

Minor DKL Food Group Pty Ltd

Compliance partnership report

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Australian Government

Fair Work
OMBUDSMAN

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Summary

Minor DKL Food Group Pty Ltd (MDKL) is a leading Australian retail food franchisor, and an owner of Coffee Club, Ribs & Rumps Restaurants and Coffee Hit brands.

MDKL voluntarily entered into a compliance partnership with the Fair Work Ombudsman [FWO] in 2015 to:

- improve compliance with Australian workplace laws throughout its network of outlets
- strengthen the reputation of its brands as employers of choice.

Underpinned by a Proactive Compliance Deed (PCD)¹, the objective of the compliance partnership was to promote and ensure ongoing and sustainable compliance across the company's franchise network. It contained a number of commitments from both parties, including:

- MDKL's provision of workplace relations information, training and support to its franchisees
- FWO's referral of requests for assistance, received from franchise employees, to the company for resolution²
- an undertaking from MDKL to audit its network, and rectify any non-compliance.

This report outlines the background to our compliance partnership with MDKL, and the workplace relations framework that applies to the company's franchise network. It also describes the key outcomes of the two-year partnership, including:

- declining numbers of requests for assistance received by the FWO as the partnership progressed
- improvement in workplace relations compliance throughout the network over successive audit cycles.

During the partnership, and with the assistance of the company, the FWO investigated the underpayment and exploitation of a visa worker engaged by a Coffee Club franchisee. The findings of the investigation prompted the FWO to commence legal proceedings against the employer, resulting in over \$180 000 in penalties against the business and its director³ and MDKL terminating the franchise relationship.

¹ A copy of the Proactive Compliance Deed can be accessed at: [Minor DKL Food Group Proactive Compliance Deed](#)

² The FWO may not refer requests that include allegations of serious non-compliance with workplace laws. Examples of serious non-compliance include deliberate breaches of the law by the employer, significant underpayments affecting more than one employee, or the exploitation of vulnerable employees, including migrants and young workers.

³ [Former Brisbane Coffee Club franchisee penalised over unlawful cash-back payment](#)

Background

Minor DKL Food Group Pty Ltd (MDKL) [ACN 127 640 733] is an Australian subsidiary of Thai-listed holding company Minor International PCL (MINT).

MINT is one of Asia's largest casual dining and fast food restaurant companies. It owns and operates Coffee Club, Ribs & Rumps, Riverside, Swensen's, Sizzler, Dairy Queen and Burger King brands. MINT is also involved in hotels and lifestyle brands in Thailand.

In Australia, MDKL is the franchisor of The Coffee Club (ACN 010 866 369), Ribs & Rumps Restaurants (ACN 151 600 305), and Coffee Hit (ACN 600 008 311) brands.

MDKL's reported revenue in 2017 – 2018 was \$679.5 million.⁴

The Coffee Club is MDKL's biggest brand with 297 outlets across Australia. The brand started in Queensland in 1989, where most franchises are located today.

The first Ribs & Rumps restaurant opened in 1995. The Coffee Club acquired the Ribs & Rumps chain in September 2011. There are currently seven restaurants in Australia located in Sydney, Gold Coast, Brisbane, Rockhampton and Townsville.

Coffee Hit was established in Melbourne in 2008. There are currently thirteen cafes operating in Victoria, Queensland and Western Australia. MDKL acquired Coffee Hit in 2014.

MDKL is also an owner of Veneziano Coffee Roasters (ACN 600 033 645), a leading speciality coffee roaster supplying wholesale and retail customers throughout Australia from facilities in Melbourne and Brisbane. It acquired the business in 2014.

MDKL approached the FWO in early 2015, expressing interest in entering a partnership that encompassed its franchise network.

Commencing on 26 March 2015, the compliance partnership was underpinned by a proactive compliance deed (PCD) executed by the parties. The PCD details a number of commitments that the parties agreed to in order to promote and secure ongoing compliance with Commonwealth workplace laws.

