[2020] FWCA 2020

The attached document replaces the document previously issued with the above code on 22 April 2020.

Annexures A and B referenced in decision added.

Member Assist
On Behalf of Associate to Deputy President Cross

Dated 8 July 2020

DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Kentucky Fried Chicken Pty. Limited
(AG2019/4042)

KFC NATIONAL ENTERPRISE AGREEMENT 2020

Fast food industry

DEPUTY PRESIDENT CROSS SYDNEY, 22 APRIL 2020

Application for approval of the KFC National Enterprise Agreement 2020.

[1] On 23 October 2019, an application ("the Application") was made by Kentucky Fried Chicken Pty Ltd (the "Applicant" or "KFC"), for the approval of an enterprise agreement known as the KFC National Enterprise Agreement 2020 (the "Agreement"). The Agreement would cover the Applicant and 77 other named employers (the "Employers")[1].

[2] The Shop, Distributive and Allied Employees' Association (the "SDA") was an employee organisation bargaining representative for the Agreement for the purposes of s.176(1)(b) of *Fair Work Act 2009* (the "Act"). The Australian Workers' Union (the "AWU") was also an employee organisation bargaining representative for the Agreement for the purposes of s.176(1)(b) of the Act. Each of the SDA and the AWU, on 29 October 2019 and 21 November 2019 respectively, filed a Form F18 – Statutory declaration of employee organisation in relation to an application for approval of an enterprise agreement (other than a greenfields agreement).

[3] On 29 October 2019, Mr Joshua Cullinan filed a Form F18A – Statutory declaration of employee representative in relation to an application for approval of an enterprise agreement (other than a greenfields agreement). That Form F18A identified at question 2 that "*The Union*" was the bargaining representative. While the Form F18A did not define the term "*Union*", in answer to question 3 it stated that the Retail and Fast Food Workers Union ("RAFFWU") "*…is the bargaining representative of an employee"*.

Standing of RAFFWU

[4] When filing the Form F18A, RAFFWU also provided a redacted document in the form of a collection of emails titled "*Instruments of Appointment – Bargaining Representative"*. That document, which is annexed to this decision and marked "Annexure B", consisted of four emails, three of which appointed RAFFWU as the bargaining representative of the persons who

[1] As listed at Appendix A to this decision.

sent the emails. Unredacted copies of those emails were subsequently provided to the Fair Work Commission (the "Commission") on 6 December 2019. Those unredacted emails disclosed that one employee in Butler, Western Australia, and one employee in Wagga Wagga, New South Wales (the "Two Employees") had appointed RAFFWU as their bargaining representative.

(a) Submissions Regarding Standing

[5] By correspondence to the Commission dated 27 November 2019, the Applicant submitted that RAFFWU was apparently seeking to appear in its own right, rather than as the bargaining representative of the Two Employees. That correspondence relevantly provided as follows:

> *"3. RAFFWU provided to the Commission what it referred to as a "redacted bargaining representative appointment document", which contained three emails presumably from KFC employees to RAFFWU. RAFFWU's covering email to the Commission gave the appearance that it was making an application to appear in the proceedings in its own right possibly as the representative of anonymous employees, akin to a registered organisation. A Full Bench of the Commission has previously rejected such an approach by RAFFWU.*
>
> *4. KFC submits that the role of a bargaining representative should be to act as a representative of the identified individual who appoints it, rather than a vehicle for expressing its own views.*
>
> *.....*
> *6. KFC's position, as set out in paragraph 4 of its letter to the Commission of 26 November 2019, is that it "does not object to any bargaining representative of named individual KFC employees being heard if the bargaining representative establishes the requirements of the Fair Work Act (2009) (Cth) are met, and if the bargaining representative is acting in accordance with the instructions of the particular employees.*
>
> *7. KFC does not press that the procedural requirements of the Act have not been met. However there remains a considerable lack of clarity about the capacity in which RAFFWU wishes to be heard by the Commission in opposing the approval of the Agreement.*
>
> *...*
> *9. In the circumstances, KFC submits that it would be premature to consider making the orders sought by RAFFWU today."*

[6] On 4 December 2019, an interlocutory hearing was convened as requested by the Applicant. At that interlocutory hearing, issues regarding the manner in which RAFFWU sought to appear, and the capacity of RAFFWU to so appear, were raised but not determined. In particular, it was noted that the direction for other interested parties filing submissions either in support or opposing the approval of the Agreement did not expire until 4.00pm on 5 December 2019. I observed that if each of the Two Employees happened to make identical submissions, notwithstanding that they were over 3000 kilometres apart, it may add weight to the Applicant's assertions that RAFFWU was seeking to appear in the proceedings in its own capacity.

[7] At 4.06PM on 5 December 2019, my Chambers received an email from RAFFWU. It attached a document titled "*Submission of Retail and Fast Food Workers Union (RAFFWU)"* (the "RAFFWU Submission"). Regarding the issue of the standing of RAFFWU, the RAFFWU Submission was as follows:

> *"7. The submission of the applicant discloses it puts the standing of RAFFWU as bargaining representative into contest. This was resolved with the withdrawal of the demand of the applicant at Hearing on 4 December 2019.*
>
> *8. We submit the Fair Work Commission should entirely disregard the submissions made by the applicant as to the standing of RAFFWU to be heard.*
>
> *9. We have specifically confirmed our members, having appointed RAFFWU as their bargaining representative, wish to continue having RAFFWU act as their bargaining representative and specifically seeks RAFFWU prosecute its case as their bargaining representative.*
>
> *10. Neither RAFFWU nor our members were on trial in this proceeding. The application of the applicant was the matter before the Fair Work Commission.*
>
> *11. The statutory declaration filed as the F16 application for approval by the applicant places the fact of RAFFWU being a bargaining representative in evidence, as does the F18A of RAFFWU's Secretary.*
>
> *12. RAFFWU submits it is a common and accepted practice for bargaining representatives to appear in relation to applications for approval of enterprise agreements. The legislation provides special rights for bargaining representatives, including RAFFWU and SDAEA.*
>
> *13. As a bargaining representative, RAFFWU has a direct interest in the matter. We submit RAFFWU has a right to be heard in this matter.*
>
> *14. To avoid any doubt, we submit the Fair Work Commission is bound by the decision in CFMEU v Collinsville [2014] FWCFB 7940 where it was stated:*
>
> > *"[16] There can be little doubt that a bargaining representative for a proposed agreement will have standing to be heard in relation to an application to approve the agreement. Bargaining representatives play a central and important role in the agreement making scheme established by Part 2-4 of the FW Act. The FW Act places obligations on and grants privileges to a bargaining representative for a proposed agreement. These include:*
> >
> > - *imposing an obligation to meet the good-faith bargaining requirements;*
> > - *standing to apply for a majority support determination;*
> > - *standing to apply for a bargaining order if the good faith bargaining*
> >
> > *requirements are not being met by other bargaining representatives;*
> >
> > - *standing to apply for a scope order;*
> > - *standing to apply for a low-paid authorisation;*

- *standing to apply for the approval of an enterprise agreement; and*

- *the right of an employee organisation that was a bargaining representative for the proposed agreement to give notice that it wants to be covered by the agreement.*

[17] The Senior Deputy President determined that the CFMEU was not a bargaining representative for the Agreement and had no right in that capacity to be heard and nor did it have a right to give notice under section 183 of the FW Act."

15. The Vickers case referred to by the applicant was a demonstrably different matter and that fact should have been drawn to the attention of the Fair Work Commission. Further, in considering the appropriateness of permitting RAFFWU to be Heard in an Award Review proceeding (see [2018] FWCFB 2797) a Full Bench of the Fair Work Commission stated:

[11] The gravamen of Ai Group's submission is that RAFFWU be denied the opportunity to cross examine witnesses and make submissions in the review proceedings relating to the Fast Food Award. This submission is devoid of merit.

It is not contested that RAFFWU has members (at Domino's) who may be affected by the outcome of these proceedings. In such circumstances we would have thought that RAFFWU has a right to be heard. But in any event we need not go so far, as we are satisfied that RAFFWU should be permitted to fully participate in the proceedings.

And at [12, (i)]

The fact that RAFFWU is not 'directly affected' by the variations which are the subject of the review proceedings is immaterial. The present proceedings are plainly distinguishable from the circumstances in Re Vickers. The point is that RAFFWU has members who may be so affected. In this respect RAFFWU is in no different position to the SDA or Ai Group, neither of which will be 'directly affected' by the proceedings as they are not covered by the Fast Food Award (the Fast Food Award does not apply to the SDA or Ai Group as the award is not expressed to 'cover' them, see ss.47-48 and clause 4 of the Fast Food Award).

16. That RAFFWU is an Industrial Association representing the interests of Fast Food workers goes beyond the decision in [2019] FWCFB 2797. In [2019] FCA 1799 with regard the Domino's Pizza class action, the Federal Court said at [53]:

The RRFWU is one of the two unions representing the industrial interests of employees working in the sector, some of whom are likely to be class members in the proceeding.

17. Further, RAFFWU as an Industrial Association is the first applicant in Retail and Fast Food Workers Union Incorporated & Anor v Tantex Pty Ltd in the Federal Court of Australia prosecuting matters pertaining to McDonald's, another major fast food employer.

18. In any event, RAFFWU does not seek to be heard as an interested party. RAFFWU has standing as the bargaining representative of the two members who have appointed RAFFWU as their bargaining representative. That standing entitles RAFFWU to be heard in accordance with Collinsville.

19. The desperation of the applicant to avoid RAFFWU being heard belies the weakness in its application."

[8] At 3.45pm on 5 December 2015, the SDA filed a Submission (the "SDA Submission") that put relevantly:

"By way of general protest, the SDA objects to RAFFWU Incorporated ("RAFFWUI") being characterized as a Union. It is an incorporated association under the (Vic) Associations Incorporation Reform Act 2012. It operates entirely outside the legislative framework governing registered organisations. In the context of the present proceeding, RAFFWUI has no greater authority than a mere bargaining representative appointed to represent (and only represent) the employees who have appointed it to act in that capacity. It would be an error for the Commission to accord RAFFWUI any greater status than its status as a bargaining representative and it is submitted with respect that the Commission must not elevate the status of RAFFWUI to that of an organization of employees registered under the Fair Work (Registered Organisations) Act 2009."

[9] In Reply, the Applicant and the Employers submitted that while RAFFWU claimed to represent two casual employees of KFC franchisees, the RAFFWU Submission made no submission regarding particular concerns of either employees or their personal circumstances, and no evidence is given by the Two Employees. The failure to give any evidence was submitted to give rise to an inference that such evidence would have harmed RAFFWU's case[2].

[10] The Applicant submitted that there existed the distinct impression that RAFFWU was simply using the Two Employees as a vehicle for expressing what are in substance RAFFWU's views, in circumstances where the Full Bench of the Commission in *Vickers*[3] had found that it was entirely inappropriate to allow RAFFWU to appear as of right in Commission proceedings.

(b) Consideration Regarding Standing

[11] Regarding bargaining representatives, Section 176(1) of the Act provides:

"**176 Bargaining representatives for proposed enterprise agreements that are not greenfields agreements**

Bargaining representatives

(1) The following paragraphs set out the persons who are bargaining representatives for a proposed enterprise agreement that is not a greenfields agreement:

(a) an employer that will be covered by the agreement is a bargaining representative for the agreement;

[2] *Jones v Dunkel* [1959] HCA 8; *Woolworths Group Limited T/A Woolworths* [2019] FWCA 7 at [45].

[3] [2017] FWCFB 3131, at [29] and [30].

(b) an employee organisation is a bargaining representative of an employee who will be covered by the agreement if:

(i) the employee is a member of the organisation; and

(ii) in the case where the agreement is a multi-enterprise agreement in relation to which a low-paid authorisation is in operation--the organisation applied for the authorisation;

unless the employee has appointed another person under paragraph (c) as his or her bargaining representative for the agreement, or has revoked the status of the organisation as his or her bargaining representative for the agreement under subsection 178A(2); or

(c) a person is a bargaining representative of an employee who will be covered by the agreement if the employee appoints, in writing, the person as his or her bargaining representative for the agreement;

(d) a person is a bargaining representative of an employer that will be covered by the agreement if the employer appoints, in writing, the person as his or her bargaining representative for the agreement.

[12] However, regarding employee organisations as defined by the Act (being organisations registered under the *Fair Work (Registered Organisations Act) 2009*)[4], sub-section (3) of s.176 provides.

"(3) Despite subsections (1) and (2):

(a) an employee organisation; or

(b) an official of an employee organisation (whether acting in that capacity or otherwise);

cannot be a bargaining representative of an employee unless the organisation is entitled to represent the industrial interests of the employee in relation to work that will be performed under the agreement."

[13] Section 178 of the Act deals with other matters relevant to the appointment of bargaining representatives. It provides:

"**178 Appointment of bargaining representatives--other matters**

When appointment of a bargaining representative comes into force

(1) An appointment of a bargaining representative comes into force on the day specified in the instrument of appointment.

[4] See s.12 definitions of *employee organisation* and *organisation*.

Copies of instruments of appointment must be given

> (2) A copy of an instrument of appointment of a bargaining representative for a proposed enterprise agreement must:
>
> > (a) for an appointment made by an employee who will be covered by the agreement--be given to the employee's employer; and
> >
> > (b) for an appointment made by an employer that will be covered by a proposed enterprise agreement that is not a greenfields agreement--be given, on request, to a bargaining representative of an employee who will be covered by the agreement.

Regulations may prescribe matters relating to qualifications and appointment

> (3) The regulations may prescribe matters relating to the qualifications or appointment of bargaining representatives.

[14] In *Jones v Queensland Tertiary Admissions Centre Ltd (No.2)*[5], Collier J. observed, when considering an employer bargaining representative but which analysis was equally apposite to the appointment of an employee bargaining representative, as follows:

> *" 25. References to the role of "bargaining representative" are repeated throughout the Act. The term is not defined in the Act and is a newly-created role, replacing the role of "bargaining agent" under the previous Workplace Relations Act 1996 (Cth). Paragraph 697 of the Explanatory Memorandum to the Fair Work Bill 2008 (Cth) provided:*
>
> > *Bargaining representatives have a more significant formal role in the bargaining process compared to bargaining agents under the WR Act. Bargaining representatives are entitled to: bargain for enterprise agreements and depending on the type of agreement will usually be entitled to apply for (among other things) protected action ballot orders, bargaining orders, majority support determinations, scope orders and serious breach declarations. Bargaining representatives are also entitled to represent a person in matters before FWA (see clause 596). As part of their responsibilities, bargaining representatives for a single-enterprise agreement and a multi-enterprise agreement to which a low paid authorisation is in operation are required to meet the good faith bargaining requirements set out in subclause 228(1). Non-compliance with the requirements exposes a bargaining representative to bargaining orders. Division 3 also makes clear that an employer must not refuse to recognise or bargain with a bargaining representative.*
>
> *26. In my view the legislation referable to the appointment of a bargaining representative in these circumstances should be interpreted liberally. The Act is intended to be accessible to employers large and small, as well as to employees both in their own capacity and through union membership. It is intended to assist relevant parties and facilitate the processes contemplated by the Act, including negotiation of enterprise agreements. The role of bargaining representative is clearly significant, however I consider that, in relation to the circumstances relevant to such appointments, the key factor is that there be attendant certainty upon the creation of the role rather than a requirement of overt formality. So, it must be clear on the face of the relevant*

[5] (2010) 186 FCR 22, at [25] and [26].

> *document that the position has been created, and a copy of that document must be capable of being given to a bargaining representative of the employee (s 178(2)). Accordingly, for example, I do not consider that reference to "instrument of appointment" in s 178(1) requires that a document purporting to record the appointment of a bargaining representative of an employer be a document of the formality of a deed under seal. Provided the appointment is made in writing, as required by s 176(1)(d), and provided it clearly evidences the creation of the role, the appointment is effective."*

[15] RAFFWU is clearly not an employee organisation as defined by the Act, and its attempt to equate it's position to that of the SDA, contained at paragraph 12 of their submission extracted above, is baseless and contrary to the entire scheme of the Act and the the *Fair Work (Registered Organisations Act) 2009*.[6]

[16] The provisions of the *Fair Work (Registered Organisations Act) 2009* impose significant obligations upon all registered organisations, and employee organisations in particular, regarding such issues as their Rules, the keeping of accounts and the filing of relevant documentation with the Commission. Failure to comply with those obligations can have serious consequences, including significant pecuniary penalties[7]. RAFFWU is not subject to any such obligations, and its attempt to equate itself with a registered organisation by the use of the term "*union*" in its name is misleading.

[17] While RAFFWU points to the decision of the Full Bench in *4 yearly review of modern awards – Fast Food Industry Award 2010*[8], regarding the "appropriateness of permitting RAFFWU to be heard in an Award Review proceeding"[9], it is clear that as Modern Awards no longer have named respondents or parties principal, and cover certain persons, organisations and entities who are not named respondents, that procedural fairness can demand that a broad range of persons or entities may be heard. That was particularly so where it was not contested in the Award Review that RAFFWU had members who may have been affected by the outcome of the proceedings.

[18] Unlike the broad nature of Modern Award coverage however, the delineation of the permissible participants in Enterprise Agreement negotiation is significantly more restrictive. The SDA, being an organisation entitled to represent the industrial interests of employees in this area, is as of right a bargaining representative of its members unless that status is revoked (s.176(1)(b)). RAFFWU only becomes a bargaining representative if it is appointed, in writing, by a person as "*his or her bargaining representative"* (s.176(1)(c)). Its participation in the Application is therefore limited to it being the bargaining representative of the Two Employees. RAFFWU seems to accept that limitation at paragraph 18 of their submission extracted above.

[19] When the content of the Two Employees' Submission is considered, there would appear to be some force to the Applicant's Reply Submission that there exists at least an impression that RAFFWU is using the Two Employees as a vehicle for expressing what are in substance RAFFWU's views, rather than those of the Two Employees. Nonetheless, the RAFFWU Submission has been made, and I am not prepared to find that the RAFFWU Submission is not

---

[6] See the Full Bench decision in *Vickers* [2017] FWCFB 3131.

[7] See for example *Registered Organisations Commissioner v Communications, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2020] FCA 96.

[8] [2018] FWCFB 2797, at [11] and [12].

