



Australian Government

Fair Work

OMBUDSMAN

PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

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

and

Foodco Group Pty Ltd (ABN 62 792 531 007)

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Schedule 1

Details:

Parties	Office of the Fair Work Ombudsman (FWO) and Foodco Group Pty Ltd	
FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43 884 188 232
	Address	The Fair Work Ombudsman GPO Box 9887 Melbourne VIC 3001
	Telephone	(03) 9954 2648
	Email	cletus.brown@fwo.gov.au
	Attention	Cletus Brown Director – Knowledge Solutions
Employer	Name	Foodco Group Pty Ltd (ACN 007 145 057)
	ABN	62 792 531 007
	Address	Building 215, Unit 215F1 122 Lang Road Moore Park, NSW 2021
	Telephone	(02) 9302 2200
	Fax	(02) 9302 2212
	Email	joconnor@foodco.com.au
	Attention	Jenifer O'Connor National Manager of Culture and Engagement

1. Preamble

- 1.1 The Fair Work Ombudsman (**FWO**) is an independent statutory agency established under the Fair Work Act 2009 (**FW Act**) charged with the responsibility of promoting fair, harmonious and productive workplaces.
- 1.2 The main functions of the FWO are to provide advice and assistance to workplace participants and to ensure compliance with the FW Act.
- 1.3 Foodco Group Pty Ltd is a company incorporated under the *Corporations Act, 2001 (Cth)* (**Corporations Act**) and owns and operates a franchise business in Australia through its related bodies corporate.
- 1.4 Foodco Group Pty Ltd and its Franchisees are committed to complying with all legal obligations towards its employees.
- 1.5 To show its commitment to compliance and to encourage fair, harmonious and productive workplaces, Foodco Group Pty Ltd have agreed to enter into a compliance partnership with the FWO.
- 1.6 The partnership, formalised in this Deed, will place obligations on both parties and is designed to bring benefits to the FWO, Foodco Group Pty Ltd and its employees, and also to Franchisees and their employees. Both parties are committed to the success of this partnership and look forward to using it as an example of cooperative engagement to promote compliance.
- 1.7 Both parties acknowledge the importance of having systems and processes in place to ensure compliance and to monitor, and improve where appropriate, these on an on-going basis. They also acknowledge the value regular audits play in a compliance environment to provide confidence that mistakes are not being made or are corrected in a proactive manner as soon as is possible.
- 1.8 The FWO will provide assistance to Foodco Group Pty Ltd where appropriate and Foodco Group Pty Ltd will introduce or maintain, and enhance where appropriate, a number of proactive measures to promote and ensure compliance and promote productive workplaces.

2. Background

- 2.1 The FWO forms partnerships with employers who are leaders in their field and committed to achieving fair, harmonious and productive workplaces and complying with their legal obligations.

- 2.2 In early 2016, Foodco Group Pty Ltd approached the FWO with the intention of proactively engaging with the agency to ensure it and its Franchisees are compliant with Commonwealth workplace laws and it is an employer of choice.
- 2.3 After discussions, both parties agreed to enter a proactive partnership focused on ensuring compliance with Commonwealth workplace laws. In broad terms, the FWO will provide assistance to Foodco Group Pty Ltd where appropriate and Foodco Group Pty Ltd will maintain or implement the proactive measures contained in this Deed to promote and ensure compliance and promote productive workplaces.
- 2.4 The parties agree as follows:

Part I – Communication

3. **Internal Communication**

- 3.1 As a sign of the commitment of both the FWO and Foodco Group Pty Ltd to the compliance partnership, both parties will communicate its existence and its purpose to their staff.

4. **Communication to Foodco Group Pty Ltd Employees**

- 4.1 Within 14 days of the execution of the Deed, Foodco Group Pty Ltd will communicate the existence of the Deed to all current employees at Foodco Group Pty Ltd sites via an internal communication method such as email, internal memo or intranet and make a copy of the Deed available to all staff.
- 4.2 Foodco Group Pty Ltd will communicate the existence of the Deed to all future employees at Foodco Group Pty Ltd sites within 14 days of engagement.
- 4.3 That communication is to be in the following form:

“Foodco Group Pty Ltd has entered into a compliance partnership with the Office of the Fair Work Ombudsman (FWO).

