

**PROACTIVE COMPLIANCE DEED**

Between

The Commonwealth of Australia

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

and

Australian Fast Foods Pty Ltd(ABN 31 008 647 907)

**Schedule 1**

**Details:**

|  |  |  |
| --- | --- | --- |
| **Parties** | **Office of the Fair Work Ombudsman and**  **Australian Fast Foods Pty Ltd** | |
| **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 4786 |
|  | Fax | (02) 6276 7173 |
|  | Attention | Russell Jacob  Director – Misclassification and Operational Support Services |
| **Australian Fast Foods** | Name | Australian Fast Foods Pty Ltd |
|  | ABN | 31 008 647 907 |
|  | Address | 1 Whipple St Balcatta WA 6021 |
|  | Telephone | (08) 9240 9777 |
|  | Fax | (08) 9240 6112 |
|  | Attention | Lorraine Boswell Chief People and Culture Officer |
|  | **Australian Fast Foods Contact Person** | Lorraine Boswell |

# OPERATIVE PROVISIONS:

## Background

* 1. Australian Fast Foods Pty Ltd (Australian Fast Foods) owns and operates the Chicken Treat brand.
  2. Australian Fast Foods employs approximately 500 full time, part time and casual employees in its Chicken Treat stores in WA.
  3. As part of its business, Australian Fast Foods also grants third parties (**Franchisees**) the right to operate a Chicken Treat outlet pursuant to its standard Franchise Agreement. Australian Fast Foods is currently applying the *Chicken Treat Employees, SDA Agreement 2009* (2009 Agreement) to all of its restaurant outlet employees.
  4. In September 2013, the FWO commenced a targeted audit campaign in Western Australia, the “WA Enterprise Agreement Audit Program”.
  5. This campaign audited a number of businesses with enterprise and collective agreements, looking primarily at whether employers were aware that the base rate of pay in an agreement must not be less than that prescribed in the relevant modern award.
  6. The WA Enterprise Agreement Audit Program included a number of Chicken Treat stores owned and operated by Australian Fast Foods.
  7. The audit identified that Australian Fast Foods employees were being paid the rates contained in the2009 Agreement,which were less than the rates contained in the *Fast Food Industry Award 2010*.
  8. Australian Fast Foods subsequently voluntarily back paid 457 employees a total of $35,205.60, calculated back to the last national minimum wage order in July 2013.
  9. The identified underpayments were limited to stores operated by Australian Fast Foods and did not extend to stores operated by Franchisees.
  10. Australian Fast Foods has agreed to enter a proactive compliance deed with the FWO to demonstrate that they wish to work with the regulator in order to be compliant with Commonwealth Workplace laws and to ensure that there have been no further underpayments under the 2009 Agreement.
  11. The parties agree as follows.

## Acknowledgments

* 1. Australian Fast Foods acknowledges that:

1. there are opportunities for continuous improvement in relation to its workplace practices to ensure ongoing compliance with Commonwealth workplace laws;
2. the promises it has given in this Deed are reasonable in the circumstances;
3. the FWO may:
   1. make this Deed available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
   2. release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act* 1982 (Cth);
   3. issue a media release in relation to this Deed; and
   4. from time to time, publicly refer to this Deed;
4. if Australian Fast Foods contravenes any of the terms of this Deed the FWO may take any enforcement action the FWO considers appropriate.

## Promise to take proactive compliance activity

3.1 Australian Fast Foods must do or cause to be done all those activities and things set out in Attachments A and B to this Deed.

## Commencement of Proactive Compliance Deed

* 1. This Deed comes into effect when both Australian Fast Foods and the FWO have executed this Deed.
  2. This Deed will expire at the end of 18 months after the commencement of this Deed, unless terminated earlier in accordance with its terms.

## Publicity

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

5.2 Notwithstanding 5.1, Australian Fast Foods agrees and acknowledges that, if Australian Fast Foods 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 Australian Fast Foods.

5.4 FWO agrees and acknowledges that Australian Fast Foods may, subject to clause 6 below, issue its own media releases in relation to this Deed.

5.5. Australian Fast Foods agrees to provide FWO with 24 hours to view all Australian Fast Food releases arising under this Deed prior to the publication by Australian Fast Foods.

## No Inconsistent Statements

6.1 Australian Fast Foods:

(a) must not; and

(b) must ensure that each of its officers, employees or agents 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.

## Termination by the FWO

* 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 Australian Fast Foodscommits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

## Independent Legal Advice

* 1. Australian Fast Foods acknowledges that:

(a) before executing this Deed, Australian Fast Foods was given the opportunity to seek independent legal and other advice of its choice;

(b) in light of any advice provided, Australian Fast Foods considered its position; and

(c) Australian Fast Foods fully understands the effect of this Deed.

