

## NOTICE OF FILING

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Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 33  
Rule 16.32

## Defence

No. VID1503 of 2025

Federal Court of Australia  
District Registry: Victoria  
Division: Fair Work

**Dakota Jackson** (and another according to the Schedule)

First Applicant

**McDonald's Australia Limited (ACN 008 496 928)** (and another according the Schedule)

First Respondent

In response to the allegations within the Statement of Claim filed on 18 November 2025 (**SOC**), the First Respondent (**MAL**) says as follows (capitalised terms below having the meaning in the SOC unless otherwise indicated):

### A THE PARTIES

1. In response to paragraph 1, except to say that Ms Jackson was employed by MAL in the period March 2014 to 29 October 2021, MAL otherwise admits paragraph 1.
2. In response to paragraph 2:
  - (a) MAL admits subparagraphs (a) and (c); and
  - (b) MAL does not know and therefore cannot admit subparagraph (b).
3. MAL admits paragraph 3.
4. MAL admits paragraph 4.
5. In response to paragraph 5:

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|--|--|
| Filed on behalf of (name & role of party)                  | McDonald's Australia Limited (ACN 008 496 928), the First Respondent |
| Prepared by (name of person/lawyer)                        | Ian Bolster  |
| Law firm (if applicable)                                   | Ashurst Australia  |
| Tel  | +61 2 9258 6697  |
| Fax  | +61 2 9258 6999  |
| Email  | ian.bolster@ashurst.com  |
| <b>Address for service</b><br>(include state and postcode) | Level 8, 39 Martin Place, Sydney NSW 2000                            |

- (a) MAL admits that the Applicants purport to bring this proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on their own behalf and on behalf of the persons described in paragraph 5;
  - (b) MAL notes the apparent error at the end of subparagraph 5(c)(i) whereby it appears the word 'and' has been omitted at the end of subparagraph (c)(i) and in this Defence proceeds on the basis that that word has been omitted in error;
  - (c) MAL says that, in this Defence, it uses the term Group Member as it is defined in paragraph 5, with the assumption in subparagraph (b) above, without any admission as to the accuracy of that definition;
  - (d) MAL relies on the pleadings below in relation to the allegations referred to in the SOC but reserves the right to make further pleas by way of defence to allegations concerning Group Members other than the Applicants if and when those allegations are properly pleaded and particularised by the Applicants in due course; and
  - (e) MAL denies paragraph 5 to the extent that that paragraph alleges that the applicants or Group Members have a proper claim; and
  - (f) MAL otherwise does not know and therefore cannot admit paragraph 5.
6. In respect of paragraph 6, MAL denies that any such person has a proper claim and otherwise does not know and therefore cannot admit paragraph 6.

## **B THE RESPONDENTS**

### **B.1 MAL**

#### ***MAL business***

- 7. MAL admits paragraph 7.
- 8. MAL admits paragraph 8.
- 9. MAL admits paragraph 9.
- 10. MAL admits paragraph 10.

#### ***MAL franchise network***

- 11. MAL admits paragraph 11.

12. MAL admits paragraph 12.

***Corporate and franchise stores - employees***

13. In response to paragraph 13:

(a) MAL admits subparagraph (a);

(b) MAL admits subparagraph (b);

(c) as to subparagraph (c), MAL:

(i) admits that each Franchise Agreement required the relevant Franchisee to use kitchen fixtures, lighting and other equipment, seating and signs in accordance with equipment specifications and layout designated by MAL;

(ii) admits the subparagraph to the extent that the matters pleaded fall within the "McDonald's System" as that term is defined in each Franchise Agreement; and

(iii) otherwise denies the subparagraph.

(d) as to subparagraphs (d) and (e), MAL:

(i) admits the subparagraphs to the extent that the matters pleaded fall within the "McDonald's System"; and

(ii) otherwise denies the subparagraphs,

(e) MAL denies subparagraph (f); and

(f) MAL admits subparagraph (g).

(g) MAL says further that each Franchise Agreement contained an express term to the effect that the relevant Franchisee was required, at their own expense, to comply with all federal, state and local laws, ordinances and regulations affecting the operation of the relevant Franchisee's restaurants.

14. MAL admits paragraph 14.

15. Save that some restaurants engaged contractors from time to time to carry out certain tasks pleaded in subparagraph (b), MAL otherwise admits paragraph 15.

16. In response to paragraph 16:
- (a) MAL admits that at least some Franchisees employed persons to perform work as alleged; and
  - (b) MAL does not know, and therefore cannot admit, that all relevant employees working at stores operated by a Franchisee were employed by the Franchisee, as opposed to another entity (**Employer Identity Issue**).
- 16A. Where the SOC makes allegations from paragraph 17 onwards about Franchise Employees, MAL will address each allegation on the assumption (which is not admitted) that Franchise Employees were in fact employed by a Franchisee (rather than another entity). However, MAL otherwise does not admit the allegation in respect of Franchise Employees due to the Employer Identity Issue (**Employer Identity Qualification**).

## **B.2 Jameri**

17. MAL admits paragraph 17.
18. MAL admits paragraph 18.
19. Subject to the Employer Identity Qualification, MAL admits paragraph 19.
- 19A. Where the SOC makes allegations from paragraph 19 onwards about Jameri Employees, MAL will address the allegation on the assumption that the term Jameri Employees is confined to persons employed by Jameri to perform the work referred to at paragraph 19 of the SOC in the Jameri Stores in the State of South Australia.

## **C INDUSTRIAL LAWS AND INSTRUMENTS**

### **C.1 Public holidays – Fair Work Act**

20. MAL admits paragraph 20 save that during the Claim Period, s 115(1)(a)(vi) of the FW Act referred to “the Queen’s birthday holiday” rather than “the holiday for the birthday of the Sovereign”.
21. MAL admits paragraph 21.
22. In response to paragraph 22 MAL:

- (a) says during the Claim Period up to 31 January 2023, the provision referred to in paragraph 22 was numbered s 98, rather than s 98(1), the heading read "Employee taken not to be on paid personal/carer's leave on public holiday", and there was no sub-heading "Public holidays";
- (b) says from 1 February 2023, s 98(1) of the FW Act was in the terms pleaded in paragraph 22, save that the text appearing after the sub-heading "Public holidays" was numbered "(1)"; and
- (c) otherwise admits paragraph 22.