[9] Two Employees' Submission at [15].

an expression of the views of the Two Employees merely on the basis of the text of the Submission or on the basis of a *Jones v Dunkel*[10] inference.

[20] I consider the parties interests would be best served by my directing my attention to whether or not the Agreement can be approved, rather than embarking on a preliminary enquiry into whether the RAFFWU Submission is actually an expression of the Two Employees' views, though I note that such latter course would clearly be available to the Commission (for example, pursuant to s.590(2)(a)).

Directions, Submissions and Hearing

[21] On 7 November 2019, Directions were issued to the parties that identified a number of possible issues with the Agreement in relation to forms and signature requirements, the National Employment Standards ("NES"), the Better off Overall Test ("BOOT"), and potential unlawful deductions.

[22] In response to the Directions of 7 November 2019, the Applicant filed Submissions (the "Applicant's Submission") together with the undertakings that the Applicant was prepared to provide (the "Undertakings"). A copy of the Undertakings is attached to this agreement and marked "Annexure A".

[23] As anticipated in response to the Directions of 7 November 2019, and the Applicant's Submission and the Undertakings:

(a) The SDA filed submissions (the "SDA Submission") on 5 December 2019; and

(b) The RAFFWU Submission was filed, also on 5 December 2019.

[24] On 12 December 2019, the Applicant filed submissions in reply (the "Applicant's Reply Submission"), that responded to the SDA Submission and the RAFFWU Submission.

[25] On 16 December 2019, the Two Employees filed an additional submission regarding the dispute clause of the Agreement (the "RAFFWU Supplementary Submission").

[26] On 16 December 2019, a Hearing occurred in Sydney at which the Applicant, the SDA, and RAFFWU as bargaining representative for the Two Employees, addressed the Commission further.

[27] On 20 February 2020, I sought the response of the parties to various enquiries regarding the standing and authorisation of the Applicant and the Employers. Responses to my enquiries were received on:

(a) 26 February 2020, from the Applicant;

(b) 28 February 2020 from the SDA;

(c) 28 February 2020, from the Two Employees; and

[10] (1959) 101 CLR 298.

(d) 3 March 2020, from the Applicant in reply to the response of the Two Employees.

Outstanding Issues

[28] Arising from the issues raised by the Commission, the Applicant's Submission, the Undertakings, the SDA Submission, the RAFFWU Submission, the Applicant's Reply Submission, and the RAFFWU Supplementary Submission, the following issues require my consideration and determination in order to determine whether the Agreement must be approved:

(a) The standing and authorisation of the Applicant and the Employers;

(b) The evidence of the Applicant and the Employers, particularly regarding the obligations pursuant to s.180 of the Act;

(c) The Notice of Employee Representative Rights ("NERR");

(d) Whether the group of employees is fairly chosen;

(e) BOOT issues;

(f) Terms undermining the NES;

(g) The dispute term obligation; and

(h) Unlawful terms.

(a) The Standing and Authorisation of the Applicant and the Employers

[29] The Two Employees challenge the standing of Kentucky Fried Chicken Pty Ltd to make applications on behalf of any other employer. They note that the Single Interest Employer Authorisation ("SIEA")[11] made by the Commission on 17 April 2019, does not specify any person who may make applications on behalf of employers after the SIEA is made (s.250(1)(c) of the Act). The Two Employees' challenge was expressed in the RAFFWU Submission as follows:

> *"20. We note the Single Interest Employer Authorisation ([2019] FWC 2604) identifies Yum! Restaurants Australia Pty Ltd to make the application for the Single Interest Employer Authorisation on behalf of the applicant – at [4]. It is unclear what standing Kentucky Fried Chicken Pty Ltd has to make applications on behalf of any other employer. No material has been served on RAFFWU which would identify the basis for the application by the applicant.*
>
> *21. The decision in [2019] FWC 2604 does not specify any person who may make applications on behalf of employers after the authorisation is made – see s.250 (1)(c) of the Fair Work Act. The Order (PR707102) does not specify any person whatsoever for the purposes of s.250 (1)(c).*

[11] [2019] FWC 2604.

…

23. Further Mr Jon D'Souza is identified in [2019] FWC 2604 at [4] as an employee of Yum! Restaurants Australia Pty Ltd. However, he makes the F17 presumably declaring the actions of Kentucky Fried Chicken Pty Ltd. He does not identify what steps he took to confirm the actions of the applicant.

24. It would appear Yum! Restaurants Australia Pty Ltd is not an employer. It is not listed in [2019] FWC 2604 as an employer at [3]. It would appear to be the franchisor.

25. Mr D'Souza is not a bargaining representative nor an authorised person named in the Order. Mr D'Souza led bargaining with a Mr Champion who, despite the statutory declaration of Mr D'Souza, advised RAFFWU that he was not a bargaining representative.

26. It would appear that bargaining was not conducted by employers or their bargaining representatives. This may be a relevant factor as to whether the Proposed Agreement was genuinely agreed.

…

30. The submissions, undertaking and response filed on 21 November 2019 by Mr McDonald make numerous references to "KFC" as if it is some identifiable entity. The F16 of the applicant identifies the applicant (Kentucky Fried Chicken Pty Ltd) is "KFC". It would appear we have been served with the submissions, undertaking and response of a single entity – one of 78 employers – who is not authorised under the Order to make applications on behalf of the employers (let alone give undertakings, file submissions or make responses.)

31. The Fair Work Act provides at s.185 in relation to an application for approval of an agreement:

(2) The application must be accompanied by:

(a) a signed copy of the agreement; and

(b) any declarations that are required by the procedural rules to accompany the application.

32. The Rules provide at Rule 24:

> *24 Application for approval of an enterprise agreement Agreements other than greenfields agreements*
>
> *(1) If an application is made under section 185 of the Act for approval of an enterprise agreement that is not a greenfields agreement, each employer that is covered by the agreement must lodge a statutory declaration, in support of the application for approval, by the employer or by an officer or authorised employee of the employer within 14 days after the agreement is made.*

33. We have been served with a single F17 by a person who does not appear to be an officer or employee of any of the 78 employers. We have not been served with a single compliant statutory declaration let alone 78.

34. There is no valid application before the Fair Work Commission and the application ought be dismissed.

STANDING OF SIGNATORY

35. The Proposed Agreement has been purportedly signed by Mr D'Souza as "Employer Authorised Person". No material is identified as to what that is or how it is relevant.

36. The Fair Work Regulations stipulate the signature requirements at 2.06A

> *2.06A Bargaining representative must apply for FWC approval of an enterprise agreement—requirements for signing agreement*
>
> *(1) For subsection 185(5) of the Act, this regulation prescribes the requirements for the signing of an enterprise agreement.*
>
> *(2) For paragraph 185(2)(a) of the Act, a copy of an enterprise agreement is a signed copy only if:*
>
> *(a) it is signed by:*
>
> *(i) the employer covered by the agreement; and*
>
> *(ii) at least 1 representative of the employees covered by the agreement; and*
>
> *(b) it includes:*
>
> *(i) the full name and address of each person who signs the agreement; and*
>
> *(ii) an explanation of the person's authority to sign the agreement.*

37. It is unclear how Mr D'Souza is entitled to sign on behalf of any employer. He does not appear to be an officer or employee of any relevant employer. He was not a bargaining representative.

38. We submit that there is no signed agreement before the Fair Work Commission and it cannot be approved. The application ought be dismissed."

[30] The SIEA was made by the Commission on 17 April 2019. It contained the following important observations and conclusions of Deputy President Sams:

> ***[7]*** *It is to be observed that if the Commission is satisfied that all the requirements set out in ss (1)-(3) of s 249 of the Act have been met, the Commission* ***must*** *make the single interest employer authorisation. Section 249(4) deals with the operation and duration of the authorisation.*
>
> ***[8]*** *Given the nature of this application, I propose to determine it 'on the papers'.*

> ***[9]*** *Having considered the terms of the application and the accompanying statement of Mr D'Souza, I am satisfied that the Employers have agreed to bargain together and have not been subject to any coercion and that the relevant Employers are franchisees of the same franchisor. I have taken into account confirmation from the Union party to previous agreements covering the employees of the Employers, the SDA, that it consents to the application and is anxious to commence bargaining for a new enterprise agreement. Accordingly, I will issue a single interest employer authorisation for the Employers to bargain together for the proposed agreement.*

[31] Further, as set out at paragraph [10] the SIEA Decision:

> "*In accordance with s 249(4) of the Act, the single interest employer authorisation comes into operation on 17 April 2019 and will cease operation on the day on which the proposed enterprise agreement is made or on 17 April 2020, whichever is the earlier*."

[32] Pursuant to s.182, the Agreement was made on the date when majority of employees cast a valid vote to approve it, being 11 October 2019. The Application by Kentucky Fried Chicken Pty Limited for the approval of the Agreement was made on 23 October 2019, by which time the SIEA Order had ceased to operate.

[33] The conclusion that the relevant employers were franchisees of the same franchisor was entirely consistent with previous Full Bench determination in 2010 that KFC franchisees carry on a business as a common enterprise. The Full Bench found:

> "*…KFC outlets are not isolated stand alone businesses. They are operated under franchise agreements which require a very high level of standardisation and cooperation. Most features of the business are standardised and operated under the KFC umbrella. This extends to appearance, design, purchasing, operations, pricing and marketing. Profit is effectively shared as KFC Pty Ltd obtains a proportion of revenue from franchisees.*
>
> *In our view KFC Pty Ltd and its franchisees carry on a business as a common enterprise. They are closely connected and contribute to the overall purpose of successfully operating KFC outlets.*"[12]

[34] The Applicant identified in the Form F16, Kentucky Fried Chicken Pty Ltd ("KFC"), is an employer to be covered by the Agreement (clause 2.1 of the Agreement). KFC is a bargaining representative for the purposes of s.176(1)(a) of the Fair Work Act (2009) (Cth) ("the Act"), and is therefore entitled to apply for the approval of the Agreement under s.185(1) of the Act.

[35] Section 185(1) of the Act requires "*a bargaining representative*" to apply to the FWC for approval of the agreement. It does not require "*all bargaining representatives*" to do so.

[36] Insofar as it has been identified that Yum! Restaurants Australia Pty Ltd was, at least in the title of the SIEA, the putative Applicant for the SIEA, I note that:

(a) Paragraph [1] of the SIEA notes that the Application was made by Yum! Restaurants Australia Pty Ltd and 78 other named employers, including KFC;

---

[12] [2010] FWAFB 8826 at [20] to [22].

(b) Yum! Restaurants Australia Pty Ltd and KFC are "*related bodies corporate*" and so deemed to be "single interest employers" (s.172(5)(b)); and

(c) Mr Jon D'Souza named in reference to Yum! Restaurants Australia Pty Ltd in the SIEA is the same person that is named in reference to KFC in the Forms F16 and F17.

[37] I find that KFC has standing to make the Application. Further, s.185(1) of the Act only requires "*a bargaining representative*" to apply to the Commission for approval of an agreement. It does not require "*all bargaining representatives*" to do so.

[38] Insofar as Rules 24(1) of the *Fair Work Commission Rules 2013* ("the Rules") provides that each employer that is covered by the Agreement must lodge a statutory declaration, bearing in mind the conclusions contained in the SIEA, and its terms, pursuant to Rule 6 of the Rules I waive the need for compliance with Rules 24(1).

[39] I further find that Mr D'Souza is clearly entitled to sign the Application documents on behalf of the Applicant. Mr D'Souza is the People and Capability Director of KFC. KFC is an employer stipulated at clause 2.1 as being covered by the Agreement. As such, Mr D'Souza is entitled to sign the Agreement.

(b) The Evidence of the Applicant and the Employers, Particularly Regarding the Obligations Pursuant to s.180 of the Act

[40] RAFFWU submitted that the obligations at s.180 of the Act fell on each relevant employer, and that there was no evidence from any employer (seemingly including KFC) that they complied with each of the requirements of s.180.

[41] RAFFWU further noted that the Applicant was the only employer to whom the proposed Agreement was said to apply as no other employers were listed at Schedule A. As such it raised questions regarding whether persons not covered by the Agreement voted on the Agreement. It put, without any basis, that "*…the voting pool was infected by tens of thousands of persons who will not be covered by the Proposed Agreement because of its terms*".

[42] Finally RAFFWU submitted that there was no evidence as to how employees were given access to the Policy of promoting union membership identified in clause 41.2 of the Proposed Agreement during the access period, and noted that the definition of employees in the Proposed Agreement was circular and exclusive of Shift Supervisors.

[43] As the Full Bench previously observed[13], KFC is a business that involves not isolated stand alone businesses, but businesses that are operated under franchise agreements which require a very high level of standardisation and cooperation. It would be ludicrous to suggest, and the Act does not require, that after the group of 78 employers identified in the SIEA bargained together for one enterprise agreement to apply to all of them, that each of the 78 employers must then individually undertake the pre-approval steps outlined in s.180.

[13] [2010] FWAFB 8826 at [20] to [22].

[44] Mr D'Souza provided significant detail in the Form F17 Statutory Declaration at questions 2.5, 2.6, 2.7 and 2.8 (with numerous annexures) regarding the steps taken to ensure provision of relevant materials and understanding of those materials. Those steps were taken in relation to each of the 661 KFC Outlets nationally. As such Mr D'Souza was ensuring, from his position of People and Capability Director of KFC, complete and consistent compliance with the Act's requirements for all employers covered by the SIEA. By doing so, those employers and Mr D'Souza took all reasonable steps to ensure compliance with the Act.

[45] There is no evidence, even from the Two Employees, that there was any confusion as to whom the proposed agreement related. Additionally, the detail and dissemination of the relevant materials, together with the substance of the proposed Agreement as a whole, would have left employees in no doubt as to coverage.

[46] I do not consider it was necessary that employees be given access to the Policy of promoting union membership identified in clause 41.2. It is unclear whether any such written policy exists. The focus of that particular sub-clause of the Agreement is provision of an application form to join the union. I further see no uncertainty in the definition of Shift Supervisors.

(c) The Notice of Employee Representative Rights ("NERR")

[47] RAFFWU alleges that the F17 incorrectly states that the NERR was placed in KFC outlets on 23 April 2019, and argues that:

> *"57. It is clear from the Single Interest Employer Authorisation decision that the applicant had agreed to bargain for the proposed agreement prior to 12 April 2019. It is clear the other employers had agreed to bargain. It is beyond doubt the notification time had occurred prior to 12 April 2019 and very likely before 9 April 2019. The NERR was not issued until 23 April 2019.*
>
> *58. Had employees been issued with the NERR in accordance with the Act, employees could have exercised their right to be represented. They may have also engaged in the case for the Single Interest Employer Authorisation. They were denied those rights. RAFFWU is concerned the applicant and other employers almost certainly failed to comply with the requirement to issue the NERR within 14 days.*
>
> *59. It is also of note the obligation falls on each employer – not merely the applicant.*
>
> *60. RAFFWU is concerned that no valid NERR was issued and therefore the applicant cannot satisfy the Fair Work Commission that the statutory requirement at s.188(1)(a) (ii) is met. The Application ought be denied.*
>
> *61. In the alternative, the NERR that was issued was not concordant with the decision and order in [2019] FWC 2604. We submit this makes the NERR invalid."*

[48] I reject those submissions. An application for a SIEA necessarily occurs before bargaining commences so as to authorise the SIEA employers to bargain together. This is noted in the SIEA wherein it noted that the SDA "*consents to the application and is anxious to*

commence bargaining for a new agreement"[14]. The notification time for the purposes of s.173(3) of the Act, as recorded by Mr D'Souza in the Form F17 is clearly not wrong.

[49] RAFFWU advanced what it identified as an alternative argument, being a difference between the scope of the SIEA and the NERR that it described as "*manifestly different in scope and…therefore invalid".* The difference identified was the following:

> *"*[The SIEA] *specified the persons employed as "Team Members (not including managerial employees), including employees engaged as commissaries or in home delivery call centres." However, the NERR that was issued was for a different Proposed Agreement which would cover "employees that work in KFC outlets across Australia.""*

[50] It is an exaggeration to describe the above difference as manifestly different in scope. The coverage of the Agreement is certainly no less than that referred to in the SIEA. However, it is clear that single interest employee authorisations do not define the scope of bargaining. As the Full Bench observed in *Stuartholme School and Others v Independent Education Union of Australia*[15]:

> *"In our view there is no indication in the relevant statutory provisions that the legislature intended that a single interest employer authorisation should define the scope of bargaining and that a bargaining representative who argues for a different scope is necessarily not genuinely trying to reach an agreement. The principle purpose of an authorisation is to permit a group of employers to do what the Fair Work Act does not otherwise permit and that is to bargain together for one enterprise agreement to apply to all of them. …"*

[51] The NERR is not invalid.

(d) Whether the Group of Employees is Fairly Chosen

[52] RAFFWU submits the group of employees to be covered by the Proposed Agreement was not fairly chosen. It noted that the NERR that was issued included all employees, however the Application was made for approval of a Proposed Agreement that excludes Managerial employees.

[53] RAFFWU does not, however, say how the exclusion of managerial employees results in the group being not fairly chosen. It is unchallenged that Managerial employees have never been covered by an enterprise industrial instrument applying to KFC team members.

[54] Given the history of agreement coverage, the involvement in bargaining of professional and experienced bargaining representatives and the absence of any evidence of manipulation, I find there is no substance to the allegation that the group of employees is not fairly chosen.

(e) BOOT Issues

[14] At paragraph [9].

[15] [2010] FWAFB 1714 at [16].

[55] Section 193 of the Act deals with the BOOT. It provides:

"193 Passing the better off overall test

When a non greenfields agreement passes the better off overall test

(1) An enterprise agreement that is not a greenfields agreement passes the better off overall test under this section if the FWC is satisfied, as at the test time, that each award covered employee, and each prospective award covered employee, for the agreement would be better off overall if the agreement applied to the employee than if the relevant modern award applied to the employee.

FWC must disregard individual flexibility arrangement

(2) If, under the flexibility term in the relevant modern award, an individual flexibility arrangement has been agreed to by an award covered employee and his or her employer, the FWC must disregard the individual flexibility arrangement for the purposes of determining whether the agreement passes the better off overall test.

