



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Paul Sadler Swimland Pty Ltd and its Franchisees

ENFORCEABLE UNDERTAKING

PARTIES

1. This Enforceable Undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by:
 - a) Paul Sadler Swimland Pty Ltd (ABN 94112082210) of Level 4, 112 Wellington Parade, East Melbourne VIC 3002 (**the Franchisor**);
 - b) The following companies which operate businesses trading as Paul Sadler Swimland:
 - (i) Paul Sadler Swimland Bacchus Marsh Pty Ltd;
 - (ii) Paul Sadler Swimland Bendigo Pty Ltd;
 - (iii) Paul Sadler Swimland Braybrook Pty Ltd;
 - (iv) Paul Sadler Swimland Carrum Downs Pty Ltd;
 - (v) Paul Sadler Swimland Essendon Pty Ltd;
 - (vi) Paul Sadler Swimland Hoppers Crossing Pty Ltd;
 - (vii) Paul Sadler Swimland Melton Pty Ltd;
 - (viii) Paul Sadler Swimland Narre Warren Pty Ltd;
 - (ix) Paul Sadler Swimland Parkwood Green Pty Ltd;
 - (x) Paul Sadler Swimland Riverside Gardens Pty Ltd;
 - (xi) USAust Management Services Pty Ltd trading as Paul Sadler Swimland Rowville; and
 - (xii) Paul Sadler Swimland Taylors Lakes Pty Ltd(collectively, **the Franchisees**).

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

2. This Undertaking comes into effect when:
 - a) the Undertaking is executed by each of the Franchisor and the Franchisees; and
 - b) the FWO accepts the Undertaking so executed.

BACKGROUND:

3. The Franchisor and the Franchisees carry on business within the swim school industry. Collectively, the Franchisor and the Franchisees employ over 600 employees.
4. At all material times, Paul Francis Sadler was the Director of the Franchisor and ten of the Franchisees.
5. At all material times, Wayne Pollock was the Chief Executive Officer of the Franchisor

and Director of three of the Franchisees.

Relevant industrial instruments

6. Up until late 2013, the Franchisees were covered by the *Fitness Industry Award 2010* (the **Award**) and employees were entitled to be paid in accordance with the provisions contained therein.
7. In late 2013, the Franchisees each made separate Enterprise Agreements which were approved by the Fair Work Commission (collectively, **the 2013 Agreements**) and which applied to the employees of each respective Franchisee. A list of the 2013 Agreements is contained at Attachment A to this Undertaking.
8. On 23 June 2017 the *Paul Sadler Swimland Single Enterprise Agreement* (**the 2017 Agreement**) commenced operation in relation to the Franchisees, and replaced the 2013 Agreements.

Identification of underpayments

9. In 2015 one of the Franchisees, Paul Sadler Swimland Essendon Pty Ltd, identified errors in the rates of pay paid to some employees and took steps to rectify these matters after employees raised concerns regarding the accuracy of wages that had been paid.
10. In March and April 2016, further issues were identified in relation to the rates paid to employees across the Franchisor and Franchisees.
11. The underpayments occurred over the period 1 July 2010 to March 2016, in respect of both the Award and the 2013 Agreements (as they respectively applied).
12. The identified underpayments generally arose from one or more of the following errors:
 - (a) failure to correctly implement age increments for junior employees under the Award and the 2013 Agreements;
 - (b) failure to correctly progress employees according to their experience under the Award and the 2013 Agreements; and
 - (c) failure to correctly apply the transitional wage provisions set out in the Award from 1 July 2010, in particular, failing to apply the wage increase that came into effect from the first pay period commencing on or after 1 July 2010 when calculating the transitional wage rates.
13. The Franchisor and Franchisees took actions to calculate the underpayments arising from the contraventions referred to in paragraph 12, ensuring that any contractual terms providing for payments above the terms of the Award or the 2013 Agreements were maintained.
14. The total underpayments arising from contraventions of the Award and the 2013 Agreements were calculated by the Franchisor and the Franchisees as \$1,425,477.99

(gross).

15. In addition, the Franchisor and Franchisees calculated and paid an additional 5% ex gratia amount of each underpayment, to a total amount of \$71,272.40.

16. The total amounts calculated by the Franchisor and Franchisees as being outstanding to their employees were as follows:

- (a) \$46,606.85 (gross) to employees of Paul Sadler Swimland Bacchus Marsh Pty Ltd;
- (b) \$214,543.74 (gross) to employees of Paul Sadler Swimland Bendigo Pty Ltd;
- (c) \$40,107.03 (gross) to employees of Paul Sadler Swimland Braybrook Pty Ltd;
- (d) \$66,817.31 (gross) to employees of Paul Sadler Swimland Carrum Downs Pty Ltd;
- (e) \$445,580.68 (gross) to employees of Paul Sadler Swimland Essendon Pty Ltd;
- (f) \$162,972.69 (gross) to employees of Paul Sadler Swimland Hoppers Crossing Pty Ltd;
- (g) \$49,526.94 (gross) to employees of Paul Sadler Swimland Melton Pty Ltd;
- (h) \$121,099.36 (gross) to employees of Paul Sadler Swimland Narre Warren Pty Ltd;
- (i) \$82,419.84 (gross) to employees of Paul Sadler Swimland Parkwood Green Pty Ltd;
- (j) \$40,925.92 (gross) to employees of Paul Sadler Swimland Riverside Gardens Pty Ltd;
- (k) \$162,676.80 (gross) to employees of USAust Management Services Pty Ltd trading as Paul Sadler Swimland Rowville; and
- (l) \$63,443.23 (gross) to employees of Paul Sadler Swimland Taylors Lakes Pty Ltd.