## C.2 "Sundays were public holidays in SA – *Holidays Act 1910 (SA)*"

23. MAL denies paragraph 23.

### Particulars

On a proper construction of s 115 of the FW Act, at all material times, public holidays within the meaning of s 115 of the FW Act (as applicable in South Australia) did not include a day only by reason of it being an ordinary Sunday occurring each calendar week (**Ordinary Sundays**).

24. MAL denies paragraph 24 and says further that:

- (a) it refers to and repeats paragraph 23 above;
- (b) in respect of subparagraph (a), during the Claim Period:
  - (i) for the purposes of s 89(1) of the FW Act, an employee took paid annual leave only when the following preconditions were met:
    - (A) the employee was not a casual employee;
    - (B) the employee had accrued entitlements to paid annual leave pursuant to s 87(1) of the FW Act; and
    - (C) pursuant to s 88(1) of the FW Act, the employee took some or all of their accrued entitlement to paid annual leave for a period agreed between the employee and their employer,

**(Paid Annual Leave Preconditions)**
  - (ii) for a national system employee based in South Australia for work purposes to be taken not to be on paid annual leave pursuant to s 89(1) of the FW Act:

- (A) the employee must have satisfied the Paid Annual Leave Preconditions; and
  - (B) the period of paid annual leave taken must have included one of the public holidays within the meaning of s 115 of the FW Act (which, for the avoidance of doubt does not include Ordinary Sundays) (**NES Public Holidays**),
- (iii) section 89(1) of the FW Act does not apply where the periods of paid annual leave taken included only Ordinary Sundays,
- (c) in respect of subparagraph (b), during the Claim Period:
- (i) for the purposes of s 98(1) of the FW Act, an employee took paid personal/carer's leave only when the following preconditions were met:
    - (A) the employee was not a casual employee;
    - (B) the employee had an accrued and untaken entitlement to paid personal/carer's leave pursuant to s 96(1) of the FW Act;
    - (C) pursuant to s 97 of the FW Act, the employee took a period of paid personal/carer's leave because the employee was not fit for work because of a personal illness, or personal injury, affecting the employee; or 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 an unexpected emergency affecting the member; and
    - (D) the employee complied with notice and evidence requirements in accordance with s 107 of the FW Act;

**(Paid Personal/Carer's Leave Preconditions)**
  - (ii) for a national system employee based in South Australia for work purposes to be taken not to be on paid personal/carer's leave pursuant to s 98(1) of the FW Act:
    - (A) the employee must have satisfied the Paid Personal/Carer's Leave Preconditions; and
    - (B) the period of paid personal/carer's leave taken must have included one of the NES Public Holidays,
  - (iii) section 98(1) of the FW Act does not apply where the period of paid personal/carer's leave taken included only Ordinary Sundays.

### C.3 McDonald's Enterprise Agreement 2013

25. In response to paragraph 25:

- (a) MAL admits subparagraphs (a), (b), (f) and (g);
- (b) in respect of subparagraph (c), MAL:
  - (i) admits that it was involved in drafting terms of the proposed 2013 Agreement;
  - (ii) says that the bargaining for the 2013 Agreement occurred between representatives for the Shop, Distributive and Allied Employees Association, MAL and the Franchisees; and
  - (iii) otherwise denies subparagraph (c);
- (c) in respect of subparagraph (d), MAL:
  - (i) admits that it prepared a document titled "*McDonald's Australia Enterprise Agreement 2013 Explanation Document*" for the purposes of summarising the terms of the proposed 2013 Agreement and their effect;
  - (ii) admits that it prepared communications to employees providing access to the proposed 2013 Agreement;
  - (iii) admits that it prepared materials relating to explanation sessions held to explain the terms of the proposed 2013 Agreement; and
  - (iv) otherwise denies subparagraph (d),
- (d) in respect of subparagraph (e), MAL:
  - (i) admits the documents referred to in subparagraph 25(c)(i) and (ii) above were provided to employees through a message sent via "Metime Message" and the employees' email accounts;
  - (ii) admits the documents referred to in subparagraph 25(c)(iii) above were provided to restaurant operators to complete and place on the noticeboard in their restaurant; and

(iii) otherwise denies subparagraph (e).

26. MAL admits paragraph 26.

27. MAL admits paragraph 27.

28. In response to paragraph 28:

(a) MAL admits subparagraphs (a) to (j) for the period up to and including 3 February 2020; and

(b) MAL otherwise denies paragraph 28.

29. In response to paragraph 29:

(a) save that the entirety of clause 32 of the McDonald's Agreement has not been pleaded, MAL otherwise admits the paragraph insofar as it relates to all material times up to and including 3 February 2020;

(b) MAL will rely upon the entirety of clause 32 of the McDonald's Agreement for its full force and effect; and

(c) MAL otherwise denies paragraph 29.

30. In response to paragraph 30:

(a) MAL admits the paragraph insofar as it relates to all material times up to and including 3 February 2020; and

(b) MAL otherwise denies paragraph 30.

31. In response to paragraph 31:

(a) save that the entirety of clause 32 of the McDonald's Agreement has not been pleaded, MAL otherwise admits that clause 32.5 of the McDonald's Agreement provided, "*All employees except a level 4 employee will be compensated for working on a public holiday by payment at the rate of 200% of the minimum weekly wage (which, in respect of casual employees, includes the casual loading provided for in clause 15.2)*" and clause 32.6 provided "*Employees working on a public holiday will be engaged for a minimum of 3 hours*"; and

(b) MAL otherwise denies paragraph 31.