When a greenfields agreement passes the better off overall test

(3) A greenfields agreement passes the better off overall test under this section if the FWC is satisfied, as at the test time, that each prospective award covered employee for the agreement would be better off overall if the agreement applied to the employee than if the relevant modern award applied to the employee.

Award covered employee

(4) An award covered employee for an enterprise agreement is an employee who:

(a) is covered by the agreement; and

(b) at the test time, is covered by a modern award (the relevant modern award) that:

(i) is in operation; and

(ii) covers the employee in relation to the work that he or she is to perform under the agreement; and

(iii) covers his or her employer.

Prospective award covered employee

(5) A prospective award covered employee for an enterprise agreement is a person who, if he or she were an employee at the test time of an employer covered by the agreement:

(a) would be covered by the agreement; and

(b) would be covered by a modern award (the relevant modern award) that:

(i) is in operation; and

(ii) would cover the person in relation to the work that he or she would perform under the agreement; and

(iii) covers the employer.

Test time

(6) The test time is the time the application for approval of the agreement by the FWC was made under section 185.

FWC may assume employee better off overall in certain circumstances

(7) For the purposes of determining whether an enterprise agreement passes the better off overall test, if a class of employees to which a particular employee belongs would be better off if the agreement applied to that class than if the relevant modern award applied to that class, the FWC is entitled to assume, in the absence of evidence to the contrary, that the employee would be better off overall if the agreement applied to the employee."

[56] The BOOT is an evaluative determination, not to be conducted via a line by line analysis. It is an assessment that requires consideration of the advantages and disadvantages of an enterprise agreement to award covered employees and prospective award covered employees. There will invariably be some advantages to making an agreement, as there will likely be some disadvantages. An enterprise agreement may pass the BOOT even if some award benefits have been reduced, so long as they are more than offset by the benefits of the enterprise agreement. Ultimately the application of the BOOT is a matter that involves the exercise of discretion.

(i) More Beneficial Provisions

[57] The Agreement contains terms which are more beneficial than the Award. I find that the Agreement contains the following advantages to employees covered by the Agreement when compared to award covered employees and prospective award covered employees:

(a) Clause 5.2.1 provides guaranteed minimum hours of 6 hours under the Agreement, compared to 3 hours per week under the award.

(b) Part-time employees only being rostered according to their availability as to days of the week, and the periods in each of those days, as agreed on engagement. Such availability cannot be changed without the written agreement of the employee. Part-time employees may also be offered additional hours within their agreed availability, which they are free to accept or reject (except for a maximum period of 15 minutes at the end of a shift).

(c) The ability for part-time employees to request in writing that the employer agree to increase the guaranteed minimum hours where such part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed minimum hours.

(d) Additional benefit to part-time employees base rates of an extra 0.25% / 0.5% applied to their base rate in addition to the award penalties for working weekends, nights and public holidays.

(e) Improved benefit of access to a formal traineeship qualification for part-time school-based trainees as part of their employment with KFC.

(f) Part Time School-based Trainees receive at least 0.25 or 0.5% in excess of the relevant award rate for an award employee of the same type (i.e. 15 year-old trainees, and 16 year-old employees in Year 12), or the higher team member rate plus a loading of 7.5%. School-based trainees are paid at least an hour for attending traineeship review meetings.

(g) Full and part-time employees will receive an additional 0.25% over the award rate from 1/2/20 and 0.5% over the award rate from 1/7/21.

(h) Casual employees will receive an additional $0.01 per hour at the adult level (plus the additional 25% loading) over the award rate from commencement of the agreement.

(i) Clause 6.5 Protection of Rates provides existing employees at the date of the Agreement coming into operation shall not suffer a reduction in their total rate of pay (including allowances) for working the same hours, as a result of the implementation of the Agreement.

(j) Clause 9.1 Spread of Hours provides for a maximum of 10 hours within a 11 hour spread, whereas the Award provides an employee may be rostered to work up to a maximum of 11 ordinary hours on any day.

(k) Clause 12.2 Rest Breaks provides that employees can access an additional 10 minute rest break after 8 hours rather than after 9 hours under the Award.

(l) Clause 20 Family and Domestic Violence Leave provides employees may access their accrued personal/carers leave for a maximum of 3 days paid leave in addition to their entitlement to 10 days unpaid leave. Additionally, under the Agreement, employees are entitled to 10 days unpaid leave compared to 5 days unpaid leave under the award and NES.

(m) Clause 24 Compassionate Leave provides full and part-time employees are entitled to 3 days paid compassionate leave, as opposed to 2 days under the NES. Under the Agreement, casuals are also entitled to 3 days unpaid leave, as opposed to 2 days under the NES. Employees may also access 1 days paid leave to attend the funeral of an aunt or uncle, which is in addition to NES entitlements.

(n) Clause 25.2 Parental Leave provides that employees have an entitlement to unpaid leave for permanent care and long-term foster arrangements.

(o) Clause 26.5 Time Off in Lieu of Overtime provides that an employee has the benefit of the time off within one month rather than potentially having to wait for 6 months to get the benefit under the Award.

(p) Clause 29.4 Termination notice by employee provides that an employee is only required to provide one week’s notice where the Award requires additional notice based on years of service.

(q) Clause 32 Disputes Procedure provides that dispute which cannot be resolved by conciliation may be dealt with by compulsory arbitration.

(r) Clause 35 Accident Pay provides that accident pay at Agreement rates continues for 26 weeks from the date of injury.

(s) Clause 40 Union Delegates provides that delegates may be granted leave for union training courses or programs at the employer's discretion.

(t) Clause 41 Redundancy specifies that employees of small employers also receive redundancy entitlements under the Agreement.

(ii) Less Beneficial Provisions

[58] It was also apparent that the Agreement contained certain possible disadvantages for employees it covered when compared to award covered employees and prospective award covered employees. BOOT concerns were expressed to the parties by way of the Commission's Single Enterprise Agreement Legislative Checklist that was provided to the parties.

[59] After considering the Applicant's Submission, the SDA Submission, the RAFFWU Submission, and the Applicant's Reply Submission, I considered the following matters as possible concerns regarding whether the Agreement passed the BOOT:

(a) Rates if pay for junior casual employees were calculated as slightly lower than the Award.

(b) Clause 5.2.7 of the Agreement states that a part-time employee may be offered ordinary hours in addition to 'guaranteed minimum hours' paid at ordinary rates and 5.2.7(d) provides that agreed additional hours paid at ordinary rates will accrue entitlements such as annual leave and personal/carer's leave.

(c) Clause 5.2.7(e) of the Agreement provides that a part-time employee may decline additional hours, with the exception of up to a maximum of 15 minutes at the end of a shift, to be paid at ordinary time subject to the daily and weekly maximums provided elsewhere in the Agreement, however it is unclear whether the additional 15 minutes would accrue leave entitlements as conferred at clause 5.2.7(d) of the Agreement.

(d) Clause 10.10 of the Agreement provides for time off in lieu ("TOIL") however it does not indicate that any unpaid TOIL must be paid to the employee upon termination as Clause 26.5(h) of the Award provides, nor does it provide that if the employee requests at any time, to be paid for overtime worked but not taken off, the employer must pay the employee for the overtime in the next pay period following the request as provided at Clause 26.5(d) of the Award.

(e) Clause 35.1 of the Agreement provides that the amount of accident pay shall be increased by the employer to the amount of the ordinary time weekly rate for the average rostered hours worked by the employee at the time of the accident, however 'average rostered hours' appears inconsistent with Clause 20.1(a) of the Award which provides that the weekly accident payment made to an employee is the difference between the weekly workers'

compensation payment and the employee's weekly wage payable under the Award. Also, the Agreement does not provide that the entitlement to accident pay continues on termination of an employee's employment as provided by Clause 20.3 of the Award, or the return to work protections at Clause 20.5 entitling the employee to reduced accident pay when the employee returns to work on reduced hours or modified duties (for the performance of such work).

(f) The Agreement does not provide that the time of taking rest and meal breaks, and the duration of meal breaks, form part of the roster and are subject to any agreement reached regarding part-time employees' regular pattern of work.

(g) Clause 8.7 of the Agreement provides that Team Members occasionally rostered by Employers to assist other team members in learning non-certified, on-the-job skills (but without the major responsibility on a day to day basis for supervising and/or training new employees) shall receive an additional skills champion allowance of 1.5% of their base rate whilst performing such work. Team Members are equivalent to an Award Level 1, however employees at this level are not required to assist in training other employees, and supervision is not necessarily a requirement of an employee classified at an Award Level 2.

(iii) Resolution of Preliminary BOOT Analysis

[60] The Undertakings were provided subsequent to the Commission's concerns being outlined to the parties. I consider that my concerns that the Agreement did not meet the approval requirements of ss.186 and 187 of the Act, in particular the BOOT, were addressed by the Undertakings in the following way:

(a) My concern in respect of rates of pay for school-based trainees and casuals was addressed by Undertaking 3 of the Undertakings;

(b) My concern regarding part-time employee who are offered ordinary hours in addition to 'guaranteed minimum hours' being paid at ordinary rates is addressed in two ways:

(i) Firstly, Clause 12.3 of the Award was varied on 11 October 2019[16]to provide that part-time employees may agree to vary the regular pattern of work for a particular rostered shift provided that the variation is recorded by the end of the affected shift; and

(ii) The provision of Undertaking 1 of the Undertakings.

(c) My concern expressed at paragraph [59(c)] above was addressed by Undertaking 2 of the Undertakings.

(d) My concerns expressed at paragraph [59(d)] above were addressed by Undertaking 5 of the Undertakings.

(e) My concerns expressed at paragraph [59(e)] above were addressed by Undertaking 11 of the Undertakings.

(f) My concerns expressed at paragraph [59(f)] above were addressed by Undertaking 6 of the Undertakings.

[16] PR712899.

(g) My concerns expressed at paragraph [59(g)] above were addressed by Undertaking 4 of the Undertakings that such employees will not have the responsibility for supervising team members and/or training new employees.

[61] I formed the preliminary view that the concerns that I possessed regarding the less beneficial terms and the BOOT analysis were addressed by the Undertakings. Indeed, the position of the SDA at the Hearing was expressed that it advanced only the following limited BOOT concern:

> *"The final question I need to deal with is this issue of part-timers working additional hours and there's an undertaking that's been offered, which is the first undertaking. I have to say that the SDA's position is that the agreement provisions are superior to the award and we would not want clause 5.2.1 to be completely replaced by 12.3 of the award. If there's an issue about 12.3 replacement it should be limited, in our submission, to the first 15 minutes which under the agreement are required additional time at ordinary time rates if an employee needs to finish serving a customer or what have you."*[17]

(iv) RAFFWU Further Boot Issues

[62] RAFFWU, however, highlighted a number of further BOOT issues which, it submitted, would preclude approval of the Agreement. RAFFWU remains of the view that the Commission cannot be satisfied that the Agreement passes the BOOT. I will consider each issue below and outline whether or not I am satisfied the issue affects the BOOT analysis, and in what way. In my determination, I have concluded that the uniform deductions clause in the Agreement is not better off as against the Award, however, this detriment is offset by those items which are.

(a) Non-Skills Champion

[63] RAFFWU submits that the wage rate payable to employees is only between 1c and 10c more than the Award. RAFFWU submits this is so miniscule so as to be a neutral factor in the BOOT consideration.

[64] Table B of clause 6.1 of the Agreement states that pay rates are a percentage of the Award weekly rate plus 0.25% on commencement. The adult weekly rate in Table B has been rounded to the nearest 10 cents after this addition, which is how the Commission would also calculate Award rates if adding the same percentage. Combined with the Undertakings given, the result is that the rates under the Agreement will always be higher than the Award. I am satisfied that this actually weighs positively in the BOOT assessment.

(b) Skills Champion

[65] RAFFWU noted that it had previously raised concern with KFC that those paid a Skills Champion Allowance should be entitled to be paid at the rate of Level 2 in the Award. The proposed undertaking directed to this issue attempts to deal with this issue and RAFFWU maintains the Proposed Agreement contains detriment without the undertaking.

[17] Transcript PN 97.

[66] However, the Skills Champion Allowance is not a benefit provided by the Award. KFC in the Undertakings has nonetheless committed to a position that an employee paid the Skills Champion Allowance will not have the responsibility for supervising team members and/or training new employees.

[67] RAFFWU's complaint is clearly that it did not gain something in negotiations, not that there is detriment when compared to award covered employees. I am satisfied that this actually weighs positively in the BOOT assessment, but for a very limited category of employees.

(c) Uniform Deduction

[68] RAFFWU submitted that the Uniform Deduction was a clear and manifest detriment, and also an unlawful term.

[69] KFC noted that the Award has no restriction in relation to uniform deduction as it is silent in relation to uniform deduction. It submitted that accordingly, for the purposes of applying the BOOT, the uniform deduction cannot be regarded as a detriment as compared to the Award.

[70] I note that the terms of the Agreement reflect less a "*deduction*" and more "*deposit and retention of deposit until uniform return on termination*", and in return employees gain the benefit of provision of a uniform. Overall, this issue weighs only slightly negatively in the Commission's BOOT assessment.

(d) Meal Breaks and Rest Breaks

[71] RAFFWU submitted that the Award provides that the time of taking rest and meal breaks, and the duration of meal breaks, are subject to rostering provisions. The Award provides that an unpaid meal break must be taken after no more than 5 hours of work. The Proposed Agreement provides arrangements for the not taking of meal breaks, and for the non-rostering of meal breaks.

[72] In particular, it was submitted, Clause 11.3 of the Proposed Agreement permits an employer to direct an employee to take a period of shorter than 30 minutes as a "meal" break (of 20 minutes duration.) These are not genuine meal breaks and are "*crib breaks*". It "*is to be taken according to operational requirements.*" These were submitted to be clear and manifest detriments, which in practice, are simply the abolition of the meal break. While the Applicant has proposed an undertaking in relation to the "rostering of meal breaks", RAFFWU submitted the Applicant has not proposed any undertaking in relation to the time of taking rest breaks. This is a detriment.

[73] Finally, RAFFWU submitted that the "rostering" of meal and rest breaks, including the length of meal breaks, has particular benefit to part-time employees who have set rosters which can only change by agreement. The detriment inflicted by these provisions is amplified under the Proposed Agreement which casualises part-time work.

[74] KFC noted that Clause 11.3 of the Agreement only applies to shift supervisors and enables a crib break to be taken instead of an unpaid meal break. KFC submits that the provision of a paid break is more beneficial than the provision of an unpaid break.

[75] KFC disagreed that the Agreement's provisions for rest breaks are detrimental as compared to the Award. Firstly, the Award does not have any requirement for there to be a roster that is set in advance. Conversely, the Agreement provides at clause 9.8 that the employer will determine and display a roster seven days in advance. To require a rest break to be incorporated into a roster set seven days in advance would place an obligation upon KFC in excess to what is required under the Award. Secondly, employees and employers being able to arrange a meal break when its suits them should not be regarded as a detriment.

[76] This issue is limited to Shift Supervisors. I consider that certain Shift Supervisors may see a 20 minute paid break as more beneficial than a 30 minute unpaid break. In the absence of evidence either stating benefit or detriment though, I consider this issue a neutral consideration in the BOOT assessment.

(e) Dispute Resolution - Representation

[77] RAFFWU noted that the Award provides for an employee to have a representative if they wish throughout the dispute resolution process. A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 9.

[78] RAFFWU contended that the Proposed Agreement limits representation to SDAEA and AWU. Further, clauses 32.3 and 32.4 of the Proposed Agreement provide structural impediment to any worker progressing and resolving their dispute unless SDAEA, AWU or the employer agree. The clause does not meet the requirements of s.186 (6) as described below. However, this is also a substantial detriment.

[79] RAFFWU submitted that the proposed undertaking does not deal with the latter issue and mistakes the earlier issue. The undertaking refers to representation by clause 9 of the Award. The Award does not apply and the clause in the Proposed Agreement will apply. Any undertaking needs to be relevant to the disputed term.

[80] The undertaking provided by the Applicant is as follows:

> *"Clause 32: KFC undertakes that a party to a dispute may appoint a person, organisation or association to represent them in any discussion or process permitted by clause 9 of the Award*".

[81] The breadth of the undertaking seems to be mis-interpreted by RAFFWU. The reference to the Award in the Undertaking has the two-fold effect of:

(a) Ensuring employee entitlements arising from the Award are squarely preserved; and

(b) Recognising the steps under the Award that are equivalent to those under the Agreement.

[82] It is clear on the face of the Agreement, the Award and the Undertaking that the SDA and AWU are in no way "*gatekeepers*" to any step in the process (as RAFFWU allege in their Supplementary Submission). I consider this issue a neutral consideration in the BOOT assessment.

(f) Shut-down and Refurbishment

[83] RAFFWU noted that the Agreement introduces at Clause 26 a provision which allows the employer to direct an employee to take annual leave or, for employees who do not have sufficient leave at the time of the shutdown, require them to take leave without pay for the duration of the shutdown.

[84] RAFFWU submitted that while the term would appear to offend the National Employment Standards (relating to annual leave), it is also a substantial detriment. The Award provides no such right to an employer to direct annual leave be taken nor stand down an employee (other than in accordance with s.524 of the Act).

[85] In relation to the National Employment Standards, RAFFWU submitted that the term in the Proposed Agreement does not provide for a circumstance where the requirement to take annual leave is reasonable. As such, the proposed term is not compliant with the National Employment Standards nor section 55 of the Fair Work Act. It submitted that the Proposed Agreement cannot be approved (see s.186 (2) (c) of the Act).

[86] KFC accepted that there is no provision in the Award for an employer to direct an employee to take annual leave during a shutdown. However, there is nothing in the Award which would make it unlawful at common law for an employer to direct an employee to take annual leave during a shutdown or refurbishment period provided that such a direction is reasonable. Nor is there anything in the Act which would prevent such a direction.

[87] KFC also noted that the Act is clearly permissive of such provisions in industrial instruments. The ability of an employer to direct an employee to take annual leave is provided for in the Act at s.93(3):

> *"A modern award or enterprise agreement may include terms requiring an employee, or allowing for an employee to be required, to take paid annual leave in particular circumstances, but only if the requirement is reasonable."*

[88] KFC further noted that an employee can be directed to take annual leave during a shutdown under a number of awards. Some awards specify the requirement for an employee to take unpaid annual leave where the employee has insufficient accrued leave available. Such awards have not been found to exclude the National Employment Standards in contravention section 55 of the Act, and nor would the Agreement.

