



Australian Government

Fair Work OMBUDSMAN

PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

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

and

Retail Zoo Pty Ltd
(ABN: 59 141 218 206)

Schedule 1

Details:

Parties	Office of the Fair Work Ombudsman and Retail Zoo 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
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Retail Zoo	Name	Retail Zoo Pty Ltd
	ABN	59141218206
	Address	Level 1, Tower 2, Chadstone Place 1341 Dandenong Rd Chadstone Vic 3148
	Telephone	03 9508 4434
	Fax	03 9508 4499
	Attention	Nigel Smith National HR Manager
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	Retail Zoo Pty Ltd	
	Contact Person	Nigel Smith National HR Manager

OPERATIVE PROVISIONS:

1. Background

- 1.1 Retail Zoo Pty Ltd is the holding company of the Boost Juice, Salsas, Cibo and Hatch group of companies ("Retail Zoo Group").
- 1.2 The Retail Zoo Group is primarily focused on the preparation and sale of retail food in the quick service restaurant (QSR) industry in a variety of different categories and also provides franchisees the opportunity to participate in these categories.
- 1.3 As at 7 July 2014, the Retail Zoo Brands operate under the following number of "company owned" stores and franchised stores:
 - (a) Boost Juice: A total of 217 stores operating in Australia consisting of 11 company owned stores and 206 franchised owned stores;
 - (b) Salsas: A total of 51 stores operating in Australia consisting of 6 company owned stores and 45 franchised owned stores;
 - (c) Cibo: A total of 23 stores operating in Australia all of which are franchised owned stores; and
 - (d) Hatch: 2 company owned stores operating in Australia.
- 1.4 On 17 March 2014, Retail Zoo approached the Fair Work Ombudsman ("FWO") with the view to proactively engaging with the FWO with the intent to be an employer who is compliant with Commonwealth Workplace Laws and an employer of choice.
- 1.5 The parties agree as follows.

2. Acknowledgments

- 2.1 Retail Zoo acknowledges that:
 - (a) it places a high priority on continuous improvement in relation to its workplace practices 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 Retail Zoo 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 Retail Zoo must do or cause to be done all those activities and things set out in **Attachment A** and **Attachment B** to this Deed.

4. Commencement of Proactive Compliance Deed

4.1 This Deed comes into effect when both Retail Zoo and the FWO have executed this Deed.

4.2 This Deed will expire at the end of three (3) years after the commencement of this Deed, unless terminated earlier in accordance with its terms.

5. Publicity

5.1 The FWO agrees to provide Retail Zoo with 24 hours to view all FWO media releases (**Releases**) arising from this Deed prior to publication by the FWO.

5.2 Notwithstanding paragraph 5.1, Retail Zoo agrees and acknowledges that, if Retail Zoo makes 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 Retail Zoo.

6. No Inconsistent Statements

(a) Retail Zoo:

(i) must not; and

(ii) must use reasonable endeavours to ensure that each of its officers, employees or agents do not; and

(iii) must use its reasonable endeavours to ensure that each of its Related Body Corporate and Franchisees 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 Retail Zoo 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 Retail Zoo acknowledges that:

- (a) before executing this Deed, Retail Zoo was given the opportunity to seek independent legal and other advice of its choice;
- (b) in light of any advice provided, Retail Zoo considered its position; and
- (c) Retail Zoo fully understands the effect of this Deed.

9. Continuing obligations

9.1 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 Retail Zoo.

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 Queensland 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 Retail Zoo 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 Retail Zoo, marked for the attention of the Retail Zoo Contact Person with the address indicated in Schedule 1 or as otherwise notified by Retail Zoo .

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

19.1 In this Deed:

Commonwealth means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the

Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman.

Commonwealth Workplace Laws means:

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

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

Franchisee means an entity or person that has entered into a franchise agreement with a Related Body Corporate of Retail Zoo for the right to operate a Retail Zoo Brand;

Related Body Corporate means a related body corporate of Retail Zoo, as defined in the *Corporations Act 2001 (Cth)*;

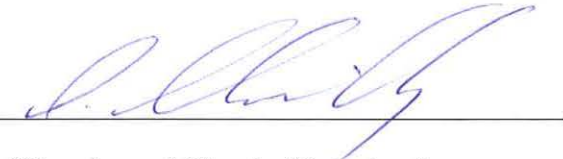
Retail Zoo Brand means any one or more of the following brands that is operated by a Related Body Corporate or Franchisee:

- (a) Boost Juice;
- (b) Salsas;
- (c) CIBO; and/or
- (d) Hatch.