32. MAL denies paragraph 32 and says further that:

- (a) the McDonald's Agreement applied to the Corporate Agreement Employees, Franchise Agreement Employees and Jameri Agreement Employees for the period up to and including 3 February 2020;

**Particulars**

- (i) on a proper construction of clauses 32.5 and 32.6 of the McDonald's Agreement, and based on a common assumption or understanding adopted by the parties, at all material times up to and including 3 February 2020, public holidays within the meaning of clauses 32.1, 32.2 and 32.3 of the McDonald's Agreement (as applicable in South Australia) did not include a day only by reason of it being an Ordinary Sunday.
  - (ii) the parties to the McDonald's Agreement, including their bargaining representatives, conducted the negotiations for the McDonald's Agreement on the basis that a public holiday did not include an Ordinary Sunday;
  - (iii) the parties to the McDonald's Agreement (and its predecessor), including their bargaining representatives, had not asserted any right to be paid public holiday rates for work performed on Ordinary Sundays at any time prior to the commencement of these proceedings; and
  - (iv) on a proper construction of clause 32.6 of the McDonald's Agreement, the 3 hour minimum applied to the engagement, which could include continuous hours of the engagement on the day preceding or subsequent to the public holiday.
  - (v) further particulars will be provided following discovery.
- (b) subject to the full terms and effect of the McDonald's Agreement in the Claim Period, Corporate Agreement Employees, Franchise Agreement Employees, and Jameri Agreement Employees (other than level 4 employees) were entitled to be paid:
    - (i) the applicable minimum rates of pay prescribed by clause 19.4 of the McDonald's Agreement; and where applicable, overtime and penalty rates prescribed by clauses 28.2 and 28.3 of the McDonald's Agreement,

for work on Ordinary Sundays.

**Particulars**

Clause 28.2.1 of the McDonald's Agreement provides that overtime rates of time and a half for the first 2 hours and double time thereafter shall be paid for all work in excess of:

- 28.2.1.1 152 hours per 4 weeks for a full-time employee;
- 28.2.1.2 38 hours per week for a part-time and casual employee;
- 28.2.1.3 9.5 hours per day excluding meal break;
- 28.2.1.4 5 shifts per week; or
- 28.2.1.5 where a part-time employee is rostered outside their mutually agreed availability as provided by subclause 14.2;
- 28.2.1.6 hours worked by an employee where clause 13.4 and 13.5 and 14.9 and 14.10 are not complied in a given week or 4 week period for that employee as the case may be.

Clause 28.3 of the McDonald's Agreement provides that a loading of 10% will apply for ordinary hours of work within the span of hours between 1.00am and 5.00am, and for casual employees an additional 10% of the rate on top of the casual rate.

- (c) subject to the full terms and effect of the McDonald's Agreement in the Claim Period, Corporate Agreement Employees, Franchise Agreement Employees, and Jameri Agreement Employees:
  - (i) who were full-time employees were entitled, pursuant to clause 13.1 of the McDonald's Agreement, to a minimum daily engagement of four hours;
  - (ii) who were part-time employees were entitled, pursuant to clause 14.8 of the McDonald's Agreement, to be rostered for a minimum of three consecutive hours on any shift; or
  - (iii) who were casual employees were entitled, pursuant to clause 15.4 of the McDonald's Agreement, to a minimum engagement of three hours,on Ordinary Sundays, subject to the exception in clause 21.2 of the McDonald's Agreement regarding voluntary attendance at crew meetings.

33. MAL admits paragraph 33.

#### **C.4 Fast Food Award**

34. MAL admits paragraph 34.
35. In response to paragraph 35:
- (a) MAL admits subparagraphs (a) to (d) for the period on and from 4 February 2020;
  - (b) as to subparagraph (e):
    - (i) MAL admits subparagraph (i) for the period up to and including 3 February 2020;
    - (ii) MAL admits subparagraph (ii) for the period on and from 4 February 2020 up to and including 27 July 2022; and
    - (iii) MAL admits subparagraph (iii);
  - (c) save for the qualifications referred to in subparagraph (b), MAL otherwise admits subparagraphs (f) to (h); and
  - (d) MAL otherwise denies paragraph 35.
36. Save that clause 30 of the Fast Food Award was accompanied with a note which referred to further provisions relating to part-day public holidays in Schedule F – Part-day Public Holidays, MAL otherwise admits paragraph 36.
37. Save that between 28 July 2022 and 13 November 2022, clause 27 of the Fast Food Award was accompanied with a note which referred to further provisions relating to part-day public holidays in Schedule F – Part-day Public Holidays, MAL otherwise admits paragraph 37.
38. In response to paragraph 38:
- (a) MAL admits the paragraph save that:
    - (i) the entirety of the relevant clauses has not been pleaded;
    - (ii) in respect of paragraph 38(d)(i) and (ii), payments were to be paid at the earliest of:
      - (A) the next pay period following the request;

- (B) the next pay period following the elapsing of 6 months from the time the overtime was worked; or
    - (C) the termination of the employee's employment.
  - (iii) MAL will rely upon the entirety of clause 26 of the Fast Food Award up to and including 27 July 2022 and clauses 20.2 to 20.4 and 20.7 of the Fast Food Award on and from 28 July 2022 for their full force and effect.
- 39. MAL admits paragraph 39.
- 40. MAL admits paragraph 40.
- 41. MAL denies paragraph 41 and says further that:
  - (a) the Fast Food Award applied to the Corporate Award Employees, Jameri Award Employees and Franchise Award Employees who:
    - (i) in the period up to and including 3 February 2020:
      - (A) were employed in a classification listed in Schedule B of the Fast Food Award in accordance with clause 16.1; and
      - (B) to whom the McDonald's Agreement did not apply; or
    - (ii) in the period on and from 4 February 2020 up to and including 27 July 2022, were employed in the classifications listed in Schedule B to the Fast Food Award in accordance with clause 16.1; or
    - (iii) in the period on and from 28 July 2022 were employed in the classifications listed in clause 12 of the Fast Food Award,
  - (b) subject to the full terms of the Fast Food Award in the Claim Period, Corporate Award Employees, Jameri Award Employees and Franchise Award Employees were entitled to be paid:
    - (i) for all ordinary hours worked on Ordinary Sundays:
      - (A) for full-time and part-time Level 1 employees, 125% of the minimum hourly rate of pay in the Fast Food Award;
      - (B) for full-time and part-time Level 2 and 3 employees, 150% of the minimum hourly rate of pay in the Fast Food Award;

