\$347.94
21	██████████	Casual Shop Assistant Level 1	\$1634.38
22	██████████	Casual Shop Assistant Level 1	\$193.77
23	██████████	Casual Shop Assistant Level 1	\$104.70
24	██████████	Casual Shop Assistant Level 1	\$3525.93
25	██████████	Apprentice Baker 1st year	\$360.35
26	██████████	Casual Shop Assistant Level 1	\$398.13



## Appendix B – Workplace Notice

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

#### JCMA Proprietary Limited trading as Bakers Delight

We refer to the audit conducted by the Office of the Fair Work Ombudsman (FWO) of JCMA Pty Ltd trading as Bakers Delight (ABN 18 141 770 032) (**JCMA Pty Ltd**) assessing compliance with the *Fair Work Act 2009*.

The FWO's investigation reviewed time and wage records for the period 2 January 2014 and 5 February 2014. The FWO found that JCMA Pty Ltd contravened section 45 of the *Fair Work Act 2009* for some employees by failing to comply with the following provisions of the *General Retail Industry Award 2010*:

- a) Clause 13.2 and Schedule A – casual base rate of pay;
- b) Clause 19.2 (a) and Schedule A – full time apprentice base rate of pay;
- c) Clause 29.4 (b) and Schedule A – Saturday ordinary rate of pay;
- d) Clause 29.4 (c) and Schedule A – Sunday rate of pay; and
- e) Clause 29.4 (d) and Schedule A – public holiday rate of pay.

#### Baking production shift worker employees only

- f) Clause 30.4 (a) and Schedule A – early morning shift allowance;
- g) Clause 30.3 (b) and Schedule A – Saturday shift allowance; and
- h) Clause 30.3 (c) and Schedule A – Sunday shift allowance.

In July 2014 JCMA Pty Ltd was notified by the FWO of the contraventions determined and requested to complete a self audit for the period 1 July 2013 – 30 June 2014 (self audit period). JCMA Pty Ltd cooperated with the investigation and completed a 1 year audit which found that JCMA Pty Ltd had underpaid 26 employees a total amount of \$39,626.20, ranging from \$104.70 to \$3,672.42

JCMA Pty Ltd 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 changing workplace practices and rectifying underpayments to the employees affected by the contraventions.


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

If you worked for JCMA Pty Ltd in the self audit period and have queries or questions relating to this employment, please contact [REDACTED] in the first instance on [REDACTED] or by email at [REDACTED]

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 to check their rates of pay and the terms and conditions of the *General Retail Industry Award 2010*.

**Executed as an undertaking**

\*EXECUTED by JCMA Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

(Signature of director/company secretary)

CANRAM NVA  
(Name of director)


(Name of director/company secretary)

4 Dec 2014  
(Date)

(Date)

in the presence of:

in the presence of:

  
(Signature of witness)

(Signature of witness)

YIFENG ZHANG  
(Name 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

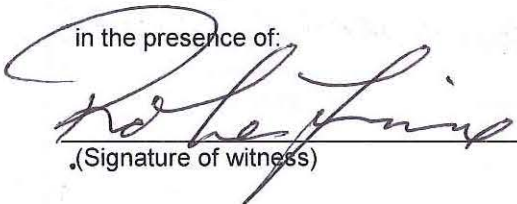
17 DECEMBER 2014  
(Date)

Executive Director

Dispute Resolution and Compliance

For Natalie James, Fair Work Ombudsman, as her delegate subject to the instrument of delegation made pursuant to section 683 of the FW Act and executed by Nicholas Paul Wilson on 30 January 2013.

in the presence of:

  
(Signature of witness)

ROBERT PRICE.  
(Name of Witness)

(Signature of witness)

(Name of Witness)