We have entered into this compliance partnership because we are committed to ongoing compliance with Commonwealth workplace laws throughout our network. This partnership is to demonstrate to our staff and the broader community that we are committed to working with the FWO to promote harmonious, productive and cooperative workplaces. We believe this partnership will have a positive impact on our employees and our business.

To formalise this partnership, we have signed a Proactive Compliance Deed (Deed) with the FWO. This Deed places obligations on both parties and demonstrates our commitment to compliance with workplace laws.

We are pleased to make this Deed available to you through ◀insert hyperlink or place▶.

You can also access information about entitlements and rights at work by contacting ◀insert name and contact details of the Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Foodco Group Pty Ltd as an Employee Liaison Officer, or by visiting the [Fair Work Ombudsman website](http://www.fairwork.gov.au) at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94.”

5. **Communication by Foodco Group Pty Ltd to Franchisees**

- 5.1 Within 14 days of the execution of the Deed, Foodco Group Pty Ltd will communicate the existence of the compliance partnership 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.
- 5.2 Foodco Group Pty Ltd will communicate the existence of the Deed to all future Franchisees within 14 days of engagement.
- 5.3 That communication is to be in the following form:

"Foodco Group Pty Ltd has entered into a compliance partnership with the Office of the Fair Work Ombudsman (FWO).

We have entered into this compliance partnership because we are committed to ongoing compliance with Commonwealth workplace laws throughout our network. This partnership is to demonstrate to our staff and the broader community that we are committed to working with the FWO to promote harmonious, productive and cooperative workplaces. We believe this partnership will have a positive impact on our employees and our business.

*To formalise this partnership, Foodco Group Pty Ltd have signed a Proactive Compliance Deed (**Deed**) with the FWO. This Deed places obligations on both parties and demonstrates our commitment to compliance with workplace laws.*

We intend the partnership with the FWO to have a positive impact on the Foodco Group Pty Ltd brands. To support this, it is important that all franchisees commit to complying with all their workplace obligations and thus enhance the image of our brands. Franchise outlets play an important part in the success of the Foodco Group Pty Ltd brand and compliance with workplace laws across all outlets is vital to the ongoing success of our business.

We are pleased to make this Deed available to you through ◀insert hyperlink or place▶.

You can also access information about entitlements and rights at work by contacting ▶insert name and contact details of the Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Foodco Group Pty Ltd as an Employee Liaison Officer, or by visiting the [Fair Work Ombudsman website](http://www.fairwork.gov.au) at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94."

6. Communication to Franchisee Employees

- 6.1 Foodco Group Pty Ltd 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:

“Foodco Group Pty Ltd has entered into a compliance partnership with the Office of the Fair Work Ombudsman (FWO).

Foodco Group Pty Ltd has entered into this compliance partnership because it is committed to ongoing compliance with Commonwealth workplace laws throughout our network. This partnership is to demonstrate to all our employees and the broader community that we are committed to working with the FWO to promote harmonious, productive and cooperative workplaces. This partnership will have a positive impact on our employees and our business.

Foodco Group Pty Ltd and its franchisees are committed to working with the FWO to ensure compliance with Commonwealth workplace laws and promote harmonious, productive and cooperative workplaces. Franchise outlets play an important part in the Foodco Group Pty Ltd brand and compliance with workplace laws across all outlets is vital to the ongoing success of our business.

As a Foodco Group Pty Ltd franchise operator we too are committed to compliance with workplace relations laws.

We have 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 ◀insert name and contact details of Employee Liaison Officer appointed by entity as required by resources clause set out below▶, who has been appointed by Foodco Group Pty Ltd as an Employee Liaison Officer, or by visiting the [Fair Work Ombudsman website](http://www.fairwork.gov.au) at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94.”

