
Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (Undertaking) is given to the Fair Work Ombudsman (FWO) by Daiso (Australia) Pty Ltd ((ABN 15 140 019 656) (Daiso Australia) and Ms Mei King Hii (Ms Hii) for the purposes of section 715 of the *Fair Work Act 2009* (FW Act).

Background

2. Daiso is a worldwide chain of stores, originating from Japan. The Daiso stores sell lifestyle items and novelty gift products and every item in store sells for the same price.
3. Daiso Australia operates five Daiso stores in Victoria under a licence or franchising arrangement. The Daiso stores operated by Daiso Australia are located in shopping centres across Melbourne, including a store in the Midtown Plaza at 246 Bourke Street, Melbourne (Midtown Plaza Store).
4. Daiso has been the subject of 5 complaints to the Fair Work Ombudsman (FWO) by current and former employees of Daiso Australia at the Midtown Plaza Store between 22 May 2012 and 21 March 2014.
5. The first 3 complaints lodged in 2012 related to allegations that Daiso Australia had failed to pay the complainants their entitlements under the *General Retail Industry Award 2010* (the Award), including the minimum hourly rate of pay and applicable penalty rates.
6. Daiso Australia agreed to voluntarily resolve these complaints by paying the 3 employees a total of \$11,849.52 (gross) to rectify the underpayments.
7. As part of the investigation and resolution of the 2012 complaints, Ms Hii met with representatives of the FWO and representatives of the Shop, Distributive and Allied Employees Association (SDA) on separate occasions and received advice and education about the Award and FW Act.
8. In November 2013 the FWO received 2 further complaints from former employees of Daiso Australia at the Midtown Plaza Store alleging that they had not been paid penalty rates for hours worked as shop assistants at the Midtown Plaza Store.
9. The FWO commenced an investigation and conducted an audit of Daiso Australia's employees employed as shop assistants at the Midtown Plaza Store in the period from 1 September 2013 to 30 November 2013 (the Audit Period).
10. The investigation identified underpayments to 27 employees (the Affected Employees) who were employed variously as full-time and part-time employees to work as shop assistants during the Audit Period. A list of the Affected Employees is provided at Attachment A.
11. During the Audit Period Daiso Australia paid the Affected Employees at rates of pay that were

less than their minimum entitlements under the Award by failing to pay the applicable minimum hourly rates of pay, penalty rates and overtime rates of pay. This failure to pay applicable minimum rates of pay resulted in Daiso Australia failing to correctly calculate annual leave on termination for some Affected Employees.

12. Daiso Australia also failed to provide the Affected Employees with a rest break of 12 hours or more between shifts on all occasions, as required under clause 31.2 of the Award. This resulted in Affected Employees being entitled to be paid at double time when this break was not provided.
13. Daiso Australia also failed to pay annual leave loading to some Affected Employees for annual leave taken during the Audit Period.
14. Daiso Australia underpaid the Affected Employees a total of \$37,983.76 during the Audit Period. The amount underpaid to each Affected Employee is set out in Attachment A (Audit Period Underpayments).
15. Ms Hii is and was a director of Daiso Australia and, at all material times:
 - (a) was principally responsible for the overall direction, management and supervision of the operations of Daiso Australia and the employment arrangements at Daiso's Midtown Plaza store during the Audit Period;
 - (b) was responsible for making decisions on behalf of Daiso Australia, or who had ultimate responsibility for Daiso Australia's decisions, in relation to the terms and conditions upon which the Affected Employees were employed, including:
 - (i) the recruitment and engagement of the Affected Employees;
 - (ii) setting and adjusting pay rates for the Affected Employees; and
 - (iii) the work to be performed by the Affected Employees.
 - (c) knew that the Award applied to Daiso Australia and the Affected Employees;
 - (d) was responsible in a practical sense for ensuring that Daiso Australia complied with its legal obligations to its employees.

Contraventions

16. The FWO has determined, and Daiso Australia admits, that Daiso Australia contravened:
 - (a) section 45 of the FW Act by failing to comply with the following provisions of the Award:
 - (i) Clause 12.2 – agreement in writing on a regular pattern of work for part time employees on commencement of employment;
 - (ii) Clause 12.7 – minimum hourly rate of pay for part-time employees;
 - (iii) Clause 18 – minimum hourly rate of pay for junior employees;
 - (iv) Clause 12.7 and 29.2 – Overtime for part-time employees;
 - (v) Clause 29.2 – Overtime for full-time employees;
 - (vi) Clause 29.4(a) – Evening penalty rates

