



Australian Government

Fair Work OMBUDSMAN

PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

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

and

McDonald's Australia Limited (ABN 43 008 496 928)

Schedule 1

Details:

Parties	Fair Work Ombudsman (FWO) and McDonald's Australia Ltd (McDonald's)	
FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43884188232
	Address	The Fair Work Ombudsman GPO Box 9887 BRISBANE QLD 4001
	Telephone	(07) 3404 7486
	Fax	(02) 6276 7173
	Attention	Russell Jacob Director – Misclassification and Governance

McDonald's	Name	McDonald's Australia Limited
	ABN	43 008 496 928
	Address	21-29 Central Avenue THORNLEIGH NSW 2120
	Telephone	(02) 9875 7050
	Fax	(02) 9875 7010
	Attention	Joanne Taylor Senior Vice President/Chief Restaurant Support Officer

**McDonald's
Contact Person**

Bill Andrews
National Employee Relations Manager

OPERATIVE PROVISIONS:

1. Background

- 1.1 McDonald's has approximately 922 restaurants in Australia with over 75% of the restaurants operated by licensees. The remaining restaurants are owned and operated by McDonald's.
- 1.2 McDonald's has over 90,000 employees in Australia, of which over 80% are employed on a casual basis.
- 1.3 The FWO and McDonald's entered into a pro-active compliance deed on 8 April 2011 (the first deed). All agreed activities provided for in the first deed were undertaken by the parties.
- 1.4 Throughout the period of the first deed, the FWO observed McDonald's undertaking responsive, self-regulated compliance activities which have improved the way in which McDonald's manages workplace relations both internally and externally.
- 1.5 To facilitate ongoing collaboration between the FWO and McDonald's, the parties have agreed to enter into a second deed.
- 1.6 The parties agree as follows.

2. Acknowledgments

- 2.1 McDonald's acknowledges that:
 - (a) it places a high priority on continuous improvement and welcomes the opportunity to work closely with the FWO to ensure ongoing compliance with Commonwealth workplace laws;
 - (b) the promises it has given in this Deed are reasonable in the circumstances;
 - (c) the FWO may:
 - i. make this Deed available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - ii. release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act 1982 (Cth)*;
 - iii. issue a media release in relation to this Deed; and
 - iv. from time to time, publicly refer to this Deed;
 - (d) if McDonald's contravenes any of the terms of this Deed the FWO may take any enforcement action the FWO considers appropriate.

3. Promise to take proactive compliance activity

- 3.1 McDonald's must do or cause to be done all those activities and things set out in Attachment A to this Deed.

4. Commencement of Proactive Compliance Deed

- 4.1 This Deed comes into effect when both McDonald's and the FWO have executed this Deed.
- 4.2 This Deed will expire at the end of 2 years after the commencement of this Deed, unless terminated earlier in accordance with its terms.

5. Publicity

5.1 The FWO agrees to provide McDonald's with 24 hours to view all FWO media releases (**Releases**) arising from this Deed prior to publication by the FWO. If McDonald's requests any edits or amendments to the Releases; FWO will, in good faith consider those requests.

5.2 Notwithstanding 5.1, McDonald's agrees and acknowledges that, if McDonald's make any suggested edits or amendments to the Releases, the FWO is under no obligation to accept any of them.

5.3 The Releases will reflect the positive cooperation of McDonald's.

6. No Inconsistent Statements

McDonald's:

(a) must not;

(b) must ensure that each of its officers, employees or agents do not ; and

(c) must use reasonable endeavours to ensure that each of its licensees do not

make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the acknowledgements made in this Deed.

7. Termination by the FWO

7.1 Without prejudice to any right or remedy the FWO may have, at any time, the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if McDonald's commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

8. Independent Legal Advice

8.1 McDonald's acknowledges that:

(a) before executing this Deed, McDonald's was given the opportunity to seek independent legal and other advice of its choice;

(b) in light of any advice provided, McDonald's considered its position; and

(c) McDonald's fully understands the effect of this Deed.

9. Continuing obligations

The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):

(a) clause 2 (Acknowledgements); and

(b) clause 6 (No inconsistent statements).

10. Legally binding

10.1 The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

11. Entire agreement

11.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and McDonald's.