17. From October 2016, the Franchisor:

- (a) advised the FWO of the underpayments that had been identified;
- (b) engaged an accounting firm to review the methodology it had used in conducting the calculations and a sample of the calculations it had performed; and
- (c) implemented various system changes to ensure ongoing compliance with workplace relations obligations across the Franchisees.

18. Each of the Franchisees has fully rectified the total underpayments set out in paragraph 16 by making payments directly to the affected employees. Where a Franchisee has been unable to pay an employee directly, they undertake to make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund (**Fund**).

Summary of contraventions

19. The FWO has determined, and the Franchisees admit, that the Franchisees contravened:

- (a) Clause 17.1 of the Award, by failing to pay the minimum wages set out in the Award to adult employees;
- (b) Clause 17.2 of the Award, by failing to pay the minimum wages set out in the Award to junior employees; and
- (c) The 2013 Agreements, by failing to pay the minimum rates set out in the applicable 2013 Agreement.

20. The FWO has found, and the Franchisor admits, that the Franchisor was involved (as defined by s 550 of the FW Act) in the contraventions set out in paragraph 19.

21. Underpayments were identified for a total of 1308 employees, including a significant number of young workers.

ENFORCEABLE UNDERTAKING

22. Upon the commencement of this Undertaking and for the purposes of section 715 of the FW Act, the Franchisor and the Franchisees undertake to do the following as set out in paragraphs 23 to 56 below.

Workplace relations systems and processes

23. The Franchisor and the Franchisees undertake to comply at all times and in all respects with the FW Act, *Fair Work Regulations 2009* (Cth) (**FW Regulations**), the 2017 Agreement and any other industrial instrument which may apply from time to time.

24. The Franchisor undertakes to ensure that measures are implemented such that all Paul Sadler Swimland franchisees, including the Franchisees and any new franchise which opens within two years from the date of execution of this Undertaking, will comply with the FW Act, FW Regulations and any other applicable industrial instrument which may apply to the Franchisees and any new franchise and their respective employees from time to time.

25. Within 60 days of the date of commencement of this Undertaking, the Franchisor and Franchisees undertake to provide to the FWO a summary of the steps they have taken or are proposing to take to comply with, and the systems and processes they have implemented or propose to implement to ensure future compliance with, their obligations under the 2017 Agreement and the FW Act, including steps taken to:

- (a) support and assist each of the Franchisees to comply with their obligations under the 2017 Agreement and the FW Act;
- (b) ensure each employee is paid the correct minimum rates of pay and entitlements;
- (c) ensure accurate and complete rosters and time records are created and

maintained for all employees;

- (d) issue payslips to each employee within one working day of payment containing all prescribed information;
- (e) ensure junior employees receive wage increases relating to their age within one pay period of their birthday;
- (f) ensure employees receive wage increases relating to their experience within one pay period of reaching the relevant level of experience; and
- (g) ensure employees receive the benefit of all provisions within the 2017 Agreement or any other applicable industrial instrument, that comes into operation during the term of this Undertaking.

26. Within 30 days of the Franchisor and the Franchisees providing the details outlined at paragraph 25 above, the FWO may provide feedback on the steps taken or proposed. The Franchisor and the Franchisees will take all reasonable steps to incorporate such feedback into its systems and processes.

Audit Activity

27. At its own expense, the Franchisor undertakes to engage an external accounting professional (for example a Certified Practising Accountant) or an external professional otherwise approved by the FWO to perform audits of the Franchisor's and each Franchisee's compliance with all Commonwealth workplace laws, the 2017 Agreement and any other industrial instruments that may apply from time to time (**Audits**). The Audits will:

- (a) be conducted within 6 months of the execution of this Undertaking and again within 18 months of the execution of this Undertaking;
- (b) assess a sample of 40% of all junior employees and 20% of all other employees across a range of different classifications at all locations and, where applicable, employment types (full time, part time and casual employees);
- (c) assess the Franchisor's and each Franchisee's compliance with:
 - (i) section 535 of the FW Act in relation to record keeping;
 - (ii) section 536 of the FW Act in relation to payslips; and
 - (iii) wages provisions of the 2017 Agreement or any other industrial instrument that may apply from time to time;
- (d) assess a sample of at least two pay periods.

28. If the Audits find any underpayment of wages based on the sample referred to in clause 27(b), and the FWO reasonably believes that employees not included in the sample are also likely to have been underpaid, the Franchisee(s) for which the underpayments are discovered, undertake to engage an external accounting professional (or other external

professional approved by the FWO) to conduct an audit of all its employees (including junior employees) in accordance with clauses 27(c) and (d) above (**Additional Audit**).