- (vii) Clause 29.4(b) – Saturday penalty rates;
 - (viii) Clause 29.4(c) – Sunday penalty rates;
 - (ix) Clause 29.4(d) – Public Holiday penalty rates;
 - (x) Clause 31.2(b) – Penalty rates where employees not given 12 Hour Rest Break between Work Periods; and
 - (xi) Clause 32.3 – Annual Leave Loading;
 - (b) section 44 of the FW Act by failing to comply with subsection 90(2) of the FW Act, a term of the National Employment Standards, by failing to pay accrued annual leave on termination of employment in full.
17. By reason of the matters set out in paragraph 15 above, the FWO has determined, and Ms Hii admits, that she was involved in the contraventions committed by Daiso Australia within the meaning of subsection 550(2)(a) or (c) of the FW Act.

Commencement of Undertaking

18. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Daiso Australia and Ms Hii; and
 - (b) the FWO accepts the Undertaking so executed.
19. Upon the commencement of this Undertaking, Daiso Australia undertakes to assume the obligations set out below.

Undertakings

20. For the purposes of section 715 of the FW Act, Daiso Australia and Ms Hii undertake to:

Future Workplace Relations Compliance

- (a) ensure Daiso Australia's compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including the Award and the FW Act;
- (b) develop and implement systems and processes to promote ongoing compliance with applicable Commonwealth workplace laws and instruments, including the Award and the FW Act;
- (c) within 90 days of the commencement of this Undertaking, provide to the FWO, written details of the steps taken to satisfy its obligations under (a) and (b) above;

Rectification of Audit Period Underpayments

- (d) within 14 days of the commencement of this Undertaking, pay to each of the Affected Employees the outstanding Audit Period Underpayments owed to each of them, as set out in Attachment A;
- (e) within 7 days of each payment being made to an Affected Employee, provide reasonable evidence to the FWO that the payment has been made;

- (f) for a period of 3 months after the commencement of this Undertaking, take reasonable steps to locate Affected Employees who could not be located within the period referred to in 20(d) above, including attempting to contact the Affected Employees by telephone or in writing on existing or any new contact details obtained to:
 - (i) advise them they are owed money; and
 - (ii) explain the process for claiming the money owed to them;
- (g) at the end of the 3 month period set out in 20(f) above, report to the FWO on the attempts to locate Affected Employees, and the payments made to any Affected Employees located and paid, in the preceding 3 month period;
- (h) within 7 days after the end of the period referred to in paragraph 20(g), pay to the Commonwealth of Australia (through the Office of the Fair Work Ombudsman) pursuant to section 559(1) of the FW Act, and in discharge of any liability to pay the Audit Period Underpayments, any amounts owed to Affected Employees who could not be located and paid within the specified period, to be held on trust for the Affected Employees; and
- (i) provide the FWO with a report on any Affected Employees who could not be located, within 7 days after the end of the period referred to in paragraph 20(g), together with details of the amount owed to them and their last known contact details;

Audit 1 June 2012- 1 June 2014

- (j) perform, or cause to have performed at Daiso Australia's expense, an audit of compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the Award and the FW Act, in respect to the pay and conditions of all employees of Daiso Australia at the Midtown Plaza Store for the period from 1 June 2012 to 1 June 2014 (Retrospective Audit) on the following basis:
 - (i) the Retrospective Audit will be performed by an accounting professional (for example, a Certified Practising Accountant), an external audit specialist or an accredited employment law specialist, and;
 - (ii) the Retrospective Audit will cover all pay periods for all employees performing work for Daiso Australia at the Midtown Plaza Store during the audit period;
- (k) provide to the FWO, by no later than 30 November 2014, details of the methodology used to conduct the Retrospective Audit and a report on the outcomes of the Retrospective Audit certified as correct by a Certified Practising Accountant, audit specialist or accredited employment law specialist;
- (l) in the event that the Retrospective Audit disclose contravention(s) by Daiso Australia of applicable Commonwealth workplace laws and instruments, Daiso Australia will rectify all such contraventions by 30 November 2014 (including, where relevant, by rectifying any and all underpayments arising from such contraventions);
- (m) by 30 November 2014, provide reasonable evidence to the FWO that any payments required in accordance with 20(l) above have been made;
- (n) take reasonable steps to locate former employees entitled to a rectification payment in accordance with 20(l) above who could not be located by 30 November 2014, including attempting to contact each employee by telephone or in writing on existing or any new contact details obtained to:

- (i) advise them they are owed money; and
- (ii) explain the process for claiming the money owed to them;
- (o) by 30 January 2015, report to the FWO on the attempts to locate former employees, and the payments made to any former employees located and paid, in the preceding 2 month period;
- (p) within 7 days after the end of the period referred to in paragraph 20(o), pay to the Commonwealth of Australia (through the Office of the Fair Work Ombudsman) pursuant to section 559(1) of the FW Act, and in discharge of any liability to pay rectification amounts as required under paragraph 20(l), any amounts owed to former employees who could not be located and paid within the specified period, to be held on trust for those persons; and
- (q) within 7 days after the end of the period referred to in paragraph 20(o), provide the FWO with a report on any persons who could not be located, together with details of the amount owed to them and their last known contact details;

Prospective Audits

- (r) perform, or cause to have performed at Daiso Australia's expense, future audits of compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the Award and the FW Act, in respect to the pay and conditions of all employees of Daiso Australia at all of the stores that it operates, for the following periods:
 - (i) an audit for the period from 1 June 2014 to 31 August 2014;
 - (ii) an audit for the period from 1 June 2015 to 31 August 2015;
 - (iii) an audit for the period from 1 June 2016 to 31 August 2016;
- (s) The Future Audits will be conducted on the following basis:
 - (i) the Future Audits will be performed by an accounting professional (for example, a Certified Practising Accountant), an external audit specialist or an accredited employment law specialist;
 - (ii) the Future Audit will cover all pay periods for all employees performing work for Daiso Australia at all of its stores during the applicable audit periods;
 - (iii) the Future Audits are to be finalised by November of each audit year; and
 - (iv) Daiso Australia will provide to the FWO, no later than 30 November of each audit year, details of the methodology used to conduct each Future Audit and a report on the outcomes of each Future Audit certified as correct by a Certified Practising Accountant, audit specialist or accredited employment law specialist;
- (t) in the event the any of the Future Audits disclose contravention(s) by Daiso Australia of applicable Commonwealth workplace laws and instruments, Daiso Australia will rectify all such contraventions by 30 November of each audit year (including, where relevant, by rectifying any and all underpayments arising from such contraventions);
- (u) by 30 November of each audit year, provide reasonable evidence to the FWO that any payments required in accordance with 20(t) above has been made;

- (v) take reasonable steps to locate any former employees entitled to a rectification payment in accordance with 20(t) above who Daiso Australia has been unable to locate by 30 November of each applicable audit year, including attempting to contact each employee by telephone or in writing on existing or any new contact details obtained to:
 - (i) advise them they are owed money; and
 - (ii) explain the process for claiming the money owed to them;
- (w) by 30 January of the year following each applicable audit year, report to the FWO on the attempts to locate former employees, and the payments made to any former employees located and paid; in the preceding 2 month period;
- (x) within 7 days after the end of the period referred to in paragraph 20(w), pay to the Commonwealth of Australia (through the Office of the Fair Work Ombudsman) pursuant to section 559(1) of the FW Act, and in discharge of any liability to pay rectification amounts as required under paragraph 20(t), any amounts owed to former employees who could not be located and paid within the specified period, to be held on trust for those persons; and
- (y) within 7 days after the end of the period referred to in paragraph 20(w), provide the FWO with a report on any persons who could not be located, together with details of the amount owed to them and their last known contact details;

Superannuation

- (z) make superannuation contributions for the benefit of each of the Affected Employees to each of the Affected Employees' nominated superannuation fund where required in accordance with clause 22 of the Award, in respect of those amounts of the Audit Period Underpayments that fall within the definition of ordinary time earnings for the purposes of superannuation legislation (as detailed in Attachment A);
- (aa) make superannuation contributions for the benefit of employees or former employees of Daiso Australia to each person's nominated superannuation fund where required in accordance with clause 22 of the Award in respect of any underpayments identified as a result of the Retrospective Audit referred to above;

Apologies

- (bb) within 14 days of the commencement of this Undertaking, send a letter of apology to each of the Affected Employees in the form set out in Attachment B (Apologies); and
- (cc) provide proof of the delivery of the Apologies to Affected Employees to the FWO within 7 days of the Apologies being sent;

Workplace Notice

- (dd) within 14 days of the commencement of this Undertaking, place a notice, in the form set out in Attachment C, on a noticeboard at the Midtown Plaza store which:
 - (i) is at least A3 sized;
 - (ii) is placed in a location to which all employees who work at the Midtown Plaza store have access;

- (iii) remains on display for a period of at least 30 days;
- (ee) within 21 days of the commencement of this Undertaking, provide to the FWO a copy of the workplace notice referred to in paragraph 20(dd) and proof that it has been displayed as required;