⁴ Australia's top 500 private companies by revenue – The Australian Financial Review – 6 September 2018

Market Structure

The key market input governing the compliance partnership and the issue of compliance relates to the cost of labour.

The *Restaurant Industry Award 2010* (Award) applies to the majority of hospitality employees within the MDKL network, unless an enterprise agreement is in place. The minimum base rates in the Award, and the National Employment Standards, underpin enterprise agreements. All other terms and conditions come from the relevant enterprise agreement.

The Award covers employees in the restaurant industry. This includes restaurants, reception centres, night clubs, cafes and roadhouses as well as any tea room, café, and catering by a restaurant business. Employees covered by the Award include those in the industry working as food and beverage attendants, kitchen and cooking staff, administrative and clerical staff, and store persons.

As of 1 July 2018, under the Award, the rates of pay for a permanent part-time or full-time adult employee are \$19.47 per hour (Level 1) and \$20.22 per hour (Level 2).

Junior rates of pay vary depending on the age of the individual. For example these are:

- \$9.47 per hour (Level 1) and \$10.11 (Level 2) for a 16-year-old
- \$16.55 (Level 1) and \$17.19 (level 2) for a 19-year-old.

Casual employees are entitled to a 25% casual loading on top of these base rates of pay.

Saturday rates of pay incur a 25% penalty loading, while Sunday rates incur a 50% loading. Public holidays incur a 125% loading.

Overtime rates can apply at various times during the course of the week depending on the time and number of hours an employee works, and can be up to double time.

Communication

In accordance with clauses 9 – 10 of the PCD, MDKL and the FWO informed their respective staff about the compliance partnership.

The FWO posted a notice on its intranet informing FWO staff of the commencement of the partnership and advised them to refer all inquiries and requests for assistance related to MDKL to the team managing the partnership.

The FWO also issued a [media statement](#)⁵ on 4 May 2015.

⁵ [The Coffee Club joins growing list of FWO partners](#)

MDKL informed its employees and franchisees about the partnership and the terms of the PCD through its intranet portal, The Club House. It also made a copy of the PCD available to staff, along with a contact point for questions about the partnership or conditions of employment.

Franchisees were required to do the same for their employees. MDKL asked them to write to staff to inform them that either MDKL or the FWO would answer their inquiries or requests for assistance. The company gave its franchisees a standardised template for these communications. It included the name and contact details of the MDKL Group People Manager, and information on how to contact the FWO.

Workplace relations training

MDKL provided the FWO with details about ongoing workplace relations training it provides to all franchisees (clauses 53-54 of the PCD).

The company delivers this training in a range of formats:

- franchisee training manuals
- face-to-face sessions
- webinars.

Training covers a number of topics, including:

- the National Employment Standards
- the *Restaurant Industry Award 2010*.
- employing visa workers
- performance management principles (based on FWO guidance materials)
- Flexible Work Arrangements
- Superannuation

The company also held a webinar information session for franchises about the FWO-MDKL compliance partnership, following the commencement of our PCD.

Systems and processes

MDKL implemented systems and processes to ensure ongoing compliance with Australian workplace laws (clauses 14-21 of the PCD).

The company nominated its Group Human Resources Manager to be the contact person for employee and franchisee enquiries. This provided some anonymity for employees if they preferred not to speak directly with the manager or owner of the franchise where they worked.

MDKL provided support to franchisees and employees through its online learning and communications portal, The Club House. Users were able to access important reference information on workplace entitlements and obligations, including:

- the National Employment Standards
- the Award
- the Fair Work Information Statement.

MDKL also used the portal as a notification platform, through which it announced to its members the self-audit program required by the PCD. The company also used the portal to update franchisees on upcoming training events, such as webinars.

MDKL provided a number of resources for franchisees to help them achieve and sustain compliance with workplace laws. These included:

- templates for employment contracts, pay slips, time sheets, and time and wage records
- FWO's 'Part-time hours agreement or variation' template
- position descriptions with associated classification levels to help franchisees accurately classify their staff
- internal human resources (MDKL HR) advice
- access to the Australian Retailers Association (ARA) support line.