29. If requested by the FWO, the Franchisor will provide details of the methodology to be used to conduct the Audits.

30. Within 30 days of the completion of each of the Audits, the Franchisor will provide a report on the outcomes of the Audits to the FWO, which will include:

- (a) a statement about the methodology used to conduct the Audit; and
- (b) details of any contraventions identified in the Audit.

Outcome of Audits

31. Within 30 days of the completion of an Audit, the Franchisor and each of the Franchisees undertake to:

- (a) rectify any underpayments that are identified;
- (b) provide to the FWO evidence of such rectification;
- (c) in the event that after making reasonable efforts, the Franchisor and/or the applicable Franchisee are unable to locate current or former employee(s) to whom monies are owed, make an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay the money into the Consolidated Revenue Fund; and
- (d) perform an Additional Audit in accordance with clause 28 (as required).

32. Within 30 days of the completion of an Additional Audit, the Franchisor and each of the Franchisees undertake to:

- (a) rectify any underpayments that are identified;
- (b) provide to the FWO evidence of such rectification; and
- (c) in the event that after making reasonable efforts, the Franchisor and/or the applicable Franchisee are unable to locate current or former employee(s) to whom monies are owed, make an application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay the money into the Consolidated Revenue Fund.

33. If requested, the Franchisor and the Franchisees must provide the FWO with all records and documents used to conduct the Audits and Additional Audits (as applicable), including any working documents, within 7 days of such a request.

Employee Assistance

34. For a period of 18 months after the execution of this Undertaking, the Franchisor undertakes to:

- (a) maintain a designated email address for all current and former employees to

make enquiries in relation to any underpayment or related employment concerns;

- (b) ensure that the email address is included with the annual PAYG payment summary and given to all persons who are, or were, engaged by the Franchisor and the Franchisees who are in receipt of a payment summary, as well as the Notice referred to in paragraph 48 for the 18 month period;
- (c) respond to each email enquiry and seek to resolve any issues within 30 days;
- (d) notify the FWO of any issues which are not resolved within 30 days; and
- (e) report to the FWO each 6 months, for a total period of 18 months, on all contact received from employees through the email address.

35. In the event that the Franchisor receives an allegation of underpayment of minimum wages or entitlements through the designated email address referred to in paragraph 34 above, the Franchisor undertakes to:

- (a) notify the FWO within 7 days of receiving the allegation;
- (b) conduct a full investigation into the allegation;
- (c) rectify those contraventions which are able to be substantiated; and
- (d) report on the outcome of the investigation to the FWO within 30 days of notifying the FWO of the allegation.

FWO My account registration

36. Within 28 days of the commencement of this Undertaking, the Franchisor and the Franchisees will:

- (a) each register with the FWO My account portal at www.fairwork.gov.au/register and create a My account profile;
- (b) upload a copy of the 2017 Agreement and save it to their respective My account profile;
- (c) provide the My Account Customer Registration Number to the FWO;
- (d) if requested by the FWO in writing, demonstrate to an officer of the FWO:
 - (i) that an officer or employee of the Franchisor and/or Franchisees (as relevant) with responsibility for recruitment, human resources and/or payroll functions has the necessary skills and knowledge required to effectively use the My Account platform, including knowing how to save information to My Account from the FWO website and how to use relevant online tools on the FWO website; and

- (ii) how they will use this information to ensure compliance with workplace obligations including paying employees the correct minimum rates of pay.

(e) subscribe to the FWO's 'subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates> and request information updates on the following topics:

- (i) pay rates and entitlements;
- (ii) new products and resources;
- (iii) about us and our work;
- (iv) updates in my industry; and
- (v) tailored information that's relevant to me.

Workplace relations training

37. As at the date of executing this Undertaking, all persons who have managerial responsibility for human resources, recruitment, employee entitlements or payroll functions on behalf of the Franchisor and/or Franchisees have undertaken the following workplace relations training:

Date	Training Session	Attendees	Facilitator
28 Jul 17	<p>Managing Payroll Process</p> <ul style="list-style-type: none"> • Policy and how to document • Ensuring correct rates are paid • Checking and updating qualifications • Tracking hours • Managing changes in pay rates <p>Overtime</p> <ul style="list-style-type: none"> • When is overtime payable? • Managing and tracking overtime <p>Breaks</p> <ul style="list-style-type: none"> • Managing breaks • Compliance • How to roster • Scenarios <p>ERIC People</p> <ul style="list-style-type: none"> • Training and update <p>Allowances</p>	<p>All Managers and All Assistant Managers</p> <p>Swimland Leadership Team</p>	

	<ul style="list-style-type: none"> • First Aid • Split shift <p>When are these payable and how are they managed</p>		
27 Oct 17	<p>Compliance Policy Documents</p> <ul style="list-style-type: none"> • TOIL policy • Travel and Expense Management and Reimbursement • Absenteeism Process and Policy • Replacing Team Members Policy • Managing variations to rosters • Managing payroll process • Managing changes to pay rates • Leave policy - including cashing out of A/L • Managing roster changes 		
24 Nov 17	<p>Managing all types of Leave</p> <ul style="list-style-type: none"> • PCL/LSL/Unpaid Leave/Extended Leave • Entitlements • How to apply • How to track 		
Ongoing	<p>At every Managers Meeting 1-2 hrs is allocated to HR Compliance This involves;</p> <ul style="list-style-type: none"> • Updates • ERIC People Developments • HR Worksheets 	All Managers	

(collectively, the **Completed Training**).