Public Notice

- (ff) within 28 days of the commencement of this Undertaking, place a public notice in a weekday edition of the Herald Sun newspaper which:
 - (i) bears the company name of Daiso (Australia) Pty Ltd;
 - (ii) bears the company logo (if any) of Daiso (Australia) Pty Ltd;
 - (iii) appears on either of pages 3, 5 or 7 of the relevant edition;
 - (iv) measures at least 15cms high x 7.4cms wide; and
 - (v) is in the form of Attachment D to this Undertaking;

Workplace Relations Training

- (gg) within 3 months of the commencement of this Undertaking, ensure that Ms Hii, the other directors of Daiso, and all other persons engaged by Daiso who have managerial responsibility for human resources, recruitment and/or payroll functions attend workplace relations training paid for by Daiso, that addresses:
 - (i) employee entitlements under the National Employment Standards; and
 - (ii) obligations under the Award, including specifically terms relating to rostering, rest breaks and meal breaks, obligations in respect of different categories of employees, penalty rates and rates of pay.
- (hh) ensure the workplace training is conducted by an accredited workplace trainer;
- (ii) provide to the FWO the training material to be used at least 14 days before the training occurs;
- (jj) provide to the FWO evidence of attendance at the training course, within 7 days after the training has occurred (including the name and position of all attendees and the date on which the training was attended);
- (kk) for a period of 3 years from the commencement of this Undertaking, ensure that further training is conducted, covering the topics set out at 20(gg) above, for any new or existing employees or contractors who, after the commencement of this Undertaking, acquire responsibilities that include managerial, human resources and/or recruitment functions on behalf of Daiso, and that such training occur within 8 weeks of the person acquiring those responsibilities.

Broader community workplace relations education

- (ll) make a donation of \$5,000.00 to Youth Law- Young People's Legal Right's Centre Inc (Frontyard, 19 King Street, Melbourne, 3000) by 31 December 2014 with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the community.

- (mm) provide proof of the payment referred to in 20(ii) to the FWO within 7 days of it being made;

Process for New Complaints

21. Any new complaints received by the FWO on or after the commencement of this Undertaking by a person who is or has been employed by Daiso Australia but who is not an Affected Employee (within the meaning of paragraph 10), will be referred to Daiso Australia for initial assessment and resolution in the first instance.
22. Daiso Australia will use all reasonable endeavours to resolve any legitimate workplace complaint and to rectify any identified contraventions (including by rectifying any underpayments), within 28 days of the complaint being referred to Daiso Australia by the FWO.
23. Within 7 days of resolving a complaint, Daiso Australia will provide the FWO with evidence that the workplace complaint has been resolved.
24. Where a complaint cannot be resolved by agreement between Daiso Australia and the complainant within the period specified at 22 above, Daiso Australia will report back to the FWO about the nature of the complaint and the steps taken to attempt to resolve it. This report must be provided within 7 days of the end of the period specified at 22 above.
25. The FWO reserves its rights to investigate any complaint that it considers serious or in the public interest to investigate or which Daiso Australia has been unable to resolve.
26. Within 14 days of the commencement of this Undertaking, Daiso Australia will notify the FWO of the name and contact details of its nominated liaison officer for the purposes of any new complaint referred to in 21 above.

Acknowledgements

27. Daiso Australia and Ms Hii acknowledge that:
 - (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fwo.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 Daiso Australia or Ms Hii;
 - (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 Daiso Australia or Ms Hii 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, Daiso Australia or Ms Hii may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED for and on behalf of Daiso (Australia) Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cth):



Signature of Director

林 潔 明

Signature of director/company secretary


5/8/14

Date

5/8/2014

Date

EXECUTED by Ms Mei King Hii

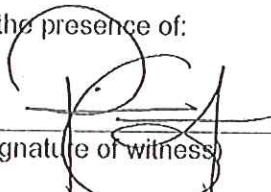


Mei King Hii, Director

5/8/14

(Date)

in the presence of:

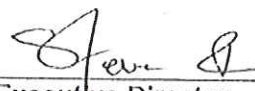


(Signature of witness)

Richard Costanzo

(Name of Witness)

ACCEPTED by the Fair Work Ombudsman pursuant to section 715(2) of the Fair Work Act 2009 on:



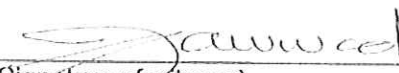
Executive Director -- Dispute Resolution and Compliance

8 August 2014

(Date)

(an authorised delegate pursuant to an instrument of delegation made pursuant to section 683 of the FW Act)

in the presence of:



(Signature of witness)

Jane Awwad

(Name of Witness)