7. Communication by the FWO

- 7.1 The FWO will publish an article on its intranet alerting its staff to the commencement of the partnership. This article will include reference to the nominated FWO Contact Person and instruct all contact with Foodco Group Pty Ltd to be directed to them. FWO will make information about the partnership and its commitments available to its staff throughout the life of the Deed.

Part II – Systems and Processes to promote compliance

8. *Foodco Group Pty Ltd Employees*

- 8.1 Foodco Group Pty Ltd will ensure ongoing compliance with Commonwealth workplace laws.
- 8.2 Within 28 days of the date of execution of the Deed, Foodco Group Pty Ltd will provide the FWO with details of the systems and processes already in place or to be implemented to ensure ongoing compliance throughout its network with Commonwealth workplace laws.

9. *Foodco Group Pty Ltd Franchisees*

- 9.1 Foodco Group Pty Ltd will facilitate compliance with relevant Commonwealth workplace laws by its Franchisees by having processes and procedures in place that educate, support and monitor its Franchisees.
- 9.2 Within 28 days of the date of execution of the Deed, Foodco Group Pty Ltd will provide the FWO with details of the systems and processes already in place or to be implemented to ensure ongoing compliance throughout its network with Commonwealth workplace laws.

10. *FWO Support*

- 10.1 The FWO will provide feedback on the systems and processes as provided by Foodco Group Pty Ltd to facilitate compliance.
- 10.2 Upon request, the FWO will discuss and provide the FWO view on workplace relations queries that may arise from time to time throughout Foodco Group Pty Ltd operations.

Part III – Workplace Relations Training

11. *Workplace Relations Training*

- 11.1 The FWO encourages all employers to provide relevant training, particularly workplace relations training at the human resources, pay roll, managerial and supervisory levels. Foodco Group Pty Ltd is committed to the development of its staff and its franchisees.

12. *Provision of Training*

- 12.1 Within 28 days of the commencement of this Deed, Foodco Group Pty Ltd will provide the FWO with details of the workplace relations training it provides, or, to be implemented, to human resources, pay roll, managerial and supervisory staff within Foodco Group Pty Ltd and its Franchisees. This information will be kept confidential by FWO and will not be publicised or used by the FWO in any way other than to provide feedback to Foodco Group Pty Ltd and to ensure compliance with this Deed.
- 12.2 Foodco Group Pty Ltd will establish a 'My Account' account on the fairwork.gov.au website within three months of the commencement of this Deed. Foodco Group Pty Ltd will also encourage all its Franchisees and their managers at each location to set up a 'My account' on the FWO website within three months of the commencement of this Deed or of their engagement.
- 12.3 Foodco Group Pty Ltd will also encourage all its Franchisees and their managers at each location to undertake each of the following FWO on-line learning modules within three months of the commencement of this Deed or their engagement:
- (a) Difficult conversations in the workplace;
 - (b) Hiring employees; and
 - (c) Managing performance.

13. *FWO Support*

- 13.1 The FWO will make available to Foodco Group Pty Ltd appropriate workplace relations training materials that Foodco Group Pty Ltd can use as a resource. The FWO will not be responsible for any errors that occur as a result of Foodco Group Pty Ltd altering the materials.
- 13.2 The FWO will, upon request, provide assistance to Foodco Group Pty Ltd staff accessing the FWO on-line learning modules.

Part IV – Workplace Enquiries and Self-Resolution of Requests for Assistance

14. Workplace Enquiries

- 14.1 If the FWO receives a workplace enquiry regarding Foodco Group Pty Ltd or one of its Franchisees, and the person making the enquiry has not previously raised the issue directly with Foodco Group Pty Ltd, the FWO will refer the person to the Foodco Group Pty Ltd Employee Liaison Officer or Contact Person (as identified in the Deed), unless the matter is potentially a serious contravention.
- 14.2 If the person making the enquiry has previously contacted Foodco Group Pty Ltd with the same enquiry and believes the issue was not resolved, the FWO will aim to assist.