- (C) for casual Level 1 employees, 150% of the minimum hourly rate of pay in the Fast Food Award;
- (D) for casual Level 2 and 3 employees, 175% of the minimum hourly rate of pay in the Fast Food Award;
- (ii) for overtime hours on Ordinary Sundays:
  - (A) for full-time and part-time employees, 200% of the minimum hourly rate of pay in the Fast Food Award;
  - (B) for casual employees, 225% of the minimum hourly rate of pay in the Fast Food Award.

### **Particulars**

- (i) The applicable rate of pay for ordinary hours worked on Ordinary Sundays is set out in clauses 25.5 and 30.4 up to and including 27 July 2022 and clause 21 on and from 28 July 2022.
- (ii) The applicable rate of pay for overtime hours worked on Ordinary Sundays is set out in clauses 26.1 up to and including 27 July 2022 and clause 20.6 on and from 28 July 2022.
- (iii) On a proper construction of clauses 26.1, 26.5 and 30.4 (up to and including 27 July 2022) and clauses 20.6, 20.7 and 21 (on and from 28 July 2022) of the Fast Food Award, during the Claim Period on and from 4 February 2020, public holidays within the meaning of those clauses (as applicable in South Australia) did not include a day only by reason of it being an Ordinary Sunday.
- (iv) Alternatively, if public holidays within the meaning of clauses 26.1, 26.5 and 30.4 (up to and including 27 July 2022) and clauses 20.6, 20.7 and 21 (on and from 28 July 2022) of the Fast Food Award (as applicable in South Australia) included Ordinary Sundays (which is denied), as a matter of proper construction, during the Claim Period on and from 4 February 2020, in South Australia:
  - (A) for ordinary hours of work on Ordinary Sundays, the specific applicable Sunday loadings in clauses 25.5(c)(iii) and 25.5(d) of the Fast Food Award (up to and including 27 July 2022) and the specific applicable Sunday rates in clause 21 of the Fast Food Award (on and from 28 July 2022) took precedence over the general public holiday rates in clause 30.4 (up to and including 27 July 2022) and clause 21 (on and from 28 July 2022) of the Fast Food Award.
  - (B) for full-time Award overtime hours, part-time Award overtime hours or casual Award overtime hours (as the case may be) on Ordinary Sundays and TOIL taken at the overtime equivalent for overtime worked on Ordinary Sundays, the specific applicable Sunday overtime rate in clause 26.1 of the Fast Food Award (up to and including 27 July 2022) and the specific applicable Sunday overtime rates in clause 20.6 (on and from 28 July 2022)

took precedence over the general public holiday overtime rates in those clauses.

## **D ALLEGED CONTRAVENTIONS BY MAL**

### **D.1 Ms Jackson**

42. MAL admits paragraph 42.

#### ***"Underpaid Sunday Hours – McDonald's Agreement"***

43. In response to paragraph 43:

(a) in respect of subparagraph (a);

(i) MAL admits that during the Claim Period up to and including 3 February 2020, Ms Jackson performed work on a Sunday on two occasions, being 17 November 2019 and 18 January 2020; and

(ii) MAL otherwise denies subparagraph (a).

(b) in respect of subparagraph (b):

(i) MAL admits Ms Jackson was not paid at the MWW-based rate for the hours in subparagraph (a);

(ii) MAL says that for the hours in subparagraph (a), Ms Jackson was paid at the casual hourly rates prescribed for her age at the relevant time in the table in clause 19.4 of the McDonald's Agreement (in addition to applicable early morning penalties under clause 28.3 of the McDonald's Agreement) and an additional over-Agreement payment of 3.3% on top of the casual hourly rates prescribed by clause 19.4 of the McDonald's Agreement;

(iii) MAL refers to and repeats paragraph 32 above; and

(iv) MAL otherwise denies subparagraph (b).

(c) MAL denies subparagraph (c).

#### ***"Underpaid Sunday ordinary hours – Fast Food Award"***

44. In response to paragraph 44:

- (a) in respect of subparagraph (a):
  - (i) MAL admits that during the Claim Period on and from 4 February 2020, Ms Jackson performed ordinary hours of work on Sundays;

**Particulars**

In accordance with clauses 25.2 and 25.3 (up to and including 27 July 2022) and clauses 11.1, 13.4 and 13.5 (on and from 28 July 2022) of the Fast Food Award, Ms Jackson's ordinary hours of work were:

- (i) no more than 38 ordinary hours per week or, when worked in accordance with a roster, no more than 38 ordinary hours per week averaged over the course of the roster cycle; and
- (ii) a maximum of 11 ordinary hours on any day,

**(Casual Ordinary Hours).**

- (ii) MAL otherwise denies subparagraph (a).

- (b) in respect of subparagraph (b):

- (i) MAL admits Ms Jackson was not paid the public holiday rate prescribed by clause 26.1 (up to and including 27 July 2022) and clause 20.6 (on and from 28 July 2022) of the Fast Food Award for the days in subparagraph (a) that were Ordinary Sundays;
- (ii) MAL says that Ms Jackson was paid the Sunday penalty rate for Level 1 casual employees prescribed by clauses 25.5 (up to and including 27 July 2022) and clause 21 (on and from 28 July 2022) of the Fast Food Award for the days in subparagraph (a) that were Ordinary Sundays;
- (iii) MAL refers to and repeats paragraph 41 above; and
- (iv) MAL otherwise denies subparagraph (b).

