



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

C & JT Pty Limited (ABN: 44 147 912 454)

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by C & JT Pty Ltd (**the Employer**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Background**

1. The Employer has been registered as a Constitutional Corporation since 8 February 2011 (ACN 147 912 454).
2. The Employer operates two "Nando's" franchise restaurants in Canberra City and one in Bondi, New South Wales.
3. In May 2015 the Employer was subject to an Audit as part of the FWO's Northern ACT Campaign 2015, which found contraventions of Commonwealth workplace laws occurred between 1 July 2014 and 30 June 2015 affecting 13 casual employees aged between 16-25 (**the Employees**).
4. The Employees were variably paid between \$18.00 and \$36.00 per hour, with the majority being paid a flat rate of \$18.00 per hour for all work performed, including hours worked on weekends and public holidays.
5. The flat rate of \$18.00 per hour was at all times less than the minimum casual hourly rate for ordinary hours for a junior food and beverage attendant aged 19 years or older, and less than the minimum weekend casual rates for employees aged 18 years or under the *Restaurant Industry Award 2010* (**the Award**) which applies to the Employer.
6. The Employer accepted the finding of the audit and engaged a Certified Practising Accountant (the CPA) to determine the quantum of underpayments.
7. On 27 August 2015 the Employer provided the FWO with a copy of the CPA's calculations which showed the amount of the total underpayments to the Employees to be \$27,495.69 and the FWO accepts these calculations.
8. The Employer will rectify the underpayments in accordance with the terms of this Undertaking and take additional steps to ensure future compliance with the Award and workplace laws.

**Contraventions**

9. 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 20 by failing to pay the Employees correct ordinary hourly rate of pay;
  - (b) Clause 13.1 by failing to pay the Employees the correct casual loading on the ordinary hourly rate;
  - (c) Clause 20.3 by failing to pay the Employees the correct junior hourly rate;
  - (d) Clause 34 by failing to pay the Employees the correct Saturday, Sunday and Public Holiday penalty rates.

**Commencement of Undertaking**

10. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by the Employer; and

(b) the FWO accepts the Undertaking so executed.

11. Upon the commencement of this Undertaking, the Employer undertakes to assume the obligations set out below.

## **Undertakings**

12. For the purposes of section 715 of the FW Act, the Employer undertakes to:

### *Rectify underpayment*

- (a) Within 90 days of the commencement of this Undertaking, complete full payment of the amounts owed to each Employee as set out in **Attachment A**;
- (b) Within 7 days of making a payment to any of the affected Employees, provide to the FWO evidence of the payment made.;

### *FWO MyAccount Registration*

- (c) Within 14 days of the commencement of this Undertaking, register with the FWO 'My Account' portal at 'www.fairwork.gov.au' and complete the profile, minimum pay rates and award options through this portal;
- (d) Provide the FWO with the Company's 'My Account' registration number within 7 days of registration;

### *Future Workplace Relations Compliance*

- (e) Comply at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) (**FW Regulations**), the Award and any modern awards as they apply to any of the Employer's employees;

### *Workplace Notice*

- (f) Within 28 days of the commencement of this Undertaking, display a notice within the workplace in a place which is accessible to all employees (**Workplace Notice**) for a period of 14 consecutive days in the terms set out in **Attachment B**;
- (g) Within 7 days of the display of the notice, provide a copy of the **Workplace Notice** and provide photographic evidence of its display to the FWO;

### *Apology*

- (h) Within 14 days of the commencement of this Undertaking, send each of the Employees an apology (**Apology Letter**) in the form of the letter set out in **Attachment C**;
- (i) Within 7 days of the Apology Letter being sent, provide to the FWO a copy of each of the Apology Letters and proof of their delivery to the Employees;

### *Self – Audit and Reporting Activity*

- (j) Cause to have performed by an external accounting professional (e.g. Certified Practising Accountant), audit specialist or employment law specialist (at the expense of the Employer) future audits of the Employer's compliance with the FW Act, FW Regulations and fair work instruments including but not limited to the Award on the following terms:
  - (i) The audits will be required to cover each of the full pay period(s) that fall in the period from 1 September to 30 September (inclusive) in the years 2016, 2017 and 2018;
  - (ii) The audits must be completed within 30 days of the end of the relevant audit period each year;



- (iii) The audits will apply to all employees employed at any time during the audit period in a classification of work of any fair work instrument applying to the Employer in the audit period;
- (iv) The audits will assess the Employers compliance with the following obligations according to each employee's classification of work, category of employment and hours worked during the audit period:
  - wages and work-related entitlements;
  - any accrual and payment of entitlements under the National Employment Standards in Part 2-2 of the FW Act;
  - method and frequency of payment in accordance with the section 323 of the FW Act; and
  - record keeping and pay slip obligations in Division 3 of Part 3-6 of the FW Act.
- (v) Within 7 days of the completion of the audit each year, the Employer will provide to the FWO a copy of the audit report which must include:
  - a statement of the qualifications of the person conducting the audit and the methodology used in the audit;
  - the audit findings;
  - written particulars of any contraventions identified in the audit, including steps the Employer will take to rectify any identified contravention(s), when the rectification will occur and evidence of rectification to be supplied to the FWO.

