

# PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

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

and

Breadtop Pty Ltd(ABN 25 101 360 383)

|  |  |  |
| --- | --- | --- |
| Schedule 1 |  | |
| Details |  | |
| Parties | Office of the Fair Work Ombudsman and Breadtop 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 Governance |
| **Breadtop** | Name | Breadtop Pty Ltd |
|  | ABN | 25 101 360 383 |
|  | Address | 16/71 Victoria Crescent Abbotsford VIC 3067 |
|  | Telephone | (03) 9417 4200 |
|  | Fax | (03) 9417 4211 |
|  | Contact | Clara Ho Company Accountant |

# OPERATIVE PROVISIONS:

## Background

* 1. Breadtop is an Australia-based bakery franchise selling a wide range of bread, cakes, buns and pastries. The franchise has 65 stores throughout metropolitan [Melbourne](http://en.wikipedia.org/wiki/Melbourne), [Sydney](http://en.wikipedia.org/wiki/Sydney), [Brisbane](http://en.wikipedia.org/wiki/Brisbane), [Adelaide](http://en.wikipedia.org/wiki/Adelaide), and [Canberra](http://en.wikipedia.org/wiki/Canberra) and employs around 800 full time, part time and casual staff through its network.
  2. During the period March 2011 to April 2013 the FWO received a small number of complaints concerning matters such as alleged underpayment of wages and entitlements in relation to Breadtop Pty Ltd (Breadtop) franchisees.
  3. In June 2013, the FWO and Breadtop commenced discussions with a view to the parties entering into this Deed as a proactive workplace engagement opportunity. Breadtop has stated their intention to be an employer who is compliant with Commonwealth workplace laws and an employer of choice.
  4. The parties agree as follows.

## Acknowledgments

* 1. Breadtop acknowledges that:
     1. there are opportunities for continuous improvement in relation to its workplace practices to ensure ongoing compliance with Commonwealth workplace laws;
     2. the promises it has given in this Deed are reasonable in the circumstances;
     3. the FWO may:
        1. make this Deed available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
        2. release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act* 1982 (Cth);
        3. issue a media release in relation to this Deed; and
        4. from time to time, publicly refer to this Deed;
     4. if Breadtop contravenes any of the terms of this Deed the FWO may take any enforcement action the FWO considers appropriate.

## Promise to take proactive compliance activity

* 1. Breadtop must do or cause to be done all those activities and things set out in Attachment A and B to this Deed.

## Commencement of Proactive Compliance Deed

* 1. This Deed comes into effect when both Breadtop and the FWO have executed this Deed.
  2. This Deed will expire at the end of two years after the commencement of this Deed, unless terminated earlier in accordance with its terms.

## Publicity

* 1. The FWO agrees to provide Breadtop with 24 hours to view all FWO media releases (**Releases**) arising from this Deed prior to publication by the FWO.
  2. Notwithstanding 5.1, Breadtop agrees and acknowledges that, if Breadtop make any suggested edits or amendments to the Releases, the FWO is under no obligation to accept any of them.
  3. The Releases will reflect the positive cooperation of Breadtop.

## No Inconsistent Statements

* 1. Breadtop:
     1. must not; and
     2. must ensure that each of its officers, employees or agents do not; and
     3. must use its reasonable endeavours to ensure that each of its 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.

## Termination by the FWO

* 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 Breadtopcommits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

## Independent Legal Advice

* 1. Breadtop acknowledges that:
     1. before executing this Deed, Breadtop was given the opportunity to seek independent legal and other advice of its choice;
     2. in light of any advice provided, Breadtop considered its position; and
     3. Breadtop fully understands the effect of this Deed.

## Continuing obligations

* 1. The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):
     1. clause 2 (Acknowledgements); and
     2. clause 6 (No inconsistent statements).

## Legally binding

* 1. The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

## Entire agreement

* 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:
     1. affects the meaning or interpretation of this Deed; or
     2. constitutes any collateral agreement, warranty or understanding between the FWO and Breadtop.

## Construction

* 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.
  2. Unless expressed to the contrary in this document:
     1. words in the singular include the plural and vice versa; and
     2. any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

## Severance

* 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.

## Governing law

* 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.

## Counterparts

* 1. This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

## Costs in respect of this Deed

* 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.

## Notices

* 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:
     1. if given by Breadtop to the FWO, at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
     2. if given by the FWO to Breadtop, marked for the attention of the Breadtop Contact Person with the address indicated in Schedule 1 or as otherwise notified by Breadtop.
  2. Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.
  3. Any notice, request or other communication will be deemed to be received:
     1. if delivered by hand, upon delivery;
     2. 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
     3. if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

## Date of this Deed

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

## Definitions

In this Deed:

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

**Commonwealth workplace laws** means:

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

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

**Franchisee** means an entity or person that has entered into a franchise agreement with Breadtop for the right to operate a Breadtop outlet.