- (c) MAL denies subparagraph (c).

***"Underpaid Sunday overtime hours – Fast Food Award"***

45. MAL denies paragraph 45.

***"Loss and damage"***

46. MAL denies paragraph 46.

46A. MAL says further that even if Ms Jackson did suffer a loss (which is denied), the compensation should be reduced by the additional over-Agreement payments referred to at subparagraph 43(b)(ii) above.

## **D.2 Corporate Agreement Employees**

### ***"Underpaid Sunday hours"***

47. MAL admits paragraph 47.

48. In response to paragraph 48:

- (a) MAL admits that during the Claim Period up to and including 3 February 2020, it did not pay the Corporate Agreement Employees referred to in paragraph 47 at the MWW-based rate for the days referred to in paragraph 47 that were Ordinary Sundays;
- (b) MAL says that for the days referred to in paragraph 47 that were Ordinary Sundays, during the Claim Period up to and including 3 February 2020, it paid the Corporate Agreement Employees at the applicable hourly or casual rate prescribed for their age at the relevant time in the table in clause 19.4 of the McDonald's Agreement (in addition to any other rate that otherwise applied);
- (c) MAL refers to and repeats paragraph 32 above; and
- (d) MAL otherwise denies paragraph 48.

49. MAL denies paragraph 49.

### ***"Underpaid Sunday minimum hours"***

50. Save that some Corporate Agreement Employees were paid for a minimum engagement of three hours on some Ordinary Sundays despite not having worked for a minimum of three hours, MAL otherwise admits paragraph 50.

51. MAL denies paragraph 51.

### ***"Loss and damage"***

52. MAL denies paragraph 52.

52A. MAL says further that even if the Corporate Agreement Employees did suffer a loss (which is denied), the compensation should be reduced by:

- (a) any additional over-Agreement payments at the rate of 3.3% of the hourly rates prescribed by clause 19.4 of the McDonald's Agreement to the extent that any such payments were made to the Corporate Agreement Employees on the relevant days; and
- (b) any payments in respect of the minimum engagement of 3 hours on the relevant days referred to at paragraph 50 above.

### **D.3 Corporate Award Employees**

#### ***"Underpaid Sunday ordinary hours"***

53. In response to paragraph 53:

- (a) MAL admits that during the Claim Period on and from 4 February 2020 some Corporate Award Employees worked Casual Ordinary Hours, full-time ordinary hours or part-time ordinary hours on one or more Sundays;

#### **Particulars**

In accordance with clauses 11, 25.2 and 25.3 (up to and including 27 July 2022) and clauses 9, 13.1 and 13.5 of the Fast Food Award (on and from 28 July 2022), the ordinary hours of work for full-time employees were:

- (i) an average of 38 ordinary hours per week over a period of no more than four weeks and, were rostered in accordance with clause 25.4 or clause 13.2 of the Fast Food Award (as the case may be);
- (ii) the maximum number of ordinary hours on any day was 11 hours,

#### **(Full-time Ordinary Hours).**

In accordance with clauses 12 and 25.3 (up to and including 27 July 2022) and clauses 10, 13.3 and 13.5 (on and from 28 July 2022) of the Fast Food Award, the ordinary hours of work for full-time employees were:

- (i) less than 38 hours per week;
- (ii) as agreed at the time of engagement of the part-time employee or as varied in accordance with the Fast Food Award;
- (ii) the maximum number of ordinary hours on any day was 11 hours,

**(Part-time Ordinary Hours).**

(b) MAL otherwise denies paragraph 53.

54. In response to paragraph 54:

(a) MAL admits that during the Claim Period on and from 4 February 2020, it did not pay the Corporate Award Employees referred to in paragraph 53 the public holiday rates in clause 30.4 (up to and including 27 July 2022) and in clause 21 (on and from 28 July 2022) of the Fast Food Award for the days referred to in paragraph 54 that were Ordinary Sundays;

(b) MAL says that the Corporate Award Employees were paid the applicable Sunday penalty rates prescribed by clause 25.5 (up to and including 27 July 2022) and clause 21 (on and from 28 July 2022) of the Fast Food Award for the days in subparagraph (a) that were Ordinary Sundays;

(c) MAL refers to and repeats paragraph 41 above; and

(d) MAL otherwise denies paragraph 54.

55. MAL denies paragraph 55.

***"Underpaid Sunday overtime hours"***

56. In response to paragraph 56:

(a) MAL admits that during the Claim Period on and from 4 February 2020, some Corporate Award Employees worked full-time Award overtime hours, part-time Award overtime hours or casual Award overtime hours (as the case may be) on one or more Sundays; and

(b) MAL otherwise denies paragraph 56.

57. In response to paragraph 57:

(a) in respect of subparagraph (a):

(i) MAL admits that the Corporate Award Employees referred to at paragraph 56 who were full-time employees or part-time employees were not paid 250% of their minimum hourly rate of pay for the full-time Award overtime hours or part-time Award overtime hours (as the case may be) that they worked on Ordinary Sundays;

- (ii) MAL says that the Corporate Award Employees referred to at paragraph 56 who were full-time employees or part-time employees were paid the Sunday rate of 200% of their minimum hourly rate of pay prescribed by clause 26.1 (up to and including 27 July 2022) and clause 20.6 (on and from 28 July 2022) for the full-time Award overtime hours or part-time Award overtime hours (as the case may be) that they worked on Ordinary Sundays;
  - (iii) MAL refers to and repeats paragraph 41 above; and
  - (iv) MAL otherwise denies subparagraph (a).
- (b) In respect of subparagraph (b):
- (i) MAL admits the Corporate Award Employees referred to at paragraph 56 who were casual employees were not paid 275% of their minimum hourly rate of pay for the casual Award overtime hours they worked on Ordinary Sundays; and
  - (ii) MAL says the Corporate Award Employees referred to at paragraph 56 who were casual employees were paid 225% of their minimum hourly rate of pay prescribed by clause 26.1 (up to and including 27 July 2022) and clause 20.6 (on and from 28 July 2022) for the casual Award overtime hours they worked on Ordinary Sundays;
  - (iii) MAL refers to and repeats paragraph 41 above; and
  - (iv) MAL otherwise denies subparagraph (b).
- (c) MAL denies subparagraph (c) and says further that to the extent there was any agreement for a Corporate Award Employee to take time off instead of being paid a particular amount of overtime for the hours referred to at paragraph 56, the Corporate Award Employee was only entitled to take a period of time off equivalent to the applicable Sunday overtime rate prescribed by clause 26.1 (up to and including 27 July 2022) or clause 20.6 (on and from 28 July 2022) of the Fast Food Award.

