



# DECISION

*Fair Work Act 2009*

s.185 - Application for approval of a single-enterprise agreement

## **Collins Restaurants Management Pty Ltd & Collins Restaurants NSW Pty Ltd**

(AG2014/6545)

## **KFC TEAM MEMBERS' ENTERPRISE AGREEMENT - QUEENSLAND AND TWEED HEADS (NSW) 2014 - 2017**

Fast food industry

COMMISSIONER BULL

SYDNEY, 9 SEPTEMBER 2014

*Application for approval of the KFC Team Members' Enterprise Agreement - Queensland and Tweed Heads (NSW) 2014 - 2017.*

[1] An application has been made for approval of an enterprise agreement known as the *KFC Team Members' Enterprise Agreement - Queensland and Tweed Heads (NSW) 2014 - 2017* (the Agreement). The application was made pursuant to s.185 of the *Fair Work Act 2009* (the Act). The Agreement is a single-enterprise agreement.

[2] On 18 July 2014, the Commission wrote to the Applicant via its representative and The Australian Workers' Union (AWU) and the Shop, Distributive and Allied Employees Association (SDA), as bargaining representatives for the Agreement, in relation to concerns it had with the Agreement. In particular, the concerns related to the dispute settlement procedure, penalties and uniform allowance.

[3] Correspondence was received from the Applicant on 25 July and 4 September 2014.

### **Undertakings**

#### Dispute settlement procedure

[4] Upon request from the Commission, the Applicant has provided an undertaking with respect to clause 6.1 - **Grievance and dispute settling procedure**, of the Agreement. In particular, that the dispute settlement procedure in the Agreement will apply to any disputes that arise in relation to the National Employment Standards as per s.186(6)(a)(ii) of the Act.

#### Better off overall test

[5] In its correspondence to the Applicant and the SDA and the AWU, the Commission noted that the Agreement provides for a number of penalties that are less than the penalties

provided under the *Fast Food Industry Award 2010* (the Award), being the relevant modern award for the purpose of the better off overall test. In particular, the Agreement provides a lesser penalty with respect to late night and early morning penalties and public holidays. Further, the Agreement does not provide weekend penalties that would be afforded to employees under the Award.

[6] In addition to these concerns, the Commission also noted that the Agreement provides that laundering of uniforms will be at the employee's expense, whereas, the Award provides for a special clothing allowance for full-time employees of \$6.25 per week and part-time or casual employees an allowance of \$1.25 per shift.

[7] The Commission requested the Applicant to provide a number of indicative rosters and calculations to demonstrate how employees are better off overall under the Agreement.

[8] With respect to the uniform allowance, the Applicant submits that the additional 9% buyout provided for at sub clause 9.1.1(b) of the Agreement accommodates the allowance employees would have received under the Award.

[9] With respect to the penalty rates, the Applicant provided a number of indicative rosters and calculations to demonstrate employees are better off overall under the Agreement. Upon review of the rosters and calculations the matter was listed for a telephone conference.

[10] The Commission held a conference via telephone on 3 September 2014, to discuss concerns it had based on the calculations and correspondence that had been sent to the Commission on 25 July 2014. In particular, the calculations that had been provided to the Commission demonstrated that some employees were not better off overall, where the employees work the majority of hours on weekends.

[11] Upon request from the Commission, the Applicant has provided an undertaking to ensure that all new team members employed after the date of approval of this Agreement will be rotated through the week or the applicable roster cycle to ensure that at all times they are able to benefit from the 9% buyout of penalty rates and so that they will not be disadvantaged when compared to the penalty rates for weekend work as provided for in the Award.

[12] A further undertaking has been provided by the Applicant that all team members who are rostered for ordinary hours between the hours of 12:30am to 5:00am at the Kangaroo Point Restaurant shall continue to receive a 50% penalty rate for such hours and that the employer has no intention to expand late trading during these hours beyond Kangaroo Point.

[13] Upon review of the correspondence and undertakings, I am satisfied the Agreement meets the better off overall test.

[14] These undertakings are taken to be a term of the Agreement. A copy of the undertakings is attached at **Annexure A**.

[15] Pursuant to s.190(4) of the Act, the SDA and the AWU have been made aware of the undertakings provided. The bargaining representatives have not advised of any concerns with the undertakings provided.

[16] The undertakings are not so substantial that if asked to vote again the employees who voted would not approve the Agreement. I am therefore satisfied that the undertakings do not result in a substantial change to the Agreement as per s.190(3)(b) of the Act.

[17] The Agreement will cover all team members (level 1 and level 2) employed by the employer in all KFC restaurants throughout Queensland and Tweed Heads in New South Wales. I am satisfied that pursuant to s.186(3A) of the Act, this group is fairly chosen as being geographically or organisationally distinct.

[18] I am satisfied that each of the requirements of ss.187 and 188 of the Act as are relevant to the application for approval have been met.

[19] The Australian Workers' Union and the Shop, Distributive and Allied Employees Association being bargaining representatives for the Agreement, have given notice under s.183 of the Act that they want the Agreement to cover them. In accordance with s.201(2) I note that the Agreement covers these organisations.

[20] The Agreement is approved. In accordance with section 54(1), the Agreement will operate from 16 September 2014. The nominal expiry date of the Agreement is 30 June 2017.

[21] This decision is to be brought to the attention of the employees.



COMMISSIONER

Annexure A



**COLLINS FOODS LIMITED**

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3 September 2014

Commissioner Bull  
Fair Work Commission  
Level 10, Terrace Tower  
80 William Street  
East Sydney NSW 2011

By email to: [chambers.bull.c@fwc.gov.au](mailto:chambers.bull.c@fwc.gov.au)

Re: AG2014/6545 - Application by Collins Restaurants Management Pty Ltd & Collins Restaurants NSW Pty Ltd for approval of the KFC Team Members' Enterprise Agreement - Queensland and Tweed Heads (NSW) 2014-2017

**Undertakings**

I, Judy A Fenton, Human Resources Manager, of the above mentioned applicants give the following undertakings arising from the telephone conference of Wednesday, 3 September 2014 before the Commission:

**Undertaking 1**

In respect to Clause 6.1 of the proposed Agreement, the Employers will apply the Dispute Settlement Procedure to any Disputes that relate to the National Employment Standards (NES) in accordance with S186 (6) (a) (ii) of the Fair Work Act 2009.

**Undertaking 2**

The Employers will ensure that all new Team Members employed after the date of approval of this Agreement will be rotated through the week or the applicable roster cycle to ensure that at all times they are able to benefit from the 9% buyout of penalty rates and so that they will not be disadvantaged when compared to penalty rates for Weekend Work as provided for in the *Fast Food Award 2010*.

**Undertaking 3**

All Team Members subject to this Agreement who are rostered for ordinary hours between the hours of 12.30am to 5.00am at the Kangaroo Point Restaurant shall continue to receive a 50% penalty rate for such hours. The Employer has no intention to expand late trade during these hours beyond Kangaroo Point. (It is to be noted that Kangaroo Point is the only Restaurant so trading during these hours).

[www.collinsfg.com.au](http://www.collinsfg.com.au)



Yours faithfully,  
**COLLINS RESTAURANTS MANAGEMENT PTY LTD**  
**COLLINS RESTAURANTS NSW PTY LTD**

A handwritten signature in black ink, appearing to read 'J Fenton', written over a light grey rectangular background.

Judy A Fenton  
**HUMAN RESOURCES MANAGER**

Copies to SDA and AWU (via Email)

Note - this agreement is to be read together with an undertaking given by the employer. The undertaking is taken to be a term of the agreement. A copy of it can be found at the end of this agreement.

## **FAIR WORK ACT 2009**

## **ENTERPRISE AGREEMENT**



# **KFC TEAM MEMBERS' ENTERPRISE AGREEMENT QUEENSLAND AND TWEEDS HEADS NSW 2014 - 2017**

## **BETWEEN**

**COLLINS RESTAURANTS MANAGEMENT PTY LTD AND  
COLLINS RESTAURANTS NSW PTY LTD;**

**AND**

**IT'S EMPLOYEES CLASSIFIED  
AS TEAM MEMBERS**

**AND**

**THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION**

**AND**

**THE AUSTRALIAN WORKERS' UNION**

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## **PART 2 APPLICATION AND OPERATION**

### **2.1 TITLE; OPERATIVE DATE AND TERM**

2.1.1 This agreement is to be known as the KFC Team Members' Enterprise Agreement – Queensland and Tweed Heads (NSW) 2014 - 2017 (herein after referred to as the "Agreement"). This Agreement replaces the KFC Qld Team Members' Agreement Collins Restaurants Management Pty Ltd 2009 - 2012 and the Collins Restaurants NSW Agreement 2001.