15. Self-Resolution of Requests for Assistance

- 15.1 Both parties acknowledge that at times unintentional mistakes can occur and an employee or the employee of a Franchisee may either not receive their full entitlements or may believe they have not received their full entitlements.
- 15.2 Part of the commitment to this compliance partnership is to handle such matters in an efficient and effective manner by notifying the Foodco Group Pty Ltd Contact Person as soon as practicable once a request for assistance has been received by the FWO. The FWO and Foodco Group Pty Ltd agree that in the majority of cases these matters will be dealt with at the workplace level.
- 15.3 In line with the FWO's Compliance and Enforcement Policy, the FWO reserves its right to investigate any request for assistance that it considers potentially a Serious Contravention of the FW Act or that is in the public interest to investigate. A request for assistance that involves a potentially serious contravention may not be referred to Foodco Group Pty Ltd for self-resolution.
- 15.4 Details of the FWO's Compliance and Enforcement Policy may be found on the [FWO website](#).

16. FWO Referrals

- 16.1 The FWO will notify Foodco Group Pty Ltd within 7 days of each request for assistance received by an employee or former employee of a business operated by Foodco Group Pty Ltd (or a related body corporate) under the "Muffin Break" brand or under the "Jamaica Blue" brand and provide details of the alleged non-compliance.

- 16.2 The FWO will provide a nominated contact person for dealing with these matters.
- 16.3 The FWO will provide a template to Foodco Group Pty Ltd to be used in reporting back to the FWO on the outcome of each request for assistance.

17. *Self-Resolution by Foodco Group Pty Ltd*

- 17.1 Foodco Group Pty Ltd will attempt to resolve any matters raised in the request for assistance, including for any similarly affected employees, and rectify any identified underpayments, as well as any other issues identified by the FWO or Foodco Group Pty Ltd, within 28 days of notification by the FWO.
- 17.2 Within 7 days of resolving the matter, Foodco Group Pty Ltd will provide the FWO with evidence that the matter has been resolved and any identified underpayments and any other issues identified by the FWO or Foodco Group Pty Ltd, including to any similarly affected employees, have been rectified.
- 17.3 Where the matter cannot be resolved by agreement between Foodco Group Pty Ltd and the employee or former employee of a business operated by Foodco Group Pty Ltd (or a related body corporate) under the “Muffin Break” brand or under the “Jamaica Blue” brand within 28 days of notification by the FWO, Foodco Group Pty Ltd will provide the FWO with a written report addressing the reasons why the matter 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 7 days after the expiry of the 28 days from notification by the FWO.

18. *Self-resolution as a Franchisor*

- 18.1 Within 7 days of receiving a request for assistance alleging non-compliance from an employee or former employee of a Franchisee, the FWO will notify Foodco Group Pty Ltd and the Franchisee of the allegations and provide details supplied by the employee or former employee.
- 18.2 Foodco Group Pty Ltd will assist the Franchisee to resolve the request for assistance, including for any similarly affected employees, and take all reasonable steps to ensure the Franchisee rectifies any identified underpayments and any other issues identified by the FWO or Foodco Group Pty Ltd, within 28 days of notification by the FWO.
- 18.3 Within 7 days of resolving the matter, Foodco Group Pty Ltd or the Franchisee will provide the FWO with evidence that the matter has been resolved and any identified underpayments and other issues identified by the FWO or Foodco Group Pty Ltd, including to any similarly affected employees, have been rectified by the Franchisee.

- 18.4 Where the matter cannot be resolved by agreement between the Franchisee and the employee or former employee within 28 days of notification by the FWO, Foodco Group Pty Ltd or the Franchisee will provide the FWO with a written report addressing the reasons why the matter could not be resolved between the parties and the steps taken to resolve the matter. The completed report is to be provided to the FWO no later than 7 days after the expiry of the 28 days from notification by the FWO.

Part V – Self-auditing of the Foodco Group Pty Ltd network

19. Self-Audits

- 19.1 A key component of the compliance partnership is that Foodco Group Pty Ltd undertakes to demonstrate its commitment to compliance by undertaking a self-audit certified by an agreed independent third party. Such a 'third party' may include a certified practicing accountant (**CPA**) and/or a specialist in workplace relations, including a registered organisation such as an employer association.

