



Australian Government

Fair Work OMBUDSMAN

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) Daci & Daci Bakers Pty Ltd (ACN 153 570 686) (**Daci & Daci**);
 - (b) Cheryl Katharine Daci (**Mrs Daci**); and
 - (c) Naser Daci (**Mr Daci**);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 Daci & Daci, Mr Daci and Mrs Daci; and
 - (b) the FWO accepts the Undertaking so executed (as evidence by the FWO's endorsement below).

Background

3. Daci & Daci is in the business of operating a wholesale and retail bakery/restaurant in Hobart, Tasmania.
4. Between 1 December 2011 to 12 May 2013, Daci & Daci employed 109 employees (**the Employees**). The Employees performed various duties as wait staff, kitchen hands and chefs.
5. The terms and conditions of the Employees' employment were governed by the *Restaurant Industry Award 2010* (**Restaurant Award**). The Employees were engaged in the following classifications:
 - (a) Introductory;
 - (b) Food and Beverage attendant (levels 1, 2, 3);
 - (c) Food and Beverage supervisor;
 - (d) Kitchen attendant (grades 1 and 2); and
 - (e) Cook (grades 3 and 4).

6. Mr and Mrs Daci are Directors of Daci & Daci. Mrs Daci is also the Secretary of Daci & Daci. Mr and Mrs Daci have held these positions since Daci & Daci was registered as a company on 5 October 2011.
7. In or around March 2013 the FWO commenced an investigation of Daci & Daci following a number of complaints from previous employees of Daci & Daci.
8. As a result of its investigation, the FWO determined that Daci & Daci had contravened provisions of the FW Act and the Restaurant Award. As a result, the employees listed in Attachment A (**Affected Employees**) were underpaid a total of \$77,921.72. Daci & Daci has rectified this underpayment.

Contraventions

9. The FWO has determined, and Daci & Daci admits, that Daci & Daci contravened section 45 of the FW Act by failing to comply with the following provisions of the Restaurant Award:
 - (a) Clause A.2.5 of Schedule A by failing to pay adult employees the applicable minimum wage;
 - (b) Clause A.2.5 of Schedule A by failing to pay apprentice employees the applicable minimum wage;
 - (c) Clause A.2.5 of Schedule A by failing to pay junior employees the applicable minimum wage;
 - (d) Clause 13.1 by failing to pay casual employees a casual loading;
 - (e) Clause 31.2(b) by rostering employees to work for more than 10 hours per day on more than three consecutive days without a break of at least 48 hours;
 - (f) Clause 31.2(c) by allowing employees to work more than eight days of more than 10 hours in a four week period;
 - (g) Clause 31.2(e) by failing to give employees a minimum of eight full days off per four week period;
 - (h) Clause 31.6(a) by failing to prepare a roster for full-time and part-time employees showing normal starting and finishing times and the surname and initials of each employee, and failing to post such a roster in a conspicuous place accessible to the employees concerned;
 - (i) Clause 33.2(a) by failing to pay employees overtime rates for overtime work performed Monday to Friday;
 - (j) Clause 33.2(b) by failing to pay employees overtime rates for overtime work performed between midnight Friday and midnight Saturday;

- (k) Clause 33.2(c) by failing to pay employees overtime rates for overtime work performed between midnight Saturday and midnight Sunday ;
 - (l) Clause 33.2(d) by failing to pay employees overtime rates for work performed on a rostered day off;
 - (m) Clause A.7.3 of Schedule A, by failing to pay employees penalty rates for work performed on weekends and public holidays;
 - (n) Clause A.7.3 of Schedule A, by failing to pay employees penalty rates for late night work performed between 10pm and midnight Monday to Friday;
 - (o) Clause A.7.3 of Schedule A, by failing to pay employees penalty rates for early morning work performed between midnight and 7am Monday to Friday;
10. The FWO has determined, and Daci & Daci admits, that Daci & Daci also contravened:
- (a) section 535 of the FW Act by failing to make and keep employee records as prescribed by the *Fair Work Regulations 2009* in relation to five of the Employees; and
 - (b) section 536 of the FW Act by failing to provide payslips to one of the Employees.
11. The FWO has determined, and Mr Daci and Mrs Daci admit, that they were involved in the contraventions committed by Daci & Daci within the meaning of section 550(a) and (c) of the FW Act.