Additionally, MDKL business development managers promoted compliant workplaces by conducting workplace relations checks during its twice-yearly cycle of franchisee reviews.

The company now also provides a 'Teach and Coach Checklist', along with a training guide, for its franchisees to complete. These materials help ensure that franchisees understand and can achieve compliance with workplace laws. Business development managers review the checklist and develop an action plan to address any areas of non-compliance. MDKL HR will then implement the plan and determine the level and type of support the franchisee needs to achieve compliance.

Self-resolution of requests for assistance

A key element of the PCD was the requirement that MDKL resolve any requests for assistance received from the FWO concerning its franchise employees (clauses 22-40).

During the compliance partnership, the FWO referred 16 requests for assistance to MDKL to investigate and resolve.

The majority of requests referred to the company were of a non-serious nature and concerned allegations of minor:

- underpayment of the hourly rate
- penalty rates
- pay slip issues
- termination entitlements.

In the first year of the compliance partnership, the FWO referred 15 requests for assistance to MDKL.

In the second year of the partnership, the FWO referred only one matter.

Wherever possible, the company was required to resolve these matters within 28 days of the referral. The company fulfilled this obligation by ensuring that all matters were resolved within the specified timeframe.

Under the terms of the PCD, MDKL was required to report to the FWO on the outcome of each referral. The company satisfied this requirement in each case by detailing its investigation, the underpayments identified and, where entitlements were outstanding, an agreed payment schedule. The company also summarized the 'future prevention strategy' it implemented in each matter, which involved a full audit of the franchisee's workplace relations practices.

Overall, the sharp decline in referral numbers over the two years of the compliance partnership indicates a positive contribution to sustained compliance amongst MDKL franchisees.

However, as in all compliance partnerships, the FWO reserves the right not to refer certain requests for assistance back to our compliance partners (clause 24 of the PCD). Where the allegations made in the request suggest serious non-compliance with workplace laws, the FWO will commence its own investigation.

During the partnership with MDKL, the FWO received a request for assistance alleging a Coffee Club franchisee was engaging in serious and deliberate non-compliance. The FWO investigated and substantiated the allegations, and took the employer to court. MDKL assisted the FWO in this matter, as detailed in the following case study.

Case Study: litigation

An employee on a 457 skilled work visa sought assistance from the FWO after his employment was terminated without notice. The worker alleged his employer, Gaura Nitai Pty Ltd, trading as Coffee Club Nundah, threatened to cancel his visa unless he returned wages he had earned as a cook.

The FWO investigation found the business had withheld wages from the worker for several months then after paying him \$19 334 in wages, requested he re-pay \$18 000 to the employer, in cash.

Due to the unlawful cash-back payment, the FWO's investigation found the worker received less than his guaranteed minimum entitlements including underpayment of the ordinary hourly rate, penalty rates, loadings, overtime, annual leave, and termination entitlements. The employer was found to have falsified records provided to the FWO in an attempt to cover up the cash-back request.

Following the investigation, the FWO commenced [legal proceedings](#)⁶ against both the company and its director, seeking declarations from the court that the employer breached multiple provisions of the *Fair Work Act 2009*. The FWO also asked the court to order penalties to deter any future non-compliance.

MDKL assisted the FWO throughout its investigation, providing the details of workplace relations information and advice it had given to Gaura Nitai Pty Ltd. MDKL also warned the business that it would terminate the franchise agreement if the worker's entitlements remained unpaid. This action helped ensure that the employer repaid the worker before the court handed down its decision.

On June 17 2017, the court ordered the company and its director to pay over \$180 000 in penalties (\$150 900 against the company and \$30 000 against the director). The court found the director's conduct was deliberate and deceitful, and described their treatment of the visa worker as "grotesque exploitation". MDKL terminated the franchise relationship in response to these findings.

⁶ [Former Brisbane Coffee Club franchisee penalised over unlawful cash-back payment](#)

Self-Audits

MDKL undertook to audit 10% of its franchise network at the conclusion of each year of the partnership (clause 41 of the PCD).