2.1.2 The terms and conditions of this Agreement will operate 7 days after the date of approval by the Fair Work Commission (FWC). Notwithstanding this the parties have agreed that the Agreement will operate from 2 June 2014 or the first full pay week following a successful ballot of Employees to approve the Agreement (whichever happens last). The Agreement will have a nominal expiry date of 30 June 2017.

2.1.3 This Agreement will continue past its nominal expiry date until replaced or cancelled in accordance with the Act.

### **2.2 PARTIES TO AGREEMENT AND PARTIES BOUND**

2.2.1 The parties to this Agreement are – Collins Restaurants Management Pty Ltd (ABN 24093912979) and Collins Restaurants NSW Pty Ltd (ABN 32094786142) (herein after referred to as the "Employer"); Employees appointed and classified under this Agreement (herein after referred to as "Employees"); and the respective Unions.

2.2.2 This Agreement is legally binding upon the Employer; the Employees; the Unions and their members.

### **2.3 COVERAGE OF AGREEMENT**

2.3.1 This Agreement shall apply to the Employer and all Team Members classified under this Agreement employed in the Employer's KFC Operations in Queensland (Qld) and New South Wales (NSW).

2.3.2 This Agreement does not apply to any Employee who is appointed as a Trainee Manager; Assistant Manager or Restaurant General Manager or who has the right to hire and fire and/or acts in any way in a managerial role.

## 2.4 DEFINITIONS

- 2.4.1 "Act" means the Fair Work Act 2009 as amended or replaced from time to time.
- 2.4.2 "Commission" means Fair Work Commission.
- 2.4.3 "Team Member" is an Employee of the Employer other than those Employees excluded by Clause 2.3.2.
- 2.4.4 "Employee Level 1" means an Employee who has commenced training or has been certified to competently perform designated operations functions or an Employee engaged in cleaning duties inside or outside an outlet.
- 2.4.5 "Employee Level 2" means a senior Employee who is proficient in all operations functions and who is appointed by the Employer to perform the role of shift supervisor and supervises Employees at Level 1. Such level does not apply to Employees engaged in basic one-on-one training.
- 2.4.6 "Union" means the Shop, Distributive and Allied Employees' Association or The Australian Workers' Union.

## PART 3 NATIONAL EMPLOYMENT STANDARDS (NES)

The National Employment Standards together with this Agreement contain the minimum conditions of employment for employees covered by the Agreement. The NES is the current set of legislated minimum employment entitlements.

The NES currently provides for the following:

- An average of 38 ordinary hours per week for full-time employees;
- An employee with 12 month's service has a right to up to 12 months unpaid Parental Leave and the right to request additional unpaid leave for a further 12 months.
- Four (4) week's annual leave per annum for full-time employees; pro-rata for Part-Time employees
- Ten (10) days per annum paid Personal Leave; pro-rata for Part-Time employees
- Two days unpaid Carer's Leave per occasion for Casuals and employees who have exhausted Leave entitlements
- Up to two (2) days paid Compassionate Leave per permissible occasion
- Paid Jury Service leave and unpaid leave for eligible community service activities
- Long Service Leave
- Public Holidays
- Notice of termination and Redundancy pay – subject to certain exclusions; and
- The provision of a Fair Work Information Statement for new employees

No term of this Agreement will operate to exclude the NES or any provision of the NES, or disadvantage an employee in any respect when compared to the NES.

## **PART 4 CONSULTATION TERM**

**4.1.1** This term applies if the Employer:

- (a) has made a definite decision to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees; or
- (b) proposes to introduce a change to the regular roster or ordinary hours of work of Employees.

### **Major change**

**4.1.2** For a major change referred to in Clause 4.1.1(a):

- (a) the Employer must notify the relevant Employees of the decision to introduce the major change; and
- (b) Clauses 4.1.3 to 4.1.9 apply.

**4.1.3** The relevant Employees may appoint a representative for the purposes of the procedures in this term.

**4.1.4** If:

- (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- (b) the Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

**4.1.5** As soon as practicable after making its decision, the Employer must:

- (a) discuss with the relevant Employees:
  - (i) the introduction of the change; and
  - (ii) the effect the change is likely to have on the Employees; and
  - (iii) measures the employer is taking to avert or mitigate the adverse effect of the change on the Employees; and
- (b) for the purposes of the discussion—provide, in writing, to the relevant Employees:
  - (i) all relevant information about the change including the nature of the change proposed; and

- (ii) information about the expected effects of the change on the Employees;  
and
- (iii) any other matters likely to affect the Employees.

4.1.6 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

4.1.7 The Employer must give prompt and genuine consideration to matters raised about the major change by the relevant Employees.

4.1.8 If a term in this Agreement provides for a major change to production, program, organisation, structure or technology in relation to the enterprise of the Employer, the requirements set out in Clause 4.1.2(a) and Clauses 4.1.3 and 4.1.5 are taken not to apply.

4.1.9 In this term, a major change is **likely to have a significant effect on employees** if it results in:

- (a) the termination of the employment of Employees; or
- (b) major change to the composition, operation or size of the Employer's workforce or to the skills required of Employees; or
- (c) the elimination or diminution of job opportunities (including opportunities for promotion or tenure); or
- (d) the alteration of hours of work; or
- (e) the need to retrain Employees; or
- (f) the need to relocate Employees to another workplace; or
- (g) the restructuring of jobs.

#### **Change to regular roster or ordinary hours of work**

4.1.10 For a change referred to in clause 4.1.1(b):

- (a) the Employer must notify the relevant Employees of the proposed change; and
- (b) Clauses 4.1.11 to 4.1.15 apply.

4.1.11 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

4.1.12 If:

- (a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- (b) the Employee or Employees advise the Employer of the identity of the representative;

the Employer must recognise the representative.

4.1.13 As soon as practicable after proposing to introduce the change, the Employer must:

- (a) discuss with the relevant Employees the introduction of the change; and
- (b) for the purposes of the discussion—provide to the relevant Employees:
  - (i) all relevant information about the change, including the nature of the change; and
  - (ii) information about what the employer reasonably believes will be the effects of the change on the Employees; and
  - (iii) information about any other matters that the Employer reasonably believes are likely to affect the Employees; and
- (c) invite the relevant Employees to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

4.1.14 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employees.

4.1.15 The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employees.

4.1.16 In this term:

**relevant Employees** means the Employees who may be affected by a change referred to in Clause 4.1.1.

## **PART 5 FLEXIBILITY**

### **5.1 INDIVIDUAL FLEXIBILITY TERM**

5.1.1 An Employer and Employee covered by this Agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the Agreement if:

- (a) the Agreement deals with 1 or more of the following matters:
  - (i) arrangements about when work is performed;
  - (ii) overtime rates;
  - (iii) penalty rates;
  - (iv) allowances;
  - (v) leave loading; and
- (b) the arrangement meets the genuine needs of the Employer and Employee in relation to 1 or more of the matters mentioned in paragraph (a); and
- (c) the arrangement is genuinely agreed to by the Employer and Employee.

5.1.2 The Employer must ensure that the terms of the individual flexibility arrangement:

- (a) are about permitted matters under section 172 of the Fair Work Act 2009; and
- (b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
- (c) result in the Employee being better off overall than the Employee would be if no arrangement was made.

5.1.3 The Employer must ensure that the individual flexibility arrangement:

- (a) is in writing; and
- (b) includes the name of the Employer and Employee; and
- (c) is signed by the Employer and Employee and if the Employee is under 18 years of age, signed by a parent or guardian of the Employee; and
- (d) includes details of:
  - (i) the terms of the Agreement that will be varied by the arrangement; and
  - (ii) how the arrangement will vary the effect of the terms; and
  - (iii) how the Employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
- (e) states the day on which the arrangement commences.

5.1.4 The Employer must give the Employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.

5.1.5 The Employer or Employee may terminate the individual flexibility arrangement:

(a) by giving no more than 28 days written notice to the other party to the arrangement; or

(b) if the Employer and Employee agree in writing — at any time.

## **5.2 INCIDENTAL AND PERIPHERAL TASKS**

5.2.1 Employees are to be available to perform a wide range of duties, including work which is incidental or peripheral to their main tasks or functions.

