



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Starbucks Coffee Australia Pty Ltd (ABN 73 169 062 926) and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 12 of this undertaking.

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by Starbucks Coffee Australia Pty Ltd (**Starbucks**), 2/658 Church Street, Cremorne, VIC 3121.

COMMENCEMENT

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by Starbucks; and
 - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

BACKGROUND

3. Starbucks is an Australian private company that operates a fast-food business trading in New South Wales, Victoria and Queensland, employing more than 1094 staff across 62 coffee shop locations.
4. Starbucks operates in Australia under a licence agreement with Starbucks Corporation in the United States of America. Starbucks was formed on 11 April 2014, and from 2014 all Australian 'Starbucks' branded stores have been operated as company owned and operated stores, and prior to this the Australian market was operated by Starbucks International.
5. On 21 July 2020, Starbucks notified the FWO that it identified that it had underpaid staff arising from incorrect application of part-time and rostering clauses of the *Fast Food Industry Award 2010* (**the Award**) between 1 September 2014 to 30 June 2020 (**the Relevant Period**) and had correspondingly contravened the National Employment Standards regarding leave,¹ and payment for absence on a public holiday during the Relevant Period.²
6. On 5 February 2021, Starbucks notified the FWO that it had calculated total underpayments of \$4.34 million (exclusive of superannuation and interest) during the

¹ Section 89 FW Act

² Section 116 FW Act

Relevant Period to 2,427 employees in relation to its breaches of the Award.

7. On 5 February 2021, Starbucks notified the FWO that the total amount to be remediated was \$4,572,192.88 (inclusive of superannuation and interest) and that 2,265 employees had been repaid, with payments processed on or before 29 December 2020. From those payments, 162 employees had bounced back messages due to bank account details being out of date, for payments totalling \$69,942.73 (**Outstanding Payments**) and efforts were being made to locate these employees. Starbucks advised that it remediated the \$4,572,192.88 (inclusive of superannuation and interest) by:
 - (a) rectifying total underpayments of \$4,570,226.86³ by paying each of the employees referred to in column A of Schedule A to this Undertaking (**Schedule A Employees**), other than the 162 employees who have yet to be located, the amounts referred to in column B of Schedule A;
 - (b) rectifying any associated superannuation underpayments as required by law to each of the Schedule A Employees, other than the 162 employees who have yet to be located, by paying any such required superannuation contributions to the chosen superannuation fund of the employee;
 - (c) paying interest to each of the Schedule A Employees, other than the 162 employees who have yet to be located, on the amount referred to in column B of Schedule A, in the sum referred to in column C of Schedule A, calculated using an interest rate of 4.25%; and
 - (d) notifying the Schedule A Employees, other than the 162 employees who have yet to be located, of the underpayments, which was done by letter dated 18 December 2020.

Remediation Calculations

8. On 18 February 2021, Starbucks provided its remediation calculations to the FWO.
9. The FWO identified issues with Starbucks' remediation methodology, including with Starbucks' approach to offsetting managerial staff salaries on an annual basis, and determining part-time employees' agreed hours of work for the purpose of identifying

³ The total underpayment arising from the contraventions is \$1,966 less than the total remediation amount. Starbucks has elected to pay a minimum remediation payment of \$20 in any instance where an amount owed to an employee was less than \$20.

overtime entitlements, based upon written rosters in lieu of written agreements.

10. Starbucks has acknowledged its time recording inconsistencies and the requirement to ensure part-time work agreements include agreed hours of work. On 18 November 2022, Starbucks advised the FWO that it amended its processes to ensure part-time employees have part-time work agreements in place in accordance with the *Fast Food Industry Award 2020 (2020 Award)* requirements and to inform its managers of rostering and record keeping requirements around amending part-time working hours.
11. Starbucks has agreed to amend its remediation calculations such that offsetting will be applied on a fortnightly basis in accordance with the 2020 Award. In February 2021, Starbucks estimated the application of offsetting on a fortnightly basis will result in further underpayments of \$288,286.40. Starbucks will calculate, make payment and report to the FWO the final calculated amount in accordance with clauses 15 to 17 below.