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

Signing page

EXECUTED BY Retail Zoo Pty Ltd (ABN 59 141 218 206) in accordance with section 127(1) of the Corporations Act 2001 (Cth):




(Signature of Director/Secretary)

SCOTT MENEELLY

(Name of Director/Secretary in Full)

Date: 29/07/14



(Signature of Director) secretary

MARK SLATTERY

(Name of Director in Full)

secretary

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)

5/8/2014

(Date)

In the presence of:

LOUISE CATO

(Name of Witness in Full)



(Signature)

Attachment A - (Proactive Compliance Activities)

Section 1 - Internal Communication – The Deed

Obligations as the Head of a Corporate Group

1. Within 14 days of the execution of the Deed, Retail Zoo will communicate the existence of the Deed to each of its Related Bodies Corporate (as defined in the *Corporations Act 2001*) via an internal communication method such as email, internal memo or intranet, and make a copy of the Deed available to each Related Bodies Corporate.

2. That communication is to be in the following form:

“Retail Zoo Pty Ltd 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, Retail Zoo Pty Ltd demonstrates that it is committed to working with the FWO to ensure compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace.

Retail Zoo Pty Ltd has made the Deed available to each other company in the Retail Zoo Pty Ltd Corporate Group through ◀insert hyperlink or place▶. Employees are also able to access information about entitlements and rights at work by contacting ◀insert name and contact details of Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Retail Zoo Pty Ltd as a liaison officer, or by visiting the FWO website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94.”

3. Retail Zoo will direct each of its Related Bodies Corporate to communicate the existence of the Deed to all its current employees via ◀insert communication method e.g. email, internal memo, intranet etc▶, the following:

“Retail Zoo Pty Ltd has taken the proactive step of entering into a Proactive Compliance Deed (Deed) with the Office of the Fair Work Ombudsman(FWO).

Retail Zoo Pty Ltd and ◀insert Related Body Corporate names▶ are committed to working with the FWO to ensure compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace.

We have made the Deed available to all our 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 Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Retail Zoo Pty Ltd as a liaison officer, or by visiting the FWO website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94.”

4. Within 14 days of the execution of the Deed, Retail Zoo will take reasonable steps to communicate the existence of the Deed to all current Franchisees via an internal communication method such as email, internal memo or intranet, and make a copy of the Deed available to all Franchisees.

5. That communication is to be in the following form:

“Retail Zoo Pty Ltd, in its capacity as the head of the corporate group that includes ◀insert Related Body Corporate name▶, 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, Retail Zoo Pty Ltd demonstrates that it is committed to working with the FWO to ensure compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace.

Retail Zoo Pty Ltd and ◀insert Related Body Corporate name▶ seeks the co-operation of all franchisees to commit to ensuring compliance with workplace laws and engage with the FWO on matters arising as a result of workplace complaints.

Retail Zoo Pty Ltd has made the Deed available to all franchisees of ◀insert Related Body Corporate name▶ 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 Employee Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Retail Zoo Pty Ltd as an Employee Liaison Officer, or by visiting the FWO website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

6. Retail Zoo will take reasonable steps to ensure that each Franchisee communicates via an internal communication method such as email, internal memo or intranet to all its employees the following:

"Retail Zoo Pty Ltd, in its capacity as the head of the corporate group that includes ◀insert Related Body Corporate name▶ (as franchisor) , has taken the proactive step of entering into a Proactive Compliance Deed (**Deed**) with the Office of the Fair Work Ombudsman (FWO).

Retail Zoo Pty Ltd, ◀insert Related Body Corporate name▶ and ◀Insert franchisee name▶ are committed to working with the FWO to ensure compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace.

We have made the Deed available to all our 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 Employee Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Retail Zoo Pty Ltd as an Employee Liaison Officer, or by visiting the FWO website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

7. Retail Zoo will take reasonable steps to ensure that each Franchisee makes a copy of the Deed available to its employees

Section 2 - Implement Systems and Processes

Obligations as the Head of a Corporate Group

8. Retail Zoo must ensure that it and each of its Related Bodies Corporate comply at all times and in all respects with relevant Commonwealth Workplace Laws by developing systems and processes to ensure ongoing compliance.
9. Retail Zoo 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 by it and each of its Related Bodies Corporate.