20. Self-audit of Foodco Group Pty Ltd

- 20.1 The FWO and Foodco Group Pty Ltd acknowledge and agree that:
- (a) Foodco Group Pty Ltd will, at its own expense, undertake a self-audit to ensure compliance with relevant Commonwealth workplace laws;
 - (b) The FWO will provide a template to Foodco Group Pty Ltd to be used to report to the FWO on the outcome of the self-audit/s.
 - (c) Foodco Group Pty Ltd will request Franchisees undertake the self-audit to determine compliance with relevant Commonwealth workplace laws by the Franchisee during the Self-Audit Period;
 - (d) Foodco Group Pty Ltd will set a self-audit completion date for Franchisees that permits Foodco Group Pty Ltd to report the finalised self-audit to the FWO by the self-audit completion date.
 - (e) If a Franchisee declines to participate in the self-audit, Foodco Group Pty Ltd will notify the FWO in writing within 28 days of the self-audit completion date, providing the details for the non-participation by the Franchisee and the Franchisee's identity;
 - (f) Foodco Group Pty Ltd will complete the self-audit within 6 months from the commencement of the agreed self-audit period (**the self-audit completion date**).

20.2 The FWO and Foodco Group Pty Ltd agree that the scope and methodology of the self-audits will be as follows:

- (a) The self-audit period will be a 4 week period inclusive of a public holiday (**the self-audit period**) and conducted within 1 year of the execution of the Deed. The self-audit period will be agreed between the FWO and Foodco Group Pty Ltd before the commencement of the self-audit.
- (b) The self-audit will include at least 10% of all staff across all current Franchisee sites and to the businesses operated by Foodco Group Pty Ltd (or a related body corporate) under the “Muffin Break” brand or under the “Jamaica Blue” brand during the self-audit period.
- (c) The sites selected will include a proportionate mix of state, metropolitan and remote locations and will be selected by Foodco Group Pty Ltd in consultation with and agreed to by the FWO.
- (d) Each self-audit will assess, at a minimum, compliance with relevant Commonwealth workplace laws with particular regard to:
 - i. classification and employment status of employees;
 - ii. accuracy and consistency of employee records, including hours worked;
 - iii. leave and termination payments; and
 - iv. confirmation that the employees are paid the minimum ordinary hourly rates, loadings, allowances and penalty rates (where relevant).

20.3 The self-audit will not relate to such matters as agreed by FWO and Foodco Group Pty Ltd from time to time.

20.4 Foodco Group Pty Ltd will:

- (a) (in relation to the businesses operated by Foodco Group Pty Ltd (or a related body corporate) under the “Muffin Break” brand or under the “Jamaica Blue” brand): rectify any contraventions of relevant Commonwealth workplace laws, including any identified underpayments relating to its employees; and
- (b) (in relation to current Franchisee sites): assist the Franchisee to rectify any contraventions of relevant Commonwealth workplace laws, including any identified underpayments within 28 days of the self-audit completion date.

20.5 Foodco Group Pty Ltd will notify the FWO of the identity of any Franchisee that does not rectify identified contraventions within 28 days of the self-audit completion date and the reasons why they did not make the requested rectification.

- 20.6 Foodco Group Pty Ltd will provide the FWO with a signed audit report from the third party engaged by Foodco Group Pty Ltd to certify the self-audit process and outcome within 28 days of the self-audit completion date. The self-audit report will include details such as the methodology applied, details of employees audited, any contraventions identified and evidence of any rectification of contraventions and/or underpayments within 28 days of the self-audit completion date.
- 20.7 Foodco Group Pty Ltd will identify and document in a discrete report the causes of any contraventions of relevant Commonwealth workplace laws including the steps undertaken to redress the contraventions, with a view to preventing future contraventions. Foodco Group Pty Ltd will provide this report to the FWO within 28 days of the self-audit completion date.
- 20.8 The FWO reserves the right to conduct its own audit or investigation if it is not satisfied with the conduct of the self-audit or with the accuracy of the audit reports.