## Continuing obligations

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

* + 1. clause 2 (Acknowledgements); and
    2. clause 6 (No inconsistent statements).

## Legally binding

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

## Entire agreement

* 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:
  2. affects the meaning or interpretation of this Deed; or
  3. constitutes any collateral agreement, warranty or understanding between the FWO and Australian Fast Foods.

## Construction

* 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.
  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.

## Severance

* 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.

## Governing law

* 1. This Deed shall be construed in accordance with the laws for the time being of the State of Western Australia 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.

## Counterparts

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

## Costs in respect of this Deed

* 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.

## Notices

* 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:
     1. if given by Australian Fast Foods to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
     2. if given by the FWO to Australian Fast Foods, marked for the attention of the Australian Fast Foods Contact Person with the address indicated in Schedule 1 or as otherwise notified by Australian Fast Foods.
  2. Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.
  3. Any notice, request or other communication will be deemed to be received:
  4. if delivered by hand, upon delivery;
  5. 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
  6. if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

## Date of this Deed

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

## 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

**Australian Fast Foods Contact Person** means the person nominated by Australian Fast Foods in Schedule 1 to this Deed, or any other person specified by Australian Fast Foods in writing and notified to the FWO.

# Signing page

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| --- | --- | --- | --- |
| **EXECUTED BY Australian Fast Foods Pty Ltd ABN 31 008 647 907** in accordance with section 127(1) of the Corporations Act 2001 (Cth)” |  |  |  |
|  |  |  |  |
| (Signature of Director/Secretary) |  |  | (Signature of Director) |
| (Name of Director/Secretary in Full) |  |  | (Name of Director in Full) |
| **Date:**  **SIGNED** for and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Office of the Fair Work Ombudsman: |  |  |  |
|  |  |  |  |
| (Printed Name) |  |  | (Signature) |
| (Title) |  |  | (Date) |
| In the presence of: |  |  |  |
| (Name of Witness in Full) |  |  | (Signature) |

**Attachment “A” (Proactive Compliance Activities)**

**Internal Communication – The Deed**

1. Within 14 days of the execution of the Deed, Australian Fast Foods will communicate the existence of the Deed to all current employees of Australian Fast Foods Pty Ltd via an internal communication method such as email, internal memo or intranet, and make a copy of the Deed available to all staff employed by Australian Fast Foods Pty Ltd.
2. That communication is to be in the following form:

*“Australian Fast Foods has taken the proactive step of entering into a Proactive Compliance Deed (****Deed****) with the Office of the Fair Work Ombudsman (****FWO****).*

*By entering into the Deed, Australian Fast Foods 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.*

*Australian Fast Foods 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 Liaison Officer/s appointed by entity as required by resources clause set out below>, *who has been appointed by Australian Fast Foods as an Employee Liaison Officer, or by visiting the* [*Fair Work Ombudsman wesbite at www.fairwork.gov.au*](http://www.fairwork.gov.au/) *or speaking to a Fair Work Advisor on 13 13 94.”*

**Implement Systems and Processes**

1. Australian Fast Foods 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.
2. Australian Fast Foods will provide the FWO, within 28 days of the date of the execution of this Deed, details of the systems and processes already in place or to be implemented to ensure ongoing compliance with relevant Commonwealth workplace laws.

**Self-Resolution of Complaints**

1. Within seven days of receiving a workplace complaint against Australian Fast Foods, the FWO will notify Australian Fast Foods of the complaint and provide details supplied by the complainant.
2. Australian Fast Foods will use all reasonable endeavours to resolve any workplace complaint and make rectification of substantiated underpayments, and other substantiated issues identified by the FWO, within 28 days of notification by the FWO.
3. Within seven days of resolving the complaint, Australian Fast Foods will provide the FWO with evidence that the workplace complaint has been resolved and substantiated underpayments, and other substantiated issues identified by the FWO, have been rectified.
4. Where the complaint cannot be resolved by agreement between Australian Fast Foods and the complainant within 28 days of notification by the FWO, Australian Fast Foods 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 Australian Fast Foods 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.
5. 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.
6. Further details regarding public interest considerations may be found on the FWO website.

**Self-Audits**

1. The FWO and Australian Fast Foods acknowledge and agree that Australian Fast Foods will undertake a self-audit to identify contraventions of the relevant Commonwealth workplace laws in accordance with the scope and methodology set out in Attachment “B”.

