



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

Di Stasio Pty Ltd (ABN: 20 007 375 779);

and

Mr Ronnie Di Stasio.

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:

- (a) Di Stasio Pty Ltd (ACN: 007 375 779) (**Di Stasio**); and
- (b) Mr Ronnie Di Stasio;

pursuant to 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 Di Stasio and Mr Ronnie Di Stasio; and
- (b) the FWO accepts the Undertaking so executed (as evidenced by the FWO's endorsement below).

3. Upon the FWO's acceptance of this Undertaking, and from 1 January 2017 (the **Commencement Date**), Di Stasio and Mr Ronnie Di Stasio undertake to assume the obligations set out at paragraph 15.

BACKGROUND

4. Di Stasio operates a restaurant business located at 31 Fitzroy Street, St Kilda, Victoria trading as Café Di Stasio (the **Restaurant**).
5. Mr Ronnie Di Stasio admits and agrees that, at all material times, he:
 - (a) was principally responsible for the direction and management of Di Stasio operations;
 - (b) was the person responsible for setting pay rates for the employees identified in Schedule A (the **Employees**); and
 - (c) by reason of the matters set out in subparagraphs (a) to (b), was responsible in a practical sense for ensuring that Di Stasio complied with its legal obligations.
6. The FWO commenced an investigation in March 2016 (the **Investigation**), regarding allegations of underpayments by Di Stasio to a former employee.

7. The FWO's investigation focused on employees of Di Stasio subject to a Working Holiday Sub-class 417 Visa (**WHV**) engaged during a specified period of 1 March to 15 March 2016. Following the receipt of records and documents from the Department of Immigration and Border Protection, the FWO included into the investigation one employee engaged by Di Stasio pursuant to the Temporary Work (Skilled) Sub-class 457 Visa (**457**) programme.
8. Di Stasio employed the Employees for various periods (the **Employment Period**) as detailed in Schedule A.
9. During the Employment Period, the Employees' terms and conditions of employment were governed by the FW Act and the *Restaurant Industry Award 2010* (the **Modern Award**).
10. The Investigation determined that the Employees were engaged on either a full time or casual basis, as detailed in Schedule A.

CONTRAVENTIONS

11. The FWO has determined, and Di Stasio and Mr Ronnie Di Stasio admits, that Di Stasio contravened:

(a) section 45 of the FW Act, which states a person must not contravene a term of a modern award. Those contraventions of the Modern Award were as follows:

- Underpayment of base hourly rate (cl. 20.1);
- Failure to pay casual loading (cl. 13.1);
- Failure to pay Saturday, Sunday and Public Holiday penalty rates (cl. 34.1);
- Failure to pay evening shift and split shift penalties (cl. 34.2 and 24.2);
- Failure to pay overtime penalties (cl. 33.2);

(b) section 535 of the FW Act which mandates an employer must make and keep employment records in a form prescribed by the *Fair Work Regulations 2009* (**FW Regulations**); and

(c) section 536 of the FW Act which mandates than an employer issue a pay slip in a form prescribed by the FW Regulations, within one working day of payment.

12. The FWO has determined and Mr Ronnie Di Stasio admits, that he was involved in the contraventions listed above within the meaning of section 550(2)(a) and (c) of the FW Act.
13. The underpayments arising as a result of the Contraventions total \$35,077.24 to the employees.
14. The Employer rectified the underpayments on 14 November 2016 and advised the FWO that it had taken steps to correct the Contraventions.

ENFORCEABLE UNDERTAKING

15. From the Commencement Date of this Undertaking and for the purposes of section 715 of the FW Act, Di Stasio and Mr Ronnie Di Stasio undertake the following:

Future Workplace relations compliance

- a) Take all reasonable steps to ensure that any entities in which Mr Ronnie Di Stasio holds the role of Director, including Di Stasio, comply at all times in respect to applicable Commonwealth workplace laws and instruments, including but not limited to Modern Awards, FW Act and the FW Regulations by developing systems and processes to ensure ongoing compliance with those requirements;
- b) Provide the FWO, within 60 days of the Commencement Date of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph 15(a) above. Without limitation, such systems and processes relating to:
 - (i) Ensuring that all employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - (ii) Issuing payslips to employees within 1 working day of payment in the prescribed form;
 - (iii) Keeping legible, accurate and complete records to ensure employees receive their correct wages and entitlements;

FWO My Account Registration

- c) Within 14 days of the Commencement Date, register with the FWO 'My Account' portal at www.fairwork.gov.au and have completed the profile, minimum pay rates and Award options;