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|  |  |  |  |
| Signing page |  |  |  |
| **EXECUTED BY** Breadtop Pty Ltd ABN 25 101 360 383 in accordance with section 127(1) of the Corporations Act 2001 (Cth) |  |  |  |
|  |  |  |  |
| (Signature of Director/Secretary) |  |  | (Signature of Director) |
| (Name of Director/Secretary in Full) |  |  | (Name of Director in Full) |
| **Date** |  |  |  |
| **SIGNED** for and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Office of the Fair Work Ombudsman: |  |  |  |
|  |  |  |  |
| (Printed Name) |  |  | (Signature) |
| (Title) |  |  | (Date) |
| In the presence of: |  |  |  |
| (Name of Witness in Full) |  |  | (Signature) |

**Attachment “A” (Proactive Compliance Activities)**

**Internal Communication – The Deed**

***Obligations as an Employer***

1. Within 14 days of the execution of the Deed, Breadtop will communicate the existence of the Deed to all current employees via an internal communication method such as email, internal memo or intranet and make a copy of the Deed available to all staff.
2. That communication is to be in the following form:

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

*By entering into the Deed, Breadtop demonstrates that it is committed to working with the FWO to ensure compliance with Australian workplace laws and promote a harmonious, productive and cooperative workplace.*

*Breadtop Pty Ltd has made the Deed available to all staff through <insert hyperlink or place>. You are also able to access information about entitlements and rights at work by contacting Clara Ho, who has been appointed by Breadtop Pty Ltd as an Employee Liaison Officer, or by visiting the* [*Fair Work Ombudsman website at www.fairwork.gov.au*](http://www.fairwork.gov.au/) *or speaking to a Fair Work Advisor on 13 13 94.”*

***Obligations as a Franchisor***

1. Within 14 days of the execution of the Deed, Breadtop will 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.
2. That communication is to be in the following form:

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

*By entering into the Deed, Breadtop Pty Ltd demonstrates that it is committed to working with the FWO to ensure compliance with Australian workplace laws and promote a harmonious, productive and cooperative workplace.*

*Breadtop Pty Ltd requires all franchisees to commit to ensuring compliance with workplace laws and engage with the FWO on matters arising as a result of workplace complaints.*

*Breadtop Pty Ltd has made the Deed available to all franchisees through <insert hyperlink or place>. You are also able to access information about entitlements and rights at work by contacting Clara Ho, who has been appointed by Bread Top Pty Ltd as an Employee Liaison Officer, or by visiting the* [*Fair Work Ombudsman website at www.fairwork.gov.au*](http://www.fairwork.gov.au/) *or speaking to a Fair Work Advisor on 13 13 94.”*

1. Within 28 days of the date of the execution of this Deed Breadtop 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:

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

*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 Clara Ho, who has been appointed by Breadtop Pty Ltd as an Employee Liaison Officer, or by visiting the* [*Fair Work Ombudsman website at www.fairwork.gov.au*](http://www.fairwork.gov.au/) *or speaking to a Fair Work Advisor on 13 13 94.”*

Breadtop will take reasonable steps to ensure that each franchisee makes a copy of the Deed available to its employees and any individual independent contractors engaged directly by the franchisee.

**Implement Systems and Processes**

***Obligations as an Employer***

1. Breadtop must ensure that it complies at all times and in all respects with relevant Commonwealth workplace laws by developing systems and processes to ensure ongoing compliance.
2. Breadtop 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.

***Obligations as a Franchisor***

1. Breadtop must facilitate compliance with relevant Commonwealth workplace laws by its franchisees by developing and implementing systems and processes to assist franchisees to comply with relevant Commonwealth workplace laws.
2. Breadtop 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 franchisees.

**Self-Resolution of Complaints**

***Obligations as an Employer***

1. Within seven days of receiving a workplace complaint concerning Breadtop, the FWO will notify Breadtop of the complaint and provide details supplied by the complainant.
2. Breadtop will resolve the workplace complaint and make rectification of substantiated underpayments, and other substantiated issues identified by the FWO, within 28 days of notification by the FWO.
3. Within seven days of resolving the complaint, Breadtop will provide the FWO with evidence that the workplace complaint has been resolved and identified underpayments, and other issues identified by the FWO, have been rectified.

***Obligations as a Franchisor***

1. Within seven days of receiving a workplace complaint concerning a franchisee, the FWO will notify the franchisee and Breadtop of the complaint and provide details supplied by the complainant.
2. Breadtop will assist the franchisee to resolve the workplace complaint and make rectification of the substantiated underpayments, and other substantiated issues identified by the FWO, within 28 days of notification by the FWO.
3. Within seven days of resolving the complaint, Breadtop or the franchisee 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.