[89] KFC submitted that the provision under the Agreement at clause 26 for an employee to be required to take annual leave over an annual shut down or refurbishment period meets the National Employment Standards, and is a reasonable requirement for reasons which include:

(a) Notice will always be given to affected employees in advance of any shut down. The schedule of store refurbishments is generally known up to 12 months in advance;

(b) Store refurbishments are essential for the proper maintenance of the store building and equipment, to ensure that KFC continue to meet its occupational health and safety requirements, and to roll out any changes to branding, store layout, customer experience, and so on;

(c) Store refurbishments are not frequent. Stores are generally closed for refurbishment no more than once every 7 to 10 years;

(d) As set out in clause 26.2 of the Agreement, KFC is committed to providing employees with alternate employment where possible at a nearby store during any shutdown period; and

(e) Clause 26 seeks to provide for the continuation of employment, rather than its termination, in circumstances where there is a shutdown or refurbishment.

[90] Insofar as this issue is addressed as a BOOT issue, while it is clear that no clause dealing with shut down and refurbishment exists in the Award, the Award cannot be considered in a vacuum ignoring the surrounding legislative framework.

[91] The term does nonetheless represent a detriment when compared to the Award within the legislative framework, however the perceived rarity of the application of the clause must be considered. This issue does not weigh negatively in the Commission's BOOT assessment. I note that in the recent decision of the Full Bench in *Retail and Fast Food Workers Union Incorporated v Hungry Jack's Australia Pty Ltd t/a Hungry Jack's*[18] *("Hungry Jack's")*, the Full Bench found a similar provision to be one that did not give rise to any relevant detriment[19].

[92] Insofar as it is submitted that the clause is not compliant with the NES, I reject that submission. Clauses such as Clause 26 are in fact anticipated by the NES, provided their requirements are reasonable. It is clear that store refurbishments are rare but necessary, and so are a reasonable requirement. The provisions of Clause 26 regarding notification and alternate suitable work are also reasonable.

(g) Superannuation Choice

[93] RAFFWU submits the Superannuation provision is so poorly worded that it could exclude superannuation choice, and urges the Commission to seek express clarity that employees have choice of superannuation fund.

[94] KFC submits that RAFFWU's submission ought to be rejected as the wording of the superannuation clause of the Award, and the wording of the superannuation clause of the Agreement, are relevantly exactly the same.

[95] In the absence of any material difference, I find this is a neutral consideration in the BOOT assessment.

(h) Part-Time and Casual Employment

[96] RAFFWU submitted that the Agreement provides for a form of part-time employment that, in effect, has workers rostered each week for the hours they might work in the week without any guarantee to regularity of those hours on set days at set times. In support of that contention RAFFWU footnoted reference to Clauses 12.2 to 12.8 of the Agreement, however, clause 12 of the Agreement deals only with rest breaks. Part-time employment is dealt with in

[18] [2020] FWCFB 1693.

[19] Ibid at {76}.

clause 5.2 of the Agreement. Clause 5.2.1(b) provides that a part-time employee "has reasonably predictable hours of work".

[97] RAFFWU noted that the Award provides specific arrangements for part-time work including (at Clause 12.2):

> *"At the time of first being employed, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:*
>
> *(a) the number of hours worked each day;*
> *(b) which days of the week the employee will work;*
> *(c) the actual starting and finishing times of each day;*
> *(d) that any variation will be in writing, including by any electronic means of communication (for example, by text message);*
> *(e) that the minimum daily engagement is three hours; and*
> *(f) the times of taking and the duration of meal breaks."*

[98] RAFFWU submitted that the Agreement arrangement for part-time workers is very similar (if not identical) to the proposed and rejected Award variation of the Australian Industry Group. That application, by the Australian Industry Group, was for a variation to the *Fast Food Industry Award* (the "*Fast Food Award Application*") to include a term without the benefits of Clause 12.2 of the Award. In rejecting the application, the Full Bench observed:[20]

> *"It seems to us that the proposed flexible part time clause provides little certainty as to when guaranteed minimum hours will be worked. Indeed the proposed clause may facilitate working arrangements which are more akin to casual employment rather than part time employment, albeit without the requirement to pay a casual loading."*

[99] Further, in the *Loaded Rates Case* ([2018] FWCFB 3610) the Full Bench stated[21]:

> *"Having regard to the relevant provisions of the Aldi Agreements and the evidence of Paul Joyner, it is clear that Aldi's system of part-time employment is inconsistent with the above provision, in that it does not involve reasonably predictable hours of work; does not require agreement at the commencement of employment upon a regular pattern of work specifying the days of work, the hours to be worked on each day or the starting and finishing times; and does not require any change to this to be by agreement with the employee. However it does not follow from this that Aldi's part-time employment system is simply not permitted by the Retail Award and is for that reason alone to be regarded as failing the BOOT. Clause 12.6 of the award provides:*
>
> > *12.6 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 13.*
>
> *Thus the Retail Award allows an employer to pay as a casual employee any employee who is not a full-time employee and does not fit its definition of a part-time employee. It follows, we consider, that where an enterprise agreement in the retail sector provides for*

[20] ([2019] FWCFB 272) at [143].

[21] ([2018] FWCFB 3610) at [136] to [138].

> *a form of employment that does not constitute full-time or part-time employment as contemplated by the Retail Award, the appropriate point of comparison for the purpose of the BOOT is the catch-all of casual employment under the award.*
>
> *Such a comparison would need to take into account, from a direct remuneration perspective, the rates of pay, casual loading, and weekend and public holiday penalties payable under the Retail Award and the loaded rates of pay, Sunday work allowances, public holiday penalties and leave entitlements payable under the Aldi Agreements. Attached to this decision in Schedule B is a preliminary BOOT analysis of the Aldi Prestons Agreement undertaken by Commission staff under the supervision of Commissioner Lee which takes these matters into account. It shows that part-time employees under the agreement are better off overall than under the award on all of the scenarios modelled except where the part-time employee works only weekend shifts."*

[100] RAFFWU submitted that the provisions pertaining to the wage paid to a worker who is not engaged as a part-time employee are directly comparable between the *General Retail Industry Award* and the *Fast Food Industry Award*. The *Fast Food Industry Award* includes the following provision at Clause 12.8:

> *12.8 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 13—Casual employment.*

[101] RAFFWU contended that it follows that a more appropriate comparator for part-time staff under the Agreement is the casual rates of pay under the Award. The Agreement wage rates for part-time staff do not include the 25% casual loading. The wage rates include 1c to 10c more than the Award rate for an Award defined part-time employee. As such, the Agreement does not ensure all employees and prospective employees are better off overall compared to the Award and it should not be approved. The proper test comparator for the provision is the Award casual employee wage. In the alternative, the provision is a substantial and manifest detriment.

[102] KFC on the other hand noted that the Full Bench, in the *Fast Food Award Application*[22], acknowledged the use of enterprise agreements to include 'flexible' part time provisions to allow them to accommodate the employer practices. The Full Bench said[23]:

> *"Enterprise agreements are the most common method of regulating employment in the Fast Food sector. Further, a number of the Major Fast Food Chains have included flexible part time clauses in their enterprise agreements."*

and commented that[24]:

> "*The demonstrated capacity of the Major Fast Food Chains to enter into enterprise agreements to address what are said to be inflexibilities in the current part time clause is a consideration which also tells against the proposition that the proposed variation is necessary to ensure that the Fast Food Award achieves the modern awards objective".*[12]

[22] [2019] FWCFB 272.

[23] Ibid at [122].

[24] Ibid at [150].

[103] KFC submitted that it would be incongruent with the observations of the Full Bench to deny KFC access to flexible part-time provisions on the basis they were different to the Award provisions. Moreover, clause 5.2.1(b) provides that a part-time employee "*has reasonably predictable hours of work*".

[104] As to the contention that, for the purposes of the BOOT, the wages for part-time employees under the Agreement should be compared with the wage rates of casual employees under the Award, KFC notes that the casual loading is not intended to make casual employees better off than weekly employees but to compensate them for the disadvantage associated with foregoing the entitlements available to weekly employees.

[105] KFC noted that the 25% casual loading in the Award was adopted by the Full Bench for inclusion in all modern awards and arose from the decision in the *Metal, Engineering and Associated Industries Award 1998*[25] ('the *Metal Industry Award"*). The 25% loading in the *Metal Industry Award* was mainly assessed having regard to the relative annual costs to an employer of employing weekly versus casual employees, which could be as high as 125.88%.[26] The payment of a casual loading is simply intended to compensate for entitlements that weekly employees, but not casual employees, receive.

[106] KFC further submits that the Agreement additionally provides a number of other additional benefits or protections not found in the Award, including a minimum weekly engagement of 6 hours per week.

[107] KFC also submits that it is relevant when comparing the part time provision of the Agreement to the Award as to whether there is a relevant Award prescription for existing part-time employees. The terms of the part-time provision of the Award only deal with the circumstance of a part time employee when they are first being employed. The Award does not address the circumstance of the 4183 part time employees who are already engaged by KFC pursuant to similar provisions. If these part-time employment arrangements (most of which are to enable formal traineeships leading to AQF qualifications) could not continue, the continuation of such employment and training could be jeopardised.

[108] In the *Fast Food Award Application,* the Full Bench made the following observation as to evidence:[27]

> *"We would observe here that there is a paucity of evidence regarding the views of actual employees about the proposed flexible part time clause*."

That observation was later reinforced in the decision at paragraph [120].

[109] This Application does not suffer from the same paucity of evidence. At the time of the vote, 36,849 employees were covered by the Agreement, 12,159 cast a valid vote and of those 11,591, or around 95%, voted to approve the Agreement[28].

---

[25] *Award Modernisation* [2008] AIRCFB 1000 at [49] to [50].

[26] *Metal, Engineering and Associated Industries Award 1998* (2001) 105 IR 27 at [199].

[27] [2019] FWCFB 272, at [103].

[28] Form F 17 at Q. 2.10.

[110] Further, the *Fast Food Award Application* does not stand for the proposition that the clause there considered, upon which Clause 5.2.1 of the Agreement is clearly based, is somehow impermissible. The decision in the *Fast Food Award Application* turned on the application failing to satisfy the modern awards objective (s.134). When rejecting the application, the Full Bench observed:[29]

> *"In doing so we are also conscious that s.138 provides that a modern award may only include terms 'to the extent necessary to achieve the modern awards objective. As noted by the Full Federal Court in Anglo American:*
>
> > *'The words "only to the extent necessary" in s.138 emphasise the fact that it is the minimum safety net and minimum wages objective to which the modern awards are directed. Other terms and conditions beyond the minimum are to be the product of enterprise bargaining, and enterprise agreements under Pt 2-4.'"*

[111] The Full Bench specifically recognised that Major Fast Food Chains had included flexible part time clauses in their enterprise agreements, and expressed no concern as to the existence of those terms. In fact, one of the reasons for finding that the modern awards objective was not met was that the Full Bench were not persuaded that varying the Fast Food Award in the manner proposed would encourage such enterprise bargaining. The Full Bench held:[30]

> *"We are not persuaded that varying the Fast Food Award in the manner proposed by Ai Group would encourage enterprise bargaining. Varying the award in the manner proposed would render it unnecessary to have an enterprise agreement to address what are said to be the inflexibilities in the current part time clause in the award; thus removing an incentive for fast food employers to engage in enterprise bargaining. This consideration weighs against making the variation proposed."*

[112] The part-time clause in the Agreement is simply a manifestation of acting on the incentive to remove award inflexibilities by enterprise bargaining.

[113] As to the appropriate comparator rate, I find it is not the casual rate of pay as submitted by RAFFWU. Pursuant to Clause 5.2.1 of the Agreement, part-time employees would have reasonably predictable hours of work and pro rata equivalent pay and conditions to full-time employees. The payment of a casual loading is simply intended to compensate for entitlements that weekly employees, but not casual employees, receive. To then assess the BOOT analysis against a rate including the casual loading would involve double counting of benefits, and should not be the basis for the BOOT analysis.

[114] I am fortified in the above conclusion by the conclusions of the Full Bench in *Hungry Jack's*[31]. There, RAFFWU took a similar objection to a similar clause of an enterprise agreement. The Full Bench held:[32]

> *"The RFFWUI submitted that part-time employment under the Agreement would be casual employment under the Award by virtue of clause 12.8 of the Award because it does*

---

[29] [2019] FWCFB 272, at [149].

[30] Ibid at [128].

[31] [2020] FWCFB 1693.

[32] Ibid at [72].

not meet the definition of part-time employment under the Award, or is generally more akin to casual employment, so that the BOOT comparison must be with casual employment under the Award. We reject this. The definition of part-time employment in clause 12.1 of the Agreement is relevantly the same as in clause 12.1 of the Award. Further, although clause 12.2 of the Agreement does not, unlike the Award, require agreement at the outset as to the days of the week required to be worked and the start and finishing times in each day, it does require that the amount of hours worked in each week or roster cycle must be fixed and confined to the days and times the employee agrees to be available to work. The requirement for agreement as to availability gives the employee a considerable degree of control over when hours are to be work, and the overriding requirement for reasonable predictability of hours remains. This position is to be contrasted to that considered by the Full Bench in Loaded Rates Agreements, where the scheme of part-time employment in the Aldi enterprise agreements in question there did not provide for any guarantee of the hours of work to be provided in any particular week or for reasonable predictability of hours. We note in addition that clause 12.4 of the Agreement provides for a minimum of 8 hours' work each week – a guarantee which is not contained in the Award." (Footnotes omitted)

(i) Casual Conversion

[115] In the Hearing, RAFFWU identified this issue as being referrable to the BOOT analysis[33]. It submitted that, as the Agreement does not contain the part-time provisions in the Award, the opportunity for casual employees to convert to part-time employment is affected. RAFFWU submits this is a detriment. The Award provision would permit a casual employee to apply for and convert to ongoing employment in accordance with the part-time or full-time Award provisions.

[116] RAFFWU submit that since the Award part-time provisions do not exist in the Agreement, the benefit for casual employees in exercising their rights to apply for casual conversion is diminished. There is no offsetting provision, and this is a detriment. RAFFWU note that 85% of the persons purportedly covered by the Agreement are engaged on a casual basis.

[117] KFC submit that the right of casual employees to apply for casual conversion is not at all diminished. The Agreement in fact makes it easier for casual employees to apply for conversion to part-time employment because the part-time provisions of the Agreement are more flexible than the Award, which would make it easier to convert without significant adjustment as to hours as required by clause 5.5.2 of the Award.

[118] I reject the submission of RAFFWU. Its objection is not to the casual conversion clause of the Agreement when compared to the Award. Their complaint relates to the possible "*destination*" of conversion when it is desired to be part-time employment. I agree with KFC that the Agreement in fact makes it easier for casual employees to apply for conversion to part-time employment because the part-time provisions of the Agreement are more flexible than the Award.

(v) BOOT Conclusion

[33] Transcript PN140.

[119] While I have determined that the uniform deductions clause is an item not better off in the Agreement as compared to the Award, ultimately, all employees are made, in my view, better off overall as compared to the Award. Overall, I am satisfied that the Agreement passes the BOOT in accordance with s. 193 of the Act.

Dispute Term Obligation

[120] At paragraphs [77] to [82] above I have dealt with the dispute resolution clause as it was pressed by RAFFWU in relation to the BOOT. My conclusions therein apply equally to the question of compliance with s.186(6) of the Act.

[121] RAFFWU submits that the Agreement clause fails to meet the mandatory obligation of s.186 (6) of the Act, which provides:

> *Requirement for a term about settling disputes*
> (6)The FWC must be satisfied that the agreement includes a term:
> (a) that provides a procedure that requires or allows the FWC, or another person who is independent of the employers, employees or employee organisations covered by the agreement, to settle disputes:
> (i) about any matters arising under the agreement; and
> (ii) in relation to the National Employment Standards; and
> (b) that allows for the representation of employees covered by the agreement for the purposes of that procedure. (Emphasis added)

[122] As noted above, the breadth of the undertaking provided regarding this clause seems to be mis-interpreted by RAFFWU. The reference to the Award in the Undertaking has the two-fold effect of:

(a) Ensuring employee entitlements arising from the Award are squarely preserved; and

(b) Recognising the steps under the Award that are equivalent to those under the Agreement.

[123] It is clear on the face of the Agreement, the Award and the Undertaking that the SDA and AWU are in no way "*gatekeepers*" to any step in the process (as RAFFWU allege in their Supplementary Submission).

Unlawful Terms

[124] RAFFWU submit two clauses of the Agreement are unlawful. Firstly, Clause 21 (referred to also above in the BOOT analysis) is said to be an impermissible deduction, and contrary to s.324 of the Act.

[125] Secondly, RAFFWU submit that the coverage term of the Agreement purports to covers "*franchisees*" and "*associated companies*", and "*any new franchisee*" and their "*associated companies*". Such a term is submitted to be inconsistent with law. Transmission of business (and any transfer of an instrument) is dealt with comprehensively by the Act, and to the extent the Applicant would seek to have the Agreement apply to any employer other than the applicant (subject to transmission of business and laws governing the transfer of an instrument), the approach would be contrary to law.

[126] As to Uniforms, as noted above, the terms of the Agreement reflect less a "*deduction*" and more "*deposit and retention of deposit until uniform return on termination*". Nonetheless, KFC correctly observes that it is well accepted that deductions are not an issue for consideration as part of the approval process. Commissioner Gooley stated in *Radploy Pty Ltd t/a Lake Imaging*:[34]

> *"Fair Work Australia is not required, as part of the approval process, to determine if terms of an agreement offend sections 324 or 326 of the FW Act. It is not necessary for the approval process for Fair Work Australia to determine if clause 22 is or is not enforceable. Even if it is not, Fair Work Australia is not entitled on that basis to decline to approve the agreement."*

[127] The Coverage term of the Agreement is also not unlawful. Indeed, as observed by KFC, the Commission has previously ordered the extension of coverage of the *KFC National Enterprise Agreement 2009* to non-transferring employees of new franchisees. Commissioner Cribb characterised the Application, which was approved, as follows:[35]

> *"The Shop, Distributive and Allied Employees' Association (the applicant, the union) has made an application under section 319(1)(b) of the Fair Work Act 2009 (the Act). The union is seeking an order that the transferable instrument (the KFC National Enterprise Agreement 2009) (the National Enterprise Agreement) that covers the new employers (franchisees of KFC) will also cover the non-transferring employees who perform the transferring work for the new employers. This means that all of the new employers' employees who perform the transferring work (whether they are transferring employees or non-transferring employees) will be covered by the transferable instrument. An amended draft order has been provided to this effect. Both the union and KFC consent to the making of this order in the terms sought."*

[128] Neither of the two terms identified by RAFFWU constitute unlawful terms.