38. Further to the Completed Training, the Franchisor will:

- (a) Within 60 days of the execution of this Undertaking, and in conjunction with each of the Franchisees, undertake to organise and ensure that the following workplace relations training is provided to all persons who have managerial responsibility for human resources, recruitment, employee entitlements or payroll functions on behalf of the Franchisor and/or Franchisees:

- (i) an overview of the terms and conditions of the 2017 Agreement, including but not limited to classifications, rates of pay, penalty rates, overtime and allowances;
- (ii) an overview of the rights and responsibilities of employers under the FW Act;
- (iii) an overview of Commonwealth of Australia workplace laws including the employee statutory entitlements set out in the national employment standards prescribed by the FW Act; and
- (iv) an overview of the interaction between enterprise agreements, modern awards and the national employment standards prescribed by the FW Act.

(collectively, the **Additional Training**).

- (b) Provide the Additional Training at its own expense.
- (c) Ensure the Additional Training is conducted by a workplace trainer who has been approved by the FWO.
- (d) Prepare an information sheet for all employees that includes, but may not be limited to, an overview of the terms and conditions of the 2017 Agreement, the interaction between awards and enterprise agreements and the rights and responsibilities of employers (**Information Sheet**); and
- (e) Ensure that the Information Sheet is provided to all current employees of the Franchisor and Franchisees, and is provided in the induction package (or similar) of all new employees of the Franchisor and Franchisees, for a period of 18 months following the execution of this Undertaking.

39. Unless otherwise specified, within 21 days of the Additional Training taking place, the Franchisor and/or the Franchisees (as applicable) will provide to the FWO:

- (a) details of the training provided and the topics covered;
- (b) copies of the training materials where available – these are to be provided at least 14 days prior to the training being delivered;
- (c) details of how the training was delivered and the trainer responsible;
- (d) a list of the names and positions of those who completed such training; and
- (e) the date on which such training was completed.

40. Prior to releasing the Information Sheet to employees, the Franchisor and/or Franchisees (as applicable) will provide a copy of the draft Information Sheet to the FWO for the FWO's approval. Should the FWO require any reasonable amendments to the Information Sheet these will be incorporated by the Franchisor and/or Franchisees (as

applicable). The Franchisor and/or Franchisees (as applicable) will provide a final copy of the Information Sheet to the FWO at least 14 days prior to releasing it to the employees.

Co-operation with FWO in future enquiries

41. The Franchisor and the Franchisees undertake to co-operate with the FWO in its future enquiries or investigations in relation to Requests for Assistance from current or former employees of the Franchisor and the Franchisees, including by:

- (a) responding to any correspondence from the FWO within a reasonable timeframe;
- (b) responding to requests from the FWO to participate in records of interview or to provide information within a reasonable timeframe; and
- (c) responding to any other reasonable requests for assistance from the FWO in relation to its investigations within a reasonable timeframe.

Self-resolution of Requests for Assistance

42. Within 7 days of receiving a Request for Assistance (**RFA**), the FWO will notify the Franchisor and/or the relevant Franchisee (as appropriate) of the RFA and provide details of the alleged non-compliance supplied by the person making the request.

43. The FWO will also, within 7 days of receiving the RFA:

- (a) notify the Franchisor and/or the relevant Franchisee (as appropriate) of the name of a nominated contact person for dealing with each RFA; and
- (b) provide a template to the Franchisor and/or the relevant Franchisee (as appropriate) to be used in reporting back to the FWO, the outcome of each RFA referred by the FWO.

44. The Franchisor and/or the relevant Franchisee (as appropriate) undertake that they will:

- (a) Within 28 days of notification by the FWO of a referral relating to an employee or former employee of the Franchisor or any of the Franchisees, attempt to resolve the RFA and rectify any identified underpayments, as well as any other non-compliance issues identified by FWO or the Franchisor and/or Franchisees (including for any similarly affected employees identified);
- (b) Within 7 days of resolving the RFA, provide the FWO with evidence that:
 - (i) the RFA has been resolved and any identified underpayments have been rectified; and
 - (ii) any other issues identified by the FWO or the Franchisor and/or the Franchisees, including for any similarly affected employees, have been resolved.

45. If the RFA cannot be resolved by agreement between the Franchisor and/or the relevant Franchisee (as appropriate) and the employee or former employee within 28 days of notification by the FWO, the Franchisor and /or the relevant Franchisee (as appropriate) undertake to provide the FWO with a written report addressing the reasons why the RFA could not be resolved between the parties and the steps taken to resolve the matter. The report is to be provided to the FWO within 35 days of the notification by the FWO. The FWO will consider the report and assess whether any compliance activity is warranted by the FWO.
46. The FWO retains full discretion as to what steps it takes in relation to any information or request for assistance received involving an allegation of non-compliance. This includes the discretion not to refer under this self-resolution clause and instead conduct its own investigation. The FWO will notify the Franchisor and/or the relevant Franchisee (as appropriate) of any action when appropriate in accordance with its ordinary processes.
47. The Franchisor and the Franchisees undertake to abide by any confidentiality restrictions imposed by the FWO in relation to any information supplied under this section – ‘Self-resolution of requests for assistance’ – including any restriction which might be imposed by the FWO on notifying any Franchisor or Franchisee (as applicable) of the RFA (or the details of that request). The FWO retains the discretion not to provide information to the Franchisor or the Franchisees under this section where it would cause the FWO to breach any law, including the *Privacy Act 1988* (Cth).