21. FWO Support

- 21.1 Prior to the self-audit period, the FWO will, upon request, provide appropriate technical advice on the workplace obligations/entitlements to be audited.
- 21.2 The FWO will provide suitable templates which must be used for the self-audit and/or the audit reports.

Part VI – Reporting

22. *Reporting*

22.1 One year after the commencement of the Deed (**the reporting period**), Foodco Group Pty Ltd will prepare a report that will be provided to the FWO addressing the following matters:

- (a) the actions taken by Foodco Group Pty Ltd to address the requirements of the Deed;
- (b) a summary of the outcomes of any requests for assistance referred;
- (c) a review of the systems and processes in place with an evaluation on their effectiveness of promoting compliance of workplace laws;
- (d) an analysis of the various workplace relations issues that presented during the first year of the life of the Deed, including the responses to the same undertaken by Foodco Group Pty Ltd;
- (e) the workplace relations training conducted for appropriate personnel including any proposed changes;
- (f) a summary of the self-audit outcomes;
- (g) any identified benefits from being involved in the compliance partnership; and
- (h) any learnings from the compliance partnership.

22.2 The report will be provided to the FWO no later than 28 days after the completion of the reporting period. The report will include a signed report from the third party engaged by Foodco Group Pty Ltd to certify the self-audit process and outcome.

22.3 At the expiry of the Deed (**the second reporting period**), Foodco Group Pty Ltd will prepare a final report that will be provided to the FWO addressing the following matters:

- (a) the actions taken by Foodco Group Pty Ltd to address the requirements of the Deed;
- (b) a summary of the outcomes of any requests for assistance referred;
- (c) a review of the systems and processes in place to promote compliance with commentary on their effectiveness;

- (d) an analysis of the various workplace relations issues that presented during the life of the Deed, including the responses to the same undertaken by Foodco Group Pty Ltd;
 - (e) the workplace relations training conducted for appropriate personnel including how the training could be improved;
 - (f) a summary of the self-audit outcomes; and
 - (g) any learnings from the compliance partnership.
- 22.4 The final report will be provided to the FWO no later than 28 days after the second reporting period. The report will include a signed report from the third party engaged by Foodco Group Pty Ltd to certify the self-audit process and outcome.
- 22.5 The FWO may publish the report (including the third party report) and in doing so, will reflect the positive cooperation of Foodco Group Pty Ltd during the life of the Deed.
- 22.6 The FWO may publish its own report regarding the Deed and will provide Foodco Group Pty Ltd with an opportunity to comment on the report. The FWO's report will reflect the positive engagement of Foodco Group Pty Ltd.

Part VII – Meetings

23. *Meetings between FWO and Foodco Group Pty Ltd*

- 23.1 To ensure a collaborative and meaningful ongoing compliance partnership, both the FWO and Foodco Group Pty Ltd agree to meet formally at least twice per annum. These meetings will be in person.
- 23.2 Meetings will include, but not be limited to, the following issues:
- (a) Progress and feedback on the requirements of and activities associated with implementing the terms of the Deed;
 - (b) Ongoing compliance relationship between the FWO and Foodco Group Pty Ltd;
 - (c) Number, nature and outcomes related to workplace enquiries and requests for assistance;
 - (d) Workplace compliance issues and steps taken by Foodco Group Pty Ltd to maintain and improve systems and processes to ensure compliance within its network;
 - (e) Self-audit process and outcomes.