5.2.2 The assignment of incidental or peripheral tasks to an Employee or a class of Employees shall:

(a) be consistent with the efficient performance of the Employee's main tasks or functions;

(b) be subject to the Employee having the skills or competence to perform the initial tasks.

## **5.3 MIXED FUNCTIONS**

5.3.1 Where any Employee on any one (1) day performs two (2) or more classes of work to which a differential rate fixed by this Agreement is applicable, such Employee if employed for more than four (4) hours on the class or classes of work carrying a higher rate shall be paid in respect of the whole time during which they work on that day at the same rate, which shall be at the highest rate fixed by such Agreement in respect of any of such classes of work, and if employed for four (4) hours or less the class or classes of work carrying a higher rate shall be paid at such highest rate for the shift.

# **PART 6 CONCILIATION, DISPUTE AND ANTI-DISCRIMINATION**

## **6.1 GRIEVANCE AND DISPUTE SETTLING PROCEDURE**

6.1.1 The matters to be dealt with in this procedure shall include all grievances or disputes between an Employee and an Employer in respect to any industrial matter and all other matters that the parties agree on and are specified herein. Such procedures shall apply to a single Employee or to any number of Employees.

- 6.1.2 In the event of an Employee having a grievance or dispute the Employee shall in the first instance attempt to resolve the matter with the Manager on Duty, who shall respond to such request as soon as reasonably practicable under the circumstances. Where the dispute concerns alleged actions of the Manager on Duty the Employee may bypass this level in the procedure.
- 6.1.3 If the grievance or dispute is not resolved under Clause 6.1.2, the Employee or the Employee's representative may refer the matter to the next higher level of management for discussion. Such discussion should, if possible, take place within 24 hours after the request by the Employee or the Employee's representative.
- 6.1.4 If the grievance involves allegations of unlawful discrimination by a Supervisor or Manager the Employee may commence the grievance resolution process by reporting the allegations to the next level of management beyond that of the Supervisor or Manager concerned.
- 6.1.5 If the grievance or dispute is still unresolved after discussions mentioned in Clause 6.1.3, the matter shall, in the case of a member of the Union, be reported to the relevant officer of the Union and the senior management of the Employer. An Employee who is not a member of the Union may report the grievance or dispute to Senior management or the nominated industrial representative. This should occur as soon as it is evident that discussions under Clause 6.1.3 will not result in resolution of the dispute.
- 6.1.6 If, after discussion between the parties, or their nominees mentioned in Clause 6.1.5, the dispute remains unresolved after the parties have genuinely attempted to achieve a settlement thereof, then notification of the existence of the dispute is to be given to the Commission in accordance with the provisions of the Act.
- 6.1.7 Whilst all of the above procedure is being followed, normal work shall continue except in the case of a genuine safety issue.
- 6.1.8 The status quo existing before the emergence of the grievance or dispute is to continue whilst the above procedure is being followed.
- 6.1.9 All parties to the dispute shall give due consideration to matters raised or any suggestion or recommendation made by the Commission with a view to the prompt settlement of the dispute.
- 6.1.10 Any Order or Decision of the Commission (subject to the parties' right of appeal under the Act) will be final and binding on all parties to the dispute.



6.1.11 Discussions at any stage of the procedure shall not be unreasonably delayed by any party, subject to acceptance that some matters may be of such complexity or importance that it may take a reasonable period of time for the appropriate response to be made. If genuine discussions are unreasonably delayed or hindered, it shall be open to any party to give notification of the dispute in accordance with the provisions of the Act.

## **6.2 ANTI-DISCRIMINATION**

6.2.1 It is the intention of the parties to this Agreement to prevent and eliminate discrimination as defined by the Queensland Anti-Discrimination Act 1991, the NSW Anti-Discrimination Act 1977 and the Fair Work Act 2009 as amended from time to time, which includes:

- (a) discrimination on the basis of sex, marital status, family responsibilities, pregnancy, parental status, age, race, impairment, religion, political belief or activity, trade union activity, lawful sexual activity and association with, or relation to, a person identified on the basis of the above attributes;
- (b) sexual harassment; and
- (c) racial and religious vilification.

6.2.2 Accordingly in fulfilling their obligations under the grievance and disputes settling procedure in Clause 6.1, the parties to this Agreement must take reasonable steps to ensure that neither the Agreement provisions nor their operation are directly or indirectly discriminatory in their effects.

6.2.3 Under the Queensland Anti-Discrimination Act 1991, the NSW Anti-Discrimination Act 1977 and the Fair Work Act 2009 it is unlawful to victimise an Employee because the Employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

6.2.4 Nothing in this Clause 6.2 is to be taken to affect:

- (a) any different treatment (or treatment having different outcomes) which is specifically exempted under the Queensland Anti-Discrimination Act 1991 and the NSW Anti-Discrimination Act 1977; or
- (b) an Employee, Employer or registered organisation, pursuing matters of discrimination, including by application to the Human Rights and Equal Opportunity Commission/Anti-Discrimination Commission Queensland and the Anti-Discrimination Board NSW.

## **PART 7 TYPES OF EMPLOYMENT**

### **7.1 FULL-TIME EMPLOYEE**

- 7.1.1 A "Full -Time Employee" is an Employee engaged to work thirty-eight (38) hours per week.
- 7.1.2 A Full -Time Employee shall be paid at the appropriate weekly rate specified in Clause 9.1.1 and subject to the appropriate percentage prescribed by Clause 9.1.2.

### **7.2 PART-TIME EMPLOYEE**

- 7.2.1 Part-Time Employees covered by this Agreement shall be paid at the rate of 1/38<sup>th</sup> of the ordinary weekly rate prescribed for the class of work performed in accordance with Clause 9.1.1 and subject to the appropriate percentage prescribed by Clause 9.1.2.
- 7.2.2 A Part-Time Employee is one who works not less than ten (10) hours per week and not more than thirty-five (35) hours over no more than five (5) days per week, provided that the foregoing may be amended so that Part-Time Employees may be rostered for up to a maximum of thirty-seven (37) hours to meet seasonal demands during December, January and over the Easter and scheduled school holidays or other periods agreed in writing with the Union.
- 7.2.3 At the time of first being employed, the Employer will advise the Part-Time Employee of the anticipated pattern of work specifying at least:
- (a) the hours worked each day, to a maximum of ten (10) hours;
  - (b) amendment must be mutually agreed in writing, subject to Clause 10.2;
  - (c) minimum daily payment is three (3) hours;
  - (d) all time worked in excess of the agreed hours is paid at the overtime rate, except when the maximum hours are amended as described in Clause 7.2.2; and
  - (e) the times of taking and the duration of meal breaks, subject to Clause 10.3.
- 7.2.4 The Employer is required to roster a Part-Time Employee for consecutive hours on each shift.



- 7.2.5 An Employee who does not meet the definition of a Part-Time Employee and who is not a Full-Time Employee will be paid as a Casual Employee in accordance with Clause 7.3.
- 7.2.6 A Part-Time Employee may request to become a Full-Time Employee and such request will not be unreasonably refused subject to operational requirements.
- 7.2.7 A Part-Time Employee shall be entitled to payments in respect of Annual Leave, Personal Leave, Long Service Leave, Compassionate Leave and public holidays as mentioned in Part 11 of this Agreement on a pro-rata basis.
- 7.2.8 No Full-Time or Casual Employee shall be transferred by an Employer to Part-Time employment without the written consent of the Employee:

Provided that where such transfer occurs, all leave entitlements accrued shall be deemed to be continuous. A full-time Employee who requests part-time work and is given such work may revert to full-time employment on a specified future date by agreement with the Employer, recorded in writing.

**7.3 CASUAL EMPLOYEES**

- 7.3.1 A “Casual Employee” means an Employee who is engaged and paid by the hour.
- 7.3.2 The rate of pay for Casual Employees shall be 1/38th of the appropriate full-time rate prescribed in Clause 9.1.1. The hourly rate from this Clause will be subject to the appropriate respective loadings as prescribed by Clause 7.3.3 and also subject to the appropriate percentage prescribed by Clause 9.1.2.
- 7.3.3 The Casual Loading is **25%** and is payable separately and does not compound:

	<b>From 2 June 2014 (or commencement of Agreement)</b>
<b>Prescribed Rate of Pay</b>	
for all ordinary hours worked	<b>125% (inclusive of 25% Casual Loading)</b>
where the rate of pay is prescribed as time and a-half	<b>150% (inclusive of 25% Casual Loading)</b>
where the rate of pay is prescribed as double time	<b>200% (inclusive of 25% Casual Loading)</b>

7.3.4 The minimum period of daily engagement of a Casual Employee shall be three (3) hours.

The maximum ordinary weekly hours of engagement of a Casual Employee shall be thirty-eight (38) hours.