Conclusion

[129] I am satisfied that the relevant requirements of ss 186, 187, 188 and 190 of the Act concerning this Application have been met, with the provision of written undertakings from the Applicant addressing miscellaneous matters. Copies of the undertakings are attached to this decision and marked 'Annexure A'. I note that the undertakings are taken to be terms of the Agreement.

[130] The SDA and the AWU have given notice under s 183 of the Act that they wish to be covered by the Agreement. In accordance with s 201(2) of the Act, I note that the Agreement covers the SDA and the AWU.

---

[34] [2011] FWA 39 at [50].

[35] [2013] FWC 3859.

[131] The Agreement, in accordance with s. 54 of the Act, will operate from 29 April 2020. The nominal expiry date of the Agreement is 29 April 2024.

DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<AE507798 PR718361>

Annexure A

AG2018/4042 – Application by Kentucky Fried Chicken Pty Limited

Undertakings offered by KFC

1. Clause 5.2.1: KFC undertakes to apply clause 12.3 of the Award, that is the employer and employee may agree to vary an agreement made under clause 5.2.2 of the Agreement in relation to a particular rostered shift provided that:

   (a) any agreement to vary the regular pattern of work for a particular rostered shift must be recorded at or by the end of the affected shift; and

   (b) the employer must keep a copy of the agreed variation, in writing, including by any electronic means of communication and provide a copy to the employee, if requested to do so.

2. Clause 5.2.7(e): KFC undertakes to accrue leave entitlements on the additional hours paid at ordinary time rates.

3. Clause 6: KFC undertakes to round up weekly wage rates to the nearest 10 cents, and to pay all casual employees at least $0.01 per hour above the Award rate.

4. Clause 8.7: KFC undertakes that an employee paid the Skills Champion Allowance will not have responsibility for supervising team members and/or training new employees.

5. Clause 10.10: KFC undertakes not to apply clause 10.10 of the Agreement dealing with time off in lieu of payment for overtime, and to instead apply clause 26.5 of the Award.

6. Clause 11.1: KFC undertakes to roster meal breaks provided for in clause 11.1.

7. Clause 12: KFC undertakes that rest breaks are intended to be meaningful.

8. Clause 29.7: KFC undertakes not to apply clause 29.7 of the Agreement.

9. Clause 31: KFC undertakes that severance or redundancy payments are applicable if the new employer does not recognise the employee's service with the first employer as required by s.122(3) of the Act.

10. Clause 32: KFC undertakes that a party to a dispute may appoint a person, organisation or association to represent them in any discussion or process permitted by clause 9 of the Award.

11. Clause 35: KFC undertakes that no employee under the Agreement will receive lesser accident pay then provided under the Award.

Yours sincerely,

Jonathan D'Souza
People Field Operations Director
KFC SCPAC

Undertakings_9552834_1

20 April 2020

To the Fair Work Commission,

Notwithstanding clause 3 of the KFC National Enterprise Agreement 2020 (the Agreement), an undertaking is given that the Agreement will operate 7 days after the Agreement is approved by the Fair Work Commission and that it will remain in force for a period of four years from the date of the approval of the Agreement by the Fair Work Commission.

Yours sincerely,

Jonathan D'Souza
People Field Operations Director
KFC SOPAC

(LKH) Undertaking to be put on KFC letterhead_9654458_1 (1)

1. Baymax Pty Ltd
2. D & B Arnolda Family Pty. Limited as Trustee for the D&B Arnolda Family Trust
3. Sandyshore Pty Ltd as Trustee for the Ashton Family Trust
4. Athu Holdings Pty Ltd as Trustee for the Athurkorala Family Trust
5. Sangor Pty Ltd as Trustee for the Sangor Discretionary Trust;
6. Sedar Warnambool Pty. Ltd as Trustee for the Sedar Warrnambool Discretionary Trust
7. Rigel Portland Pty. Ltd as Trustee for the Rigel Portland Discretionary Trust
8. Delah Hamilton Pty Ltd as Trustee for the Delah Hamilton Discretionary Trust
9. RTR Restaurants Pty Ltd
10. Marcamp Pty Ltd
11. Changela Food Py Ltd as Trustee for the Changela Family Trust
12. RSJ Family Pty Ltd
13. Mandir Pty Ltd as Trustee for the Chudal Family Trust
14. Broadview (Aust) Pty Ltd
15. Kozpat Pty Ltd as Trustee for the Kozpat Trust
16. Dimothenis Pty Ltd as Trustee for the Dimas Family Trust
17. Edelmanian Enterprises Pty Ltd
18. Red Earth Enterprises Pty Ltd
19. Free Grange Pty Ltd as Trustee for the Ellin Family Trust
20. Melsem Pty Ltd as Trustee for the RD Else Family Trust
21. S.P. Etheridge Pty Ltd as Trustee for the Etheridge Trust
22. Fishfood Trading Pty Ltd as Trustee for the Fisher Family Trust
23. Fishfood Holdings Pty Ltd
24. Stephkon Pty Ltd as Trustee for the Kon & Stephanie Genovezos Family Trust
25. MML Restaurant Group Pty Ltd as Trustee for the Glanville Family Trust
26. CMC Sydney Pty Ltd
27. H & L Family Restaurants Pty Ltd as Trustee for the Haydan Family Trust
28. TPH Group Pty Ltd
29. Southern Restaurants (Vic) Pty Ltd as Trustee for the Southern Trust
30. Southern Sun Restaurants Pty Ltd
31. Spencer Gulf Restaurants Pty Ltd as Trustee for the Spencer Gulf Restaurants Trust
32. Spencer Gulf Enterprises (SA) Pty Ltd
33. NM Higgon Investments Pty Ltd as Trustee for the Nichole Higgon No 2 Trust
34. Jasard Pty Ltd
35. QSR Pty Ltd (Restaurant Brands Australia)
36. Bookah Pty Ltd as Trustee for the Bookah Trust
37. Toronton Pty Ltd as Trustee for the Bellarine Ollies Unit Trust
38. Toronton Pty Ltd as Trustee for the RJ Hosking Family Trust
39. Toronton Pty Ltd as Trustee for the Colac Unit Trust

40. Mettle Pty Ltd as Trustee for the Scott Hosking Family Trust
41. Pomonal Pty Ltd as Trustee for the Stead Park Family Trust
42. HM (NSW) Pty Ltd as Trustee of the HM Unit Trust
43. St George Restaurants Pty Ltd
44. Lincron Pty Ltd
45. Wills Hill Operations Pty Ltd
46. Kayvier Pty Ltd as Trustee for the Kiki Family Trust
47. Lamstan Group Pty Ltd
48. Mylora Holdings Pty Ltd as Trustee for the Leonard Family Trust
49. Tridas Pty Ltd as Trustee for the Leonard Family Discretionary Trust
50. Mady Pty Ltd as Trustee for the Madytianos Family Trust
51. Collins Restaurants Management Pty Ltd
52. Collins Restaurants NSW Pty Ltd
53. Collins Restaurants South Pty Ltd
54. Collins Restaurants West Pty Ltd
55. Huntell Pty Ltd as Trustee for the Huntley-Mitchell Family Trust
56. Shayden Nominees Pty Ltd as Trustee for the C&M Income Trust
57. Pansummit Pty Ltd
58. Festival State Foods Pty Ltd
59. Vic Chick Pty Ltd
60. Raymond Family Partnership
61. Rusha Pty Ltd
62. RG Restaurants Pty Ltd
63. Westpark Operations Pty Ltd as Trustee for the Westpark Operations Unit Trust
64. Prime Corporation Australia Pty Ltd atf Rupani Family Trust
65. One One Pty Ltd
66. Mega Star Group Pty Ltd
67. Bluepetals Pty Ltd as Trustee of Soertsz Family Trust No 1 & Oceantime Pty Ltd as Trustee of the Soertsz Family Trust No 2, a partnership
68. Soertsz Trading Corporation Pty Ltd
69. M & C Soertsz Investment Pty Ltd as Trustee for the Suitsy Family Trust
70. Gfource Pty Limited
71. Premlata Pty Ltd as Trustee for the Tripathi Family Trust
72. Tucker Projects Pty Ltd as Trustee for the Tucker Family Trust
73. Turner Retail Pty Ltd as Trustee for the Turner Unit Trust
74. Zamm Enterprises Pty Ltd
75. W-R-Z Corporation Pty Ltd
76. C Wiles Investments Pty Ltd as Trustee for the Wiles Family Trust
77. Daymal Pty Ltd as Trustee for the Yapa Family Trust

Annexure B

INSTRUMENTS OF APPOINTMENT – BARGAINING REPRESENTATIVE
A

From: [redacted]
Sent: Tuesday, 7 May 2019 7:36 PM
To: Josh Cullinan <jcullinan@raffwu.org.au>
Subject: [redacted]

[redacted]

I hereby appoint the Retail And Fast Food Workers Union Incorporated as my bargaining representative for the purposes of bargaining an Agreement with my employer and in any matter before the Fair Work Commission that relates to bargaining for the agreement.

From: [redacted]
Sent: Tuesday, 30 April 2019 9:47 AM
To: Contact <contact@raffwu.org.au>
Subject: [redacted]

As per our last communication, please find my and my employers' details, along with my bargaining representative appointment.

[redacted]

[redacted]

"I hereby appoint the Retail And Fast Food Workers Union Incorporated as my bargaining representative for the purposes of bargaining an Agreement with my employer and in any matter before the Fair Work Commission that relates to bargaining for the agreement."

Regards,
[redacted]

INSTRUMENTS OF APPOINTMENT – BARGAINING REPRESENTATIVE
A

From: [redacted]
Sent: Wednesday, 8 May 2019 5:39 PM
To: Josh Cullinan <jcullinan@raffwu.org.au>
Subject: [redacted]

Hey RAFFWU team,
My name is [redacted] and I hereby appoint the Retail And Fast Food Workers Union Incorporated as my bargaining representative for the purposes of bargaining an Agreement with my employer and in any matter before the Fair Work Commission that relates to bargaining for the agreement.
[redacted]

CORRECTION TO DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Kentucky Fried Chicken Pty. Limited
(AG2019/4042)

KFC NATIONAL ENTERPRISE AGREEMENT 2020

Fast food industry

DEPUTY PRESIDENT CROSS SYDNEY, 22 APRIL 2020

Correction to the approval of the KFC National Enterprise Agreement 2020.

The decision issued by the Fair Work Commission on 22 April 2020 [[2020] FWCA 2020, AE507798] is corrected as follows:

[1] The nominal expiry date in paragraph [131] has been corrected to 22 April 2024.

DEPUTY PRESIDENT

Printed by authority of the Commonwealth Government Printer

<AE507798 PR718462>

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 the agreement.

1. TITLE

This agreement shall be known as the 'KFC National Enterprise Agreement 2020'.

1A. ARRANGEMENT

2. SCOPE

2.1 This agreement shall apply to –

- Kentucky Fried Chicken Pty Limited as well as its subsidiaries, and
- the franchisees and their associated companies listed in the attached Schedule A, and
- any new franchisee and their associated companies,

operating KFC food outlets, and

- all employees as defined, whether or not they are members of the Shop, Distributive and Allied Employees' Association.

2.2 Subject to the Fair Work Commission making a note of such coverage upon the approval of this Agreement, this Agreement covers the following registered organisations under the Fair Work (Registered Organisations) Act (hereafter referred to as the Union or Unions) -

- the Shop, Distributive and Allied Employees' Association (SDA);
- the Australian Workers' Union (Queensland Branch) (AWU) in relation to its coverage in North Queensland.

2.3 This agreement shall apply to the exclusion of the Fast Food Industry Award 2010.

3. DATE AND PERIOD OF OPERATION

This agreement shall take effect from the beginning of the first pay period commencing on or after 1 February 2020 and shall remain in force for a period of four years from the date of approval of the Agreement by the Fair Work Commission.

4. DEFINITIONS

4.1. The following definitions are to be applied in interpreting the subsequent provisions of this agreement unless the context indicates otherwise -

Act	Unless the context provides otherwise, the Fair Work Act 2009 or any replacement to it.
Award	The Fast Food Industry Award 2010 or other award otherwise applicable to the Employer.
Delivery Driver/s	A Team Member as defined engaged in the delivery of the employer's products to customers away from the employer's premises. When not engaged in delivery duties, Delivery Drivers may be directed to perform other Team Member duties.

Employee/s	All Team Members as defined (including school-based trainees) but does not include employees classified as managers, trainee managers, cadet managers or employees in any other managerial position.
Employer/s	Kentucky Fried Chicken Pty Ltd, as well as its subsidiaries and the franchisees and their associated companies operating food outlets listed in the attached Schedule A, and any new franchisees and their associated companies.
FWC	Fair Work Commission or its successors.
NES	National Employment Standards under the Fair Work Act.
Shift Supervisor (Level 2)	An employee other than a manager (of any description) who has the major responsibility on a day to day basis for supervising team members and/or training new employees.
Shiftworker	For the purpose of the additional week of annual leave provided for in the NES, a shiftworker is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven days a week.
Team Meeting	covers (without limitation) team communications, emergency evacuation drills, induction/orientation, product training, reward and recognition, workplace health and safety, or other reasons not part of a standard shift.
Team Member/s (Level 1)	An employee engaged in the preparation, the receipt of orders, cooking, sale, serving or delivery of meals, snacks and/ or beverages which are sold to the public primarily to take away or in food courts in shopping centres. Team members will undertake duties as directed within the limits of their competence, skills and training including incidental cleaning of toilets.
Union/s	The Shop, Distributive and Allied Employees' Association (SDA) and the Australian Workers' Union (Queensland Branch) (AWU) in relation to its coverage in North Queensland, as referred to at clause 2.2 above.
Weekly Employee/s	A full-time or part-time employee engaged on a weekly contract of employment. Can include employees paid on a fortnightly basis.

4.2. Where this Agreement refers to a condition of employment provided for in the NES, the NES definition applies.

5. CONTRACTS OF EMPLOYMENT

At the time of engagement an employer will inform each employee of the terms of their engagement and, in particular, whether they are to be employed on a full-time, part-time or casual basis as follows:

5.1 Full-time Employees

5.1.1 Full-time employees will be engaged by the week and work an average of 38 hours per week.

5.1.2 Full-time employees will be paid an ordinary hourly rate equal to the appropriate weekly rate divided by 38.

5.2.1 **Part-time Employees**

A part time employee is an employee who:

(a) Works at least 6 but less than 38 hours per week;

(b) Has reasonably predictable hours of work; and

(c) Receives on a pro-rata basis, equivalent pay and conditions to those of full- time employees.

5.2.2 At the time of engagement, the employer and the part-time employee will agree in writing upon:

(a) the number of hours of work which are guaranteed to be provided and paid to the employee each week, or where the employer operates a roster, the number of hours of work which are guaranteed to be provided and paid to the employee over the roster cycle (the guaranteed minimum hours); and

(b) the days of the week, and the periods in each of those days, when the employee will be available to work the guaranteed minimum hours (the employee's agreed availability).

5.2.3 The employee may not be rostered to work less than three consecutive hours in any shift.

5.2.4 The guaranteed minimum hours shall not be less than 6 hours per week.

5.2.5 Any change to the guaranteed minimum hours may only occur with written consent of the part-time employee.

5.2.6 Where there has been a genuine and ongoing change in the employee's personal circumstances, the employee may request alteration to the days and hours of the employee's agreed availability with 14 days' written notice to the employer. If the guaranteed hours cannot reasonably be accommodated by the employer within the requested alteration to the employee's agreed availability, then despite clause 5.2.2, those guaranteed minimum hours will no longer apply and the employer and the employee will need to reach a new agreement in writing concerning guaranteed minimum hours in accordance with clause 5.2.2. Where due to availability change, the employee is only available to work on one day, notwithstanding clause 5.2.4, the guaranteed minimum hours shall be amended to 3 hours per week.

5.2.7 A part-time employee may be offered ordinary hours in addition to their guaranteed minimum hours (additional hours) within the employee's agreed availability. The

employee may agree to work those additional hours provided that:

(a) Additional hours includes time pre and post a rostered shift, and/or additional time worked on non-rostered days;

(b) The additional hours are offered in accordance with clause 9 – Hours and Rostering;

(c) The employee may not be rostered for work outside of the employee's availability unless by mutual agreement;

(d) Agreed additional hours are paid at ordinary rates (including any applicable penalties payable for working ordinary hours at the relevant times) and accrue entitlements such as annual leave and personal/carer's leave;

(e) An employee may decline additional hours, with the exception of up to a maximum of 15 minutes at the end of a shift, to be paid at ordinary time subject to the daily and weekly maximums provided elsewhere in this agreement;

(f) The agreement to work additional hours may be withdrawn by a part-time employee with 14 days written notice;

(g) Additional hours worked in accordance with this clause are not overtime; and

(h) Where there is a requirement to work overtime in accordance with clause 10, Overtime, then overtime rates will apply.

5.2.8 A part-time employee who immediately prior to the commencement of this Agreement has a written agreement with their employer for a regular pattern of hours is entitled to continue to be rostered in accordance with that agreement, unless that agreement is replaced by a new written agreement made in accordance with clause 5.2.2.

5.2.9 Where a part-time employee has over a period of at least 12 months regularly worked a number of ordinary hours that is in excess of the guaranteed minimum hours, the employee may request in writing that the employer agree to increase the guaranteed minimum hours. If the employer agrees to the request, the new agreement concerning guaranteed minimum hours will be recorded in writing. The employer may refuse the request only upon reasonable business grounds, and such refusal must be provided to the employee in writing and specify the grounds for refusal.

5.2.10 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 5.4 – Casual Employees.