10. Retail Zoo will take reasonable steps to facilitate compliance with relevant Commonwealth Workplace Laws by Franchisees by developing and implementing systems and processes to assist Franchisees to comply with relevant Commonwealth Workplace Laws.
11. Retail Zoo 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 (if any) to ensure ongoing compliance with relevant Commonwealth Workplace Laws by Franchisees.

Section 3 - Self-Resolution of Complaints

Obligations as the Head of a Corporate Group

12. Within seven days of receiving a workplace complaint regarding one of its Related Bodies Corporate, the FWO will notify Retail Zoo of the complaint and provide details supplied by the complainant.
13. Retail Zoo will ensure that the Related Body Corporate attempts to resolve the workplace complaint and makes rectification of substantiated underpayment and/or other issues identified by the FWO, within 28 days of notification by the FWO.
14. Within seven days of the resolution of the complaint, Retail Zoo will provide the FWO with evidence that the workplace complaint has been resolved and identified underpayments have been rectified.
15. Where the complaint cannot be resolved by agreement between the Related Body Corporate and the complainant within 28 days of notification by the FWO, Retail Zoo 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 Retail Zoo to resolve the complaint.
16. The report is to be provided to the FWO no later than seven days after the expiry of the 28 days from notification by the FWO.
17. Within seven days of receiving a workplace complaint from an employee of a Franchisee, the FWO will notify the Franchisee and Retail Zoo of the complaint and provide details supplied by the complainant.
18. Retail Zoo will take reasonable steps to assist the Franchisee to attempt to resolve the workplace complaint and make rectification of identified underpayments and/or other issues identified by the FWO, within 28 days of notification by the FWO.
19. Within seven days of resolving the complaint, Retail Zoo will provide the FWO with evidence that the workplace complaint has been resolved and identified underpayments, and other issues identified by the FWO, rectified by the Franchisee.
20. Where the complaint cannot be resolved by agreement between the Franchisee and the complainant within 28 days of notification by the FWO, Retail Zoo 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 Retail Zoo and the Related Body Corporate (if relevant) to resolve the complaint. The report is to be provided to the FWO no later than seven days after the expiry of the 28 days from notification by the FWO.

General Obligations

21. 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.
22. Further details regarding public interest considerations may be found on the FWO website.

Section 4 - Self-Audits

Obligations as the Head of a Corporate Group

23. The FWO and Retail Zoo acknowledge and agree that:
 - a) Within 12 months of execution of the Deed, Retail Zoo will direct each of its Related Bodies Corporate to undertake a self-audit to identify contraventions of the relevant Commonwealth Workplace Laws by its Related Bodies Corporate that may have occurred during the Self-Audit Period; and
 - b) The scope and methodology of the audit is set out in Attachment B (Self-Audit Process).
24. The FWO and Retail Zoo acknowledge and agree that:
 - a) Within 12 months of execution of the Deed, Retail Zoo will take reasonable steps to actively encourage identified Franchisees to undertake a self-audit to identify contraventions of the relevant Commonwealth Workplace Laws relating to underpayment of wages of 20% of employees employed by the Franchisee that may have occurred during the self-audit period.
 - b) If a Franchisee identified by Retail Zoo declines to participate in a self-audit, Retail Zoo is to notify the FWO in writing within 28 days providing the details for the non-participation by the Franchisee.
 - c) A failure by the Franchisee to participate in the self-audit will not constitute a breach of this Deed provided Retail Zoo can demonstrate that it has taken reasonable steps to encourage the Franchisee to do so.
 - d) The scope and methodology of the proposed audit is set out in Attachment B (Self-Audit Process);

Section 5 - Resources

25. Retail Zoo must commit reasonable resources, financial or otherwise, and meet all reasonable expenses associated with the effective implementation of the Self-Audit Process.
26. Retail Zoo must make available a specified person or persons to act as Employee Liaison officers for all queries from employees of its Related Bodies Corporate and employees of Franchisees which concern the Self-Audit Process or any complaints referred by the FWO.
27. Retail Zoo must notify the FWO in writing of the name or names of the Retail Zoo'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 the Retail Zoo's Employee Liaison Officer/s.

28. Retail Zoo 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. Retail Zoo must notify the FWO in writing within 7 days of any change to the Retail Zoo's national contact person.
29. The FWO will identify a single national contact person (the FWO Liaison Officer) to whom all queries from the Retail Zoo can be directed. This officer may change from time to time.