#### **7.4 TEAM MEETINGS**

7.4.1 In lower volume restaurants, up to a maximum of 4 occasions per calendar year, Team Meetings may be conducted in which the minimum engagement period as prescribed elsewhere in this Agreement shall not apply. Instead a minimum payment for such attendance shall be one (1) hour. In higher volume restaurants the minimum payment for such attendance at Team Meetings shall be two (2) hours.

7.4.2 For the purpose of this clause a lower volume restaurant is defined as a KFC retail outlet with less than twenty-five (25) Employees on the payroll during the week the meeting is conducted.

#### **7.5 TRAINEESHIPS**

7.5.1 The provisions of the National Training Wage Schedule 'D' to the Modern Fast Food Industry Award 2010 (as amended) apply and are deemed to form part of this Agreement.

#### **7.6 SUPPORTED WAGE EMPLOYEES**

7.6.1 The provisions of the Supported Wage Schedule 'C' to the Modern Fast Food Industry Award 2010 (as amended) apply and are deemed to form part of this Agreement.

### **PART 8 TERMINATION OF EMPLOYMENT**

#### **8.1 STATEMENT OF EMPLOYMENT**

8.1.1 An Employer shall, in the event of termination of employment, provide upon request to the Employee who has been terminated a written statement specifying the period of employment and the classification or type of work performed by the Employee.

#### **8.2 TERMINATION BY EMPLOYER**

8.2.1 With the exception of serious misconduct, the Employer may dismiss an Employee other than a casual only if the Employee has been given the following notice:



<b>Period of Continuous Service</b>	<b>Period of Notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

8.2.2 In addition to the notice in Clause 8.2.1 above, Employees 45 years of age or over and who have completed at least 2 years' continuous service with the Employer shall be entitled to an additional week's notice.

8.2.3 Payment in lieu of notice shall be made if the appropriate notice is not given provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

8.2.4 In calculating any payment in lieu of notice the minimum compensation payable to an Employee will be at least the total of the amounts the Employer would have been liable to pay the Employee if the Employee's employment had continued until the end of the required notice period. The total must be worked out on the basis of:

- (a) the ordinary working hours to be worked by the Employee; and
- (b) the amounts payable to the Employee for the hours including for example allowances, loadings and penalties; and
- (c) any other amounts payable under the Employee's employment contract.

8.2.5 The period of notice in this Clause shall not apply in the case of dismissal for misconduct or other grounds that justify instant dismissal, or in the case of a Casual Employee, or an Employee engaged by the hour or day, or an Employee engaged for a specific period or tasks.

### **8.3 NOTICE OF TERMINATION BY EMPLOYEE**

8.3.1 The notice of termination required to be given by Full-Time and Part-Time Employees shall be one (1) week. Casual Employees must provide a minimum of one (1) hour's notice to terminate the employment relationship.

8.3.1 If an Employee fails to give notice, the Employer shall have the right to withhold monies due to the Employee with a maximum amount equal to the period of notice of one (1) week.

#### 8.4 ANNUAL LEAVE AND NOTICE PERIOD

8.4.1 Annual Leave shall not be used to provide the notice prescribed in Clauses 8.2 and 8.3.

#### 8.5 TIME OFF DURING NOTICE PERIOD

8.5.1 During the period of notice of termination given by the Employer, an Employee shall be allowed up to one (1) day's time off without loss of pay for the purpose of seeking other employment. This time off shall be taken at times that are convenient to the Employee after consultation with the Employer.

### PART 9 WAGES; ALLOWANCES AND SUPERANNUATION

#### 9.1 WAGES

9.1.1 The minimum weekly rate of wages for adult Employees shall be as follows:

Classification	2 June 2014 ( subject to qualification in Clause 2.1.2)
	Weekly \$
Employee Level 1	721.83
Employee Level 2*	765.14

\* Employee Level 2 will be paid at **106%** of the Employee Level 1 rate for the duration of the Agreement.

In addition, the Employee Level 1 wage rates specified above will be amended effective on the following dates:

27.10.14	23.02.2015	28.09.15	3.10.16
\$761.83	\$768.89	MAR + 9%	MAR + 9%

#### Notes:

- The "MAR" means the Fast Food Industry Modern Award Adult Rate (Level 1) applicable at the effective date.
- The rates of pay are inclusive of a 9% buyout of the Penalty Rates included in the Fast Food Industry Modern Award 2010.



### 9.1.2 Juniors

Upon commencement of this Agreement, the minimum rates of wages payable to Junior Employees will be calculated using the following percentages:

Age	2 June 2014 ( subject to qualification in Clauses 2.1.2 & 9.1.4 )
	%
14 years	40%
15 years	40%
16 years	50%
17 years	60%
18 years	70%
19 years	80%
20 years	90%
21+ years	100%

9.1.3 Junior rates shall be calculated in multiples of ten (10) cents with any result of five (5) cents or more being taken to the next highest ten (10) cent multiple.

### 9.1.4 Savings Clauses

- a. No existing Employees who, prior to the coming into force of this Agreement, were in receipt of wages and/or enjoyed conditions superior in any respect to the wages and/or conditions prescribed by this Agreement shall have their wages and/or conditions reduced merely through the coming into force of this Agreement.
- b. Existing Employees under the age of 16 years (as at the commencement of the first wage increase contained in the Agreement) will receive the 16 year old rate of pay until he/she turns 17 years of age, when he/she will receive the 17 year old Junior Percentage as tabled in 9.1.2.
- c. Existing Employees over the age of 20 years and under the age of 21 years (as at the commencement of the first wage increase contained in the Agreement) will receive a Junior Percentage of 93% until the first full pay period commencing on or after 27 October 2014 when he/she will receive the relevant Junior % as tabled in 9.1.2.
- d. No existing employee will be replaced by new employees on lower rates of pay except in the case where existing Employees change availability.
- e. No existing employee will lose hours to new employees on lower rates of pay except in the case where existing Employees changes availability.

## **9.2 PAYMENT OF WAGES**

9.2.1 All Employees covered by this Agreement shall be paid on the same day every week, within three (3) days of the completion of the week's work. Where an engagement is terminated in accordance with Clause 8.2.1, all wages and overtime shall be paid to the Employee within 48 hours of such termination.

Provided that where an Employee terminates their services without giving the period of notice required by Clause 8.3, or where an Employee is summarily dismissed on a weekend or public holiday, such Employee's wages shall be made available not later than 48 hours after opening time on the next bank trading day.

9.2.2 Wages shall be paid in full, by electronic funds transfer into a bank account nominated by the Employee.

## **9.3 OCCUPATIONAL SUPERANNUATION**

9.3.1 For each eligible Employee (as defined), the Employer will contribute a sum calculated on an Employee's ordinary time earnings (as defined) in accordance with the provision of the Superannuation Guarantee Administration Act – 1992 (as amended). This sum is to be paid to an approved superannuation scheme, retrospective to the date of the Employee's appointment.

9.3.2 Contributions will be made into one of the following Funds:

(a) Retail Employees Superannuation Trust (REST) (Default Fund - South/Eastern Division); or

(b) Sunsuper; or

(c) Australian Super (Default Fund – Northern Division)

On commencement, Employees will be provided with the option to select one (1) of the three Funds nominated above. If no selection is made, the Default Fund will apply.

9.3.3 "Eligible Employee" means any Employee who earns \$450.00 (OTE) or more in any calendar month. Such Employee shall only be deemed to be an eligible Employee in those months where the minimum earning requirement is met.

Provided that an Employee under the age of eighteen (18) years shall not be deemed to be an eligible Employee in any week in which the Employee works less than thirty (30) hours.



9.3.4 "Ordinary time earnings" (OTE) means the actual ordinary rate of pay the Employee receives for ordinary hours of work including shift loadings, penalty rates and bonuses. The term includes any above agreement payment as well as casual rates received for ordinary hours of work. Ordinary time earnings shall not include overtime or any other terms specified and updated by the Australian Tax Office ruling on OTE.

#### **9.4 TRANSPORT**

9.4.1 When an Employer requires an Employee to work until it is too late to travel home by the Employee's normal method of transport home the Employer must pay the cost of transport for the Employee to get home free of charge. This Clause does not apply where the Employer provides accommodation for the Employee for the night free of charge.