***General Obligations***

1. 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.
2. Further details regarding public interest considerations may be found on the FWO website.

**Self-Audits**

***Obligations as an Employer***

1. The FWO and Breadtop acknowledge and agree that:
   1. Breadtop will undertake a self-audit to identify contraventions of the relevant Commonwealth workplace laws of a percentage of employees employed by Breadtop that may have occurred during the Self-Audit Period;

***Obligations as a Franchisor***

1. The FWO and Breadtop acknowledge and agree that:
   1. Breadtop will identify six franchises to participate in a self-audit.
   2. Breadtop will actively encourage each franchisee to undertake a self-audit to identify contraventions of the relevant Commonwealth workplace laws relating to underpayment of wages of employees employed by franchisees that may have occurred during the Self-Audit Period.
   3. If a franchisee identified by Breadtop declines to participate in a self-audit, Breadtop is to notify the FWO in writing within 28 days providing the details for the non-participation by the franchisee.

***General Obligations***

1. The scope and methodology of the proposed audits are set out in Attachment “B” (Self-Audit Process).

**Resources**

1. Breadtop must commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the Self-Audit Process.
2. Breadtop must make available a specified person or persons to act as Employee Liaison Officers for all queries from Breadtop employees, or employees of franchisees, which concern the Self–Audit Process or any complaints referred by the FWO.
3. Breadtop must notify the FWO in writing of the name or names of the Breadtop’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 Breadtop’s Employee Liaison Officer/s.
4. Breadtop 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. Breadtop must notify the FWO in writing within 7 days of any change to Breadtop’s Liaison Officer/s.
5. The FWO will identify a single national contact person (the FWO Liaison Officer) whom all queries from Breadtop can be directed. This officer may change from time to time.

**Reporting**

1. One year after the commencement of the Deed, Breadtop will provide the FWO with a report addressing the following matters:

(a) the actions by Breadtop and its franchisees to address the requirements of the Deed;

(b) the number of complaints referred to Breadtop and its franchisees;

(c) the number of complaints resolved by Breadtop and its franchisees;

(d) the average time taken to resolve; and

(e) the average amount of underpayments.

1. The report is to be provided to the FWO no later than 28 days after the completion of the reporting period.
2. At the expiry of the Deed, Breadtop will provide the FWO with a report addressing the following matters:

(a) the actions by Breadtop and its franchisees to address the requirements of the Deed;

(b) the number of complaints referred to Breadtop and its franchisees;

(c) the number of complaints resolved by Breadtop and its franchisees;

(d) the average time taken to resolve; and

(e) the average amount of underpayments.

1. The report is to be provided to the FWO no later than 28 days after the completion of the reporting period.
2. The FWO may publish the reports and will reflect the positive cooperation of Breadtop and its franchisees during the life of the Deed.
3. The FWO may publish its own report regarding the Deed and will provide Breadtop with an opportunity to comment on the report.
4. The FWO’s report will reflect the positive cooperation of Breadtop and its franchisees.

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

The FWO and Breadtop Pty Ltd (**Breadtop**) agree that the scope and methodology of the self‑audit are as follows:

1. Breadtop will conduct two separate self-audits.
2. The first self- audit will relate to employees of Breadtop Pty Ltd.
3. The first self–audit period will include a two week pay period in March 2014 agreed upon by Breadtop and the FWO.
4. The first self-audit will include 10%> of Breadtop employees comprising full time, part time and casual across most job types. The number of employees audited will not be below 15 in total.
5. The second self-audit will include a minimum of six franchises selected by Breadtop. The audit will include a minimum of five employees from each of the six selected Breadtop franchises.
6. The second self-audit period will include a two week period in November 2014 agreed upon by Breadtop and the FWO.
7. Breadtop Pty Ltd and each selected franchisee must identify each contravention of the relevant Commonwealth workplace laws including those relating to underpayments of the following during both self-audit periods:

(a) wages;

(b) Ioadings;

(c) allowances; and

(d) penalties

1. Where an agreement-based transitional instrument applies to an employee, Breadtop 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.
2. Breadtop or the selected franchisee must rectify each contravention, including identified underpayments, within 28 days of the audit period ending.
3. Breadtop must provide the FWO with an audit report relating to both audits which includes the methodology applied, details of employees audited, contraventions identified and evidence of rectification of contraventions and or underpayments within 28 days of the end of the self-audit period.
4. The FWO reserves its rights to conduct its own audit or investigation if not satisfied with the conduct of the audit or with the accuracy of the audit report.