Part VIII – Resources

24. Resources

- 24.1 Foodco Group Pty Ltd will commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the Deed.
- 24.2 Foodco Group Pty Ltd has identified in Schedule 1 to the Deed a single national contact person (**Foodco Group Pty Ltd Contact Person**) to whom all queries from the FWO which concern the implementation of the Deed, or any requests for assistance referred by the FWO, can be directed. Foodco Group Pty Ltd will notify the FWO in writing within 7 days of any change to Foodco Group Pty Ltd national contact person.
- 24.3 Foodco Group Pty Ltd will make available a specified person or persons to act as Foodco Group Pty Ltd Employee Liaison Officers for all queries from Foodco Group Pty Ltd employees, or employees of franchisees which concern the Self-Audit Process, workplace entitlements or any requests for assistance referred by the FWO.
- 24.4 The FWO will identify a single national contact person (**the FWO Contact Person**) whom all queries from Foodco Group Pty Ltd can be directed. The FWO will notify Foodco Group Pty Ltd in writing within 7 days of any change to the FWO national contact person.

Part IX – Procedural Terms

25. **Acknowledgements**

25.1 Foodco Group Pty Ltd acknowledges that:

(a) there are opportunities for continuous improvement in relation to its workplace practices to ensure ongoing compliance with Commonwealth workplace laws;

(b) the promises it has given in this Deed are reasonable in the circumstances;

(c) the FWO may during the term of the Deed:

i. make this Deed available for public inspection, including by posting it on the FWO website at www.fairwork.gov.au;

ii. release a copy of this Deed pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);

iii. issue media release(s) in relation to this Deed;

iv. use the Foodco Group Pty Ltd corporate logo, the “Muffin Break” logo and the “Jamaica Blue” logo on www.fairwork.gov.au for the purpose only of informing users of the website of the existence and purpose of this Deed; and

v. from time to time, publicly refer to this Deed;

(d) if Foodco Group Pty Ltd contravenes any of the terms of this Deed the FWO may take any enforcement action the FWO considers appropriate.

26. **Promise to take proactive compliance activity**

26.1 Foodco Group Pty Ltd will do or cause to be done all those activities and things set out in the Deed.

26.2 The FWO will also provide assistance as outlined in the Deed.

27. **Commencement of Proactive Compliance Deed**

27.1 This Deed comes into effect when both Foodco Group Pty Ltd and the FWO have executed this Deed.

27.2 This Deed will expire at the end of 2 years after the commencement of this Deed, unless terminated earlier in accordance with its terms.

28. **Publicity**

- 28.1 The FWO agrees to provide Foodco Group Pty Ltd with 1 business day to view all FWO media releases (**releases**) arising from this Deed prior to publication by the FWO.
- 28.2 Notwithstanding 28.1, if Foodco Group Pty Ltd make any suggested edits or amendments to the releases, the FWO agrees to consider Foodco Group Pty Ltd's suggested edits or amendments prior to making any release.
- 28.3 The releases will reflect the positive cooperation of Foodco Group Pty Ltd and their commitment to ensuring compliance with Commonwealth workplace laws.
- 28.4 FWO agrees and acknowledges that Foodco Group Pty Ltd may, subject to clause 28.5 below, issue its own media releases in relation to this Deed.
- 28.5 Foodco Group Pty Ltd agrees to provide FWO with 1 business day to view all Foodco Group Pty Ltd releases arising under this Deed prior to publication by Foodco Group Pty Ltd.

29. *No Inconsistent Statements*

- 29.1 Foodco Group Pty Ltd:
- (a) will not, without good reason; and
 - (b) will take reasonable steps to communicate to its officers, employees or agents that they should not;

make any public statement, which conveys or implies or reasonably conveys or implies anything inconsistent with the Acknowledgements made in this Deed.

30. *Termination*

- 30.1 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 Foodco Group Pty Ltd commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.
- 30.2 Without prejudice to any right or remedy Foodco Group Pty Ltd may have, at any time, Foodco Group Pty Ltd may by notice in writing, terminate this Deed if FWO commits, in the opinion of Foodco Group Pty Ltd, a breach or otherwise fails to observe a term or terms of this Deed and fails to rectify any such breach or failure within a reasonable time, not exceeding 30 days, after receipt of notice from Foodco Group Pty Ltd providing reasonable particulars of the breach or failure.

31. *Independent Legal Advice*

31.1 Foodco Group Pty Ltd acknowledges that:

- (a) before executing this Deed, Foodco Group Pty Ltd was given the opportunity to seek independent legal and other advice of its choice;
- (b) in light of any advice provided, Foodco Group Pty Ltd considered its position; and
- (c) Foodco Group Pty Ltd fully understands the effect of this Deed.