58. MAL denies paragraph 58.

***"Loss and damage"***

59. MAL denies paragraph 59.

**D.4 All full-time and part time Corporate Employees**

***"Deducted Sunday leave"***

60. In response to paragraph 60:

- (a) MAL admits that, from time to time during the Claim Period, some Corporate Employees who were based in South Australia for work purposes and who were employed on a full-time or part-time basis:
  - (i) satisfied the Paid Annual Leave Preconditions and took paid annual leave pursuant to s 88(1) of the FW Act; and/or
  - (ii) satisfied the Paid Personal/Carer's Leave Preconditions and took paid personal leave pursuant to s 97 of the FW Act,on a Sunday,
- (b) in the absence of particulars of the taking of paid annual leave or paid personal carer's leave, MAL does not know and therefore cannot admit paragraph 60.

61. In response to paragraph 61:

- (a) MAL admits the paragraph insofar as it relates to periods of paid annual leave taken by full-time or part-time Corporate Employees who had satisfied the Paid Annual Leave Preconditions and the period of paid annual leave taken included NES Public Holidays falling on a Sunday; and
- (b) MAL otherwise denies paragraph 61.

62. In response to paragraph 62:

- (a) MAL admits it did make deductions from annual leave balances of some full-time and part-time Corporate Employees;
- (b) in relation to the reference to paid annual leave, it refers to and repeats subparagraph 60(b); and
- (c) it otherwise denies paragraph 62.

63. MAL denies paragraph 63.

64. In response to paragraph 64:

(a) MAL admits the paragraph insofar as it relates to periods of paid personal/carer's leave taken by full-time or part-time Corporate Employees who had satisfied the Paid Personal/Carer's Leave Preconditions and the period of paid personal leave taken included NES Public Holidays falling on a Sunday; and

(b) MAL otherwise denies paragraph 64.

65. In response to paragraph 65:

(a) MAL admits it did make deductions from personal leave balances of some full-time and part-time Corporate Employees;

(b) in relation to the reference to paid personal leave, it refers to and repeats subparagraph 60(b); and

(c) it otherwise denies paragraph 65.

66. MAL denies paragraph 66.

***"Loss and damage"***

67. MAL denies paragraph 67.

67A. Further, or alternatively, during the Claim Period:

(a) for each Ordinary Sunday during the Claim Period that was taken as annual leave by Corporate Employees, MAL paid the Corporate Employee annual leave loading.

**Particulars**

Clause 30.2 of the McDonald's Agreement provides that during a period of annual leave an employee will receive annual leave loading of 17.5% calculated on the applicable minimum weekly wage in clause 19.

Clause 28.3 of the Fast Food Award (up to and including 27 July 2022) provides that during a period of annual leave an employee will receive a loading calculated on the wage rate prescribed by clause 17 of the Fast Food Award and would be as follows:

- (i) Day work: Employees who would have worked on day work only had they not been on leave – 17.5% or the relevant weekend penalty rates, whichever is greater but not both.
- (ii) Shiftwork: Employees who would have worked on shiftwork had they not been on leave – a loading of 17.5% or the shift loading (including relevant weekend penalty rates), whichever is the greater but not both.

Clause 22.2 of the Fast Food Award (on and from 28 July 2022) provides that during a period of annual leave an employee will receive a loading calculated for the period of leave on the employee's minimum hourly rate specified in clause 15 at the rate of the greater of the following two amounts:

- (i) 17.5% of the employee's minimum hourly rate for all ordinary hours the employee would have worked if they were not on leave during the period; or
- (ii) the relevant weekend penalty amounts payable to the employee for all ordinary hours they would have worked on a weekend if they were not on leave during the period.

(b) If (which is denied) MAL was obliged to treat as public holidays the Ordinary Sundays during the Claim Period that were taken as annual leave by Corporate Employees, then the Corporate Employee was only entitled to be paid:

- (i) his or her ordinary hours of work on such Sundays at his or her base rate of pay pursuant to s 116 of the FW Act; and
- (ii) in respect of Corporate Agreement Employees during the Claim Period up to and including 3 February 2020, an additional day's ordinary pay for:

- (A) a full-time employee whose non-working day falls on such Sundays, pursuant to clause 32.7 of the McDonald's Agreement;
- (B) a part-time employee rostered so that they do not work their ordinary hours on the same days each week (an alternating roster) and the Sunday falls on a day on which the employee works in any week of their roster pursuant to clause 32.8 of the McDonald's Agreement; and
- (C) a part-time employee normally rostered to work 5 days per week and their non working day falls on a Sunday pursuant to clause 32.9 of the McDonald's Agreement.