### **PART 10 HOURS OF WORK; OVERTIME AND PENALTY RATES**

#### **10.1 HOURS OF WORK**

10.1.1 The ordinary hours of work excluding meal breaks shall be an average of thirty-eight (38) hours per week for Employees to be worked as follows:

- (a) 38 hours within a work cycle not exceeding 7 consecutive days; or
- (b) 76 hours within a work cycle not exceeding 14 consecutive days; or
- (c) 152 hours within a work cycle not exceeding 28 consecutive days.

#### **10.1.2 Implementation**

- (a) The 38 hour weeks shall be implemented on one of the following bases:
  - (i) by Employees working less than 8 ordinary hours each day; or
  - (ii) by Employees working 8 ordinary hours on one or more days each work cycle and by fixing one or more work days on which all Employees will be off during a particular work cycle; or
- (b) The method of rostering the 38 hour week shall be agreed between the Employer and the Employees concerned subject to the particular needs of the establishment.



- (c) Ordinary hours are to be worked within a minimum of 4 hours and a maximum of 10 hours per day and shall be exclusive of meal breaks subject to Clause 10.3.
  - (d) An Employee shall not be rostered for work on more than 4 consecutive days of 10 hours without a break of at least 48 hours.
  - (e) No Employee shall be rostered to work for more than 10 successive days without a day off.
- 10.1.3 No Employee under the age of 18 years shall work, or be permitted to work, later than 8.00 p.m. without the consent of the Employee's parents or legal guardians. The Queensland Child Employment Act 2006 shall also be complied with when the Employee is a "school aged child" as defined in that Act.

## **10.2 ROSTERS**

- 10.2.1 The ordinary working hours of all Employees shall be worked in accordance with a weekly roster which (subject to Clause 10.2.2) shall not be changed except upon seven (7) days notice.
- 10.2.2 Rosters may be altered in cases of sickness, absenteeism, or where the Employer and the Employee concerned mutually agree.
- 10.2.3 A copy of the roster shall be posted in a conspicuous place on the Employer's premises and may also be posted via electronic means.

## **10.3 MEALS AND MEAL BREAKS**

- 10.3.1 No Employee shall be required or permitted to work for more than 5.5 hours continuously (excluding rest pauses) without an unpaid meal break of not less than 30 minutes or more than one (1) hour. Provided that such meal break shall be given and taken not earlier than after the completion of 2 hours' work and before the commencement of the seventh hour.
- 10.3.2 Where an Employee is required to work through their usual meal break, that Employee shall be paid for all time so worked at double time and such double time shall continue to be paid until the Employee ceases work for the day or is allowed an unpaid meal break of at least 30 minutes' duration.
- 10.3.4 Any Employee who is required to work overtime for more than one (1) hour beyond their rostered ceasing time shall be provided with an adequate meal by the

Employer, or, in the event of the Employer being unable to provide such meal, be paid an allowance of \$11.76 in lieu thereof. This allowance will be adjusted annually in line with movements in the Modern Award.

#### **10.4 REST PAUSES**

10.4.1 Full-Time Employees shall receive a rest pause of 10 minutes' duration in the first half and the second half of each day worked.

#### **10.4.2 Part-Time and Casual Employees**

Part-Time and Casual Employees who work a minimum of four (4) consecutive ordinary hours, but less than 7.6 consecutive ordinary hours on any one day shall receive a rest pause of 10 minutes' duration. Employees who work a minimum of 7.6 consecutive ordinary hours (excluding the meal break) on any one day shall receive a rest pause of 10 minutes' duration in the first half and the second half of the period worked.

10.4.3 Rest pauses shall be taken in the Employer's time.

10.4.4 Rest pauses shall be taken at such times and in such a manner to suit the convenience of the Employer and so as not to interfere with the continuity of work where continuity is necessary.

10.4.5 Notwithstanding the provisions of Clause 10.4.1, where the Employer and Employees agree, the rest pauses may be combined so that Employees have one rest pause of 20 minutes' duration.

#### **10.5 PENALTY RATES**

10.5.1 All ordinary time worked by an Employee between 12.30 a.m. and 5.00 a.m. Monday to Sunday shall attract an additional payment of 10%.

#### **10.6 OVERTIME**

10.6.1 Except as hereinafter provided, all time worked outside or in excess of the ordinary hours as prescribed in Clauses 7.1, 7.2, 7.3 and 10.1 shall be deemed to be overtime and shall be paid for at the rate of time and a-half, provided that all Employees shall be paid at the rate of Double Time for all overtime worked in excess of 2 hours in any one day.



10.6.2 All time worked on a 6<sup>th</sup> or 7<sup>th</sup> shift in any one (1) working week will be paid in accordance with Clause 10.6.1 above.

10.6.3 An Employee who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that the Employee has not had at least 10 consecutive hours off duty between those times shall, subject to Clause 10.6.4, be released after completion of such overtime until the Employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If, on the instructions of the Employer, such an Employee resumes or continues work without having had such 10 consecutive hours off duty, the Employee shall be paid overtime rates until released from duty for such period and the Employee shall then be entitled to be absent until the Employee has had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

10.6.4 The provisions of Clause 10.6.3 shall apply in the case of Employees who rotate from one shift to another as if 8 hours were substituted for 10 hours when overtime is worked:

- (a) for the purpose of changing rosters; or
- (b) where an Employee does not report for duty; or
- (c) where a roster is worked by arrangement between the Employees themselves.

## **PART 11 LEAVE AND PUBLIC HOLIDAYS**

(Note: Annual, Personal, and Long Service Leave entitlements and anniversary dates standing to an Employee's credit as at the date of approval of this Agreement are carried over under this Agreement)

### **11.1 ANNUAL LEAVE**

11.1.1 Every Employee (other than a Casual) shall, for each year of employment be entitled to annual leave on full pay as follows:–

- (a) Not less than 152 hours per year, accrued each week in accordance with the Act.



- (b) Such Annual Leave shall be exclusive of any statutory holiday which may occur during the period of that Annual Leave. Annual Leave will be paid at the Employee's ordinary Rate of Pay applicable immediately prior to the commencement of that Annual Leave.
- (c) In the event of termination all Annual Leave accrued and not taken must be paid out to the Employee.
- (d) Part-Time Employees are entitled to the above leave entitlements on a pro rata basis.

### 11.1.2 Annual Leave Loading

A 17.5% Annual Leave Loading applies to all paid Annual Leave.

## 11.2 PERSONAL LEAVE (SICK AND CARER'S LEAVE)

11.2.1 Every Employee (other than a Casual) shall be entitled to 76 ordinary hours Personal Leave for each completed year of service which accrues each week.

Part-Time Employees shall be entitled to the Personal Leave on a pro-rata basis formula.

(e.g.: Entitlement per week for Full-Time Employee 1.462 hours)

For instance, an Employee who works 20 hours per week will be entitled to 0.769 hours Personal Leave per week =

$$\frac{20 \times 1.462}{38} = 0.769 \text{ hours per week}$$

### 11.2.2 Personal Leave (Taken as Sick Leave)

Employees (other than a Casual) will be entitled to paid personal leave (taken as sick leave) if the Employee is not fit for work because of a personal illness, or personal injury, affecting the Employee.

Unless otherwise agreed by the Employer, every Employee shall produce a certificate from a qualified medical practitioner specifying the nature of the illness and the period or approximate period the Employee will be unable to work, or other evidence of illness to the satisfaction of the Employer. Alternatively, a statutory declaration can be supplied.

Provided that it shall not be necessary for an Employee to produce such a certificate or declaration if the absence from work on account of illness does not exceed two (2) continuous days.

11.2.3 An ill or injured Employee must verbally notify the Employer (at least four (4) hours, or as much notice as possible under the circumstances, prior to the commencement of a shift) unless physically prevented from doing so, of the illness or injury and the approximate period of absence. If the Employee fails to provide such notice, in the appropriate manner, the Employer may refuse payment of Personal Leave entitlements until the Employee produces a certificate from a qualified medical practitioner specifying the nature of the illness or injury and that in the practitioner's opinion the Employee was unfit to perform work on that day.

11.2.4 Personal Leave entitlements shall be cumulative.

11.2.5 (a) The continuity of employment of an Employee with the Employer for Personal Leave accumulation purposes shall be deemed to be not broken by any of the following:

- (i) absence from work on paid leave granted by the Employer; or
- (ii) the Employee having ceased employment with the Employer for any period not exceeding three (3) months, provided that Employee shall have been re-employed by the Employer.

(b) The period during which the employment of the Employee with the Employer shall have been interrupted or determined by the circumstances mentioned in provision 11.2.5 (a) (ii) hereof shall not be taken into account in calculating the period of employment of the Employee with the Employer.