Attachment A – List of Employees and Underpayments

	Employee Name	Ordinary Time Earning Underpayment for Superannuation Purposes	Total Underpayment (Gross)
1	██████████	\$2,090.10	\$2,847.68
2	██████████	\$444.21	\$1,863.19
3	██████████	\$694.79	\$694.79
4	██████████	\$23.38	\$616.87
5	██████████	\$2,084.09	\$2,211.01
6	██████████	\$2,454.96	\$2,859.74
7	██████████	\$1,339.58	\$1,339.58
8	██████████	\$33.65	\$33.65
9	██████████	\$1,622.45	\$1,902.97
10	██████████	\$702.90	\$702.90
11	██████████	\$847.98	\$1,931.54
12	██████████	\$1,866.64	\$2,065.31
13	██████████	\$1,463.97	\$1,463.97
14	██████████	\$1,088.42	\$1,303.89
15	██████████	\$756.26	\$1,745.41
16	██████████	\$518.16	\$1,846.77
17	██████████	\$723.00	\$1,717.55
18	██████████	\$44.51	\$643.40
19	██████████	\$15.81	\$201.48
20	██████████	\$751.22	\$1,194.51
21	██████████	\$574.86	\$574.86
22	██████████	-\$1,382.27	\$2,275.74
23	██████████	-\$486.16	\$486.16
24	██████████	-\$1,429.34	\$1,591.46
25	██████████	-\$1,571.53	\$1,900.61
26	██████████	-\$934.61	\$934.61
27	██████████	-\$278.76	\$1,034.11

Attachment B – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Daiso Australia Pty Ltd, (Daiso Australia) for non-compliance with Commonwealth workplace laws.

A recent investigation conducted by the Office of the Fair Work Ombudsman (FWO) determined that Daiso Australia contravened the *Fair Work Act 2009* by failing to provide the correct rates of pay, overtime rates, penalty rates and other entitlements to employees under the *General Retail Industry Award 2010* (Award) and the National Employment Standards.

The investigation determined that you were affected by the above contraventions.

Daiso Australia is taking steps to remedy the contraventions, including by rectifying the amount that you have been underpaid, undertaking a broader audit of its compliance with Commonwealth workplace laws, investing in workplace relations training and making a donation to fund education about workplace rights and entitlements.

Daiso Australia and director, Ms Mei King Hii have formally admitted to the FWO that Daiso Australia did not comply with their 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. As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Daiso Australia and Ms Hii express their sincere regret and apologise to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [Daiso to include contact details].

Yours sincerely

[Director/Officer]

Attachment C- Form of Workplace Notice

Contravention of the Fair Work Act by Daiso (Australia) Pty Ltd

We refer to the investigation and audit conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Daiso (Australia) Pty Ltd (Daiso Australia) contravened the *Fair Work Act 2009* by failing to provide the correct rates of pay, overtime rates, penalty rates and other entitlements to employees under the *General Retail Industry Award 2010* (Award) and the National Employment Standards.

Daiso Australia and director, Ms Mei King Hii, have formally admitted to FWO that these contraventions occurred and have entered into an Enforceable Undertaking with the FWO (available at www.fwo.gov.au) committing to a number of measures to remedy the contraventions, including rectifying the underpayments, undertaking a broader audit of its compliance with Commonwealth workplace laws, investing in workplace relations training and making a donation to fund education about workplace rights and entitlements.

Daiso Australia and Ms Hii, express their sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore, Daiso Australia 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 have queries or questions relating to your employment with Daiso Australia, please contact <insert details of internal contact>. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment D- Form of Public Notice

Contravention of the Fair Work Act by Daiso (Australia) Pty Ltd

We refer to the investigation and audit conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that Daiso (Australia) Pty Ltd (Daiso Australia) contravened the *Fair Work Act 2009* by failing to provide the correct rates of pay, overtime rates, penalty rates and other entitlements to employees under the *General Retail Industry Award 2010* (Award) and the National Employment Standards.

Daiso Australia and director, Ms Mei King Hii, have formally admitted to FWO that these contraventions occurred and have entered into an Enforceable Undertaking with the FWO (available at www.fwo.gov.au) committing to a number of measures to remedy the contraventions, including rectifying the underpayments, undertaking a broader audit of its compliance with Commonwealth workplace laws, investing in workplace relations training and making a donation to fund education about workplace rights and entitlements.

Daiso Australia and Ms Hii express their sincere regret and apologise for the conduct which resulted in the contraventions. Furthermore, Daiso Australia 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 Daiso Australia and have queries or questions relating to your employment, please contact <insert details of internal contact>. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.