12. Construction

12.1 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

12.2 Unless expressed to the contrary in this document:

- (a) words in the singular include the plural and vice versa; and
- (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

13. Severance

13.1 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

14. Governing law

14.1 This Deed shall be construed in accordance with the laws for the time being of the State of New South Wales and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

15. Counterparts

15.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

16. Costs in respect of this Deed

16.1 The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related documentation.

17. Notices

17.1 Any notice, request or other communication to be given or served pursuant to this Deed must be in writing and dealt with as follows:

- (a) if given by McDonald's to the FWO, at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
- (b) if given by the FWO to McDonald's, marked for the attention of the McDonald's Contact Person with the address indicated in Schedule 1 or as otherwise notified by McDonald's.

17.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.

17.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

18. **Date of this Deed**

18.1 The date the parties execute the Deed, or, if it is executed on different dates, the date of last execution.

19. **Definitions**

In this Deed:

Deed means this Proactive Compliance Deed, including any Schedules and Attachments;

Commonwealth workplace laws means:

- the *Fair Work Act 2009*;
- the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*
- the *Fair Work Regulations 2009*;
- the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*

McDonald's Contact Person means the person nominated by McDonald's in Schedule 1 to this Deed, or any other person specified by McDonald's in writing and notified to the FWO.

Licensee means an entity or person that has entered into a license agreement with McDonald's for the right to operate a McDonald's outlet.

Signing page

EXECUTED BY McDonald's Australia Limited in accordance with section 127(1) of the Corporations Act 2001 (Cth)"



(Signature of Director/Secretary)

Andrew Gregory

(Name of Director/Secretary in Full)



(Signature of Director)

CRAIG CAWOOD

(Name of Director in Full)

Date: 19/3/14

SIGNED for and on behalf of the COMMONWEALTH OF AUSTRALIA as represented by the Office of the Fair Work Ombudsman:

MICHAEL CAMPBELL

(Printed Name)



(Signature)

DEPUTY FAIR WORK OMBUDSMAN

(Title)

1/4/14

(Date)

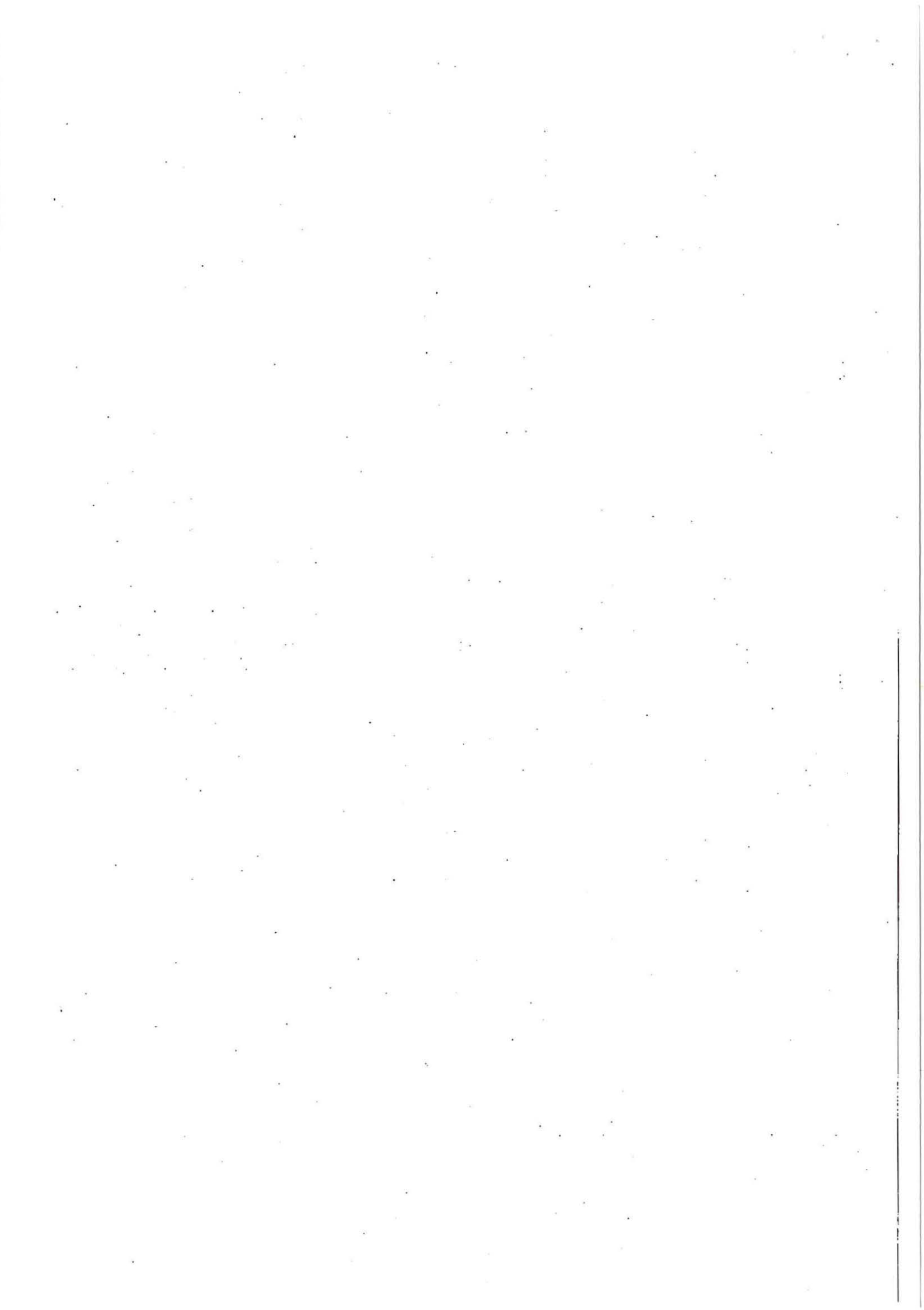
In the presence of:

LOUISE CATO

(Name of Witness in Full)



(Signature)



Attachment A (Proactive Compliance Activities)

Internal Communication – The Deed

Obligations as an Employer

1. Within 14 days of the execution of the Deed, McDonald's will communicate the existence of the Deed to all current employees and to all employees of its licensees via the internal communication system, the intranet based "Metime", and make a copy of the Deed available to all current employees and to all employees of its licensees.

That communication is to be in the following form:

McDonald's believes in continuous improvement and has taken the proactive step of entering into a further Proactive Compliance Deed (Deed) with the Fair Work Ombudsman.

By entering into the Deed, McDonald's demonstrates that it is committed to working with the FWO to ensure compliance with Australian workplace laws and to promote a harmonious, productive and cooperative workplace.

McDonald's has made the Deed available to all staff through <insert hyperlink or place>. You are also able to access information about entitlements and rights at work by contacting <insert name and contact details of the McDonald's Liaison Officer appointed as required by resources clause set out below>, who has been appointed by McDonald's as an Employee Liaison Officer, or by visiting the Fair Work Ombudsman website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

Obligations as a Licensor

2. Within 14 days of the execution of the Deed, McDonald's will communicate the existence of the Deed to all current licensees via its internal communication system, the intranet based "Metime", and make a copy of the Deed available to all licensees.

That communication is to be in the following form:

"McDonald's believes in continuous improvement and has taken the proactive step of entering into a further Proactive Compliance Deed (Deed) with the Fair Work Ombudsman.

By entering into the Deed, McDonald's demonstrates that it is committed to working with the FWO to ensure compliance with Australian workplace laws and promote a harmonious, productive and cooperative workplace.

McDonald's requires all licensees to commit to ensuring compliance with workplace laws and to engage with the FWO on matters arising as a result of workplace complaints.

McDonald's has made the Deed available to all staff through <insert hyperlink or place>. You are also able to access information about entitlements and rights at work by contacting <insert the name and contact details of Employee Liaison Officer appointed by McDonald's as required by resources clause set out below>, who has been appointed by McDonald's as an Employee Liaison Officer, or by visiting the Fair Work Ombudsman website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

Implement Systems and Processes

Obligations as an Employer

3. McDonald's must ensure that it complies at all times and in all respects with relevant Commonwealth workplace laws by developing systems and processes to ensure ongoing compliance.

Obligations as a Licensor

4. McDonald's must facilitate compliance with relevant Commonwealth workplace laws by its licensees by developing and implementing systems and processes to assist licensees to comply with relevant Commonwealth workplace laws.

Workplace Enquiries

5. If the FWO receives an enquiry regarding a workplace matter concerning McDonald's or a licensee, and the person making the enquiry has not previously raised the enquiry directly with McDonald's or the licensee, the FWO will refer the person making the enquiry to a McDonald's Employee Liaison Officer or the McDonald's Contact Person (as identified in the Deed and this Attachment).
6. If the person making the enquiry has previously contacted McDonald's concerning the workplace matter and believes that the matter was not resolved, the FWO will aim to resolve the enquiry.
7. The FWO reserves its right to resolve any workplace enquiries that it considers serious or is in the public interest.