Undertakings

12. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, Daci & Daci, Mr Daci and Mrs Daci undertake to:

Future workplace relations compliance

- (a) ensure compliance at all times and in all respects with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the Restaurant Award and the FW Act, by developing systems and processes to ensure ongoing compliance with those requirements, including engaging the services of a bookkeeper;
- (b) provide to the FWO, within 28 days of the execution of this Undertaking, written detail of the systems and processes implemented in satisfaction of the undertaking in paragraph 12(a) above designed to ensure such ongoing compliance;
- (c) provide to the FWO, within 28 days of the execution of this Undertaking, evidence that the services of a bookkeeper have been engaged by Daci &

Daci;

Workplace relations training

- (d) within three months of the execution of this Undertaking, organise and ensure training for all persons engaged by Daci & Daci who have managerial responsibility for human resources, recruitment or payroll functions (including Mr and Mrs Daci) **(Training)**;
- (e) ensure the Training relates to compliance with all applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Restaurant Award;
- (f) ensure the Training is conducted by an accredited workplace trainer. Such person or organisation is to be approved by the FWO and paid for by Daci & Daci;
- (g) provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted;
- (h) provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the Training was attended);
- (i) for a period of three years from the execution of this Undertaking, ensure that training is conducted in the manner prescribed in paragraphs 12(d) to (h) in relation to any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of Daci & Daci;

Future Audits

- (j) cause to have performed by an accounting professional (for example, a Certified Practising Accountant) or an employment law specialist, at Daci & Daci's expense, audits of Daci & Daci's compliance with all applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the Restaurant Award and the FW Act, relating to the pay and conditions of at least 30% of all employees of Daci & Daci **(Audit)**, for each year in a three year period as follows:
 - (i) the Audit for the calendar year 2014 is to be finalised by 31 January 2015;
 - (ii) the Audit for the calendar year 2015 is to be finalised by 31 January 2016; and
 - (iii) the Audit for the calendar year 2016 is to be finalised by 31 January 2017;
- (k) provide to the FWO, at least 14 days prior to the commencement of an Audit being undertaken, the methodology to be used for the purpose of the Audit for approval by the FWO;

- (l) provide to the FWO, within 14 days of each finalised Audit being provided to Daci & Daci, details of the methodology used to conduct the Audit and the outcomes of the Audit;
- (m) in the event an Audit discloses contraventions of any applicable Commonwealth of Australia workplace laws and instruments, rectify all such contraventions within 14 days of the Audit being provided to Daci & Daci including rectification of any and all underpayments to employees;
- (n) provide evidence of rectification of the contraventions to the FWO within 14 days of the Audit being provided to Daci & Daci;

Record Keeping

- (o) provide to the FWO time and wage records and payslips that comply with all applicable Commonwealth of Australia workplace laws and instruments in respect of at least 30% of all employees of Daci & Daci for a period of no less than one calendar month, which is to include a public holiday (**Sample**):
 - (i) the Sample for the calendar year 2014 is to be provided to the FWO by 14 January 2015,
 - (ii) the Sample for the calendar year 2015 is to be provided to the FWO by 14 January 2016, and
 - (iii) the Sample for the calendar year 2016 is to be provided to the FWO by 14 January 2017;

Apology

- (p) send a letter (**Apology Letter**) to each of the Affected Employees, listing in each letter the provision(s) of the Restaurant Industry Award 2010 and the *Fair Work Act 2009* that it breached in respect to the employee, and apologising for the contravention(s). The form of the letter is that contained in Attachment B and the letter is to be sent within 14 days of the execution of this Undertaking;
- (q) within seven days of the Apology Letters being sent, provide proof to the FWO and a copy of the Apology Letters. Upon receipt of the Apology Letters by the FWO, the FWO will review the Apology Letters and if the FWO identifies errors in the Apology Letters particularly in respect of identification of the contraventions relevant to the employee, the FWO will advise Daci & Daci within seven days of receipt of the letter from Daci & Daci. Daci & Daci will then rectify the error and send to the affected employee another Apology Letter within seven days of receipt of notification from the FWO of the error(s) in the Apology Letter. Within seven days of the Apology Letter being sent, provide proof to the FWO and a copy of the Apology Letter.;

Workplace notice

- (r) Cause to be displayed a notice in the form of Attachment C to this Undertaking (**Workplace Notice**):
 - (i) For a period of at least 28 days, at the bakery / restaurant operated by Daci & Daci ; and
 - (ii) Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
 - a. in a location to which all employees who work at the bakery / restaurant have access;
 - b. in a manner which is reasonably capable of drawing the Workplace Notice to the general attention to all employees who work at the bakery / restaurant (for example, by placement on a staff noticeboard);
- (s) Provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

Future complaints

- (t) Where contacted by current or former employees not covered by this Undertaking alleging that their lawful entitlements have not been met, Daci & Daci agree to:
 - (i) notify the FWO within 7 days of receiving the allegation;
 - (ii) take all reasonable steps to ascertain whether a contravention or contraventions of the FW Act has occurred, and where such contraventions are found, take immediate steps to rectify those contraventions;
 - (iii) within 7 days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other issues identified have been resolved; and
 - (iv) should a decision be made not to rectify an issue raised by an allegation, notify the FWO within 7 days of this decision and the reasons for not rectifying.