Section 6 – Reporting

30. One year after the commencement of the Deed, Retail Zoo will provide the FWO with a report addressing the following matters:
 - a) the actions by Retail Zoo , its Related Bodies Corporate and Franchisees to address the requirements of the Deed;
 - b) the number of complaints referred to the Retail Zoo , its Related Bodies Corporate and Franchisees;
 - c) the number of complaints resolved by the Retail Zoo , its Related Bodies Corporate and Franchisees;
 - d) the average time taken to resolve; and
 - e) the average amount of underpayments.
31. One year after providing the above report, Retail Zoo must provide a second report in the same terms as the above clause.
32. The report must be provided to the FWO no later than 28 days after the completion of the reporting period.
33. At the expiry of the Deed, Retail Zoo must provide the FWO with a report addressing the following matters:
 - a) the actions by Retail Zoo, its Related Bodies Corporate and Franchisees to address the requirements of the Deed;
 - b) the number of complaints referred to the Retail , its Related Bodies Corporate Ltd and Franchisees;
 - c) the number of complaints resolved by the Retail Zoo , its Related Bodies Corporate and Franchisees;
 - d) the average time taken to resolve; and
 - e) the average amount of underpayments.
34. The report must be provided to the FWO no later than 28 days after the completion of the reporting period.
35. The FWO may publish the reports provided by Retail Zoo and will reflect the positive cooperation of the Retail Zoo during the life of the Deed.

36. The FWO may publish its own report regarding the Deed and will provide Retail Zoo with an opportunity to comment on the report.
37. The FWO's report will reflect the positive cooperation of Retail Zoo.

ATTACHMENT B - (SCOPE AND METHODOLOGY OF SELF-AUDIT)

The FWO and Retail Zoo agree that the scope and methodology of the self-audit are as follows:

Self-Audit A - Related Bodies Corporate

1. The self-audit period will be one full pay period within the first 12 months after the execution of this Deed.
2. The self-audit will be conducted in relation to employees from two (2) Boost Juice stores, one (1) Salsa store and one (1) Hatch store
3. The self-audit will include 20 % of the employees from stores selected by Retail Zoo and will include a mix of full time, part time and casual employees where possible.
4. Retail Zoo and the Related Body Corporate must identify each contravention of the relevant Commonwealth Workplace Laws including those relating to underpayments of:
 - (a) wages;
 - (b) loadings;
 - (c) allowances; and
 - (d) penalties.
5. Where an agreement-based transitional instrument applies to an employee, the employing entity (body corporate) 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*.
6. The employing entity (body corporate) must rectify each contravention, including identified underpayments, within 28 days of the self-audit period ending.
7. Retail Zoo must provide the FWO with an audit report relating to the self-audit period which includes the methodology applied, details of employees audited, contraventions identified, reasons for the contraventions and evidence of rectification of contraventions and or underpayments. The report must be signed off by an independent certified practicing accountant (CPA) or equivalent professional agreed to by the FWO.
8. The FWO reserves its rights to conduct its own audit or investigation if not satisfied with the conduct of the self-audit or with the accuracy of the audit report.

Self-Audit B - Franchisees

9. Retail Zoo will take reasonable steps to conduct the self-audit in relation to employees from a minimum of 10% of Franchisee operated stores and will include ten (10) Boost Juice stores, five (5) Salsa stores and three (3) CIBO Espresso stores (where possible).

10. The self-audit will include a minimum 20% of the employees from the selected stores (where possible) and will include a mix of full time, part time and casual employees where possible.
11. Retail Zoo and the Franchisee must identify each contravention of the relevant Commonwealth Workplace Laws including those relating to underpayments of:
 - (a) wages;
 - (b) loadings;
 - (c) allowances; and
 - (d) penalties.
12. Where an agreement-based transitional instrument applies to an employee, Retail Zoo and the Franchisee 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*.
13. Retail Zoo will take reasonable steps to ensure that the Franchisee rectifies each contravention, including identified underpayments, within 28 days of the self - audit period ending.
14. Retail Zoo must provide the FWO with an audit report relating to the self - audit period which includes the methodology applied, details of employees audited, contraventions identified and evidence of rectification of contraventions and or underpayments. The report must be signed off by an independent certified practicing accountant (CPA) or equivalent professional agreed to by the FWO.
15. The FWO reserves its rights to conduct its own audit or investigation if not satisfied with the conduct of the self - audit or with the accuracy of the audit report.