

Deed of Variation to Proactive Compliance Deed - *Cleaning Services*

Between



Fair Work
OMBUDSMAN

The Commonwealth of Australia
(as represented by the Office of the Fair Work Ombudsman)

and

Woolworths Group Limited (ACN 000 014 675)

WOOLWORTHS GROUP



Deed dated

Parties **Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman) ABN 43 884 188 232**
of The Fair Work Ombudsman, GPO Box 9887, Sydney, NSW, 2001
(FWO)

Woolworths Group Limited ACN 000 014 675
of 1 Woolworths Way, Bella Vista, NSW, 2153
(Woolworths)

Introduction

- A The Proactive Compliance Deed currently places obligations on Woolworths to ensure, to the extent possible, that Employees who have been underpaid since 1 July 2014 are paid their full employee entitlements due to them under Commonwealth Workplace Laws.
- B In the period since the Proactive Compliance Deed commenced operating, Woolworths has given evidence in relation to the operation of the Proactive Compliance Deed before the Senate Education and Employment References Committee (**Senate Committee**) which is conducting the *Senate Inquiry into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies* (**Senate Inquiry**)
- C During the course of the Senate Inquiry, Woolworths gave evidence to the Senate Committee that it would consider claims from Employees or former Employees for Underpayments pre-dating 1 July 2014 with a view to securing rectification of the same under the processes outlined in the Proactive Compliance Deed.
- D The parties wish to vary the Proactive Compliance Deed to reflect the commitment made by Woolworths in C above.

It is agreed

1 **Definitions and interpretation**

1.1 Definitions

In this Deed:

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- (1) **Deed** means this document..
- (2) **Proactive Compliance Deed** means the Proactive Compliance Deed entered into by Woolworths and the FWO on 24 August 2018.

1.2 Previous definitions

Unless the contrary intention appears, a word or phrase defined in the Proactive Compliance Deed has the same meaning in this Deed.

2 Variation of Proactive Compliance Deed

2.1 The Proactive Compliance Deed is varied as follows:

(1) By replacing the definition of "Underpayments" in clause 1 with the following:

***Underpayments** means any underpayment or non-payment of wages or applicable entitlements owing to an Employee in respect of the provision of Cleaning Services at a Woolworths Site, to the extent that there is a shortfall to the minimum wages prescribed in accordance with Commonwealth Workplace Laws or Fair Work Instruments (including underpayment or non-payment of overtime and penalty rates) which has been identified, substantiated and quantified to the reasonable satisfaction of Woolworths and the FWO by way of:*

(a) the Woolworths auditing processes referred to in clause 7;

(b) the reporting processes referred to in clauses 8 or 9; or

(c) any other means.

(2) By replacing clause 4.1(c) with the following:

(c) ensure, to the extent possible, that Employees who have been underpaid are paid their full employee entitlements due to them under Commonwealth Workplace Laws; and

3 Variations not to affect accrued rights and obligations

3.1 The variations to the Proactive Compliance Deed do not affect the validity or enforceability of the Proactive Compliance Deed as varied.

3.2 Nothing in this Deed:

(1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Proactive Compliance Deed before the date of this Deed; or

(2) discharges, releases or otherwise affects any liability or obligation arising under the Proactive Compliance Deed before the date of this Deed.

4 Confirmation

4.1 Each party is bound by the Proactive Compliance Deed as varied by this Deed.

5 Further assurance

5.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

6 Costs

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

7 Governing law

7.1 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.

8 Date of this Deed

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

Executed as a deed

EXECUTED BY WOOLWORTHS GROUP LIMITED by its authorised representative



(Signature of authorised representative)

RICHARD JOHN EDWARD DAMMERY
Chief Legal Officer & Company Secretary

(Name of authorised representative)

6 November 2018

(Date)

In the presence of:

Emi Landan

(Name of witness in full)




(Signature)

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

Kristen Hannah

(Printed Name)



(Signature)

DFWO

(Title)

7/11/18

(Date)

In the presence of:

Paola Poblete

(Name of witness in full)



(Signature)