ADMISSIONS

12. The FWO has a reasonable belief, and Starbucks admits, that Starbucks contravened:
 - (a) section 45 of the FW Act during the Relevant Period by failing to pay each of the Schedule A Employees the amount or amounts to which that employee was entitled under the Award, in respect of each provision of the Award which is identified in Schedule A to this Undertaking in relation to that employee, and in particular:
 - (i) Clause 12.2 - Failure to keep prescribed written part-time hours of work agreements;
 - (ii) Clause 17 - Minimum weekly wages;
 - (iii) Clause 19.1(a) - Meal allowance;
 - (iv) Clause 25.5(b) - Saturday penalty rates;
 - (v) Clause 25.5(c) and (d) - Sunday penalty rates;
 - (vi) Clause 26.2(a) and (f) - Overtime; and
 - (vii) Clause 28.3 - Annual leave loading.

- (b) section 44(1) of the FW Act during the Relevant Period by contravening the National Employment Standards in relation to employees being taken not to be on annual leave on public holidays (section 89) and payment for absence on a public holiday (section 116) in respect of relevant Schedule A Employees for the Relevant Period.
13. The contraventions identified in clause 12 of this Undertaking do not include:
- (a) any contraventions which relate to or arise as a consequence of Starbucks failing to correctly apply the Award to any employee not listed in Schedule A to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of Starbucks failing to correctly apply the Award and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or
 - (b) any contraventions which relate to or arise as a consequence of Starbucks failing to correctly apply any provisions of the Award to any of the Schedule A Employees other than as identified in clause 12(a) of this Undertaking; or
 - (c) any contraventions which have not yet occurred at the date that this Undertaking is offered by Starbucks (whether or not those contraventions are identified in the Independent Audits described at clause 29 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by Starbucks and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

UNDERTAKINGS

14. Starbucks will take the actions set out at clauses 15 to 57 below.

Rectification of Remediation methodology

15. Starbucks will engage ER Strategies, and by 15 September 2023 ER Strategies will complete the recalculated entitlements owing to employees for the Relevant Period utilising the following methodologies:

-
- (a) where an employee was engaged on an annual salary, payments of annual salary made in any fortnight can be set off (only) against obligations owed to the employee under the Award or the National Employment Standards in respect of the same fortnight period. For the avoidance of doubt this does not preclude the averaging of ordinary hours pursuant to clause 25.2 of the Award and clause 13.1 of the 2020 Award;
 - (b) where there was late payment of annual variations to the Award, this is corrected to ensure payments are applied from the required dates;
 - (c) all instances of part-time employees being remediated as casuals are identified and remediated under the correct part-time provisions under the Award, inclusive of all applicable penalties and entitlements;
 - (d) where a full-time employee worked in excess of an average of 38 hours per week, averaged over a four week period, overtime is to be applied in accordance with clause 26.2(a)(i) of the Award; and
 - (e) where a part-time employee worked an 'un-rostered shift' (i.e., if there was an additional shift that was not on the electronic roster), all hours worked in the shift are to be paid at the applicable overtime rate in accordance with clause 26.2(f) of the Award.

The requirement noted at clause 15(e) does not apply where a roster does not exist due to the staff member having commenced employment within the preceding 21 days of that shift.

Review and rectification of underpayments

- 16. By 15 September 2023, Starbucks will:
 - (a) apply the updated methodology described at clause 15 to calculate the quantum of any underpayments, including any superannuation entitlements payable on those amounts, to each of the Schedule A Employees under the Award during the Relevant period and under the Award and the 2020 Award during the period between 1 July 2020 and 31 December 2022 (**Underpayments**); and
 - (b) pay each of the Schedule A Employees to whom the Underpayments relate, and

each of the 162 employees yet to be located to whom the Outstanding Payments relate:

- (i) the underpayment amount owing to them;
 - (ii) any superannuation payments which may be required by law, by making payment to their chosen superannuation fund; and
 - (iii) interest on the amount referred to in clause 16(b)(i), applied at a rate of 4.25%.
17. By 30 September 2023, Starbucks will provide the FWO evidence of all payments made to or for the benefit of the Schedule A Employees for the Relevant Period and the period between 1 July 2020 and 31 December 2022 pursuant to clause 7 and also the Underpayments pursuant to clause 16.
18. By 1 November 2023, Starbucks will:
 - (a) provide the FWO evidence of any further payments made after 30 September 2023 to or for the benefit of the Schedule A Employees pursuant to clauses 7 and 16; and
 - (b) pay any Outstanding Payments or Underpayment amounts pursuant to clauses 7 and 16(b)(i) owing to any Schedule A Employees who cannot be located to the Commonwealth of Australia in accordance with section 559 of the FW Act. Starbucks will complete the required documents supplied by the FWO for this purpose.
19. In the event that the FWO is able to locate and contact any former Starbucks employees to whom Outstanding Payments or Underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify Starbucks in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice Starbucks will:
 - (a) pay to the former employee interest on the amount already paid by Starbucks to the Commonwealth of Australia in respect of that employee, calculated for each financial year from the date that the employee first became entitled to that amount until the date on which that amount is paid, using an interest rate of

4.25%; and

- (b) pay to the former employee's nominated superannuation fund an amount equal to the amount that would have been required by law, had Starbucks paid the amount under clause 18 directly to the former employee.

Provision of Information

Information about new systems and processes

- 20. On 18 November 2022, Starbucks provided the FWO with a report that outlined the new systems and processes that it has put in place to ensure compliance with its obligations under the FW Act and the 2020 Award.
- 21. By 21 September 2023, Starbucks will provide to the FWO its final unredacted report as referenced in paragraph 20 above to outline all new systems and processes that it has put in place to ensure compliance with its obligations under the FW Act and the 2020 Award. The report provides sufficient detail to demonstrate:
 - (a) compliance with all requirements per clause 10 of the 2020 Award regarding part-time hours of work agreements; and
 - (b) that all employees' entitlements to payments for authorised absence on a public holiday are captured and applied contemporaneously.
- 22. The FWO may, within 28 days of receiving the information under clause 21, seek reasonable further information regarding the new systems and processes from Starbucks by issuing a written notice to Starbucks specifying the additional information required. Starbucks must provide the information specified in such a notice within 14 days of receipt.

No limitation on use of information

- 23. When providing the information under clauses 21 – 22, Starbucks will state in writing that it does so without qualification and without seeking to place any limitation on how the FWO may use the information in the lawful performance of its statutory functions and powers. Starbucks will not assert, or seek to assert, any limitation on how the FWO may use or rely on the information in the lawful performance of its statutory functions and powers.

Letter of Assurance

24. By 21 September 2023, Starbucks will provide the FWO a Letter of Assurance signed by the Chief Executive Officer in the terms as set out at Attachment A to this Undertaking.

Workplace Relations Training

25. By 31 October 2023, Starbucks will ensure that all current employees or contractors of Starbucks with responsibility for management of employees, human resources, recruitment and payroll, have completed training which satisfies clause 26 below.
26. The training must:
- (a) be provided by an external workplace relations or employment law expert, approved by the FWO prior to the training being provided; and
 - (b) cover, at a minimum:
 - (i) how to correctly determine award coverage and award classification;
 - (ii) how to correctly apply award conditions including, without limitation: overtime and penalty rates; and paid and unpaid breaks, under the 2020 Award;
 - (iii) other FW Act entitlements and obligations, including the National Employment Standards.
27. By 30 November 2023, Starbucks will provide to the FWO evidence of its compliance with clauses 25 and 26, including:
- (a) a copy of the training materials used; and
 - (b) a schedule or list of the employees and contractors who received the training and the date on which they attended.
28. The training requirement will be ongoing for new or existing employees and contractors who acquire responsibilities for any of the functions referred to in clause 25 above, and operate for the term of this Undertaking. The Training must be undertaken, and evidence provided to the FWO, within three calendar months of the relevant employee or contractor taking on responsibility for the functions.