(c) MAL mistakenly believed the Corporate Employee should be paid the annual leave loading, in accordance with clause 30.2 of the McDonald's Agreement,

clause 28.3 of the Fast Food Award (up to and including 27 July 2022) or clause 22.2 of the Fast Food Award (on and from 28 July 2022); and

- (d) but for the mistaken belief pleaded in subparagraph (c) above, MAL would not have paid the Corporate Employee the annual leave loading;
- (e) by reason of the matters pleaded in subparagraphs (a) to (d) above, the Corporate Employee has been unjustly enriched at the expense of MAL and MAL is entitled to restitution of an amount equivalent to the annual leave loading paid to the Corporate Employee on every Ordinary Sunday taken as leave by the Corporate Employee in the Claim Period; and
- (f) accordingly, MAL is entitled to set off, and hereby sets off, against the amounts claimed in the SOC in respect of the Corporate Employee, the amounts in subparagraph (e) above.
- (g) Further, or alternative to the matters pleaded in subparagraphs (a) to (f) above, if the Court concludes that the amounts described in (e) above cannot be taken into account for any loss assessed for amounts claimed in the SOC in respect of the Corporate Employees, then it would not be appropriate, within the meaning of s 545 of the FW Act, to make an order for compensation in respect of the Corporate Employee in circumstances where such an order failed to accord with the compensatory and remedial purposes of s 545 by failing to take into account the amounts paid to the Corporate Employee as described in subparagraph (e) above.

67B. Further or alternatively, and in answer to each of the contraventions alleged herein against MAL concerning Level 4 managers under the McDonald's Agreement during the Claim Period up to and including 3 February 2020:

- (a) there was a term in each Level 4 manager contract of employment template to the effect that:
  - (i) *where the level 4 manager was a full-time employee* – the manager is rostered to work 38 ordinary hours plus two reasonable additional hours per week and working reasonable additional hours is a part of the manager's role and has been taken into account in setting the manager's base salary;

- (ii) the manager's base salary will satisfy any payment or benefit (including without limitation minimum wages, overtime, allowances, penalties and loadings) to which the manager is entitled under the McDonald's Agreement and any other relevant industrial law, calculated over a 12 month period;

### **Particulars**

MAL used several versions of a standard form contract of employment for Level 4 managers during the Claim Period up to and including 3 February 2020. Copies of the various versions of MAL's standard form contract are in the possession of MAL's solicitors and will be provided upon request.

- (b) it paid each Level 4 manager an amount (less applicable tax) for the pay period during the Claim Period up to and including 3 February 2020, being the relevant portion of the salary set out in each manager's contract of employment;
- (c) in the premises pleaded at subparagraphs (a) and (b) above, and where the term pleaded at subparagraph (a) appears in a relevant Level 4 manager's contract of employment, the amounts paid to that Level 4 manager referred to in subparagraph (a) above under their contract of employment are entitled to be set off against the amount of the entitlements alleged at paragraphs 47 to 52 of the SOC;
- (d) further or alternatively to subparagraphs (a) to (c) above, there was a close correlation between the purpose of the payments pleaded at subparagraph 67B(b), and the purpose of the base rates and penalty rates pleaded at paragraphs 47 to 52 of the SOC.

### **Particulars**

The purpose of the payments pleaded at subparagraph 67B(b) above was to compensate each Level 4 manager for the work they performed (such payment calculated on an annualised basis). The purpose of the entitlements alleged at paragraphs 47 to 52 of the SOC is to compensate each Level 4 manager for the hours of work they performed (such payment calculated on an hourly basis, with loadings and allowances calculated separately).

- (e) by reason of the matters pleaded at subparagraph (d), part of the amounts paid to each Level 4 manager is entitled to be set off against the amount of the entitlements alleged at paragraphs 47 to 52 of the SOC;

(f) in the premises pleaded at subparagraphs (a) to (e) above, and insofar as the payments pleaded at subparagraph 67B(b) above:

(i) across the Claim Period; or alternatively

(ii) across each pay period –

exceed the amounts payable under the McDonald's Agreement across that period, MAL denies the alleged contraventions.

(g) alternatively to subparagraph (f) above, in the premises pleaded at subparagraphs (a) to (e) above and insofar as the payments pleaded at subparagraph 67B(b) above:

(A) across the Claim Period; or alternatively

(B) across each pay period –

do not exceed the amounts payable under the McDonald's Agreement, the payments pleaded at subparagraph 67B(b) above should be brought into account when assessing each Level 4 manager's compensable loss for the purposes of s 545 of the FW Act.

67C. Further or alternatively, and in answer to each of the contraventions alleged herein against MAL concerning Level 2 shift supervisors and Level 2 or Level 3 managers under the Fast Food Award on and from 4 February 2020:

(a) *as to Level 2 shift supervisors under the Fast Food Award:*

(i) where a Level 2 shift supervisor's contract of employment contained a term to the effect that:

(A) the hourly rate set out in the contract compensates the manager for all work performed; and

(B) amounts calculated on the contractual hourly rate may be set off against all payments and benefits to which the manager is entitled under the Award (including but not limited to minimum weekly wages, overtime, weekend and other penalty rates, annual leave loading, shift loading and other entitlements due under the Award with respect to minimum weekly wages,

allowances, superannuation, penalty rates, overtime, breaks annual leave loading and public holidays);

### **Particulars**

MAL used several versions of a standard form contract of employment for Level 2 shift supervisors during the Claim Period on and from 4 February 2020. Copies of those various versions of MAL's standard form contracts are in the possession of MAL's solicitors and will be provided upon request.

- (ii) where MAL paid a Level 2 shift supervisor referred to in subparagraph (i) above an amount (less applicable tax) for each pay period during the Claim Period up to and including 3 February 2020, calculated with reference to the hourly rate expressed in each Level 2 shift supervisor's contract of employment; then
- (iii) in the premises pleaded at subparagraphs (i) and (ii) above, the amounts paid to each Level 2 shift supervisor referred to in subparagraph 67C(a)(ii) above under their respective contracts of employment are entitled to be set off against the amount of the entitlements alleged at paragraphs 53 to 59 of the SOC;
- (iv) further or alternatively to subparagraphs (i) to (iii) above, there was a close correlation between the purpose of the payments pleaded at subparagraph 67C(a)(ii), and the purpose of the base rates and penalty rates pleaded at paragraphs 53 to 59 of the SOC.

