

Foodco Group Pty Ltd compliance partnership: final report

Foodco Group Pty Ltd (Foodco) was established in 1989 with a single Muffin Break store in Coolangatta. Their franchise network now spans seven countries, including Australia and New Zealand. In Australia, this includes 323 outlets (202 Muffin Break and 121 Jamaica Blue cafes). Approximately 95% of stores are operated by franchisees, who employ around 4,000 staff. The remaining 5% are company-operated stores where Foodco is the direct employer.

Foodco is a member of the Franchise Council of Australia (FCA). In 2015, we met with the FCA to discuss a range of issues affecting franchises in Australia. Following this meeting, we wrote to eight FCA members, including Foodco, inviting them to enter into a compliance partnership. Foodco was the only member that responded, indicating it wanted to publicly demonstrate its commitment to compliance.

In November 2016, a Hobart Muffin Break franchisee entered into an enforceable undertaking with us after paying two workers as little as \$11 an hour and a total underpayment of \$46,000.¹

Acknowledging the need to ensure system-wide compliance, Foodco began a two-year compliance partnership with us on 18 January 2017, underpinned by a Proactive Compliance Deed (PCD).²

The partnership has seen the discovery of some non-compliance across the Foodco franchise network, and action to resolve it. Foodco has enhanced its systems and processes to prevent, detect and address non-compliance. This has included a new workplace training program and dedicated hotline for employee complaints. Foodco investigated matters referred by the FWO and these resulted in franchisees reimbursing employees \$22,317.55. They also acted on the results of a third-party audit, which found non-compliance and resulted in the repayment of \$4,244.75 to 152 employees.

We encourage Foodco to continue to invest in enhancing compliance practises throughout its franchise network. To support these efforts we are open to entering into a second compliance partnership.

Foodco's fulfilment of its responsibilities under the terms of the PCD are outlined in this report.

¹ FWO media release: <https://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2016-media-releases/november-2016/20161103-muffin-break-franchisee-media-release>

² FWO media release and link to PCD: <https://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/march-2017/20170313-foodco-pcd-mr>

Communication about the compliance partnership

Foodco informed franchisees and directly employed café and head office staff about the compliance partnership (clause 5 of the PCD).

Communications at the commencement and throughout the partnership were distributed via:

- website notices
- franchisee handouts
- intranet updates.

Communications included:

- a copy of the PCD
- reasons for entering into the partnership
- implications for franchisees, staff and the brands
- where to go for more information.

New franchisees were advised about the partnership as part of a Human Resources module in Foodco's Centre of Retail Excellence (CORE) program. New employees were advised in their letter of engagement.

Specific communications resources were provided to assist franchisees communicate with vulnerable workers. As is commonly found in the food franchise sector, 25% of employees in the Foodco network are under the age of 16. There are also significant numbers of migrant visa workers, including international students. Resources included:

- tailored information during CORE training sessions³ (covering the FWO's *Employer's guide to employing young workers*⁴, and how to check a migrant worker's eligibility to work using the Visa Entitlement Verification Online system⁵)
- template letters of engagement and supporting information to assist young workers and their parents to know their award entitlements
- regular posts on the Foodco intranet with advice on hiring young employees.

FWO staff were notified about the partnership via the FWO intranet (clause 7). They were given information about the PCD and instructed to direct related enquiries to a dedicated head office contact responsible for managing the partnership.

Workplace relations training

Foodco provided us with details of workplace relations training within 28 days of commencing the PCD (clause 12).

³ See Franchisee training – CORE for more information below

⁴ See: <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/an-employers-guide-to-employing-young-workers>

⁵ See: <https://immi.homeaffairs.gov.au/visas/already-have-a-visa/check-visa-details-and-conditions/check-conditions-online/visa-holders>

Franchisee training – CORE

Foodco requires all new franchisees to complete a 3-week training program at its Sydney head office.

CORE is an in-house training program covering compliance with Australian workplace laws and other aspects of business operations. Content remains accessible to franchisees via Foodco's intranet. Topics covered include:

- the *Fair Work Act 2009* (FW Act), National Employment Standards (NES) and relevant awards (the *Restaurant Industry Award 2010* and *Fast Food Industry Award 2010*)
- award classifications and job descriptions
- pay rates, allowances, penalty rates and overtime
- pay slips, rosters, timesheets
- record-keeping and employment documentation
- payroll and rostering systems
- the hiring process and letters of engagement
- performance management
- fair/unfair termination and dismissal
- bullying and sexual harassment
- advice on the 2017 legislative reforms to protect vulnerable workers.⁶

Franchisees also receive an employment relations handbook containing detailed information and policies.

Foodco staff training

Foodco consultants and staff receive training on:

- the relevant modern awards
- pay rates, allowances, penalty rates and overtime
- hiring and letters of engagement.