Self-Resolution of Complaints

Obligations as an Employer

8. Within seven days of receiving a workplace complaint concerning McDonald's, the FWO will notify McDonald's of the complaint and provide details supplied by the complainant. The FWO will ask the employee to provide particulars in support of their complaint.
9. McDonald's will use all reasonable endeavours to resolve the workplace complaint and make rectification of identified underpayments, and other issues identified by the FWO, within 28 days of notification by the FWO.

10. Within seven days of resolving the complaint, McDonald's will provide the FWO with evidence that the workplace complaint has been resolved and identified underpayments, and other issues identified by the FWO, have been rectified.
11. Where the complaint cannot be resolved by agreement between McDonald's and the complainant within 28 days of notification by the FWO, McDonald's must provide the FWO with a written report addressing the reasons why the matter could not be resolved between the parties and the steps taken by McDonald's to resolve the complaint. The report is to be provided to the FWO no later than 7 days after the expiry of the 28 days from notification by the FWO.
12. The FWO reserves its rights to investigate any complaint that it considers serious or in the public interest to investigate or unable to be resolved within 28 days.

Obligations as a Licensor

13. Within seven days of receiving a workplace complaint concerning a licensee, the FWO will notify the licensee and McDonald's of the complaint and provide details supplied by the complainant. The FWO will ask the employee to provide particulars in support of their complaint.
14. McDonald's will use all reasonable endeavours to assist the licensee to resolve the workplace complaint and make rectification of identified underpayments, and other issues identified by the FWO, within 28 days of notification by the FWO.
15. Within seven days of resolving the complaint, McDonald's or the licensee will provide the FWO with evidence that the workplace complaint has been resolved and identified underpayments, and other issues identified by the FWO, have been rectified by the licensee.
16. Where the complaint cannot be resolved by agreement between the licensee and the complainant within 28 days of notification by the FWO, McDonald's or the licensee must provide the FWO with a written report addressing the reasons why the matter could not be resolved between the parties and the steps taken by McDonald's or the licensee to resolve the complaint. The report is to be provided to the FWO no later than 7 days after the expiry of the 28 days from notification by the FWO.
17. The FWO reserves its rights to investigate any complaint against a licensee that it considers serious or in the public interest to investigate or unable to be resolved within 28 days.
18. Further details regarding public interest considerations may be found on the FWO website.

Resources

19. McDonald's must commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the Deed.

20. McDonald's must make available a specified person or persons to act as Employee Liaison officers for all queries from McDonald's employees, or employees of licensees which concern any complaints referred by the FWO.
21. McDonald's must notify the FWO in writing of the name or names of McDonald's Employee Liaison Officer/s within 7 days of the commencement of this Deed, and must notify the FWO in writing within 7 days of any change to McDonald's Employee Liaison Officer/s.
22. McDonald's has identified in Schedule 1 to the Deed a single national contact person to whom all queries from the FWO which concern the implementation of the program, or any complaints referred by the FWO, can be directed. McDonald's must notify the FWO in writing within 7 days of any change to McDonald's Contact Person/s.
23. The FWO will identify a single national contact person (the FWO Liaison Officer) whom all queries from McDonald's can be directed. This officer may change from time to time.

Reporting

24. One year after the commencement of the Deed, and at the expiry of the Deed, McDonald's will provide the FWO with a report addressing the following matters:
 - (a) the actions taken by McDonald's and its licensees to address the requirements of the Deed;
 - (b) the number of complaints referred to McDonald's and its licensees;
 - (c) the number of complaints resolved by McDonald's and its licensees;
 - (d) the average time taken to resolve; and
 - (e) the average amount of underpayments.
25. The reports are to be provided to the FWO no later than 28 days after the completion of the one year anniversary of the commencement of the Deed and at the end of the reporting period.
26. The FWO may publish the reports and will reflect the positive cooperation of McDonald's and its licensees during the life of the Deed.
27. The FWO may publish its own report regarding the Deed and will provide McDonald's with an opportunity to comment on the report.
28. The report will reflect the positive cooperation of McDonald's and its licensees.