**Resources**

1. Australian Fast Foods must commit all reasonably necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the Self-Audit Process.
2. Australian Fast Foods must make available a specified person or persons to act as Employee Liaison officers for all queries from Australian Fast Foods employees, or employees of franchisees, which concern the Self-Audit Process or any complaints referred by the FWO.
3. Australian Fast Foods must notify the FWO in writing of the name or names of the Australian Fast Foods’ 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 the Australian Fast Foods’s Employee Liaison Officer/s.
4. Australian Fast Foods 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. Australian Fast Foods must notify the FWO in writing within 7 days of any change to the Australian Fast Foods’s national contact person.
5. The FWO will identify a single national contact person (the FWO Liaison Officer) whom all queries from Australian Fast Foods can be directed. This officer may change from time to time.

**Reporting**

1. One year after the commencement of the Deed, Australian Fast Foods will provide the FWO with a report addressing the following matters:
2. the actions by Australian Fast Foods to address the requirements of the Deed;
3. the number of complaints referred to Australian Fast Foods;
4. the number of complaints resolved by Australian Fast Foods;
5. the average time taken to resolve; and
6. the average amount of underpayments.
7. The report is to be provided to the FWO no later than 28 days after the completion of the reporting period.
8. At the expiry of the Deed, Australian Fast Foods will provide the FWO with a report addressing the following matters:
9. the actions by Australian Fast Foods to address the requirements of the Deed;
10. the number of complaints referred to Australian Fast Foods;
11. the number of complaints resolved by Australian Fast Foods;
12. the average time taken to resolve; and
13. the average amount of underpayments.
14. The report is to be provided to the FWO no later than 28 days after the expiry date of the Deed.
15. The FWO may publish the report and will reflect the positive cooperation of Australian Fast Foods during the life of the Deed.
16. The FWO may publish its own report regarding the Deed and will provide Australian Fast Foods with an opportunity to comment on the report.
17. The FWO’s report will reflect the positive cooperation of Australian Fast Foods.
18. If Australian Fast Foods request any edits or amendments to the report, FWO will, in good faith consider those requests.

# ATTACHMENT “B” (SCOPE AND METHODOLOGY OF SELF-AUDIT)

The FWO and Australian Fast Foods agree that the scope and methodology of the self - audit are as follows:

1. The Self–Audit Period (**Self-Audit Period**) will include three full pay periods, one each from 2010, 2011 and 2012. The pay periods to be the subject of the self-audit will be agreed between the FWO and Australian Fast Foods prior to the self-audit commencing.
2. The self–audit will include no less than 5% of Crew (as defined in the Chicken Treat Employees, SDA Agreement 2009) across all sites operated by Australian Fast Foods in Western Australia during the Self-Audit Period. This will include a mix of full-time, part time and casual, adult and junior employees.
3. Australian Fast Foods must identify each contravention of the relevant Commonwealth workplace laws including those relating to underpayments of:
   1. wages;
   2. overtime; and
   3. allowances.
4. Where an agreement-based transitional instrument applies to an employee, Australian Fast Foods must review that the base rate of pay payable to the employee under the transitional instrument is not less than the base rate payable to the employee under the relevant modern award in accordance with Schedule 9, Part 4, item 13 of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009.
5. The Self – Audit is to be completed by 30 June 2014.
6. Australian Fast Foods must rectify each contravention found during the self-audit period, including identified underpayments, within 28 days of the end of the self-audit period.
7. Australian Fast Foods must provide the FWO with an audit report relating to the self-audit which includes the methodology applied, details of employees audited, contraventions identified and evidence of rectification of contraventions and or underpayments within 28 days of the end of the self-audit period.
8. The FWO reserves its rights to conduct its own audit or investigation if not satisfied with the conduct of the audit or with the accuracy of the audit report.
9. If contraventions are identified during the self-audit, Australian Fast Foods are to take all reasonable steps to conduct a further extended self-audit for the period 6 April 2010 to 30 June 2013 and include all Crew employees.
10. The second extended Self – Audit is to be completed by 31 December 2014.
11. Australian Fast Foods will use all reasonable endeavours to rectify each contravention found during the self-audit period, including identified underpayments, within 28 days of the end of the second extended self-audit.
12. If Australian Fast Foods is unable to rectify each contravention found during the self-audit period, including identified underpayments within 28 days of the end of the second extended self-audit, they are to notify the FWO in writing within two days of the 28 day period and provide details regarding why rectification could not be made.
13. Australian Fast Foods must provide the FWO with a second audit report relating to the second extended self-audit which includes the methodology applied, details of employees audited, contraventions identified and evidence of rectification of contraventions and or underpayments within 28 days of the end of the self-audit period.
14. The FWO reserves its rights to conduct its own audit or investigation if not satisfied with the conduct of the audit or with the accuracy of the audit report