They also sign up for FWO's My Account⁷ service and are required to complete the following training modules on fairwork.gov.au:

- difficult conversations in the workplace
- hiring employees
- managing performance.⁸

Systems and processes

Foodco implemented new and/or updated systems and processes to ensure ongoing compliance with workplace laws (clause 8), including: changes to intranet communications, the establishment of an

⁶ See: <https://www.fairwork.gov.au/about-us/legislation/the-fair-work-system/protecting-vulnerable-workers-reform>

⁷ See: <https://www.fairwork.gov.au/my-account/registerpage.aspx>

⁸ See: <https://www.fairwork.gov.au/how-we-will-help/online-training>

employment relations hotline and anonymous survey, ongoing training through webinars and group meetings and promotion of FWO's My Account service.

During the term of the partnership, Foodco conducted 6-monthly formal reviews of its systems and processes. They have committed to continuing this review process.

Brand communications platform – intranets

Jamaica Blue and Muffin Break franchisees and staff can now find the following information on their respective intranets:

- copies of the relevant awards
- pay rates
- templates for letters of engagement, rosters and timesheets.

Employment relations hotline and survey

Foodco introduced an employment hotline after signing the PCD.

Franchisees and staff can call to make an enquiry or complaint via the hotline, which is monitored by a dedicated head office staff member between 8:30am-5:00pm on weekdays. Staff can also make text message and email enquiries out of hours.

Between January 2017 and December 2018, the hotline received 170 enquires (110 Muffin Break and 60 Jamaica Blue) about:

- pay (51)
employment conditions (44)
- termination of employment (37)
- bullying / harassment (31)
- superannuation (5)
- visa issues (1)
- trials (1).

Foodco reported that all enquiries were responded to and resolved without the need for further investigation.

An anonymous online survey can be completed by anyone not comfortable raising an issue directly and wishing to remain confidential. Foodco advises they received 375 responses during the compliance partnership period and that it has been an effective tool for cross-checking data against information provided by franchisees in the audits.

On-going training and education – webinars & group meetings

New franchisees are required to attend a webinar, three months after their initial CORE training, to revise workplace relations information and address any difficulties experienced.

Franchisees must attend a group meeting twice a year, where Foodco's HR department provides a presentation on:

- self-audit findings
- the main compliance issues in the network
- updates to the awards.

My Account

New franchisees are encouraged to sign up for My Account on fairwork.gov.au, through which they can complete the following FWO online learning modules:

- difficult conversations in the workplace
- hiring employees
- managing performance.

Self-resolution of workplace disputes

We referred 12 requests for assistance from current and former employees to Foodco (Part IV of the PCD).

Foodco assisted franchisees investigate, resolve and rectify underpayments within 28 days of referral.

The referred matters related to 10 outlets (7 Muffin Break and 3 Jamaica Blue), and some involved more than one employee.

Investigations by Foodco's internal compliance team led to 14 workers being reimbursed \$22,317.55 by franchisees. These matters related to:

- underpayment of wages
- non-payment of superannuation
- notice of termination
- annual leave.

Two referred matters didn't result in money being reimbursed. One because the franchisee had left the network and Foodco could not secure payment – the FWO was able to assist this worker to recover \$633 from a separate employing entity. The second employee did not respond to attempts to contact them.

External audits

Foodco engaged a specialist firm, Employment Innovations, to conduct an audit of its franchise network (clauses 19-21).

The audit covered a four-week period including a public holiday and was conducted within the first year of the compliance partnership, from June 2016.

38 stores (representing 10% of the network) were audited in a mix of state, metropolitan and regional locations (10 Vic, 14 NSW, 6 Qld, 9 WA and 1 ACT). Two-thirds of employees audited were casuals.

Compliance with the following entitlements and obligations was assessed:

- classification of employees under the awards
- the NES
- employment status
- record-keeping
- leave and termination payments
- minimum pay, loadings, allowances and penalties.

Only two stores were fully compliant with Australian workplace laws. A total of 57 breaches were discovered in relation to:

- allowances (22)
- classifications (17)
- time and wages records (10)
- penalties and weekend rates (5)
- overall non-compliance - stores did not provide enough information to assess (4)
- pay slips (3).

The audit uncovered 152 employees who had been underpaid a total of \$4,244.75. Individual underpayments ranged from \$5.75 to \$611.09. All monies were reimbursed.

Foodco advised that all other non-monetary matters were addressed through communications, education and assistance to rectify issues.

Reporting to the FWO

In addition to reporting on hotline enquiries and audits, Foodco provided two annual progress reports to the FWO (clause 22). They described:

- actions taken to address the requirements of the deed
- outcomes of requests for assistance referred by the FWO
- a review of systems and processes and their effectiveness in promoting compliance
- workplace relations issues encountered in the first year and Foodco's response
- workplace relations training undertaken
- audit outcomes

- benefits or learnings from the compliance partnership.