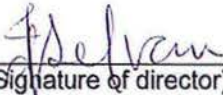
## Acknowledgements

13. 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](http://www.fairwork.gov.au) 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 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 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, 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 C & JT Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

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

\_\_\_\_\_  
(Signature of director/company secretary)

JEROME TIRELL SELVAN  
\_\_\_\_\_  
(Name of director)

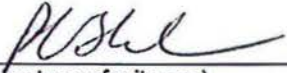
\_\_\_\_\_  
(Name of director/company secretary)

03/12/2015  
\_\_\_\_\_  
(Date)

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

in the presence of:

in the presence of:

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

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

Phillip Bloxham  
\_\_\_\_\_  
(Name of witness)

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

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


  
\_\_\_\_\_  
Lynda McAlary-Smith

4/12/15  
\_\_\_\_\_  
(Date)

Executive Director Proactive Compliance & Education

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

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

ROBERT HORTLE.  
\_\_\_\_\_  
(Name of Witness)

**Attachment A – Employees and amounts owed**

Employees	Classification	Amount Owed	Period of Engagement
[REDACTED]	Food and Beverage attendant – grade 2	3987.89	
[REDACTED]	Food and Beverage attendant – grade 2	2262.04	
[REDACTED]	Food and Beverage attendant – grade 2	299.08	
[REDACTED]	Food and Beverage attendant – grade 2	36.08	
[REDACTED]	Food and Beverage attendant – grade 2	4450.68	
[REDACTED]	Food and Beverage attendant – grade 2	2336.24	
[REDACTED]	Food and Beverage attendant – grade 2	190.00	
[REDACTED]	Food and Beverage attendant – grade 2	4791.41	
[REDACTED]	Food and Beverage attendant – grade 2	2640.41	
[REDACTED]	Food and Beverage attendant – grade 2	2256.03	
[REDACTED]	Food and Beverage attendant – grade 2	4225.93	
[REDACTED]	Food and Beverage attendant – grade 2	526.91	
[REDACTED]	Food and Beverage attendant – grade 2	90.43	

## **Attachment B – Form of Workplace Notice**

### **Contravention of *Fair Work Act 2009* and the *Restaurant Industry Award 2010* by C & JT Pty Ltd**

A recent audit conducted by the Office of the Fair Work Ombudsman (FWO) determined that C & JT Pty Ltd contravened the *Fair Work Act 2009* by failing to pay casual employees the correct entitlements under the *Restaurant Industry Award 2010* as follows:

- minimum hourly rates of pay for time worked Monday to Friday;
- junior minimum hourly rates of pay;
- casual loading on hours worked; and
- penalty rates for time worked on Saturdays and Sundays.

C & JT Pty Ltd has formally admitted to 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.

C & JT Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, C & JT Pty Ltd 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, please contact me on [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 C – Letter of Apology**

<Date>

<Employee name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of C & JT Pty Ltd for non-compliance with Commonwealth workplace relations laws. A recent audit conducted by the Office of the Fair Work Ombudsman (FWO) determined that C & JT Pty Ltd contravened the *Fair Work Act 2009* by failing to pay casual employees the correct entitlements under the *Restaurant Industry Award 2010* (MA000119) as follows:

- Minimum hourly rates of pay for work performed Monday to Friday
- Junior minimum hourly rates of pay
- Casual loading for all hours worked
- Penalty rates for work performed on a Saturday and Sunday

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

C & JT Pty Ltd is taking steps to remedy the contraventions, including by:

- Paying you the amount that you have been underpaid (insert amount); and
- Committing to future compliance.

You will receive this payment by (insert date) and will be provided with a payment advice regarding the payment.

C & JT Pty Ltd has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace relations laws and has 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, C & JT Pty Ltd has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

We sincerely regret and apologise for failing to comply with our lawful obligations.

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

Yours sincerely

Jerome Selvan  
Director  
C & JT Pty Ltd