5.2.11 A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the minimum weekly rate prescribed for the class of work performed.

5.2.12 The employer recognises the value of permanent employment over casual employment for all parties, from higher skill retention and development from guaranteed hours, to stability in working arrangements. Where appropriate to all parties' circumstances the employer will promote permanent employment.

5.3 Part Time School-based Trainees

5.3.1 A school-based trainee is a part-time employee undertaking a school-based AQF Certificate Level I–III traineeship undertaken solely on-the-job or partly on-the-job and partly off-the-job, and engaged in accordance with the minimum hours stipulated by relevant state or territory legislation.

5.3.2 **Payment**

(a) A trainee undertaking a school-based traineeship, who is engaged on a part-time basis, will also be paid an additional loading of 7.5% on all ordinary hours worked instead of being paid annual leave (and loading), paid personal/carer's leave, paid compassionate leave and paid absence on public holidays. However, if the trainee works on a public holiday, the public holiday provisions of this Agreement apply.

(b) Where the calculated rate (including the 7.5% loading) under (a) is less than the relevant award rate, then the employee will be paid at the award rate plus the relevant additional percentage (i.e. 0.25% or 0.5% as the case may be) payable to part-time employees under Table B of clause 6.1.

Note - the above provisions simplify and are superior to paying the 80% deduction for on-the-job training combined with the 25% loading in lieu of paid leave and applied to the special traineeship wage rates, as prescribed under the relevant award provisions.

5.3.3 A trainee is entitled to be released from work without loss of pay and without loss of continuity of employment to attend any training and assessment specified in, or associated with, the training contract.

5.3.4 An employee who was employed by an employer immediately before becoming a school-based trainee with that employer must not suffer a reduction in their minimum rate of pay because of becoming a trainee. For the purpose of determining whether a trainee has suffered a reduction, casual loadings are to be disregarded.

5.3.5 **Traineeship Review Meetings**

Trainees attending traineeship review meetings with their Registered Training Organisation (RTO), where the trainee participates in training / assessment with their RTO, will be paid a minimum payment as for one hour worked at their ordinary rate, or where the meeting extends beyond one hour, for the duration of the meeting. Attendance will count as time worked.

5.3.6 In all other respects, part-time school-based trainees are subject to the provisions applicable to other part-time employees.

5.4 Casual Employees

5.4.1 Casual employees will be engaged by the hour and will receive a minimum daily engagement of three hours.

5.4.2 Casual employees will be paid at an ordinary hourly rate equal to the appropriate weekly rate divided by 38 plus a 25% loading. The casual loading is to compensate for not receiving paid entitlements under the NES and this agreement applicable to permanent employees.

5.4.3 A casual employee not advised of a cancelled shift at least one hour before the employee was to commence work shall receive a payment of 2 hours pay.

5.5 Right to request casual conversion

5.5.1 An employee engaged as a regular casual employee may request that their employment be converted to full-time or part-time employment.

5.5.2 A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this agreement.

5.5.3 A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months casual employment may request to have their employment converted to full-time employment.

5.5.4 A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months 'casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.

5.5.5 Any request under this subclause must be in writing and provided to the employer.

5.5.6 Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.

5.5.7 Reasonable grounds for refusal include that:

(a) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this agreement–that is, the casual employee is not truly a regular casual employee as defined in subclause 5.5.2;

(b) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;

(c) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or

(d) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.

5.5.8 For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.

5.5.9 Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made. If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure of this agreement.

5.5.10 Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in this clause, the employer and employee must discuss and record in writing:

(a) the form of employment to which the employee will convert –that is, full-time or part-time employment; and
(b) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 5.2.

5.5.11 The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.

5.5.12 Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.

5.5.13 A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under this clause.

5.5.14 Nothing in this clause obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.

5.5.15 Nothing in this clause requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.

5.5.16 An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of this subclause within the first 12 months of the employee's first engagement to perform work.

5.5.17 A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in subclause 5.5.16.

5.6 National Employment Standards, Access to the Agreement, etc

5.6.1 This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES). Where there is an inconsistency between this agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

5.6.2 Inclusion of the National Employment Standards or other terms of the Act in this agreement does not render them a term of the individual contract of employment except where the legislation provides otherwise.

5.6.3 The employer must ensure that copies of this Agreement and the NES are available to all employees to whom they apply, either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.

6. WEEKLY EMPLOYEE RATES OF PAY

6.1 The minimum rates of pay will be the following percentages (Table A) of the rates prescribed for the appropriate classification in Table B.

Table A	
	%
15 years of age and under	40
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90
21 years of age and over	100

Table B – Rates						
*FFIA refers to the Award		f.f.p.p on or after 1 February 2020	f.f.p.p on or after 1 July 2020	f.f.p.p on or after 1 July 2021	f.f.p.p on or after 1 July 2022	f.f.p.p on or after 1 July 2023
Team Member (Level 1) - Including Delivery Driver	Full and Part-time Employees	$815.60 per week (FFIA weekly rate plus 0.25%)	FFIA weekly rate plus 0.25%	FFIA weekly rate plus 0.5%		
	Casuals	$26.7758 per hour (including 25% loading)	FFIA hourly rate plus $0.01 per hour, plus 25% casual loading			
Shift Supervisor (Level 2)	Full and Part-time Employees	$864.70 per week (FFIA weekly rate plus 0.25%)	FFIA weekly rate plus 0.25%	FFIA weekly rate plus 0.5%		
	Casuals	$28.3851 per hour (including 25% loading)	FFIA hourly rate plus $0.01 per hour, plus 25% casual loading			

6.2 Weekly rates in this clause shall be rounded to the nearest 10 cents.

6.3 Higher duties

Any employee not appointed but required to undertake higher duties in a shift shall be paid the applicable higher rate for the time worked performing those duties.

6.4 Unless otherwise specified or amended, extra rates in this agreement are in substitution for, not cumulative with, other rates arising under this agreement, such that only the highest additional rate is applicable.

Explanatory Note – for example, where overtime rates are applicable, the 10% loading for working 10pm to midnight Monday to Friday is not included in the calculation.

6.5 Protection of Rates

6.5.1 Existing employees at the date of this agreement coming into operation shall not suffer a reduction in their total rate of pay (including allowances) for working the same hours, as a result of the implementation of the agreement.

6.5.2 Junior employees move to the new agreement rate upon a birthday increase where that is sufficient to ensure they do not suffer a reduction.

7. SHIFT PENALTIES

7.1 The following penalties will be paid on the ordinary hourly rate under Clause 6 -

Time of the Week	Who	Full-time or part-time employees	Casual employees
Monday to Friday Midnight to 6am	All employees	15%	40%
Monday to Friday 6am to 10pm	All employees	-	25%
Monday to Friday 10pm to Midnight	All employees	10%	35%
Saturday & Sunday	Team members	25%	50%
Saturday	Shift Supervisors	25%	50%
Sunday	Shift Supervisors	50%	75%

8. ALLOWANCES

8.1 Meal Allowance

Employees required to work overtime for more than one hour on any day, without being notified on the previous day or earlier of such requirements to work overtime, will at the employer's discretion either be supplied with a meal by the employer or be paid the meal money allowance of $13.32.

Where such overtime work exceeds four (4) hours, a further meal will be provided or allowance paid.

8.2 Broken Hill

An employee in the County of Yancowinna in New South Wales (Broken Hill) will in addition to all other payments be paid an allowance for the exigencies of working in Broken Hill for ordinary hours at the rate of $0.98 per hour for an adult (juniors paid at the percentage in Table A of clause 6.1), as increased in accordance with the award.

Note the above hourly allowance is calculated as 4.28% of the 1/38th of the weekly rate for a Shift Supervisor rounded to the nearest cent, as prescribed under the Award.

8.3 Laundry allowance

8.3.1 Where an employee is required to launder their uniform, the employee will be paid the following applicable allowance:

For a full-time employee—$6.25 per week;
For a part-time or casual employee—$1.25 per shift.

8.3.2 Employees will not receive the above allowance in the event the employer elects to launder the uniform.

8.4 Transport allowance

8.4.1 Where an employer requests an employee (other than specified under 8.4.2) to use their own vehicle in the performance of their duties, such employee will be paid an allowance of $0.78 per kilometre.

8.4.2 Where an employee is engaged primarily to perform delivery duties of the employer's product to customers using their own motor vehicle, such employee will be paid an allowance of $0.41 per kilometre.

8.5 Safe Transport

8.5.1 Where an employee commences and/or ceases work after 10.00 pm on any day or prior to 7.00 am on any day and the employee's regular safe means of transport is not available and the employee is unable to arrange their own alternative safe transport home, the employer shall arrange at its own cost an alternative safe form of transport for the employee.

8.6 Team Meeting allowance

8.6.1 Employees who are directed to attend team meetings as part of a rostered shift will have such time treated as time worked.

8.6.2 Where employees voluntarily attend a meeting when not working a rostered shift, they will be paid an allowance equivalent to the time spent at the meeting, with a minimum payment of one hour, at the employee's ordinary hourly rate of pay, including any relevant night or weekend penalties. Where the duration of the meeting extends beyond one hour, employees will be paid for the duration of the meeting at their ordinary hourly rate.

8.6.3 The employer may make use of this subclause on no more than 6 occasions in relation to any one individual in any one year.

8.7 Skills Champion Allowance

Team members occasionally rostered by the employer to perform the function of assisting other team members in learning non-certified, on-the-job skills (but without the major responsibility on a day to day basis for supervising and/or training new employees), shall receive an additional allowance of 1.5% of their base rate whilst performing such work.

8.8 Allowance Increases

No allowance in this clause will be less than the applicable allowance in the Fast Food Industry Award 2010 during the life of the agreement.

9. HOURS AND ROSTERING

9.1 All ordinary hours of work will be worked within a spread of eleven hours, inclusive of breaks, each day Monday to Sunday.

9.2 Hours of work on any day will be continuous, except for rest pauses and meal breaks.

9.3 The maximum engagement an employee may be rostered on any shift shall be 10 hours exclusive of meal breaks.

9.4 All rosters for full-time employees shall provide for 152 hours over any 4-week cycle.

9.5 Rostered hours shall be worked on not more than 5 days in each week, provided that rostered hours may be worked on 6 days in one week if in the following week rostered hours are worked on not more than 4 days. An employee will only work more than 6 consecutive days over adjoining weeks at ordinary rates at the employee's election.

9.6 All employees must be rostered in such a way that they shall receive at least two consecutive days off each fortnight, unless mutually agreed otherwise (for example, as in the provided availability of the employee).

9.7 There shall be a minimum break of 10 hours between a weekly employee's finishing time on one shift and commencing time on the next shift (including overtime). At the regular changeover of shifts (i.e. no more than once per week), 8 hours may be substituted for 10 hours.

9.8 The employer shall determine a roster setting out the hours to be worked by each full-time or part-time employee in any week which shall be displayed seven days in advance. Employees may be required to sign in acceptance of their weekly hours. The roster shall not be varied within the 7 day period other than by mutual agreement.

9.9 The employer shall notify employees of the start and finish dates of the roster cycle.

9.10 The employer shall take into account an employee's study commitments and an employee's access to safe transport home when rostering, consistent with the outlet's operational needs and the availability of other staff.

9.11 Rosters will not be changed so as to avoid an entitlement under this Agreement.

10. OVERTIME

10.1 Subject to the following, employees shall work reasonable overtime as required by the employer.

10.2 An employee may refuse to work reasonable overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:

10.2.1 any risk to employee health or safety;

10.2.2 the employee's personal circumstances including any family responsibilities;

10.2.3 the needs of the workplace or enterprise;

10.2.4 the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

10.2.5 any other relevant matter.

10.3 The overtime shall be calculated on a daily basis and where possible be paid on the pay day for the week in which it was worked. In no case will the employee receive payment later than the following week (or fortnight for someone receiving fortnightly pay).

10.4 The employer shall authorise overtime prior to it being worked and employees shall not be paid at overtime rates unless so authorised.

10.5 Except where otherwise provided, authorised overtime shall be payable at time and one half of the ordinary rate for the first 2 hours and double the ordinary rate thereafter (casual employees also receive their causal loading) as follows:

10.5.1 where an employee works more than 10 hours (excluding meal breaks) on any day;

10.5.2 where an employee works in excess of 5 days per week (or 6 days or 4 days worked pursuant to subclause 9.4, Hours and Rostering, or more than 6 consecutive days over adjoining weeks other than by mutual agreement):

10.5.3 where a casual employee works in excess of 38 hours per week;

10.5.4 where a full-time employee works in excess of 152 hours in a 4-week cycle;

10.5.5 where a part-time employee works hours in excess of the agreed hours in clause 5.2.2 or as varied under clause 5.2.7;

10.5.6 where a part-time employee works in excess of 38 rostered hours per week.

10.5.7 where a part-time employee works in excess of 76 hours per 2-week cycle when working additional hours;

10.5.8 where an employee is required to work outside the spread of 11 hours on any day;

10.5.9 where a weekly employee is required to start work before they have completed an interval of at least 10 consecutive hours rest from their previous finishing time (or 8 hours at the regular changeover of shifts as provided in subclause 9.7 above);

10.5.10 subject to 5.2.7, where an employee (other than a casual) works at times other than those for which the employee was rostered to work.

10.6 All overtime worked on a Sunday for weekly employees will be paid at double time (for casuals 225% inclusive of the casual loading).

10.7 All overtime worked on a public holiday for weekly employees will be paid at double time and a half of the ordinary time rate (for casuals 275% inclusive of the casual loading).

10.8 Where an employee is called in to work overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then the employee must be paid a minimum payment of 4 hours at such rate.

10.9 Subject to 5.2.7, all work on a day that a weekly employee is rostered off shall be paid for at the rate of double time (or 250% on a public holiday), with a minimum payment as for three hours worked.

10.10 Time Off in Lieu of Payment for Overtime

By mutual agreement, time off may be taken in lieu of payment for overtime provided that:

10.10.1 Time off shall be calculated at the penalty equivalent.

10.10.2 The employee is entitled to a fresh choice of payment or time off on each occasion overtime is worked.

10.10.3 Time off must be taken within one calendar month of the working of overtime, or it shall be paid out.

11. MEAL BREAKS

11.1 An employee who works 5 or more ordinary hours on any day shall receive an unpaid meal break of between 30 and 60 minutes duration.

11.2 An employee shall receive an additional unpaid meal break of between 30 and 60 minutes duration when they have worked 9 hours or more.

11.3 In lieu of the above unpaid meal break, a Shift Supervisor may be required to have a 20 minute paid crib break, which is to be taken according to operational requirements.

11.4 No meal break shall be given or taken within one hour of an employee's commencing or ceasing time.

12. REST PAUSES

12.1 Each employee who works 4 hours or more continuously on any day shall be allowed a paid rest pause of 10 minutes. The timing of this break shall be arranged by the

employer when convenient for it to be taken.

12.2 An additional 10 minutes rest pause shall be provided when an employee works more than 8 hours on any one shift.

12.3 Except as provided in this subclause, no rest pause shall be given or taken within one hour of an employee's commencing or ceasing time or within one hour before or after any meal break. Where a part-time or casual employee is required to work up to one hour beyond the employee's rostered finishing time in order to meet unforeseen operational or staffing requirements, a rest pause may be taken within one hour of the employee's ceasing time.

13. PAYMENT OF WAGES

13.1 Employees shall be paid according to their rostered hours, providing they are ready and available to work those hours.

13.2 Wages shall be paid fortnightly or weekly in arrears at the employer's option.

13.3 Payment may be made by Electronic Funds Transfer into a bank account nominated by the employer, or by cash or cheque at the employer's option.

13.4 Employees shall be supplied each pay period with a statement detailing the calculation of their wages and the deductions made from their wages. Information to be provided shall include annual leave balances where the employer's payroll system is able to provide this.

14. SUPERANNUATION

14.1 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

14.2 Voluntary employee contributions

14.2.1 Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 14.3.

14.2.2 An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.

14.2.3 The employer must pay the amount authorised under clauses 14.2.1 or 14.2.2 no later than 28 days after the end of the month in which the deduction authorised above was made.

14.3 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 14.1 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 14.1 and pay the amount authorised under clauses 14.1 and 14.2 to one of the following superannuation funds or its successor, providing the fund provides a MySuper product:

- Retail Employees Superannuation Trust (REST); or
- Sunsuper.

14.4 Absence from work

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 14.1 and pay the amount authorised under clauses 14.2.1 or 14.2.2:

(a) Paid leave—while the employee is on any paid leave.

(b) Work-related injury or illness—For the period of absence from work (subject to a maximum of 52 weeks) of the employee due to work-related injury or work-related illness provided that:

(i) the employee is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements; and

(ii) the employee remains employed by the employer.

15. PUBLIC HOLIDAYS

15.1 Public holidays are provided for in the NES.

15.2 An employer and a majority of employees may agree to substitute another day for a public holiday. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.

15.3 Full-time and part-time employees who as part of their roster cycle work on a day on which any of the public holidays fall, and who choose not to work any part of their ordinary hours on such public holiday, shall be deemed to have worked the number of hours the employee would have worked had the day not been a public holiday.

15.4 Where an employee has an entitlement to any public holiday under this Clause and this holiday falls within an employee's period of paid annual leave, they shall be entitled to a paid public holiday at ordinary rates. If a public holiday falls during periods of unpaid leave, the employee will not be entitled to any public holiday payment.

15.5 Work other than overtime on a public holiday by a weekly employee must be compensated by payment at the rate of double time and a quarter of the ordinary rate, casual employees will receive 250% (inclusive of the casual loading).

16. ANNUAL LEAVE

16.1 All weekly employees (other than shiftworkers as defined) will be entitled to leave of absence on full pay (except for part-time school-based trainee employees, where their rate is loaded for annual leave) equal to four working weeks (i.e. 152 hours for full-time employees and pro rata for part-time employees).

16.2 An employee's entitlement to paid annual leave accrues progressively during a year of service according to the employee's ordinary hours of work each period and accumulates from year to year.

16.3 Employees taking annual leave shall be paid the wages the employee would have received in respect of the ordinary time the employee would have worked had the employee not been on leave during the period of leave.

16.4 Where an employee has an entitlement to any public holiday under Clause 15, Public Holidays and this holiday falls within an employee's period of annual leave, there shall be added to that period one day being an ordinary working day for each such holiday observed.