Independent Audits

29. Starbucks must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits of Starbucks' compliance with the FW Act and *Fair Work Regulations 2009 (FW Regulations)*, in relation to the 2020 Award, and any future agreements that commence applying to replace the 2020 Award (**Audits**).
30. Starbucks will notify the FWO of its proposed Independent Auditor by no later than 21 September 2023. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Starbucks to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be approved by the FWO in writing prior to being engaged by Starbucks.
31. Starbucks must ensure that each of the Audits conducted by the Independent Auditor includes:
 - (a) an assessment of a random sample of at least 7% of all employees to whom the 2020 Award applies, across a range of classifications, locations and employment types (full-time, part-time and casual employment), during the relevant audit period (**Sampled Employees**) in respect of their employment by Starbucks and must include staff from New South Wales, Queensland and Victoria;
 - (b) an assessment of whether the Sampled Employees have been correctly classified by Starbucks;
 - (c) an assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period is in compliance with the FW Act and the 2020 Award (or replacement instruments);
 - (d) direct contact with Sample Employees by way of site visits (either in person or remotely) to at least six different sites, including at least one in each of Queensland, New South Wales, and Victoria, and at one regional location, to ensure accuracy of hours worked;
 - (e) the production of a written report on each of the Audits setting out the Independent Auditor's findings, and the facts and circumstances surrounding

them, to the FWO; and

- (f) that each of the written reports referred to in (e) above contains the following declarations from the Independent Auditor:
 - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - (ii) notwithstanding that the Independent Auditor is retained by Starbucks, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Starbucks in preparing the report;
 - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
 - (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

The First Audit

- 32. Starbucks must ensure the Independent Auditor commences the first of the Audits by no later than 31 October 2023 (**First Audit**).
- 33. The relevant audit period for the First Audit must be at least two full consecutive pay periods falling within each of the two periods: 3 April 2023 to 30 April 2023 and 4 September 2023 to 1 October 2023.
- 34. By 21 September 2023, Starbucks will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 35. Starbucks will instruct and use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 30 January 2024, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. Starbucks will instruct and use its best endeavours to ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Starbucks without the FWO's approval.
- 36. Starbucks will instruct and use its best endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit (**First Audit**

Report) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. Starbucks will instruct and use its best endeavours to ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to Starbucks without the FWO's approval.

37. Following the First Audit, the FWO will meet with (or authorise the Independent Auditor to meet with) Starbucks within 30 days of receipt of the finalised Audit Report to discuss any findings of the Independent Auditor to enable Starbucks to act on any findings in a timely manner.

The Second Audit

38. Starbucks must ensure the Independent Auditor commences the second of the Audits by no later than 31 October 2024 (**Second Audit**).
39. The relevant audit period for the Second Audit must be at least two full consecutive pay periods falling within the period 3 June 2024 to 4 August 2024.
40. By 30 June 2024, Starbucks will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
41. Starbucks will instruct and use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 30 January 2025, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. Starbucks will instruct and use its best endeavours to ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Starbucks without the FWO's approval.
42. Starbucks will instruct and use its best endeavours to ensure the Independent Auditor finalises the Second Audit and provides a written report of the Second Audit (**Second Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. Starbucks will instruct and use its best endeavours ensure the Independent Auditor does not provide the Second Audit Report, or a copy of the same, to Starbucks without the FWO's approval.
43. Following the Second Audit, the FWO will meet with (or authorise the Independent Auditor to meet with) Starbucks within 30 days of receipt of the finalised Audit Report

to discuss any findings of the Independent Auditor to enable Starbucks to act on any findings in a timely manner.

