



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

DM & G Pty Ltd (ACN 155 203 080)

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Commonwealth of Australia (as represented by the Fair Work Ombudsman (**FWO**)) by DM & G Pty Ltd (ACN 155 203 080) (**the Employer**) for the purposes of section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**).

COMMENCEMENT OF UNDERTAKING

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

BACKGROUND

4. The Employer, trading as Mr Kitchen Box Hill, operates a takeaway food premises located in the food court at the Box Hill Central Shopping Centre, 1 Main Street, Box Hill, Victoria. The Employer is covered by the *Fast Food Industry Award 2010* (**Award**).
5. In early 2014 the FWO undertook an audit of the Employer as part of the National Hospitality Campaign for all employees employed during the period from [insert audit period] (**Audit Period**).
6. As a result of the audit the FWO determined that the Employer had contravened provisions of the Award and the FW Act in respect of the

underpayment of minimum rates of pay, non-payment of casual loading, penalty and overtime rates, allowances, entitlements on termination and payslip and recordkeeping obligations.

7. As a result of the contraventions, the FWO assessed the total wage underpayments owed to the employees of the Employer during the Audit Period to be \$3,688.90 gross..
8. The Employer rectified the underpayments on 23 June 2014 and advised the FWO that it had taken steps to correct record keeping and pay slip contraventions.
9. On 14 November 2014 a former employee of the Employer, [REDACTED], sent a request for assistance the FWO claiming non-payment of an amount identified during the audit (\$849.60).
10. The FWO commenced a second audit of the Employer records for the period 30 December 2013 to 11 January 2015 and further contraventions relating to the underpayment of minimum rates of pay, non-payment of weekend and overtime penalties, allowances and annual leave entitlements upon termination were identified.
11. As a result of the contraventions identified in the second audit, the FWO assessed the employees identified in the second audit were underpaid \$46,080.69 gross.
12. The Employer has agreed to rectify the contraventions by 10 July 2015.

CONTRAVENTIONS

13. The FWO has determined, and the Employer admits that the Employer contravened section 45 of the FW Act by failing to comply with the following provisions of the Award:
 - (a) clause 13.2 of the Award – by failing to pay a casual loading;
 - (b) clause 17 of the Award – by failing to pay the required minimum rate of pay;
 - (c) clause 19.2 of the Award – by failing to pay a special clothing allowance;
 - (d) clause 25.5(b) of the Award – by failing to pay the applicable penalty rate for work performed on a Saturday;

- (e) clause 25.5(c) of the Award – by failing to pay the applicable penalty rate for work performed on a Sunday;
- (f) clause 26.1 of the Award – by failing to pay overtime rates; and

14. The FWO has determined, and the Employer admits that the Employer contravened section 44 of the FW Act by failing to comply with the following terms of the National Employment Standards (**NES**):

- (a) section 116 of the FW Act by failing to pay full time or part time employees absent from work on a day that is a public holiday; and
- (b) section 90(2) of the FW Act by failing to pay to full time and part time employees annual leave entitlements on termination of employment.

15. The FWO has determined, and the Employer admits that the Employer contravened sections 535(1) of the FW Act by failing to keep employee records as prescribed in the *Fair Work Regulations 2009* (**FW Regulations**).

16. The FWO has determined, and the Employer admits that the Employer contravened section 536(1) of the FW Act by failing to give a payslip, in the form and content prescribed in the FW Regulations, to employees within one working day of paying an amount to an employee.

UNDERTAKINGS

17. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, the Employer undertakes the following:

Rectify the underpayments

- (a) the Employer will rectify in full the underpayments determined by the FWO for the period of employment 30 December 2013 to 11 January 2015 to the current and former employees in accordance with the amounts and dates specified in the payment plan outlined in **Attachment A**.

Future Workplace relations compliance

- (b) ensure that it complies at all times and in all respects with the FW Act, the FW Regulations and the Award;
- (c) provide the FWO, within 28 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph (b) above. Without limitation, such systems and processes will include systems and processes relating to:
 - i. ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - ii. issuing pay slips to employees within 1 working day of payment; and
 - iii. keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

Workplace relations training

- (d) within 28 days of the execution of this Undertaking, [REDACTED] and any relevant payroll staff undertake external training by a workplace relations trainer focusing on the requirements of the FW Act and the Fast Food Award.:
- (e) provide to the FWO evidence of the successful completion of the training within 7 days of its completion.

Rectify other underpayments

- (f) The Employer is currently undertaking self-audits of:
 - i. all employment records for the period of employment commencing on 12 January 2015 to 6 April 2015 being the period between the end date of the FWO audit period and provision of evidence that wages are now compliant; and

- ii. other employees who were not identified in the records for the period of employment where evidence of rostered shifts for; [REDACTED] [REDACTED] (*full identification to be provided*) have been provided.

(together, the **Self Audits**)

(g) in respect of the Self-Audits, the Employer will within 14 days of the execution of this undertaking:

- i. provide evidence to the FWO of the quantum of underpayments and methodology for determining those underpayments to the FWO;
- ii. provide a schedule of payments outlining how all underpayments determined in the Self-Audits will be rectified.

(h) within 28 days of completing the schedule of payments referred to in paragraph (g)(ii) above, provide evidence to the FWO that all payments have been made.