16.5 Any time in respect of which an employee is absent from work on approved paid leave shall count for the purpose of determining the right to or accrual of annual leave.

16.6 Annual leave shall be taken at a time mutually agreed upon by the employer and employee according to the needs of the business. In the absence of agreement, it shall be taken at a time fixed by the employer.

16.7 During a period of annual leave and on termination a weekly employee will receive a loading of either 17½ percent of the weekly rate, or the relevant weekend penalty rates, whichever is the greater, but not both.

16.8 Cashing Out of Annual Leave

16.8.1 Paid annual leave must not be cashed out except in accordance with an agreement under this sub-clause.

16.8.2 Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under this sub-clause.

16.8.3 An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.

16.8.4 An agreement under this sub-clause must state:

(a) the amount of leave to be cashed out and the payment to be made to the employee for it; and
(b) the date on which the payment is to be made.

16.8.5 An agreement under this sub-clause must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

16.8.6 The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.

16.8.7 An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.

16.8.8 The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.

16.8.9 The employer must keep a copy of any agreement under this sub-clause as an employee record.

16.9 Annual leave in advance

16.9.1 An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.

16.9.2 An agreement must:

(a) state the amount of leave to be taken in advance and the date on which leave is to commence; and

(b) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

(c) The employer must keep a copy of any agreement under this sub-clause as an employee record.

16.9.3 If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under this sub-clause, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

16.10 Excessive leave accruals: general provision

16.10.1 An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks 'paid annual leave.

16.10.2 If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.

16.10.3 Clause 16.11 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.

16.10.4 Clause 16.12 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

16.11 Excessive leave accruals: direction by employer that leave be taken

16.11.1 If an employer has genuinely tried to reach agreement with an employee under clause 16.10.2 but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.

16.11.2 However, a direction by the employer under clause 16.11.1:

(a) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements are taken into account; and

(b) must not require the employee to take any period of paid annual leave of less than one week; and

(c) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and

(d) must not be inconsistent with any leave arrangement agreed by the employer and employee.

(e) The employee must take paid annual leave in accordance with a direction under paragraph 16.11.1 that is in effect.

(f) An employee to whom a direction has been given under clause 16.11.1 may request to take a period of paid annual leave as if the direction had not been given.

16.12 **Excessive leave accruals: request by employee for leave**

16.12.1 If an employee has genuinely tried to reach agreement with an employer under clause 16.10.2 but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.

16.12.2 However, an employee may only give a notice to the employer under sub-clause 16.12.1 if:

(a) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and

(b) the employee has not been given a direction under clause 16.11.1 that, when any other paid annual leave arrangements (whether made under clause 16.10, 16.11 or 16.12 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.

16.12.3 A notice given by an employee under paragraph 16.12.1 must not:

(a) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 16.10, 16.11 or 16.12 or otherwise agreed by the employer and employee) are taken into account; or

(b) provide for the employee to take any period of paid annual leave of less than one week; or

(c) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or

(d) be inconsistent with any leave arrangement agreed by the employer and employee.

16.12.4 An employee is not entitled to request by a notice under clause 16.12.1 more than 4 weeks' paid annual leave (or 5 weeks' paid annual leave for a shiftworker as defined by clause 4.1) in any period of 12 months.

16.12.5 The employer must grant paid annual leave requested by a notice under clause 16.12.1.

17. PAID PERSONAL / CARER'S LEAVE

Note – unless the context indicates otherwise, the following are only intended as a summary of provisions arising under the NES. Please refer to the NES for full provisions.

17.1 Amount of leave

For each year of service with the employer, an employee (other than a casual) is entitled to 10 days of paid personal/carer's leave in accordance with the NES, or the equivalent unpaid leave for a part-time school-based trainee. Part-time employees shall receive a pro rata entitlement in accordance with Clause 5, Contracts of Employment and the NES.

17.2 Accrual of leave

An employee's entitlement to paid personal/carer's leave accrues progressively during a year of service according to the employee's ordinary hours of work and accumulates from year to year in accordance with the NES.

17.3 Payment of leave

An employee may take paid personal/carer's leave at their base rate of pay for the number of hours rostered to be worked by the employee on that day if the leave is taken:

17.3.1 because the employee is not fit for work because of a personal illness, or personal injury, affecting the employee;

17.3.2 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 -
- a personal illness, or personal injury, affecting the member; or
- unexpected emergency affecting the member;

17.3.3 because a parent, spouse or child of the employee dies, in which case the total of compassionate leave and personal/carer's leave may be up to a total of 5 days.

17.3.4 Where personal/carer's leave is exhausted, the employee may use annual leave by agreement with the employer.

17.3.5 Leave shall not be paid for any period that the employee is entitled to workers' compensation.

17.3.6 If the period during which an employee takes paid personal/carer's leave includes a day or part-day that is a public holiday in the place where the employee is based for work purposes, the employee is taken not to be on paid personal/carer's leave on that public holiday.

17.4 To enable the employer to efficiently conduct business and offer quality service to customers, it is required that employees give as much notice as possible that they will be absent from work on personal/carer's leave, and preferably prior to commencing time on the first day of absence. In any event they shall notify their employer as soon as reasonably practicable and advise their anticipated date of return.

17.5 Supporting Evidence Requirements

17.5.1 The employer may require an employee to produce reasonable proof satisfactory to the employer on occasions when an employee is absent from work on personal/carer's leave. Other than for the first two single day absences in any one year, the employee may be required to produce a doctor's certificate stating the nature of the illness or injury to be entitled to personal / carer's leave where this is relevant.

17.5.2 In lieu of a medical certificate, the employer may accept a statutory declaration where it was impracticable for the employee to provide a medical certificate.

17.6 Disciplinary Process

An employee who has clearly demonstrated a pattern of abuse of the use of his or her personal / carer's leave entitlements, including failing to observe the notice requirements under 17.4 or failing to submit supporting evidence as provided for in clause 17.5, may be subject to disciplinary action in accordance with clause 31 - Disciplinary Procedure.

18. UNPAID LEAVE

18.1 An employee (including a casual) may take unpaid carer's leave for a particular permissible occasion if the leave is taken to provide care or support as referred to in 17.3.2, subject to the evidence requirements in 17.5.

18.2 As permitted under the NES, an employee may take unpaid carer's leave for a particular permissible occasion as:

18.2.1 a single continuous period of up to 2 days; or

18.2.2 any separate periods to which the employee and his or her employer agree.

18.3 An employee cannot take unpaid carer's leave during a particular period if the employee could instead take paid personal/carer's leave.

18.4 Otherwise, employees may by agreement with the employer, take unpaid periods of leave of more than one week and up to 12 months without breaking their continuity of employment. All accrued entitlements, including long service, annual and sick leave and public holidays will be frozen from the date of commencing unpaid leave until the date of return.

19. DEFENCE FORCES & COMMUNITY SERVICES LEAVE

19.1 Defence Force Services Leave

19.1.1 Subject to operational requirements, an employee, other than a casual, shall be allowed unpaid leave or paid leave using accrued annual or long service leave entitlements to attend Defence Forces Reserve approved training where the absence is reasonable having regard to all the circumstances.

19.1.2 Employees seeking to take Defence Force Services Leave must provide notice to the employer at least one month prior to the period of training. The notice should detail the start and finish dates for training.

19.2 Community Services Leave

19.2.1 Employees carrying out of a voluntary emergency management activity shall be permitted to take unpaid leave, or paid leave using accrued annual or long service leave entitlements, where the absence is reasonable having regard to all the circumstances.

19.2.2 The provisions of Division 8 of Part 2-2 of the Act shall be used in interpreting the provisions of this sub-clause.

20. LEAVE TO DEAL WITH FAMILY AND DOMESTIC VIOLENCE

20.1 Definitions

20.1.1 In this clause:
family and domestic violence means violent, threatening or other abusive behaviour by a family member of an employee that seeks to coerce or control the employee and that causes them harm or to be fearful.

family member means:
(a) a spouse, de facto partner, child, parent, grandparent, grandchild or sibling of the employee; or
(b) a child, parent, grandparent, grandchild or sibling of a spouse or de facto partner of the employee; or
(c) a person related to the employee according to Aboriginal or Torres Strait Islander kinship rules.

20.1.2 A reference to a spouse or de facto partner in the definition of family member in clause 20.1.1 includes a former spouse or de facto partner.

20.2 Entitlement to unpaid and paid leave

20.2.1 An employee is entitled to 10 days unpaid leave to deal with family and domestic violence, and additionally part-time and full-time employees are entitled to access their accrued personal/careers leave for a maximum of three (3) days paid leave, as follows:

(a) the leave is available in full at the start of each 12-month period of the employee's employment; and

(b) the leave does not accumulate from year to year; and

(c) the 10 days unpaid leave is available in full to part-time and casual employees.

Note:
1. A period of leave to deal with family and domestic violence may be less than a day by agreement between the employee and the employer.

2. The employer and employee may agree that the employee may take more than 10 days unpaid leave to deal with family and domestic violence.

20.3 Taking paid and unpaid leave

20.3.1 An employee may take unpaid leave to deal with family and domestic violence if the employee:

(a) is experiencing family and domestic violence; and

(b) needs to do something to deal with the impact of the family and domestic violence and it is impractical for the employee to do that thing outside their ordinary hours of work.

Note: The reasons for which an employee may take leave include making arrangements for their safety or the safety of a family member (including relocation), attending urgent court hearings, or accessing police services.

20.4 Service and continuity

The time an employee is on unpaid leave to deal with family and domestic violence does not count as service but does not break the employee's continuity of service.

20.5 Notice and evidence requirements

20.5.1 Notice
An employee must give their employer notice of the taking of leave by the employee under clause 20. The notice:

(a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and

(b) must advise the employer of the period, or expected period, of the leave.

20.5.2 **Evidence**

An employee who has given their employer notice of the taking of leave under clause 20 must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for the purpose specified in clause 20.3.

Note: Depending on the circumstances such evidence may include a document issued by the police service, a court or a family violence support service, or a statutory declaration.

20.6 Confidentiality

20.6.1 Employers must take steps to ensure information concerning any notice an employee has given, or evidence an employee has provided under clause 20.5.2 is treated confidentially, as far as it is reasonably practicable to do so.

20.6.2 Nothing in clause 20 prevents an employer from disclosing information provided by an employee if the disclosure is required by an Australian law or is necessary to protect the life, health or safety of the employee or another person.

Note: Information concerning an employee's experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

20.7 Compliance

20.7.1 An employee is not entitled to take leave under clause 20 unless the employee complies with clause 20.

21. UNIFORMS

21.1 Where uniforms are supplied to an employee, and if requested by the employer, a once only deposit of up to $35.00 (not exceeding the value of the uniform) shall be paid by the employee by means of $5.00 instalments withheld by the employer from the employee's wages during the first seven pay periods. This deposit shall be repaid to the employee on termination plus a $3 additional payment, on the basis that the uniforms issued to them are returned to the employer in good condition, fair wear and tear excepted.

21.2 In lieu of such deposit, employers may withhold up to $35.00 (not exceeding the depreciated value of the uniform) from the termination payment due to any employee until such time as the employee returns any uniform in his or her possession in good condition, fair wear and tear excepted.

22. REIMBURSEMENT OF TRAVELLING EXPENSES

22.1 Excess travelling costs

Where an employee is required by their employer to move temporarily from one branch or shop to another for a period not exceeding three weeks, all additional transport costs so incurred will be reimbursed by the employer.

22.2 Travelling time reimbursement

22.2.1 An employee who on any day is required to work at a place away from their usual place of employment, for all time reasonably spent in reaching and returning from such place (in excess of the time normally spent in travelling from their home to their usual place of employment and returning), will be paid travelling time and also any fares reasonably incurred in excess of those normally incurred in travelling between their home and their usual place of employment.

22.2.2 Where the employer provides transport from a pick up point, an employee will be paid travelling time for all time spent travelling from such pick up point and return thereto.

22.2.3 The rate of pay for travelling time will be the ordinary time rate except on Sundays and public holidays when it will be time and a half.

22.2.4 Provided that such payments shall cease when the employee has been permanently transferred to the establishment.

23. LONG SERVICE LEAVE

As per State or Territory legislation.

24. COMPASSIONATE LEAVE

Note – unless the context indicates otherwise, the following are only intended as a summary of provisions arising under the NES. Please refer to the NES for full provisions.

24.1 When a member of the employee's immediate family (i.e. the employee's spouse, parent, step-parent, foster-parent, son-in-law, daughter in law, parent-in-law, grandparent, grandparent-in-law, child, foster-child, step-child, grandchild, brother or sister), former de-facto or a member of the employee's household -

24.1.1 contracts or develops a personal illness that poses a serious threat to his or her life; or
24.1.2 sustains a personal injury that poses a serious threat to his or her life; or
24.1.3 dies;

the employee shall be entitled to take compassionate leave for each such occasion, which shall not exceed three days. (Note extra leave may be available under the personal/carer's leave provisions upon the death of a parent, spouse or children of the employee).

24.2 The employee may take compassionate leave if the leave is taken to spend time with the member of the employee's immediate family or household –

24.2.1 who has contracted or developed the personal illness, or sustained the personal injury; or

24.2.2 after the death of the member of the employee's immediate family or household referred to above.

24.3 A full-time or part-time employee shall be entitled to take paid leave for each such occasion, to be paid at the employee's base rate of pay. A casual or part-time school-based trainee employee's entitlement is to unpaid leave only.

24.4 The leave may be taken as -

24.4.1 a single continuous period of up to 3 days; or

24.4.2 up to 3 separate periods of 1 day each; or

24.4.3 any separate periods to which the employee and his or her employer agree.

24.5 If the occasion is the contraction or development of a personal illness, or the sustaining of a personal injury, the employee may take the compassionate leave for that occasion at any time while the illness or injury persists.

24.6 Proof of the occasion shall be provided by the employee to the satisfaction of the employer, together with proof of attendance in the case of a funeral outside Australia.

24.7 Upon the death of an aunt or uncle, a full-time or part-time employee shall be entitled to paid compassionate leave based upon ordinary time earnings which shall not exceed 1 day for attendance at the funeral. A part-time school-based trainee is entitled to unpaid leave. Proof of such death shall be provided by the employee to the satisfaction of the employer.

25. PARENTAL LEAVE AND FLEXIBLE WORK ARRANGEMENTS

25.1 Full-time employees, part-time employees and casual employees engaged on a regular and systematic basis who have at least twelve months continuous service shall be entitled to Parental Leave (unpaid Maternity, Paternity and Adoption Leave and the right to work part-time with the consent of the employer) in accordance with the National Employment Standards (NES), from the commencement of this agreement.

25.2 In addition to the NES entitlements, the employer will provide employees who are taking responsibility for permanent or long term care of a child through a permanent care order or equivalent long-term foster arrangement, access to unpaid parental leave under the same terms as applicable to employees who adopt a child.

25.3 An employee may request a change in working arrangements under s.65 of the Act. Before responding to a request made under s.65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in working arrangements that will reasonably accommodate the employee's circumstances having regard to:

(a) the needs of the employee arising from their circumstances;

(b) the consequences for the employee if changes in working arrangements are not made; and

(c) any reasonable business grounds for refusing the request.

25.4 If the employer refuses the request and has not reached an agreement with the employee under clause 25.3, the employer must provide a written response to the employee.

(a) The written response under s.65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.

(a) If the employer and employee could not agree on a change in working arrangements under clause 25.3, the written response under s.65(4) must:

(i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and

(ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

25.5 If the employer and the employee reached an agreement under clause 25.3 on a change in working arrangements that differs from that initially requested by the employee, the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

25.6 Disputes over an employer's refusal of an employee's request to work flexible hours or return to work on a part-time basis under the NES shall be dealt with in accordance with clause 32 – Disputes Procedure.

26. SHUT DOWN AND REFURBISHMENTS

26.1 Employees may be required to take a nominated period of annual leave over annual shut down or refurbishment periods. Prior to the shutdown, the employer shall notify employees of the dates during which the leave is to be taken. An employee who does not have sufficient leave at the time of the shutdown, shall be required to take leave without pay for the duration of the shutdown.

26.2 Where possible the employer shall attempt to find the employee suitable work at another geographically nearby store.

27. JURY SERVICE

27.1 Under the NES, full-time or part-time employees shall be allowed leave when required to attend for jury service. During such leave, the employee shall be paid the difference between the jury service fees received and the employee's ordinary time earnings (including loadings where applicable) as if working, for the first ten days, unless State or Territory court rules may provide for additional payment obligations in excess of the NES requirements.

27.2 To receive payment, an employee shall provide to the employer:

(a) proof of their requirement to attend jury service,
(b) proof of actual attendance,
(c) proof of jury fees received for such service.

27.3 The employee shall give the employer notice of such requirement to attend as soon as practicable after having received notification to attend for jury service.

27.4 The employer will not require the employee to attend for duty before or after attending for jury service so that the period of jury service and working time combined would exceed 8 hours per day or 5 days per week.

28. NATURAL DISASTER LEAVE

Where a yellow alert or a state of emergency is declared, or where flooding, earthquake bushfires, or a snow storm, occur, or are imminent, an employee shall be allowed to leave work to care for their family and/or property where there is a genuine risk, as unpaid leave.

29. TERMINATION OF EMPLOYMENT – WEEKLY EMPLOYEES

29.1 All employees will be subject to a six month trial period after commencing employment. At any time up to the completion of the trial period, should the employee fail to meet or maintain standards of performance or behaviours required by the Employer, the company may terminate the employee's employment with one week's notice.

29.2 The employer must not terminate an employee's employment unless the employer has given the employee written notice of the day of the termination (which cannot be before the day the notice is given).

29.3 Under the NES, an employer is required to give employees the following period of notice on termination, or the equivalent period of wages shall be paid in lieu:

Length of service	Notice entitlement
1 year and less	1 week
More than 1 year and up to 3 years	2 weeks
More than 3 years and up to 5 years	3 weeks
More than 5 years	4 weeks

Employees over the age of 45 years are entitled to one extra week's notice if they have more than 2 years of continuous service with the employer.

29.4 Employees are required to give the employer one week's notice, or the equivalent period of wages shall be forfeited if the employee is at least 18 years of age.