Acknowledgements

- 13. Daci & Daci, Mr Daci and Mrs Daci 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.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 of Australia workplace relations obligations by Daci & Daci, Mr Daci and Mrs Daci;
- (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 Daci & Daci, Mr Daci or Mrs Daci have 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;
- (g) consistent with section 715(3) of the FW Act, Daci & Daci, Mr Daci and Mrs Daci may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;
- (h) no assertion or matter in this Undertaking may be relied upon as an admission by any other person to support a cause of action in any other civil penalty proceeding. However, this term does not prevent any matter in this Undertaking being relied upon in future proceedings in order to inform a relevant Court or tribunal of the details of the conduct that was the evidentiary foundation for Daci & Daci, Mr Daci and Mrs Daci entering into this Undertaking;
- (i) The FWO reserves the right to rely on the terms of this Undertaking and the admissions made herein in respect of any future proceedings brought by the FWO against Daci & Daci, Mr Daci or Mrs Daci in relation to any future contraventions of Commonwealth of Australia workplace laws;
- (j) Daci & Daci, Mr Daci and Mrs Daci:
 - (i) must not; and
 - (ii) must ensure their respective officers, employees or agents, do not; make any statement, orally, in writing or otherwise, which conveys or implies or reasonably conveys or implies anything inconsistent with the acknowledgements contained in this Undertaking.

Executed as an undertaking

EXECUTED by Daci & Daci Bakers Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:

Naser Daci
(Signature of director)

Cheryl Daci
(Signature of director/company secretary)

NASER DACI
(Full name of director)

CHERYL DACI
(Full name of director/company secretary)

20/06/14
(Date)

20/6/14
(Date)

EXECUTED by Cheryl Daci

Cheryl Daci
(Cheryl Katharine Daci)

20/6/14
(Date)

Tamara Dikkenberg
In the presence of:

TAMARA DIKKENBERG
(Name of Witness)

EXECUTED by Naser Daci

Naser Daci
(Naser Daci)

20/06/14
(Date)

Tamara Dikkenberg
In the presence of:

TAMARA DIKKENBERG
(Name of Witness)

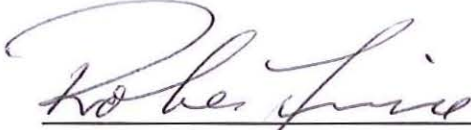
ACCEPTED by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* on:



(Fair Work Ombudsman)

25 JUNE 2014

(Date)



In the presence of:

ROBERT PRICE.

(Name of Witness)

**Attachment A – Affected
Employees**

Attachment B – Letter of Apology FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

The purpose of this letter is to apologise on behalf of Daci & Daci Bakers Pty Ltd (**Daci & Daci**), Mrs Cheryl Katharine Daci and Mr Naser Daci for non-compliance with Commonwealth of Australia workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Daci & Daci had contravened the *Fair Work Act 2009 (FW Act)* by failing to comply with the following provisions of the *Restaurant Industry Award 2010* and the *Fair Work Act 2009* (delete if no FW Act contraventions):

- a. Here insert clause(s) of the Restaurant Industry Award 2010 and the sections of the FW Act that relate to the individual to whom the letter is addressed.
- b. ...
- c. ...

Regrettably, the investigation determined that a number of employees were affected.

Daci & Daci has taken steps to remedy the contraventions, including by rectifying all underpayments identified by the FWO.

Daci & Daci, Mrs Daci and Mr Daci have formally admitted to the FWO that Daci & Daci did not comply with its obligations under Commonwealth of Australia workplace relations laws and have entered into an Enforceable Undertaking under the FW Act with the FWO, a copy of which is available from the FWO website at www.fairwork.gov.au.

As part of the Enforceable Undertaking Daci & Daci, Mrs Daci and Mr Daci have committed to a number of measures to ensure future compliance with Commonwealth of Australia workplace relations laws.

Daci & Daci expresses its sincere regret and apologises to all affected employees for failing to comply with our lawful obligations.

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

Yours sincerely

Cheryl Daci and Naser Daci
Daci & Daci Bakers Pty Ltd

Attachment C – WORKPLACE NOTICE

FORM OF WORKPLACE NOTICE

Underpayment of employees of Daci & Daci Bakers Pty Ltd

The Office of the Fair Work Ombudsman (**FWO**) has investigated allegations that Daci & Daci Bakers Pty Ltd (**the employer**) has contravened the *Fair Work Act 2009* (**FW Act**) during the period 1 December 2011 to 12 May 2013.

The FWO investigation and subsequent internal audit by the employer identified that it had failed to pay a significant number of current and former employees their correct entitlements due to them under the relevant Award.

The employer, Mrs Cheryl Katharine Daci and Mr Naser Daci (**the Directors**) cooperated fully with the FWO during this process and have since rectified all of the underpayments.

The employer and the Directors have formally admitted to the FWO that it contravened workplace laws by failing to pay the affected employees.

An Enforceable Undertaking under the FW Act has been given by the employer and the Directors to the FWO to reflect these formal admissions (that Enforceable Undertaking is available at www.fairwork.gov.au).

The employer and the Directors express their sincere regret and apologises to employees for failing to comply with their lawful obligations. Furthermore, they commit to current and prospective employees that such conduct will not occur again and that they will comply with Commonwealth of Australia workplace relations laws in the future.

Cheryl Katharine Daci and Naser Daci

Directors – Daci & Daci Bakers Pty Ltd