- (i) Within 14 days of the Commencement Date of the Undertaking provide to the FWO the 'My Account' registration number;
- (ii) Within 21 days of the Commencement Date of the Undertaking, at a mutually agreed time and location, demonstrate to a FWO Officer via www.fairwork.gov.au 'My Account' current *Restaurant Industry Award 2010* minimum pay rates and relevant overtime and penalty rates i.e. Saturday, Sunday Shift and Public Holiday Penalty rates;

Apology

- d) Within 28 days of the Commencement Date of this Undertaking Di Stasio must make an apology to the Employees named in Schedule A (the **Apology**);
- e) The form of the Apology is contained in the Declaration, Attachment B;

Audit activity

- f) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at Di Stasio's expense, audits of its compliance with all Commonwealth workplace laws and instruments (**Audits**) on the following terms:
 - (i) an Audit of the first complete pay cycle following 1 January 2017, which is to be finalised and provided to the FWO along with the methodology used to conduct the Audit by 15 February 2017 (**Audit One**);
 - (ii) an Audit of the first complete pay cycle following 1 July 2017, which is to be finalised and provided to the FWO along with the methodology used to conduct the Audit by 15 August 2017 (**Audit Two**);
 - (iii) The audits will apply to a sample of 25% of full time, part time and casual employees for a range of classifications employed during the audit period;
 - (iv) The audits will assess the Employer's 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;
- g) On the finalisation dates contained in paragraph 15 f) (i) and (ii), 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 including the particulars of any contraventions identified in the audit; and
 - in the event an audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, evidence of rectification of any and all underpayments to employees.

Workplace relations training

- h) Within 60 days of the Commencement Date of this Undertaking, organise and ensure training is provided at Di Stasio's expense to all persons who have managerial responsibility for human resource, recruitment or payroll functions
(Training):
- (i) Ensure the Training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and modern awards;
 - (ii) Ensure the Training is conducted by a workplace trainer, such person or organisation to be approved by the FWO and paid for by Di Stasio;
- i) 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 and incorporate any amendments to the Training as recommended by the FWO;
- j) 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);

- k) For a period of 1 year from the execution of this Undertaking, ensure that Training is conducted in the manner prescribed above in relation to any new or existing employees or contractors who, after the Commencement Date of this Undertaking, acquire managerial responsibilities that include human resources, recruitment or payroll functions on behalf of Di Stasio;

Workplace Notice

- l) Within 14 days of the Commencement Date of this Undertaking, cause to be displayed a notice in the form of Attachment C to this Undertaking (**Workplace Notice**):
 - (i) For a period of 28 days, at the Restaurant; and
 - (ii) Ensure that the Workplace Notice is printed on at least A4 size and is clearly displayed:
 - i. in a location to which all employees who work at Di Stasio's Restaurant have access;
 - ii. in a manner which is reasonably capable of drawing the attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard); and
 - (iii) Provide evidence to the FWO of the placement of the Workplace Notice within seven days of its placement.

NO INCONSISTENT STATEMENTS

16. Di Stasio and Mr Ronnie Di Stasio:

- (i) must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing, or otherwise imply anything that is inconsistent with admissions or acknowledgements contained in this agreement.

ACKNOWLEDGEMENTS

17. Di Stasio and Mr Ronnie Di Stasio acknowledges that:

- a) This Enforceable Undertaking is given by and accepted by the FWO pursuant to section 715 of the FW Act;
- b) The FWO may;

- (i) make this Enforceable Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Enforceable Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this Enforceable Undertaking;
 - (iv) from time to time, publicly refer to the Enforceable Undertaking (and any of the Attachments hereto) and its terms;
 - (v) rely upon the admissions made by Di Stasio and Mr Ronnie Di Stasio set out above in respect of decision making concerning any future non-compliance with Di Stasio and Mr Ronnie Di Stasio's workplace relations obligations.
- c) Consistent with the Note to section 715(4) of the FW Act, this Enforceable Undertaking does in no way derogate from the rights and remedies available to any other person arising from the conduct set out herein;
- d) Consistent with section 715(3) of the FW Act, Di Stasio and/or Mr Ronnie Di Stasio may withdraw from or vary this Enforceable Undertaking at any time, but only with the consent of the FWO;
- e) If Di Stasio and/or Mr Ronnie Di Stasio contravenes any of the terms of this Enforceable Undertaking:
 - (i) 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
 - (ii) This Enforceable Undertaking may be provided to the Court as evidence of the admissions made by Di Stasio and Mr Ronnie Di Stasio above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by Di Stasio Pty Ltd (ABN: 20 007 375 779) in accordance with section 127(1) of the Corporations Act 2001:

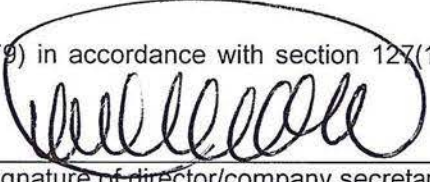
(Signature of director)

(Name of director)

(Date)
in the presence of:

(Signature of witness)

(Name of witness)



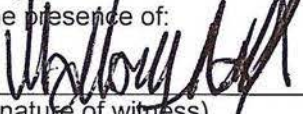
(Signature of director/company secretary)

RONNIE DI STASIO

(Name of director/company secretary)

19.12.2016

(Date)
in the presence of:

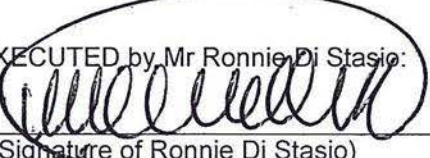


(Signature of witness)

Maloney Wall

(Name of witness)

EXECUTED by Mr Ronnie Di Stasio:

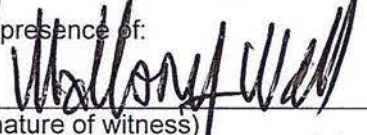


(Signature of Ronnie Di Stasio)

(Date)

19.12.2016

(Date)
in the presence of:



(Signature of witness)

Maloney Wall

(Name of witness)

(Date)
in the presence of:

(Signature of witness)

(Name of witness)

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

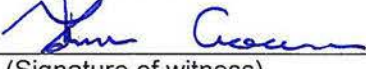


Steven Ronson
Executive Director
Dispute Resolution and Compliance
Delegate for the FAIR WORK OMBUDSMAN

(Date)

11/1/2017

in the presence of:



(Signature of witness)

Kathleen Goonan

(Name of Witness)

Schedule A – Employees

Employee	Visa	Start Date	End Date	Position	Status
	457	5/07/2012	15/9/2016	Chef	Full-time
	417	13/01/2016	1/5/2016	Chef	Casual
	417	17/12/2015	1/5/2016	Chef	Casual
	417	7/12/2015	5/6/2016	Bar staff	Casual
	417	8/02/2016	28/4/2016	Chef	Casual
	417	19/10/2015	24/4/2016	Bar staff	Casual

Attachment B – Form of Declaration and Apology

<Date>

<Employee Name>

Dear <Employee Name>

I am writing to apologise on behalf of Di Stasio Pty Ltd for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Di Stasio Pty Ltd had contravened the *Fair Work Act 2009* by:

- Underpaying the base hourly rate
- Failing to pay casual loading
- Failing to pay Saturday, Sunday and Public Holiday penalty rates
- Failing to pay evening shift and split shift penalties
- Failing to pay overtime penalties
- Failing to make and keep records in a form required
- Failing to issue pay slips in the form required.

Regrettably, the investigation determined that you were affected by the above contraventions. Di Stasio Pty Ltd has taken steps to remedy the contraventions by undertaking calculations to identify any resulting underpayments, changing workplace practices and back paying employee wages.

Di Stasio Pty Ltd have formally admitted to the FWO that they 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.

Di Stasio Pty Ltd expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact <XXXXXX> on <xxxxxxxxxx>.

Yours sincerely,

Mr Ronnie Di Stasio
Director, Di Stasio Pty Ltd

Attachment C – Form of Workplace Notice

Contravention of *Fair Work Act 2009* by Di Stasio Pty Ltd

We refer to the investigation conducted by the Commonwealth Government of Australia's Office of the Fair Work Ombudsman (**FWO**) into allegations that Di Stasio Pty Ltd contravened the *Fair Work Act 2009* by:

- Underpaying the base hourly rate
- Failing to pay casual loading
- Failing to pay Saturday, Sunday and Public Holiday penalty rates
- Failing to pay evening shift and split shift penalty rates
- Failing to pay overtime penalties
- Failing to make and keep records in a form required
- Failing to issue pay slips in the form required.

Di Stasio 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) committing to a number of measures to remedy the contraventions, including by rectifying any underpayments.

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

If you 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.

Yours sincerely,

Mr Ronnie Di Stasio
Director, Di Stasio Pty Ltd