Outcome of Audits

44. If any of the Audits identify underpayments to the Sampled Employees, Starbucks will:
 - (a) within 60 days of receipt of the relevant Audit Report, rectify any underpayments identified in the relevant audit period; and
 - (b) within three calendar months of receipt of the relevant Audit Report, conduct a reconciliation of the amounts paid and owed to the Sampled Employees in the 12 month period immediately prior to the relevant audit period and rectify any underpayments that are identified.
45. Starbucks will provide to the FWO evidence of such reconciliation and/or rectifications required under clause 44 above within 60 days of being informed by the FWO of the requirement to undertake the reconciliation.
46. If any Sampled Employees identified in the Audits as having underpayments owing to them cannot be located within three calendar months of the conclusion of each Audit, Starbucks will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Starbucks will complete the required documents supplied by the FWO for this purpose.
47. If any of the Audits identify an underpayment of minimum entitlements to one or more Sampled Employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, Starbucks will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the 2020 Award (or replacement instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by Starbucks.
48. If requested by the FWO, Starbucks will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 7 days of such a request.
49. If any Additional Audit identifies systemic compliance issues, whether monetary or non-

monetary in nature, with the requirements of the 2020 Award or replacement instrument or the FW Act, within three calendar months of completion of the audit, Starbucks will provide a Letter of Assurance to the FWO outlining further system and process changes being made to address the issue(s) and the timeframe for the completion of such changes.

Corporate Governance

50. Starbucks agree to review its internal reporting processes regarding it notifying its Board of Directors (**Board**) in relation to any potential breaches of workplace laws. In particular Starbucks will:
- (a) ensure any letters of assurance required to be given under, and at Attachment A to this Undertaking is tabled and approved by its Board prior to provision to the FWO;
 - (b) ensure the reports on new systems and processes at clauses 20 and 21 are signed off by its Board and in the event there are any issues arising, Starbucks will ensure such issues are acted upon in a timely manner;
 - (c) ensure that the two audit reports prepared from the audits at clauses 29 to 43 are tabled before its Board;
 - (d) by 21 September 2023, ensure its Board provides documentation to the FWO which demonstrates that the Board is undertaking regular monitoring (on at least a quarterly basis) of workplace relations requirements and Starbucks' compliance with the FW Act, FW Regulations, the 2020 Award and any subsequent instruments; and
 - (e) in the event of any identified compliance issues arising out of the process at clause 50(b) or 50(c), ensure its Board is to provide a further Letter of Assurance to the FWO outlining further systems and processes changes being made to address the issue(s) and to provide evidence of these changes.

Notices – Internal and External

Written Notice of Enforceable Undertaking

51. As part of Starbucks' internal review and rectification process, it had previously sent

letters (in December 2020) to all employees of the company alerting them to the findings and that it was making payments to any affected employees. A similar letter was also sent to all affected former employees found to have been underpaid by Starbucks.

52. Starbucks will send an updated letter (**Notice Letter**) to all current employees and former affected employees advising them that Starbucks has entered into an Enforceable Undertaking and confirmed if they are receiving a further back payment as a result of the review and rectification process outlined in clauses 7 and 16 by 21 September 2023. The Notice Letter will be in the form of Attachment B to this Undertaking and advise that Starbucks has entered the Undertaking with the FWO.
53. Starbucks will provide evidence to the FWO that the Notice Letter has been sent to all affected employees by 30 September 2023.

Media Release

54. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking.

Contribution Payment

55. Starbucks will make the following contribution payments to the Consolidated Revenue Fund:
 - (a) By 19 October 2023, a payment of \$150,000 for the underpayments to the Schedule A Employees.
56. By 2 November 2023, Starbucks will provide evidence to the FWO of the contribution payment made to the Consolidated Revenue Fund.