Public Notice

48. The Franchisor undertakes to:

- (a) within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking, place a public notice in the Saturday edition of *The Age*, the *Herald Sun* and the *Courier Mail* (**Public Notice**), acknowledging that:
- (i) the contraventions occurred;
 - (ii) the Franchisor and the Franchisees were responsible for the contraventions;
 - (iii) the Franchisor and the Franchisees have taken steps to rectify these contraventions and are committed to ensuring the ongoing compliance with all their respective obligations; and
 - (iv) the Franchisor and the Franchisees sincerely regret and apologise to all affected employees for their failure to comply with their obligations under Commonwealth workplace relation laws.

- (b) The Public Notice must:

- (v) bear the name and logo of the Franchisor;
 - (vi) appear within the Public Notices section of the paper;
 - (vii) be at least 10 cm x 8 cm in size; and
 - (viii) be in the form of Attachment B;
- (c) Within 7 days of the publication of the Public Notice, provide a copy of the Public Notice to the FWO.

Website Notice

49. The Franchisor undertakes to:

- (a) within 28 days of the commencement of this Undertaking, post a notice on the "News" section of the Paul Sadler Swimland website (www.paulsadlerswimland.com.au) which will:
 - (i) be in the form of the Public Notice set out at Annexure B;
 - (ii) include a link to each of the 2013 Agreements;
 - (iii) include a link to the 2017 Agreement;
 - (iv) be displayed in at least size 10 font; and
 - (v) remain on the website for a period of 12 months.

Social Media Notice

50. The Franchisees undertake to:

- (a) within 28 days of, but not prior to, the FWO publishing a Media Release on its website in respect of this Undertaking, place a post on each Franchisee's Facebook Page (where available), which will:
 - (i) be posted and pinned to the top of the homepage in public view;
 - (ii) remain on the Facebook page for a continuous period of at least 28 days; and
 - (iii) be in the form of the Public Notice set out at Attachment B.
- (b) Within 7 days of posting the notice on each of the Franchisees Facebook page (where available) provide evidence of the posting of the link to the Franchisee's Facebook Page to the FWO.

Workplace Notice

51. Within 28 days of the execution of this Undertaking, the Franchisees will display (or cause to be displayed) a notice at each of the Franchisees sites in Australia (**Workplace Notice**). The Workplace Notice will:

- (a) be in the form of Attachment B;
- (b) include details of the designated email address referred to in paragraph 34 above;

- (c) be printed in at least A3 size;
- (d) be clearly displayed in a location to which all employees who work at the Franchisor or Franchisees have access (for example, on a workplace noticeboard); and
- (e) be displayed for a period of 12 months.

52. Within 28 days of displaying the Workplace Notice, the Franchisor will provide confirmation, including photographic evidence of display, to the FWO that the Workplace Notice has been displayed at each of the Franchisees sites in Australia.
53. At the end of the period of 12 months, the Franchisor will provide confirmation to the FWO that the Workplace Notice has been continuously displayed for the required period, including photographic evidence of display in each Franchise location.

Community service payment

54. Within 60 days of the execution of this Undertaking, the Franchisor undertakes to make the following donations:
- (a) \$25,000 to the charity known as the Smith Family ABN 33 007 457 141;and
 - (b) \$25,000 to the charity known as Western Chances ABN 17 110 713 865.
55. The Franchisor undertakes to provide evidence of the donations to the FWO within 7 days of making each donation.

No Inconsistent Statements

56. The Franchisor and the Franchisees:
- (a) must not; and
 - (b) must ensure that their respective officers, employees or agents, do not,
- make any statement, orally or in writing or otherwise imply anything that is inconsistent with any admissions or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

57. The Franchisor and the Franchisees acknowledge that:
- a) The FWO may:
 - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking (and any of the attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);

- (iii) issue a media release in relation to this Undertaking where it has first given a copy of the draft media release to the Franchisor and Franchisees at least 24 hours prior to its publication. Notwithstanding this, if the Franchisor and Franchisees make any suggested edits to the media release, the FWO is under no obligation to accept any of them;
 - (iv) from time to time, publicly refer to the Undertaking (and any of the attachments hereto) and its terms; and
 - (v) rely upon the admissions made by the Franchisor and the Franchisees set out in paragraphs 19 to 20 above in respect of any decision taken regarding enforcement action in the event that the Franchisor and the Franchisees, are found to have failed to comply with its workplace relations obligations in the future;
- b) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
- c) consistent with section 715(3) of the FW Act, each of the Franchisor and the Franchisees may individually withdraw from, or vary, this Undertaking at any time, but only with the consent of the FWO; and
- d) if the Franchisor and the Franchisees, contravene any of the terms of this Undertaking:
 - (i) the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
 - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by the Franchisor and the Franchisees in paragraphs 19 to 20 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by Paul Sadler Swimland Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