Future Self – Audits and Reporting

- (i) no earlier than 11 calendar months but not later than 12 calendar months of the execution of this undertaking, the Employer will have completed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Employer), an audit of its compliance with Commonwealth Workplace laws.
- (j) at least 14 days prior to the commencement of an audit being undertaken, provide to the FWO the methodology to be used for the purpose of the Audit for approval by the FWO;
- (k) if an Audit discloses contraventions of any Commonwealth workplace laws and/or instruments, the Employer must rectify all such contraventions within 14 days of the notification to the Employer of those contraventions, including rectification of any and all underpayments to employees or former employees;
- (l) within 14 days of notification to the Employer of the contraventions, provide evidence of rectification of the contraventions to the FWO;

Workplace Notice

(m) within 1 day of the execution of this Undertaking, the Employer will cause to be displayed a notice in the form of Attachment One to this Undertaking (**Workplace Notice**):

- i. for a period of 28 days, at Mr Kitchen Box Hill, 1 Main Road, Box Hill, Victoria; 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 Employer have access;
 - b. in a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard);
 - c. provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

Record Keeping

(n) Within 28 days of the date of execution of this Undertaking, the Employer will provide to the FWO copies of time and wage records and payslips that comply with Commonwealth workplace laws that includes all periods of employment during that 28 day period.

FWO MyAccount Registration

(o) within 7 days of the execution of this Undertaking, register with the FWO 'MyAccount' portal at 'www.fairwork.gov.au' and complete the profile, minimum pay rates and Award options through this portal.

Thereafter:

- i. within 14 days of the execution of the Undertaking provide to the FWO the Company's 'My Account' registration number; and

- i. within 28 days of the execution of the Undertaking, at a mutually agreed time and location, demonstrate to a Fair Work Inspector your MyAccount knowledge, including in relation to accessing the current Fast Food Industry Award minimum pay rates and Public Holiday penalty rates.

ACKNOWLEDGEMENTS

18. The Employer 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 (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 the Employer;
- 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 the Employer 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; and
- g. consistent with section 715(3) of the FW Act, the Employer may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by DM & G Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

Mei Zhang

(Name of director)

25/6/2015

(Date)

in the presence of:



(Signature of witness)

YUXUAN LI

(Name of witness)



(Signature of director/company secretary)

Xiao Chuan He.

(Name of director/company secretary)

25/6/2015

(Date)

in the presence of:



(Signature of witness)

YUXUAN LI

(Name of witness)

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

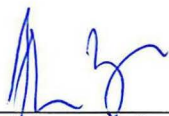
Michael Campbell

[Insert name and role of Delegate]

DEPUTY FAIR WORK OMBUDSMAN

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

2 July 2015

(Date)

Alan Wells

(Name of Witness)

Attachment A – Schedule of Payments referred to in paragraph 17

DM & G Pty Ltd - PAYMENT SCHEDULE

The Employer acknowledges the findings of an audit conducted by the FWO in March 2015 initiated following a complaint by former employee [REDACTED] which resulted in the determination of the underpayment of wages to 19 current and former employees of the takeaway food premises at the Box Hill Central Shopping Centre.

The Employer confirms the quantum of underpayments determined to be \$43,146.42 gross and accepts full responsibility for the underpayments and rectification.

To fully comply with Commonwealth workplace laws and to ensure that all current and former employees receive full recompense for work performed the Employer agrees to repay all determined underpayments through the following schedule of payments.

Payment will be made to individuals as one single payment for the fully assessed gross amount (less the appropriate tax component*) to each named employee by close of business on the Friday of the nominated payment week as set out below.

Week One – on or before Friday 19 June 2015

1. **\$13,584.01** gross to [REDACTED]

Week Two – on or before Friday 26 June 2015

1. **\$12,071.84** gross to [REDACTED]

Week Three - on or before Friday 3 July 2015

1. **\$2,651.20** gross to [REDACTED]

2. \$685.77 gross to [REDACTED]
3. \$617.09 gross to [REDACTED]
4. \$1,352 gross to [REDACTED]
5. \$428.40 gross to [REDACTED]
6. \$3,169.90 gross to [REDACTED]
7. \$1,940.12 gross to [REDACTED]
8. \$909.65 gross to [REDACTED]
9. \$686.39 gross to [REDACTED]
10. \$144.25 gross to [REDACTED]

Week Four - on or before Friday 10 July 2015

1. \$2,019.18 gross to [REDACTED]
2. \$1,129.82 gross to [REDACTED]
3. \$1,316.10 gross to [REDACTED]
4. \$761.55 gross to [REDACTED]
5. \$299.35 gross to [REDACTED]
6. \$2,314.08 gross to [REDACTED]

The Employer will provide proof of all payments within 14 days of the date of the final payments in accordance with Clause 15(h) of the Enforceable Undertaking.

*The appropriate tax component is to be remitted directly to the Australian Tax Office.

Attachment B – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by DM & G Pty Ltd

We refer to the audit by the Office of the Fair Work Ombudsman (**FWO**) of DM & G Pty Ltd and the FWO's determination of contraventions of the *Fair Work Act 2009* and the *Fast Food Industry Award 2010* by:

- failing to pay the required minimum wages
- failing to pay casual loading
- failing to pay Saturday penalty rate
- failing to pay Sunday penalty rate
- failing to pay overtime
- failing to pay special clothing allowance
- failing to pay accrued annual leave and leave loading upon the termination of employment
- failing to make and keep records as required
- failing to issue payslips

DM & G Pty Ltd has formally admitted to the FWO that these contraventions have occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions. These include undertaking training in workplace laws, registering for the FWO My Account, issuing payslips to employees within one day of payment, ensuring correct record keeping and undergoing further audits to monitor its compliance with workplace laws.

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

If you have queries or questions relating to your employment, please contact [REDACTED]
[REDACTED] on [REDACTED]. Alternatively, anyone can contact the FWO via the website at
www.fairwork.gov.au or the Infoline on 13 13 94.