No Inconsistent Statements

57. Starbucks must not and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

Request for Extension of Time

58. Starbucks may request of the FWO an extension on a time specified for completion of an obligation set out in this Undertaking. The request must be provided to the FWO in writing at least 14 days before the date of the obligation, and must set out the reason(s) why the extension is being sought. The FWO will notify Starbucks of its decision within 14 days of receiving the written request. The FWO will not unreasonably withhold agreement on a request for an extension of time. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

ACKNOWLEDGEMENTS

59. Starbucks acknowledges that:

- (a) the FWO may;
 - (i) make this 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 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 Undertaking;
 - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
 - (v) rely upon the admissions made by Starbucks set out in clause 12 above in respect of decisions taken regarding enforcement action in the event that Starbucks is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Starbucks to comply with its obligations under this Undertaking;

- (b) 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 herein;
- (c) consistent with section 715(3) of the FW Act, Starbucks may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if Starbucks contravenes any of the terms of this 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 Undertaking may be provided to the Court as evidence of the admissions made by Starbucks in clause 12 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by Starbucks Coffee Australia Pty Ltd (ABN 73 169 062 926) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

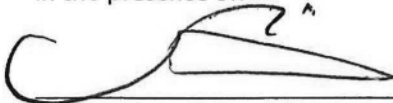
Michael Smith

(Name of director)

18.9.2023

(Date)

in the presence of:



(Signature of witness)

CHRIS GARLICK

(Name of witness)

DocuSigned by:
Braeden Lord
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(Signature of director/company secretary)

Braeden Lord

(Name of director/company secretary)

19.9.2023

(Date)

in the presence of:

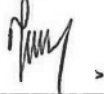


(Signature of witness)

ROWENA BURGESS

(Name of witness)

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



Mark Scully, Deputy Fair Work
Ombudsman – Compliance and
Enforcement

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:



(Signature of witness)

20 September 2023

(Date)

JARROD STEPHEN CUSACK

(Name of Witness)

SCHEDULE A

Refer to attached Schedule A

Attachment A – Letter of Assurance

Anna Booth
The Fair Work Ombudsman
Fair Work Ombudsman
GPO Box 9887
SYDNEY NSW 2001

Dear Ms Booth

I am writing on behalf of Starbucks Coffee Australia Pty Ltd (**Starbucks**) in my capacity as the Chief Executive Officer. This letter follows a process where Starbucks self-reported that:

- it had underpaid employees covered by the *Fast Food Industry Award 2010 (the Award)* in relation to their overtime and leave loading entitlements; and
- it had consequentially breached the National Employment Standards contained within the *Fair Work Act 2009 (Cth) (FW Act)* regarding leave entitlements (section 89) and payment for absence on a public holiday (section 116).

I write to provide the FWO with my assurance that I am satisfied:

- a. the process by which Starbucks, as assisted by ER Strategies, calculated the underpayments to their current and former employees was correctly undertaken; and
- b. that Starbucks is compliant with the FW Act as it relates to the *Fast Food Industry Award 2020*; and
- c. as of 30 September 2023, all former and current employees impacted by the underpayments from September 2014 onwards, apart from those who have not been able to be located by Starbucks, have been paid their entitlements (plus interest) under the Award by Starbucks.

Starbucks has remediated all issues as of 30 June 2023 and has implemented appropriate measures to ensure ongoing compliance.

Sincerely

<CEO name>

Attachment B – Notification Letter to Employees regarding Enforceable Undertaking

Dear <insert name >

As advised in our earlier letter to you of [insert date], Starbucks Coffee Australia Pty Ltd (**Starbucks**) has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth)(**FW Act**) by:

- underpaying employees covered by the *Fast Food Industry Award 2010* in relation to their overtime and leave loading entitlements between September 2014 to June 2020; and
- consequentially breaching its obligations under the National Employment Standards contained within the FW Act regarding leave and payments for staff absent on public holidays.

Starbucks has now entered into a formal Enforceable Undertaking with the FWO regarding the above contraventions and to ensure its ongoing compliance with the FW Act.

Starbucks will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance such as, conducting two independent audits and preparing a report on its systems and processes.

Starbucks understands that you may have questions and concerns relating to this and other employment issues. If you have a general enquiry about this or other employment issues, you can contact Starbucks on [insert details].

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.

Starbucks expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Yours sincerely

<Employer name>