11.2.6 Personal Leave (Taken as Carer's Leave)

(a) Employees (other than a Casual) will be entitled to paid or unpaid Carer's Leave taken by the Employee to provide care or support to a member of the Employee's immediate family, or a member of the Employee's household who requires care or support because of:

- (i) a personal illness, or injury affecting the member; or
- (ii) an unexpected emergency affecting the member.

(b) The term "immediate family" includes:

- (i) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the Employee; and

- (ii) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the Employee.
- (c) To be entitled to Carer's Leave, the Employee must give the Employer notice, as soon as reasonably practicable, that the Employee is (or will) be absent from duty on account of the Employee providing care or support to a member of the Employee's immediate family or the Employee's household.
- (d) To be entitled to Carer's Leave, the Employee must give the Employer a document of whichever of the following types apply:
  - (i) if it is reasonably practicable to do so and subject to restrictions imposed under the Privacy Act 1988 (as amended) – a medical certificate from a registered health practitioner;
  - (ii) if it is not reasonably practicable for the Employee to give the Employer a medical certificate – a statutory declaration made by the Employee.
- (e) The Employee is entitled to a period of unpaid Carer's Leave taken as either a single, unbroken period of up to two (2) days, or any separate periods to which the Employee and the Employer agree. The Employee cannot take unpaid Carer's Leave in circumstances where the Employee could take paid Carer's Leave.
- (f) A casual Employee is entitled to Unpaid Carer's Leave.

### **11.3 COMPASSIONATE LEAVE - FULL-TIME AND PART-TIME EMPLOYEES**

11.3.1 Full-Time and Part-Time Employees shall, on the death of a member of their immediate family or household in Australia or overseas, be entitled to paid compassionate leave per occasion up to and including the day of the funeral of such person. Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the Employee in two (2) ordinary days of work. This will increase to three (3) days in the circumstances of a parent. Proof of such death is to be furnished by the Employee to the satisfaction of the Employer. Such period of leave can be extended at the Employer's discretion.

11.3.2 Full-Time and Part-Time Employees shall be entitled to 2 days paid Compassionate Leave, on each occasion, to attend to a member of the Employee's family or household who sustains a personal illness that poses a serious threat to his or her life; or sustains a personal injury that poses a serious threat to his or her life. This will increase to three (3) days in the case of a parent. Subject to restrictions imposed by the Privacy Act 1988 (as amended) the Employer is entitled to ask for reasonable satisfactory evidence of the circumstances justifying such leave.



#### **11.4 LONG SERVICE LEAVE**

All Employees are entitled to Long Service Leave in accordance with either the Queensland Industrial Relations Act 1999 or the NSW Long Service Act 1955, as applicable and referenced in the National Employment Standards (NES).

#### **11.5 PARENTAL LEAVE**

All Employees the subject of this Agreement shall be entitled to Parental Leave in accordance with the provisions of the Act.

#### **11.6 PUBLIC HOLIDAYS**

11.6.1 The following days are public holidays under this Agreement:

- (i) the 1st January;
- (ii) the 26th January;
- (iii) Good Friday;
- (iv) Easter Saturday (the day after Good Friday);
- (v) Easter Monday;
- (vi) the 25th April (Anzac Day);
- (vii) Labour Day;
- (viii) The Birthday of the Sovereign;
- (ix) Christmas Day;
- (x) Boxing Day; or

any day appointed under either the Qld Holidays Act 1983 or the NSW Public Holidays Act 2010, as applicable, to be kept in place of any such holiday and any day declared by the applicable Minister to be a special holiday, either throughout the applicable State or within a specified District.

#### **11.6.2 Annual show**

Any day appointed from time to time by the applicable Minister as the day to be kept as a holiday in a particular district in relation to the annual agricultural, horticultural or industrial show held at the principal city or town, as specified in such notification for such district, shall be a public holiday.

Provided that in a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the Employee and Employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.



### 11.6.3 Payment in certain circumstances for public holidays not worked

An Employee, other than a casual, who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the Employee would ordinarily have been required to perform work on that day irrespective of the fact that the Employee may not be required to work on such day.

### 11.6.4 Payment for time worked on public holidays or substituted holidays

All work undertaken by any Employee on any of the holidays or substituted holidays mentioned in Clause 11.6.1 shall be paid for at the rate of double time with a minimum of 3 hours but so that the Employee is not entitled to be paid at public holiday rates for both the holiday and the substituted day.

### 11.6.5 Double time

For the purposes of Clause 11.6.4, "double time" means 2 times the hourly rate for ordinary hours. In the case of Casuals, the rate will be 200% (inclusive of Casual Loading) in accordance with Clause 7.3.3.

### 11.6.6 Substitution

Notwithstanding the provisions of Clause 11.6.1, the Employer and the majority of Employees concerned, may agree to substitute the public holidays in Clause 11.6.1 with another day and all work performed on the substituted day shall be deemed to be work performed on the public holiday and paid in accordance with Clause 11.6.4 but so that an Employee is not entitled to receive public holiday benefits for both days.

### 11.6.7 Payment when a day is substituted for a public holiday falling on Saturday or Sunday

When a public holiday which would otherwise have fallen on a Saturday or a Sunday is substituted for a day appointed to be kept in its place, Employees other than casuals required to work on the Saturday or the Sunday shall be paid at the ordinary Saturday or Sunday rate, except that when 25 December falls on a Saturday or a Sunday such Employees shall receive in addition a loading of one half of an ordinary day's wages.

### 11.6.8 Employees, other than casuals, who are not Monday to Friday workers

In the case of Employees who do not ordinarily work Monday to Friday of each week, they shall be entitled to public holidays as follows:

- (a) A Full-Time Employee shall be entitled to either payment for each of the abovementioned public holidays or a substituted day's leave.



- (b) A Part-Time Employee shall be entitled to either payment for each of the public holidays or a substituted day's leave provided that the Part-Time Employee would have been ordinarily rostered to work on that day had it not been a public holiday.
- (c) Where a public holiday would have fallen on a Saturday or a Sunday but is substituted for another day all Employees who would ordinarily have worked on such Saturday or Sunday but who are not rostered to work on such day shall be entitled to payment for the public holiday or a substituted day's leave.
- (d) A Part-Time Employee who works an average five (5) days per week, but whose roster is not a regular Monday to Friday roster, will not be disadvantaged by the fact that a prescribed holiday falls upon a day when the Employee would not be working. The appropriate compensation is:
  - (i) an alternative day off; or
  - (ii) an addition of one day to annual leave; or
  - (iii) an additional day's wages.

For the purposes of Clause 11.6.8, "day off" means the average number of hours rostered per day in the four week cycle prior to the public holiday.

## **11.7 BLOOD DONOR LEAVE**

- 11.7.1 A Full-Time or Part-Time Employee who is absent during ordinary working hours for the purpose of donating blood, will not suffer any deduction of pay, including any allowances and penalty payments the Employee would have received had they been at work, up to a maximum of 2 hours on each occasion and subject to a maximum of 4 separate absences each calendar year.
- 11.7.2 An Employee must attempt to donate blood outside working time. If that is not possible, the Employee must arrange for such leave to be taken on a day suitable to the Manager and be as close as possible to the beginning or end of the ordinary working hours.
- 11.7.3 The Employee must first provide proof of attendance, and of the duration, to the satisfaction of the Manager.
- 11.7.4 The Employee must notify their Manager as soon as possible, of the date and time upon which they are requesting to take such leave.



## **11.8 JURY SERVICE**

- 11.8.1 An Employee, other than a Casual Employee, required to attend for jury service during their ordinary working hours shall be reimbursed by the Employer an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the ordinary pay the Employee would have been paid if the Employee was not absent on jury service for a maximum of ten (10) days.
- 11.8.2 Alternatively, by agreement, fees (other than meal allowance) received by the Employee to attend jury service will be paid to the Employer and the Employer will continue to pay the Employee their ordinary pay for the time the Employee was absent on jury service.
- 11.8.3 Employees shall notify their Employer as soon as practicable of the date upon which they are required to attend for jury service and shall provide their Employer with proof of such attendance, the duration of such attendance and the amount received in respect thereof.
- 11.8.4 If the Employee is not required to serve on a jury for a day or part of a day after attending for jury service and the Employee would ordinarily be working for all or part of the remaining day, the Employee must, if practicable, present for work at the earliest reasonable opportunity.
- 11.8.5 Ordinary pay" means the rate of pay that an Employee would normally expect to receive for working ordinary hours on an ordinary day of the week, including any over-award payment. "Ordinary pay" excludes overtime, penalty rates of all types - including those attaching to working ordinary hours eg: disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments of a like nature.