32. Continuing obligations

32.1 The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):

- (a) clause 25 (Acknowledgements); and
- (b) clause 29 (No inconsistent statements).

33. Legally binding

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

34. Entire agreement

34.1 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:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and Foodco Group Pty Ltd.

35. Construction

35.1 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.

35.2 Unless expressed to the contrary in this document:

- (a) words in the singular include the plural and vice versa; and
- (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

36. Severance

36.1 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in

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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.

37. *Governing law*

37.1 This Deed shall be construed in accordance with the laws for the time being of the State of New South Wales and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

38. *Counterparts*

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

39. *Costs in respect of this Deed*

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

40. *Notices*

40.1 Any notice, request or other communication to be given or served pursuant to this Deed will be in writing and dealt with as follows:

- (a) if given by Foodco Group Pty Ltd to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
- (b) if given by the FWO to Foodco Group Pty Ltd, marked for the attention of the Foodco Group Pty Ltd Contact Person with the address indicated in Schedule 1 or as otherwise notified by Foodco Group Pty Ltd.

40.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.

40.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) 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

(c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

41. *Date of this Deed*

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

Part X – Definitions

In this Deed:

Commonwealth means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman;

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*.

Foodco Group Pty Ltd Contact Person means the person nominated by Foodco Group Pty Ltd in Schedule 1 to this Deed, or any other person specified by Foodco Group Pty Ltd in writing and notified to the FWO.

Foodco Group Pty Ltd Employee Liaison Officer/s means any person nominated by Foodco Group Pty Ltd to answer workplace relations and other enquiries from employees and from franchisees and their employees.

Deed means this Proactive Compliance Deed, including any Schedules;

Fair Work Ombudsman Contact Person means the person nominated by the Fair Work Ombudsman, or any other person specified by the Fair Work Ombudsman in writing and notified to Foodco Group Pty Ltd;

Franchisee means an entity or person that has entered into a franchise agreement with Foodco Group Pty Ltd (or a related bodies corporate), to operate a franchised business under the “Muffin Break” brand or under the “Jamaica Blue” brand.

FW Act means the *Fair Work Act 2009* (Cth);

FWO means the Fair Work Ombudsman;

Request for Assistance means a request made to the Fair Work Ombudsman using a Request for Assistance – Workplace dispute form.

Related company means a related body corporate as defined in the *Corporations Act 2001* (Cth).

Serious contravention of the FW Act can include:

- (a) an apparent contravention of any of the general protections provisions contained in Part 3-1 of the FW Act
- (b) multiple or deliberate contraventions of an employer's record keeping obligations in relation to employee records contained in Part 3-6 Division 3 of the FW Act and FW Regulations
- (c) one or more apparent contraventions giving rise to underpayments of more than \$5,000 in total (not per employee)
- (d) a failure to comply with a Notice to Produce issued by a Fair Work Inspector under section 712 or a Compliance Notice issued under section 716 of the FW Act.

Signing Page

EXECUTED BY Foodco Group Pty Ltd in accordance with section 127(1) of the
Corporations Act 2001 (Cth)



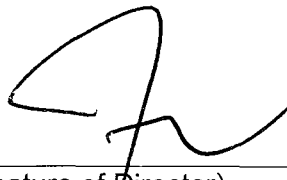
(Signature of Director/Secretary)

Serge Infanti

(Name of Director/Secretary)

12/12/2016

(Date)



(Signature of Director)

Robert Fitzgerald

(Name of Director)

12/12/2016

(Date)


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

MICHAEL CAMPBELL

(Printed Name)

DEPUTY FAIR WORK OMBUDSMAN

(Title)



(Signature)

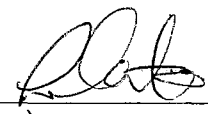
18/1/2017

(Date)

In the presence of:

LOUISE CATO

(Name of witness in full)



(Signature)