The audits sampled a four-week period inclusive of a public holiday and checked the following areas of compliance:

- knowledge of the enterprise agreement or Award
- pay rates, classifications, allowances, penalty rates
- rosters posted in advance
- pay slips and pay processing
- record keeping, including employee visa information
- employment contracts
- the provision of the Fair Work Information Statement by franchisees to workers
- visa sponsorship obligations.

MDKL introduced a 'traffic light' system to record and monitor compliance of their franchise network as part of the self-audit process.

The most common compliance issues that MDKL reported that it had identified were:

- non-payment of uniform allowance
- under-classification of employees (for example retaining an employee at an introductory level beyond the three-month period set out by the Award)
- minor details missing on pay slips
- record keeping omissions (insufficient detail in part-time agreements).

MDKL reported to the FWO that it reviewed 32 stores in its first self-audit program, conducted during the 2015-2016 period. It identified and addressed 49 separate instances where these stores had compliance issues.

The company audited 35 franchise outlets in the second self-audit program, conducted during the 2016-2017 period. It found and remedied 24 separate instances of non-compliance. The company attributed this improvement in compliance to the impact of its internal monitoring activities and improvements it had made to its systems and processes, and franchisee training.

Reporting to the FWO

MDKL provided the FWO with annual reports (clauses 57-63) including details about:

- self-audit findings
- requests for assistance referred
- requests for assistance resolved
- average time taken to resolve a request for assistance

Conclusion

MDKL voluntarily entered into a compliance partnership with the FWO to promote its reputation as an employer of choice, and to improve compliance with Australian workplace laws across its franchisee network.

The company demonstrated its commitment to the compliance partnership by satisfying the obligations set out in the PCD. These included:

- providing franchisees with training to ensure they understand their workplace compliance obligations
- supporting franchisees through the learning and communications portal
- promoting sustained franchisee compliance through via twice-yearly compliance checks and, where necessary, by providing additional coaching and support
- conducting yearly internal audits of randomly selected franchises
- resolving employee requests for assistance that we referred back to the company
- reporting to the FWO on the results of its PCD commitments.

MDKL's self-auditing program identified fewer compliance issues in the company's franchise network as the partnership progressed. Over the same period, the FWO referred fewer requests for assistance back to the company to resolve. The results indicate that the partnership was effective in raising awareness of workplace rights and obligations and in promoting compliant behaviours across MDKL franchisees.

The FWO will continue to monitor the MDKL network to evaluate the longer-term impact of our partnership on franchisee compliance.

About the Fair Work Ombudsman

The FWO is an independent agency created by the Fair Work Act 2009 on 1 July 2009. Our main role is to promote harmonious, productive and cooperative workplace relations.

The FWO employs a number of strategies to achieve compliance with national workplace laws. This includes entering into proactive compliance deeds with employers in the form of a compliance partnership. A compliance partnership is an opportunity for businesses to work with the FWO in a positive and constructive manner and achieve sustainable self-monitoring arrangements in order to demonstrate commitment to 'fair Australian workplaces'.

Employers may seek to enter into a compliance partnership with the FWO for a variety of reasons. Some of these reasons include:

- ensuring its obligations under the Act are being met
- a method of identifying and minimising business risks with respect to its employees
- to demonstrate that it is a fair Australian workplace and potentially an employer of choice
- to address potential areas of non-compliance with the Act.

A range of activities can be utilised to assist the business meet the intended outcomes of the compliance partnership. These include internal audits of wages and record keeping, initiatives to engage with employees to improve compliance, and mutually beneficial improvements to employment and business outcomes by focussing on supply chain, brand and franchise relationships.

We assign a dedicated Fair Work Officer to any business we enter into a partnership with. The officer provides support and assistance to the business to ensure they are able to meet the terms of the proactive compliance deed. We publish a report about the results of the partnership following its conclusion.

For further information and media enquiries, please contact FWO media (media@fwo.gov.au).

If you would like further information about compliance partnerships please contact Steven Ronson, Executive Director – Communications (steven.ronson@fwo.gov.au).