## **PART 12 TRAVELLING & WORKING AWAY FROM USUAL PLACE OF WORK**

### **12.1 FARES**

- 12.1.1 When an Employee is required to travel anywhere on the business of the Employer in the course of the Employee's employment, all fares so incurred shall be paid by the Employer. Employees will be reimbursed in accordance with the Employer's "Use of Privately Owned Vehicles on Company Business Policy" and mileage is paid at the highest rate prescribed by the ATO.

## **PART 13 TRAINING & RELATED MATTERS**

### **13.1 COMMITMENT TO TRAINING & CAREERS**

- 13.1.1 The parties acknowledge that various degrees of training are provided to Employees, both by internal on the job training and through external training providers.
- 13.1.2 The parties commit themselves to continuing such training as is regarded by them as appropriate and improving training in such cases where this is required.
- 13.1.3 It is agreed that the parties will co-operate in ensuring that appropriate training is available for all Employees and the parties agree to co-operate in encouraging both Employers and Employees to avail themselves of the benefits from such training.
- 13.1.4 The parties agree to continue discussions on issues raised in relation to training.
- 13.1.5 The parties are committed to encouraging young people to view this industry as one which has the capacity to provide them with learning opportunities and rewarding career paths.

## **PART 14 WORKPLACE HEALTH AND SAFETY, FACILITIES, UNIFORMS**

### **14.1 UNIFORMS**

- 14.1.1 Where Employees are required to wear a uniform or any other distinctive type of clothing, such uniform or clothing shall be supplied and maintained at the Employer's expense and shall be the property of such Employer and shall be returned to the Employer upon termination of employment in good order or condition, subject to fair wear and tear. Laundering of such uniform will be at the Employee's expense.
- 14.1.2 Upon commencement of an Employee the Employer may withhold \$20.00 per uniform from any money owing to that Employee. This will be processed as a payroll deduction of \$2.50 per week for a period of eight (8) weeks for each uniform provided.
- Provided that in circumstances where such a deposit would impose undue hardship on the Employee, alternative arrangements may be made by agreement between the Employer and the Employee. Such amount will be refunded to the Employee on termination and the return of uniforms.
- 14.1.3 Full-Time Employees shall be issued with a minimum of four (4) uniforms, Part-Time Employees shall be issued with three (3) uniforms, and Casual Employees shall be issued with two (2) uniforms. Such uniforms shall be replaced on a fair wear and tear basis.



Provided that Casual and Part-Time Employees shall be provided with further uniforms as required, dependent upon the regularity of shifts worked.

#### **14.2 DRESSING & MEAL ROOMS**

14.2.1 The Employer shall provide dressing and dining rooms in accordance with the provisions of the Queensland Work Health and Safety Act 2011.

#### **14.3 FIRST AID**

14.3.1 In all establishments, a first aid cabinet shall be available. Such first aid cabinet shall be kept and maintained in accordance with the provisions of the Queensland Work Health and Safety Act 2011 relating to such first aid cabinets.

### **PART 15 UNION RELATED MATTERS AND UNION ENCOURAGEMENT**

#### **15.1 DOCUMENTATION TO BE PROVIDED BY EMPLOYER**

15.1.1 All Employees shall be given an application form to join the appropriate Union at the point of recruitment. The Union video will be shown to new Employees as part of their orientation training.

#### **15.2 UNION DELEGATES**

15.2.1 Union delegates and job representatives have a role to play within a workplace. The existence of an accredited Union delegate and/or job representative is recognised.

15.2.2 The Employer shall not unnecessarily hinder accredited Union delegates and/or job representatives in the reasonable and responsible performance of their duties.

15.2.3 Where appropriate, the respective Union organiser will be invited to attend a minimum of two (2) Employee meetings per year at which they will give a presentation and answer any questions the Employees' may have. The organiser will be the first Agenda item for a period of fifteen (15) minutes.

#### **15.3 UNION RECOGNITION**

15.3.1 The Employer recognises that Employees who are covered by this Agreement may be represented by either, the Shop Distributive and Allied Employees' Association or The Australian Workers' Union.

## **15.4 UNION MEMBERSHIP**

15.4.1 The respective Employer undertakes to promote union membership at the point of recruitment by encouraging all Employees to join the Shop Distributive and Allied Employees' Association or The Australian Workers' Union.

## **15.5 DEDUCTION OF UNION DUES**

15.5.1 The Employer undertakes, upon authorisation by the Employee, to deduct Union membership dues, as levied by the Shop, Distributive and Allied Employees' Association or The Australian Workers' Union in accordance with its rules, from the pay of Employees who are members of the Shop, Distributive and Allied Employees' Association or The Australian Workers' Union. Such monies collected will be forwarded to the Shop, Distributive and Allied Employees' Association or The Australian Workers' Union at the beginning of each calendar month together with all necessary information to enable the reconciliation and crediting of subscriptions to members' accounts.

## **15.6 TRADE UNION TRAINING LEAVE**

15.6.1 Subject to the following conditions, elected Union delegate(s) or appointed Union Representative(s) shall be granted leave with pay to attend courses conducted by their Union which are designed to promote good industrial relations and industrial efficiency provided that:

(a) no more than 2 paid shifts shall be granted in any restaurant in any calendar year. Any additional shifts shall be unpaid and subject to approval by the Employer.

(b) untaken paid leave shall not accrue from year to year or be transferred from one outlet to another.

15.6.2 Application to attend shall be in writing and shall include details of the type and content of the course to be attended and the dates upon which the course is to be conducted. Applications shall be made not less than one (1) calendar month before the intended course, or such lesser period as may be agreed between the Employer, the respective Union and the Employee concerned.

15.6.3 Once received, applications shall be granted by the Employer on the dates notified by the Union, subject to the ability to maintain normal restaurant operating requirements.



- 15.6.4 Except in the case of a new restaurant opening, only Employees who have completed six months continuous service with an Employer shall be eligible for leave pursuant to this Clause.
- 15.6.5 Leave granted pursuant to Clause 15.6 shall count as service for all purposes of this Award.
- 15.6.6 Any Employee on paid leave in accordance with Clause 15.6 shall receive payment in accordance with the roster they would have worked for the period of absence.
- 15.6.7 The Employer shall not be required to pay any other costs associated with such leave.
- 15.6.8 On completion of the course, the Employer may require the Employee to provide satisfactory proof of attendance at the course.

## **PART 16 COPY OF AGREEMENT**

### **16.1 AVAILABILITY OF AGREEMENT OR AGREEMENT SUMMARY**

- 16.1.1 The Employer shall provide either a copy of this Agreement or an accurate summary of the Agreement provisions to be posted in a conspicuous place on the Employer's premises or by electronic communications. Where a summary of the Agreement provisions is posted, a copy of the Agreement shall be available on the Employer's premises.

### **16.2 NO EXTRA CLAIMS**

- 16.2.1 The parties to this Agreement commit themselves to making no extra claims during the life of this Agreement.



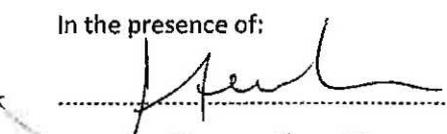
PART 17 SIGNATORIES

SIGNED FOR AND ON BEHALF OF  
COLLINS RESTAURANTS MANAGEMENT PTY LTD and COLLINS  
RESTAURANTS NSW PTY LTD

)   
) .....  
) (Signature)  
)  
) Martin John Clarke  
) .....  
) (Full Name)

Position: CEO (KFC Division) )  
Address: 16-20 Edmondstone St )  
NEWMARKET Q 4051 )

Dated: 19 / 06 / 2014

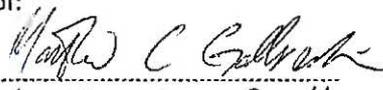
In the presence of:  
 ..... (Signature)  
JUDY A. FENTON ..... (Full Name)

Address: 16-20 Edmondstone Street  
NEWMARKET Q 4051

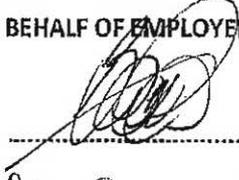
Dated: 19 / 06 / 2014

SIGNED ON BEHALF OF EMPLOYEES BY THE SHOP DISTRIBUTIVE & ALLIED EMPLOYEES' ASSOCIATION  
(SDA)

Signature: J. de Bruyn  
Name: JOSEPH DE BRUYN  
Date: 23rd June, 2014  
Address: 6th FLOOR, 53 QUEEN ST.  
MELBOURNE VIC. 3000.