29.5 Where the employer has given notice of termination to an employee, an employee shall be allowed up to one day off without loss of pay for the purpose of seeking other employment. The time off shall be taken at a mutually agreeable time.

29.6 Nothing in this clause shall affect an employer's right to dismiss an employee without notice as set out in clause 33, Disciplinary Procedure in which case an employee shall be entitled to be paid only to the time of instant dismissal.

29.7 Payment in lieu of notice shall be calculated using an employee's weekly ordinary time earnings as provided by the NES.

29.8 Termination pay shall be paid within 7 days of the termination date where practicable or on the next pay day after termination.

29.9 The employer shall, when requested, provide to the employee a written statement specifying the period of their employment and the classification of or the type of work performed by the employee.

30. ABANDONMENT OF EMPLOYMENT

30.1 The parties recognise that the onus is on the employee to advise the employer when the employee is unable to work and to ensure contact details are up to date.

30.2 The absence of an employee from work for a continuous period of three (3) consecutive rostered days without just cause and without notification to their supervisor will be evidence that the employee has abandoned the employment.

30.3 The employer will provide in writing (email where provided, otherwise by post) notification that failure to contact the employer within seven working days with a satisfactory explanation for the absence will result in the employer regarding the employee as having abandoned their employment.

30.4 Termination of employment by abandonment in accordance with this clause will operate from the date of the last attendance at work.

30.5 Where it is established that the absence was for a reasonable cause, within four (4) weeks of the termination date, the employer will reinstate the employee to their former position.

31. CONTINUITY OF EMPLOYMENT

With regard to service-related entitlements of employees provided in this agreement, service shall be deemed to be continuous upon the sale or transfer of a business from one employer party to another who continues to employ the particular employee. No severance or redundancy payments will be required to be made where the employee continues to be employed on no less advantageous conditions.

32. DISPUTES PROCEDURE

32.1 Any grievance or dispute that arises, including an NES dispute, shall wherever possible be settled by discussions at the workplace between the employee and the employee's direct manager or supervisor.

32.2 If the matter is not resolved at this level the matter will be further discussed between the employee, the employee's manager and the Area or other relevant Manager.

32.3 If no agreement is reached, the relevant union official will discuss the matter with the employer's representatives.

32.4 Should the matter still not be resolved it shall then and only then be referred to the FWC in accordance with the Act, including by the compulsory arbitration of disputes about matters arising under the Agreement or in relation to the NES as provided by s.186(6) of the Act, should this be requested by the Union or the employer party to the dispute. If the FWC arbitrates the dispute, it may also use the powers that are available to it under the Act.

32.5 Whilst the above procedure is being followed work shall continue normally without bans or limitations.

32.6 The Union will be able to represent the employee at any stage of the process.

33. DISCIPLINARY PROCEDURE

33.1 Formal disciplinary action for dealing with substandard performance or misconduct involving employees shall be in accordance with the following procedure:

33.1.1 Counselling and Retraining

Where an employee's performance is, in the employer's opinion, substandard, formal disciplinary action should only be undertaken after the employee has had the opportunity of counselling and/or retraining and also a review of expected performance standards.

33.1.2 In cases where an employee's performance continues to be substandard in the employer's opinion, the following steps will apply:

Step One: Initial Warning

Usually, an initial written or verbal warning will be issued in cases of continued substandard performance or minor misconduct.

Step Two: Final Written Warning

Usually, a final written warning will be issued in cases where substandard performance continues after the employee has previously received an initial warning, or for minor misconduct, or for serious misconduct where instant dismissal is not warranted.

Step Three: Dismissal

Dismissal will usually follow when the employee has failed to comply with the final written warning.

33.1.3 Instant Dismissal

The employer may dismiss an employee without notice for serious misconduct at work including but not limited to rudeness or abuse to customers, insubordination, dishonesty (including theft and / or fraud), drunkenness or being under the influence of illegal drugs, or in unauthorised possession of or misuse of drugs, in which case the employee shall be entitled to be paid up to the time of dismissal only.

33.2 All written warnings shall be placed on the employee's personnel file. The employee shall be requested to sign the warning. The employee shall be entitled to a copy of a warning upon request.

33.3 Warnings for substandard performance should include an improvement plan for the employee, stating the time frame for sustained improvement to occur.

33.4 The employee or employer may require the presence of a representative or witness at the disciplinary interview.

34. SAFETY

34.1 Parties agree that safety in the workplace and the avoidance of injuries is of prime importance. The employer will ensure that adequate safety training is provided to employees and employees will at all times conduct themselves in a manner which promotes a safe workplace.

34.2 Subject to Clause 21, Uniforms employers shall supply appropriate protective clothing and equipment as required and employees are required to wear such clothing and equipment.

34.3 Employees shall report all injuries and safety concerns to the employer or their management representative as soon as is practicable.

35. ACCIDENT PAY

35.1 If following an injury, an employee receives workers' compensation under the applicable State or Territory legislation, then that compensation payment shall be increased by the employer to the amount of the ordinary time weekly rate prescribed by this agreement for the average rostered hours worked by the employee at the time of the accident. This payment made by the employer will be limited to a maximum period of 26 weeks from the date of the accident or injury.

35.2 The provisions of this clause shall not apply in respect of any injury during the first 7 consecutive days (including non-working days) of incapacity.

36. FACILITIES

The employer shall where reasonably practicable provide facilities so that personal possessions of employees who are working can be secured. This shall not indicate liability on the part of the employer for loss of an employee's possessions.

37. SEXUAL HARASSMENT

37.1 It is acknowledged that sexual harassment in the workplace is totally unacceptable and the parties undertake to take whatever steps are necessary to prevent such practices.

37.2 The employer shall immediately investigate any complaint and every endeavour made to resolve the matter promptly.

38. FLEXIBILITY TERM

38.1 Despite anything else in this agreement, the employer and an individual employee may agree to vary the application of the terms of this agreement relating to any of the following in order to meet the genuine needs of both the employee and the employer:

38.1.1 arrangements for when work is performed; or
38.1.2 overtime rates; or
38.1.3 penalty rates; or

38.1.4 allowances; or
38.1.5 annual leave loading.

38.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

38.3 An agreement may only be made after the individual employee has commenced employment with the employer.

38.4 An employer who wishes to initiate the making of an agreement must:

38.4.1 give the employee a written proposal; and
38.4.2 if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

38.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

38.6 An agreement must do all of the following:

38.6.1 state the names of the employer and the employee; and
38.6.2 identify the agreement term, or agreement terms, the application of which is to be varied; and

38.6.3 set out how the application of the agreement term, or each agreement term, is varied; and
38.6.4 set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
38.6.5 state the date the agreement is to start.

38.7 An agreement must be:

38.7.1 in writing; and
38.7.2 signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

38.8 Except as provided in clause 38.7.2, an agreement must not require the approval or consent of a person other than the employer and the employee.

38.9 The employer must keep the agreement as a time and wages record and give a copy to the employee within 14 days of it being agreed to.

38.10 The employer and the employee must genuinely agree, without duress or coercion to any variation of this agreement provided for by an agreement.

38.11 An agreement may be terminated:

38.11.1 at any time, by written agreement between the employer and the employee; or
38.11.2 by the employer or employee giving 28 days' written notice to the other party.

Note: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this agreement term and the arrangement does not meet a requirement set out in s.144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see s.145 of the Act).

38.12 An agreement terminated as mentioned in clause 38.11.2 ceases to have effect at the end of the period of notice required under that clause.

38.13 The right to make an agreement under this clause is additional to, and does not affect, any other term of this agreement that provides for an agreement between an employer and an individual employee.

39. CONSULTATION

39.1 Consultation about major workplace change

If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

39.1.1 give notice of the changes to all employees who may be affected by them and their representatives (if any); and

(a) discuss with affected employees and their representatives (if any):

(i) the introduction of the changes; and

(ii) their likely effect on employees; and

(iii) measures to avoid or reduce the adverse effects of the changes on employees; and

(b) commence discussions as soon as practicable after a definite decision has been made.

39.2 For the purposes of the discussion under clause 39.1, the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

(a) their nature; and

(b) their expected effect on employees; and

(c) any other matters likely to affect employees.

39.3 Clause 39.1 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

39.4 The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 39.1.

39.5 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 paragraph 39.1 and 39.2 are taken not to apply.

39.6 In this clause, significant effects on employees, includes any of the following:

(a) termination of employment; or

(b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or

(c) loss of, or reduction in, job or promotion opportunities; or

(d) loss of, or reduction in, job tenure; or

(e) alteration of hours of work; or

(f) the need for employees to be retrained or transferred to other work or locations; or

(g) job restructuring.

39.7 Consultation about changes to rosters or hours of work

39.7.1 These provisions apply if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

39.7.2 The employer must consult with any employees affected by the proposed change and their representatives (if any).

39.7.3 For the purpose of the consultation, the employer must:

(a) provide to the employees and representatives mentioned in clause 39.7.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and

(b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

39.7.4 The employer must consider any views given under clause 39.7.3(b).

39.7.5 Clause 39.7 is to be read in conjunction with any other provisions of this agreement concerning the scheduling of work or the giving of notice.

40. UNION DELEGATE

40.1 An employee elected as Union delegate in the establishment in which he or she is employed shall upon written notification by the Union organiser to the employer's local management

representative be recognised as the accredited representative of the Union.

40.2 The employer may at its discretion grant paid, part paid or unpaid leave for duly elected or appointed Union delegates to attend training curses or programs conducted or approved by the Union.

40.3 Written requests to attend training seminars by delegate(s) shall be made to the employee's direct management between four and eight weeks prior to the date of commencement of the course. Where possible, the maximum amount of notice shall be given. If less than four weeks notice is given, leave need not be granted by the employer.

40.4 Leave granted pursuant to this clause shall count as service for all purposes of this agreement.

40.5 On completion of the course the employee shall, upon request, provide to the employer proof of their attendance at the seminar, and an outline of the course content.

40.6 Employees granted leave pursuant to this clause shall, upon request, inform the employer after the completion of the seminar of the nature of seminar and their observations on it.

41. UNION RECOGNITION AND UNION MEMBERSHIP

41.1 The employer recognises the Shop, Distributive and Allied Employees Association (SDA) and the Australian Workers Union (AWU) in North Queensland as being the Unions that represent employees who are covered by this agreement. This representation will extend to all terms and conditions of employment covered by this agreement.

41.2 All employees, including new employees at the point of recruitment, shall be given an application form to join the Union together with a statement of the employer's policy positively promoting Union membership.

41.3 The employer undertakes upon authorisation to deduct Union membership dues as levied by the Union in accordance with its rules from the pay of employees who are members of the Union. Such monies collected will be forwarded to the appropriate branch of the Union at the beginning of each month together with all necessary information to enable the reconciliation and crediting of subscriptions to members' accounts.

41.4 The employer shall provide a noticeboard or section of a notice board for the display of official union notices. Such union notices shall be shown to management prior to placement on the noticeboard.

42. SIGNATURES

_____	_____
Employee Representative Signature	Employer Authorised Person Signature
_____	_____
Print Full Name	Print Full Name
_____	_____
Employee Representative Authority	Position / Authority
_____	_____
Address	Address
_____	_____
Date	Date

Witnessed by:	**Witnessed by:**
_____	_____
Witness Signature	Witness Signature
_____	_____
Print Name	Print Name
_____	_____
Address	Address
_____	_____
Date	Date

42. SIGNATURES

Employee Representative Signature

GERARD DWYER
Print Full Name

SDAEA - NATIONAL SECRETARY
Employee Representative Authority

L6, 53 QUEEN ST MELBOURNE Vic. 2000
Address

18 - 10 - 2019
Date

Employer Authorised Person Signature

JONATHAN D'SOUZA
Print Full Name

People Capability Director KFC
Position / Authority

20 Rodborough Road Frenchs Forest 2086 NSW
Address

23/10/2019
Date

Witnessed by:

Witness Signature

MITCHELL WORSLEY
Print Name

L3, 8 GIVEN ST HAYMARKET NSW 2000
Address

18/10/19
Date

Witnessed by:

Witness Signature

Kathleen McGrath JP NSW # 221130
Print Name

6/14 Federal Pde Brookvale NSW 2100
Address

23/10/2019
Date

SCHEDULE A: KFC PARTIES

Company Name	A.C.N./A.B.N	Company Address

SCHEDULE B: SUPPORTED WAGE SYSTEM

1. This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this Agreement.

2. In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

disability support pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

relevant minimum wage means the minimum wage prescribed in this Agreement for the class of work for which an employee is engaged

supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full Agreement wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

3. Eligibility criteria

3.1 Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this Agreement, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this Agreement relating to the rehabilitation of employees who are injured in the course of their employment.

4. Supported wage rates

4.1 Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

Assessed capacity (clause 5)	Relevant minimum wage
%	%
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80

Assessed capacity (clause 5)	Relevant minimum wage
%	%
90	90

4.2 Provided that the minimum amount payable must be not less than $87 per week.

4.3 Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

5. Assessment of capacity

5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

5.2 All assessments made under this schedule must be documented in an SWS wage assessment agreement and retained by the employer as a time and wages record in accordance with the Act.

6. Lodgement of SWS wage assessment agreement

6.1 All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the Agreement is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

7. Review of assessment

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the supported wage system.

8. Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this Agreement on a pro rata basis.

9. Workplace adjustment

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

10. Trial period

10.1 In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding

12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

10.2 During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

10.3 The minimum amount payable to the employee during the trial period must be no less than $87 per week.

10.4 Work trials should include induction or training as appropriate to the job being trialled.

10.5 Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause 5 hereof.

SCHEDULE C: REDUNDANCY – WEEKLY EMPLOYEES

1. Redundancy

Redundancy occurs when an employer decides that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour.

2. Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if they had been terminated, and the employer may make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

3. Severance Pay

In addition to the period of notice provided in clause 26 - Termination of Employment - Weekly Employees, a permanent employee whose employment is terminated for reasons set out above shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of Continuous Service	**Severance pay**
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

An employee of a small employer as defined whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service

Period of Continuous Service	**Severance pay**
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and over	8 weeks' pay

The scale of severance payments set out above will be multiplied by 1.25 for employees who are 45 years of age and over and who have one year or more continuous service with the employer at the time of termination.

"Weeks' pay" means the ordinary time rate of pay for the employee concerned.

"Small employer" means an employer who employs fewer than 15 employees.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

The payments do not apply under the situations under s.122 of the Act, that is, where –

3.1 the employer obtains other acceptable employment for the employee; or

3.2 where in a transfer of employment situation, if the second (new) employer recognises the employee's service with the first (old) employer; or

3.3 the employee rejects an offer of employment made by another employer (the second employer) that:

(a) is 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 first employer immediately before the termination;

(b) and recognises the employee's service with the first employer; and

(c) had the employee accepted the offer, there would have been a transfer of employment in relation to the employee.

4. Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in clause 1 above may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payment under this schedule had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

5. Time Off During Notice Period

5.1 During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

5.2 If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent.

5.3 For this purpose, a statutory declaration will be sufficient.

6. Employees Exempted

6.1 This schedule shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees or employees engaged for a specific period of time or for a specified task or tasks.

SCHEDULE D: PART-DAY PUBLIC HOLIDAYS

Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this Agreement relating to public holidays to the extent of the inconsistency:

a. All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the NES.
b. Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the NES does not work, they will be paid their ordinary rate of pay for such hours not worked.
c. Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
d. Where an employee works any hours between 7.00 pm and midnight, they will be entitled to the appropriate public holiday penalty rate (if any) in this Agreement for those hours worked.

AG2019/4042 – Application by Kentucky Fried Chicken Pty Limited

Undertakings offered by KFC

1. Clause 5.2.1: KFC undertakes to apply clause 12.3 of the Award, that is the employer and employee may agree to vary an agreement made under clause 5.2.2 of the Agreement in relation to a particular rostered shift provided that:

   (a) any agreement to vary the regular pattern of work for a particular rostered shift must be recorded at or by the end of the affected shift; and

   (b) the employer must keep a copy of the agreed variation, in writing, including by any electronic means of communication and provide a copy to the employee, if requested to do so.

2. Clause 5.2.7(e): KFC undertakes to accrue leave entitlements on the additional hours paid at ordinary time rates.

3. Clause 6: KFC undertakes to round up weekly wage rates to the nearest 10 cents, and to pay all casual employees at least $0.01 per hour above the Award rate.

4. Clause 8.7: KFC undertakes that an employee paid the Skills Champion Allowance will not have responsibility for supervising team members and/or training new employees.

5. Clause 10.10: KFC undertakes not to apply clause 10.10 of the Agreement dealing with time off in lieu of payment for overtime, and to instead apply clause 26.5 of the Award.

6. Clause 11.1: KFC undertakes to roster meal breaks provided for in clause 11.1.

7. Clause 12: KFC undertakes that rest breaks are intended to be meaningful.

8. Clause 29.7: KFC undertakes not to apply clause 29.7 of the Agreement.

9. Clause 31: KFC undertakes that severance or redundancy payments are applicable if the new employer does not recognise the employee's service with the first employer as required by s.122(3) of the Act.

10. Clause 32: KFC undertakes that a party to a dispute may appoint a person, organisation or association to represent them in any discussion or process permitted by clause 9 of the Award.

11. Clause 35: KFC undertakes that no employee under the Agreement will receive lesser accident pay then provided under the Award.

Yours sincerely,

Jonathan D'Souza
People Field Operations Director
KFC SOPAC

Kentucky Fried Chicken Pty. Limited
ABN 79 000 587 780 | **T** +61 2 9930 3000 | **W** kfc.com.au
20 Rodborough Road (Locked Bag 522), Frenchs Forest, NSW 2086, Australia

20 April 2020

To the Fair Work Commission,

Notwithstanding clause 3 of the KFC National Enterprise Agreement 2020 (the **Agreement**), an undertaking is given that the Agreement will operate 7 days after the Agreement is approved by the Fair Work Commission and that it will remain in force for a period of four years from the date of the approval of the Agreement by the Fair Work Commission.

Yours sincerely,

Jonathan D'Souza
People Field Operations Director
KFC SOPAC

Kentucky Fried Chicken Pty. Limited
ABN 79 000 587 780 | T +61 2 9930 3000 | W kfc.com.au
20 Rodborough Road (Locked Bag 522), Frenchs Forest, NSW 2086, Australia