PAUL SADLER
(Name of director)

16/3/18
(Date)

in the presence of:


(Signature of witness)

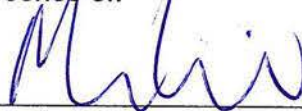
Mark Cecil
(Name of witness)


(Signature of director/company secretary)

WAYNE POLLOCK
(Name of director/company secretary)

9/3/18
(Date)

in the presence of:


(Signature of witness)

Mark Cecil
(Name of witness)


EXECUTED by Paul Sadler Swimland Bacchus Marsh Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

PAUL SADLER
(Name of director)

16/3/18
(Date)

in the presence of:


(Signature of witness)

Mark Cecil
(Name of witness)

(Signature of director/company secretary)

(Name of director/company secretary)

(Date)

in the presence of:

(Signature of witness)

(Name of witness)

EXECUTED by Paul Sadler Swimland Bendigo Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

JOHN RUSSELL

(Name of director)

9/3/18

(Date)

in the presence of:



(Signature of witness)

Mark Cecil

(Name of witness)

(Signature of director/company secretary)

(Name of director/company secretary)

(Date)

in the presence of:

(Signature of witness)

(Name of witness)

EXECUTED by Paul Sadler Swimland Braybrook Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

Paul Sadler

(Name of director)

16/3/18

(Date)

in the presence of:



(Signature of witness)

Mark Cecil

(Name of witness)

(Signature of director/company secretary)

(Name of director/company secretary)

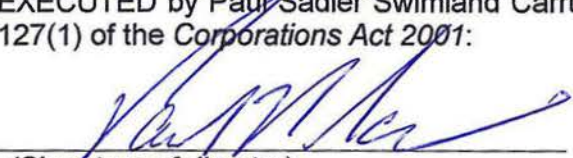
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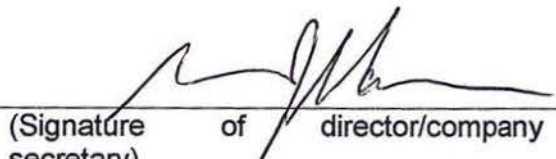
in the presence of:

(Signature of witness)

(Name of witness)

EXECUTED by Paul Sadler Swimland Carrum Downs Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)


(Signature of director/company secretary)


PAUL SADLER
(Name of director)

MICHAEL MANSOUR
(Name of director/company secretary)

16/3/18
(Date)

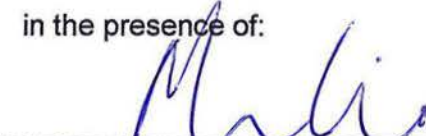
21/3/18
(Date)

in the presence of:


(Signature of witness)

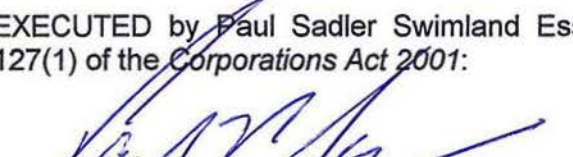
Mark Cecil
(Name of witness)

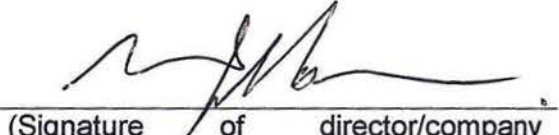
in the presence of:


(Signature of witness)

Mark Cecil
(Name of witness)

EXECUTED by Paul Sadler Swimland Essendon Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)


(Signature of director/company secretary)

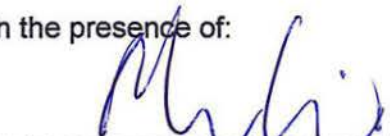
PAUL SADLER
(Name of director)

MICHAEL MANSOUR
(Name of director/company secretary)

16/3/18
(Date)

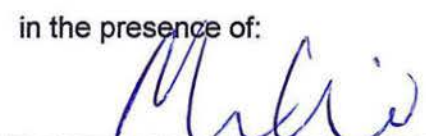
21/3/18
(Date)

in the presence of:


(Signature of witness)

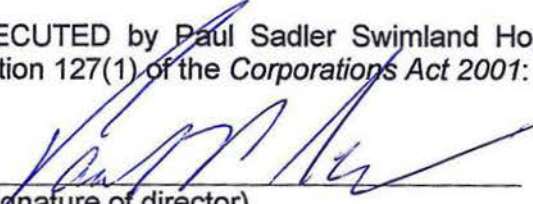
Mark Cecil
(Name of witness)

in the presence of:


(Signature of witness)

Mark Cecil
(Name of witness)

EXECUTED by Paul Sadler Swimland Hoppers Crossing Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

(Signature of director/company secretary)

PAUL SADLER
(Name of director)

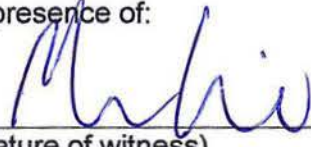
(Name of director/company secretary)

16/3/18
(Date)

(Date)

in the presence of:

in the presence of:

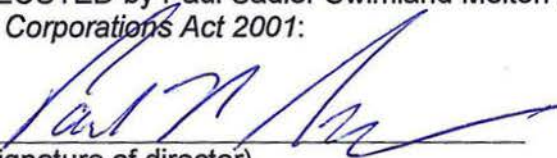

(Signature of witness)