In the presence of:  
Signature:  .....  
Name: Matthew Galbraith  
Date: 23 June 2014  
Address: 6F, 53 Queen Street, Melbourne, Vic 3000

SIGNED ON BEHALF OF EMPLOYEES BY THE AUSTRALIAN WORKER'S UNION

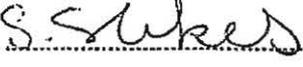
Signature:  .....

Name: Ben Swan - Branch Secretary

Date: 23/6/14 .....

Address: 12/333 Adelaide Street  
Brisbane, QLD, 4000

In the presence of:

Signature:  .....

Name: Samantha Stokes

Date: 23/6/14 .....

Address: 12/333 Adelaide Street  
Brisbane, QLD, 4000



## SCHEDULE A- REDUNDANCY PAY

### S1.0 Redundancy pay

S1.1 An Employee is entitled to be paid redundancy pay by the Employer if the Employee's employment is terminated:

- (a) at the Employer's initiative because the Employer no longer requires the job to be undertaken by the Employee or to be undertaken by anyone, except where this is due to the ordinary and customary turnover of labour; or
- (b) because of the insolvency or bankruptcy of the Employer.

Note: Clauses S3.0; S4.0; and S5.0 describe situations in which an Employee does not have this entitlement.

S1.2 The amount of the redundancy pay equals the total amount payable to the Employee for the redundancy pay period worked out using the following table at the Employee's base Rate of Pay for his or her ordinary hours of work:

Redundancy pay period		
	Employee's period of continuous service with the Employer on termination	Redundancy pay period
1	At least 1 year but less than 2 years	4 weeks
2	At least 2 years but less than 3 years	6 weeks
3	At least 3 years but less than 4 years	7 weeks
4	At least 4 years but less than 5 years	8 weeks
5	At least 5 years but less than 6 years	10 weeks
6	At least 6 years but less than 7 years	11 weeks
7	At least 7 years but less than 8 years	13 weeks
8	At least 8 years but less than 9 years	14 weeks
9	At least 9 years but less than 10 years	16 weeks
10	At least 10 years	12 weeks

### S2.0 Variation of redundancy pay for other employment or incapacity to pay

S2.1 This section applies if:

- (a) an Employee is entitled to be paid an amount of redundancy pay by the Employer because of Clause S1.0; and
- (b) the Employer:
  - (i) obtains other acceptable employment for the Employee; or
  - (ii) cannot pay the amount.



**S2.2** On application by the Employer, Fair Work Australia may determine that the amount of redundancy pay is reduced to the amount specified in the determination.

**S2.3** A determination has effect according to its terms, despite Clause S1.0.

**S3.0 Exclusions from obligation to pay redundancy pay**

**S3.1** Clause S1.0 does not apply to the Employee if:

- (a) his or her period of continuous service with the Employer on termination is less than 12 months; or
- (b) at the earlier of the following times, the Employer Employed fewer than 15 Employees:
  - (i) the time the Employee is given notice of the termination;
  - (ii) immediately before the termination.

**S3.2** For the purpose of calculating the number of Employees employed by the Employer at the time applicable under paragraph S3.1 (b):

- (a) subject to paragraph (b) of this subsection, all Employees employed by the Employer at that time are to be counted, including:
  - (i) the Employee whose employment is being terminated; and
  - (ii) any other Employee of the Employer whose employment is also being terminated; but
- (b) a casual Employee is not to be counted unless the casual Employee has, immediately before that time, been engaged by the Employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months.

**S3.3** For the purpose of calculating the number of Employees employed by the Employer at the time applicable under paragraph S3.1 (b), related bodies corporate (within the meaning of section 50 of the Corporations Act 2001) are taken to be one entity.

**S4.0 Transmission of business and redundancy pay**

**Transferring Employee**

**S4.1** Clause S1.0 does not apply to the termination of a transferring Employee's employment that occurs in connection with the transfer of a business if the new Employer recognises the Employee's service with an old Employer in the business being transferred (whether or not the old Employer was previously a new Employer in connection with the business).

## Employee who rejects offer of employment with new Employer

**S4.2** Clause S1.0 does not apply to an Employee in a business being transferred if he or she rejects an offer of employment with the new Employer:

- (a) on terms and conditions substantially similar to, and, considered on an overall basis, no less favourable than, the Employee's terms and conditions of employment with the old Employer immediately before the termination of that employment; and
- (b) recognising the Employee's service with an old Employer in the business (whether or not the old Employer was previously a new Employer in connection with the business).

**S4.3** On application by the Employee, the Commission or its successor may, if satisfied that Clause S4.2 operates unfairly to him or her, determine that the old Employer must pay the Employee a specified amount of redundancy pay. The amount must not exceed his or her entitlement under Clause S1.0 apart from this Clause.

**S4.4** The determination has effect according to its terms.

## **S5.0 Limits on scope of this Schedule**

### Employees not covered by this Schedule

**S5.1** This Schedule does not apply to any of the following Employees:

- (a) an Employee employed for a specified period of time or for a specified task;
- (b) an Employee serving a period of probation, or a qualifying period of employment, that is determined in advance and is of a duration prescribed by the regulations;
- (c) an Employee whose employment is terminated because of serious misconduct;
- (d) a casual Employee;
- (e) a seasonal Employee;
- (f) trainee (other than an apprentice) to whom a training arrangement applies;
- (g) an Employee prescribed by the regulations as an Employee to whom this Schedule does not apply if the Regulations applied.



**S5.2** Paragraph S5.1(a) does not prevent this Schedule from applying to an Employee if a substantial reason for employing the Employee as described in that paragraph was to avoid the application of this Schedule.

**Other Employees not covered by redundancy pay provisions**

**S5.3** Clauses S1.0 – S4.0 do not apply to:

- (a) an Employee who is an apprentice; or
- (b) an Employee covered by a modern award that includes an industry-specific redundancy scheme; or
- (c) an Employee prescribed by the Regulations to the Act as an Employee to whom that Subdivision B of the National Employment Standards does not apply.







**COLLINS FOODS LIMITED**

ACN 151 420 781 | ABN 13 151 420 781

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P +617 3352 0800 | F +617 3352 0894

3 September 2014

Commissioner Bull  
Fair Work Commission  
Level 10, Terrace Tower  
80 William Street  
East Sydney NSW 2011

By email to: [chambers.bull.c@fwc.gov.au](mailto:chambers.bull.c@fwc.gov.au)

Re: AG2014/6545 - Application by Collins Restaurants Management Pty Ltd & Collins Restaurants NSW Pty Ltd for approval of the KFC Team Members' Enterprise Agreement - Queensland and Tweed Heads (NSW) 2014-2017

### **Undertakings**

I, Judy A Fenton, Human Resources Manager, of the above mentioned applicants give the following undertakings arising from the telephone conference of Wednesday, 3 September 2014 before the Commission:

#### **Undertaking 1**

In respect to Clause 6.1 of the proposed Agreement, the Employers will apply the Dispute Settlement Procedure to any Disputes that relate to the National Employment Standards (NES) in accordance with S186 (6) (a) (ii) of the Fair Work Act 2009.

#### **Undertaking 2**

The Employers will ensure that all new Team Members employed after the date of approval of this Agreement will be rotated through the week or the applicable roster cycle to ensure that at all times they are able to benefit from the 9% buyout of penalty rates and so that they will not be disadvantaged when compared to penalty rates for Weekend Work as provided for in the *Fast Food Award 2010*.

#### **Undertaking 3**

All Team Members subject to this Agreement who are rostered for ordinary hours between the hours of 12.30am to 5.00am at the Kangaroo Point Restaurant shall continue to receive a 50% penalty rate for such hours. The Employer has no intention to expand late trade during these hours beyond Kangaroo Point. (It is to be noted that Kangaroo Point is the only Restaurant so trading during these hours).

[www.collinsfg.com.au](http://www.collinsfg.com.au)



Yours faithfully,  
**COLLINS RESTAURANTS MANAGEMENT PTY LTD**  
**COLLINS RESTAURANTS NSW PTY LTD**

A handwritten signature in black ink, appearing to read 'Judy A Fenton', with a large, sweeping initial 'J' and a long, horizontal flourish at the end.

Judy A Fenton  
**HUMAN RESOURCES MANAGER**

Copies to SDA and AWU (via Email)