(Signature of witness)

Mark Cecil
(Name of witness)

(Name of witness)

EXECUTED by Paul Sadler Swimland Melton Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

(Signature of director/company secretary)

PAUL SADLER
(Name of director)

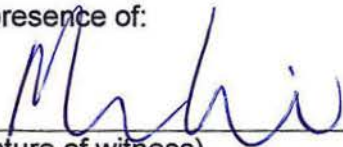
(Name of director/company secretary)

16/3/18
(Date)

(Date)

in the presence of:

in the presence of:


(Signature of witness)

(Signature of witness)

Mark Cecil
(Name of witness)

(Name of witness)

EXECUTED by Paul Sadler Swimland Narre Warren Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)



(Signature of director/company secretary)

HEATHER ROSE

(Name of director)

SHONA PALLAS

(Name of director/company secretary)

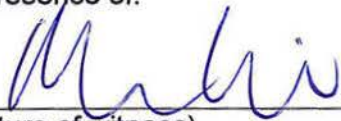
21.3.18

(Date)

21.3.18

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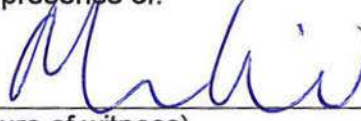
in the presence of:



(Signature of witness)

Mark Cecil

(Name of witness)

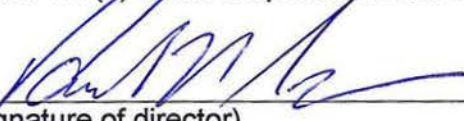


(Signature of witness)

Mark Cecil

(Name of witness)

EXECUTED by Paul Sadler Swimland Parkwood Green Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

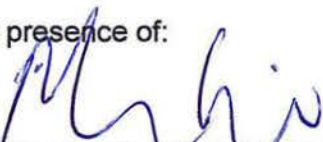
PAUL SADLER

(Name of director)

16.3.18

(Date)

in the presence of:



(Signature of witness)

Mark Cecil

(Name of witness)

(Signature of director/company secretary)

(Name of director/company secretary)


(Date)

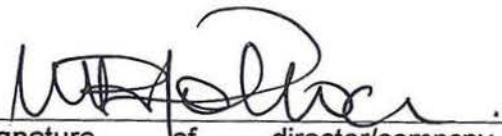
in the presence of:

(Signature of witness)

(Name of witness)

EXECUTED by Paul Sadler Swimland Riverside Gardens Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)


(Signature of director/company secretary)

PAUL SADLER
(Name of director)

WAYNE POLLOCK
(Name of director/company secretary)

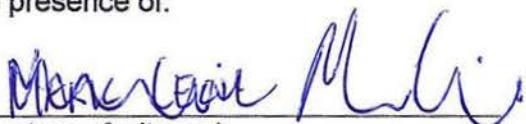
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27/3/18

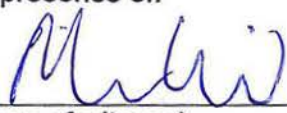
(Date)

9/3/18

in the presence of:


(Signature of witness)

in the presence of:


(Signature of witness)

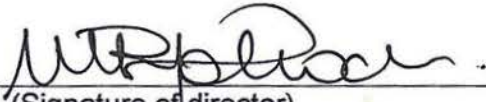
(Name of witness)

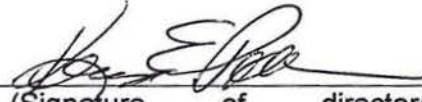
Mark Cecil

(Name of witness)

Mark Cecil

EXECUTED by USAust Management Services Pty Ltd trading as Paul Sadler Swimwear Rowville in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)


(Signature of director/company secretary)

WAYNE POLLOCK
(Name of director)

KEWY POWOCK
(Name of director/company secretary)

(Date)

9/3/18

(Date)

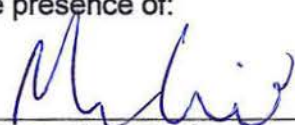


9/3/18

in the presence of:


(Signature of witness)

in the presence of:


(Signature of witness)


(Name of witness)

Mark Cecil

(Name of witness)

Mark Cecil

EXECUTED by Paul Sadler Swimland Taylors Lake Pty Ltd in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)

(Signature of director/company secretary)

PAUL SADLER
(Name of director)

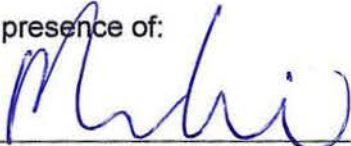
(Name of director/company secretary)

16/3/18
(Date)

(Date)

in the presence of:

in the presence of:


(Signature of witness)

(Signature of witness)

Mark Cecil
(Name of witness)

(Name of witness)


ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the Fair Work Act 2009 on:


Michael Campbell – Deputy Fair Work
Ombudsman (Operations)

22 MARCH 2018
(Date)

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:


(Signature of witness)

LOUISE CATO
(Name of Witness)

Attachment A – the 2013 Agreements

Agreement name	Date of operation
The Paul Sadler Swimland Bacchus Marsh Enterprise Agreement 2013	27 December 2013
Paul Sadler Swimland Bendigo Enterprise Agreement 2013	27 December 2013
The Paul Sadler Swimland Braybrook Enterprise Agreement 2013	16 December 2013
The Paul Sadler Swimland Carrum Downs Enterprise Agreement 2013	16 December 2013
Paul Sadler Swimland Enterprise Agreement 2013 (relating to Paul Sadler Swimland Essendon)	5 November 2013
The Paul Sadler Swimland Hoppers Crossing Enterprise Agreement 2013	16 December 2013
The Paul Sadler Swimland Melton Enterprise Agreement 2013	27 December 2013
Paul Sadler Swimland Narre Warren Enterprise Agreement 2013	27 December 2013
Paul Sadler Swimland Parkwood Green Enterprise Agreement 2013	27 December 2013
Paul Sadler Swimland Townsville Enterprise Agreement 2013 (relating to Paul Sadler Swimland Riverside Gardens);	27 December 2013
The Paul Sadler Swimland Rowville Enterprise Agreement 2013	27 December 2013
Paul Sadler Swimland Taylors Lakes Enterprise Agreement 2013	27 December 2013

Attachment B – Form of Public and Workplace Notice

We refer to the matter raised by Paul Sadler Swimland Pty Ltd (**Paul Sadler Swimland Pty Ltd**) with the Office of the Fair Work Ombudsman (**FWO**) that:

- Paul Sadler Swimland Pty Ltd;
- Paul Sadler Swimland Bacchus Marsh Pty Ltd;
- Paul Sadler Swimland Bendigo Pty Ltd;
- Paul Sadler Swimland Braybrook Pty Ltd;
- Paul Sadler Swimland Carrum Downs Pty Ltd;
- Paul Sadler Swimland Essendon Pty Ltd;
- Paul Sadler Swimland Hoppers Crossing Pty Ltd;
- Paul Sadler Swimland Melton Pty Ltd;
- Paul Sadler Swimland Narre Warren Pty Ltd;
- Paul Sadler Swimland Parkwood Green Pty Ltd;
- Paul Sadler Swimland Riverside Gardens Pty Ltd;
- USAust Management Services Pty Ltd t/as Paul Sadler Swimland Rowville; and
- Paul Sadler Swimland Taylors Lakes Pty Ltd,

contravened the *Fair Work Act 2009* (**FW Act**) and applicable industrial instruments (including the *Fitness Industry Award 2010* (**Award**) and applicable enterprise agreements) during the period 1 July 2010 to March 2016 by failing to pay the minimum wages set out in the Award to adult and junior employees, and the minimum rates set out in the applicable enterprise agreements to employees.

Paul Sadler Swimland Pty Ltd and each of the named Paul Sadler Swimland franchisees have formally admitted to the FWO that the contraventions occurred and have entered into an Enforceable Undertaking (**EU**) with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, rectify workplace practices and ensure future compliance. Some of the undertakings include:

- Ensuring that measures are implemented such that all Paul Sadler Swimland franchisees, including any new franchise that opens within 2 years of executing the EU, will comply with the *Fair Work Act 2009* (Cth), *Fair Work Regulations 2009* (Cth) and any applicable industrial instrument that may apply to any Paul Sadler Swimland franchise from time to time.
- Undertaking an audit of Paul Sadler Swimland Pty Ltd and the named Paul Sadler Swimland Franchisees' compliance with all Commonwealth workplace laws and applicable industrial instruments (currently the *Paul Sadler Swimland Single Enterprise Agreement 2017*) within 6 months of the execution of the EU and again within 18 months of the execution of the EU.
- That Paul Sadler Swimland Pty Ltd will maintain a designated email address as set out below for all current and former employees to make enquiries in relation to any underpayment or related employment concerns.
- That Paul Sadler Swimland Pty Ltd, in conjunction with each of the named Paul Sadler Swimland franchisees, will organise that additional workplace relations training is provided to all people with relevant managerial responsibility on behalf of Paul Sadler Swimland Pty Ltd or any of the named Paul Sadler Swimland franchisees.
- That Paul Sadler Swimland Pty Ltd will make a donation of \$25,000 to the charity

known as the Smith Family ABN 33 007 457 141 and a donation of \$25,000 to the charity known as Western Chances ABN 17 110 713 865.

Paul Sadler Swimland Pty Ltd and each of the named Paul Sadler Swimland franchisees express their sincere regret and apologise for the conduct which resulted in the contraventions and give a commitment that they will comply with all requirements of the Commonwealth workplace relations laws in the future.

Each of the named Paul Sadler Swimland franchisees has fully rectified the total underpayments by making payments directly to the affected employees. Where a Paul Sadler Swimland franchisee has been unable to pay an employee directly, they have undertaken to make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund.

In addition, Paul Sadler Swimland Pty Ltd and each of the named Paul Sadler Swimland franchisees calculated and paid an additional 5% ex gratia amount of each underpayment.

If you worked for Paul Sadler Swimland Pty Ltd or any of the named Paul Sadler Swimland franchisees during the period 1 July 2010 to March 2016 or and have queries or questions relating to your employment entitlements, please contact **payinfo@paulsadlerswimland.com**.

Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.