### **Particulars**

The purpose of the payments pleaded at subparagraph 67C(a)(ii) above was to compensate each Level 2 shift supervisor for the work they performed (such payment calculated on an 'all-in' hourly rate basis). The purpose of the entitlements alleged at paragraphs 53 to 59 of the SOC is to compensate each Level 2 shift supervisor for the hours of work they performed (such payments calculated on an hourly basis, with loadings and allowances calculated separately).

- (v) by reason of the matters pleaded at subparagraph (iv) above, a part of the amounts paid to each Level 2 shift supervisor is entitled to be set off against the amount of the entitlements alleged at paragraphs 53 to 59 of the SOC;

(vi) in the premises pleaded at subparagraphs (i) to (v) above, and insofar as the payments pleaded at subparagraph 67C(a)(ii) above:

(A) across the Claim Period; or alternatively

(B) across each pay period –

exceed the amounts payable under the McDonald's Agreement across that period, MAL denies the alleged contraventions.

(vii) alternatively to subparagraph (vi) above, in the premises pleaded at subparagraphs (i) to (v) above and insofar as the payments pleaded at subparagraph 67C(a)(ii) above:

(A) across the Claim Period; or alternatively

(B) across each pay period –

do not exceed the amounts payable under the McDonald's Agreement, the payments pleaded at subparagraph 67C(a)(ii) above should be brought into account when assessing each Level 2 shift supervisor's compensable loss for the purposes of s 545 of the FW Act.

(b) *as to Level 2 managers under the Fast Food Award:*

(i) where a Level 2 manager's contract of employment contained a term to the effect that the manager was entitled to an allowance to be paid in instalments, which may be set off against all entitlements the manager may have under the terms applying to their employment, including but not limited to minimum weekly wages, any overtime, penalty rates, loadings and entitlements which may be due under the Award;

### **Particulars**

MAL used several versions of a standard form contract of employment for Level 2 managers during the Claim Period on and from 4 February 2020. Copies of those various versions of MAL's standard form contracts are in the possession of MAL's solicitors and may be inspected by appointment.

(ii) where MAL paid a Level 2 manager referred to in subparagraph (i) above an amount (less applicable tax) for pay period during the Claim Period on and from 4 February 2020, calculated with reference to the

hourly rate expressed in each Level 2 manager's contract of employment, plus the relevant proportion of the allowance referred to in that contract of employment; then

- (iii) in the premises pleaded at subparagraphs (i) and (ii) above, a part of the amounts paid to each Level 2 manager referred to in subparagraph 67C(b)(ii) above under their respective contracts of employment is entitled to be set off against the amount of the entitlements alleged at paragraphs 53 to 59 of the SOC;
- (iv) further or alternatively to subparagraphs (i) to (iii) above, there was a close correlation between the purpose of the payments pleaded at subparagraph 67C(b)(ii), and the purpose of the base rates and penalty rates pleaded at paragraphs 53 to 59 of the SOC.

#### **Particulars**

The purpose of the payments pleaded at subparagraph 67C(b)(ii) above was to compensate each Level 2 manager for the work they performed (such payment calculated on an 'all-in' hourly rate basis). The purpose of the entitlements alleged at paragraphs 53 to 59 of the SOC is to compensate each Level 2 manager for the hours of work they performed (such payments calculated on an hourly basis, with loadings and allowances calculated separately).

- (v) by reason of the matters pleaded at subparagraph (iv) above, a part of the amounts paid to each Level 2 manager is entitled to be set off against the amount of the entitlements alleged at paragraphs 53 to 59 of the SOC;
- (vi) in the premises pleaded at subparagraphs (i) to (v) above, and insofar as the payments pleaded at subparagraph 67C(b)(ii) above:
  - (A) across the Claim Period; or alternatively
  - (B) across each pay period –

exceed the amounts payable under the McDonald's Agreement across that period, MAL denies the alleged contraventions.

(vii) alternatively to subparagraph (vi) above, in the premises pleaded at subparagraphs (i) to (v) above and insofar as the payments pleaded at subparagraph 67C(b)(ii) above:

(A) across the Claim Period; or alternatively

(B) across each pay period –

do not exceed the amounts payable under the McDonald's Agreement, the payments pleaded at subparagraph 67C(b)(ii) above should be brought into account when assessing each Level 2 manager's compensable loss for the purposes of s 545 of the FW Act.

(c) *as to Level 3 managers under the Fast Food Award:*

(i) there was a term in each Level 3 manager contract of employment template to the effect that the manager's annual salary compensates the manager for all work performed (including all hours worked in excess of ordinary hours) and may be set off against all entitlements as a consequence of the manager's employment, including but not limited to, minimum weekly wages and any overtime, weekend and other penalty rates, annual leave loading, shift loadings, and any other loadings, allowances and entitlements which may be due to the manager under the Award, including in respect of minimum weekly wages, allowances, superannuation, penalty rates, overtime, breaks, annual leave loading and public holidays;

### **Particulars**

MAL used several versions of a standard form contract of employment for Level 3 managers during the Claim Period on and from 4 February 2020. Copies of those various versions of MAL's standard form contracts are in the possession of MAL's solicitors and will be provided upon request.

(ii) it paid each Level 3 manager during the Claim Period on and from 4 February 2020 an amount (less applicable tax):

(A) each week; or alternatively

(B) bi-monthly, being 1/24<sup>th</sup> of the salary figure expressed in each manager's contract of employment;

- (iii) in the premises pleaded at subparagraphs (i) and (ii) above, a part of the amounts paid to each Level 3 manager referred to in subparagraph 67C(c)(ii) above under their respective contracts of employment is entitled to be set off against the amount of the entitlements alleged at paragraphs 53 to 59 of the SOC;
- (iv) further or alternatively to subparagraphs (i) to (iii) above, there was a close correlation between the purpose of the payments pleaded at subparagraph 67C(c)(ii), and the purpose of the base rates and penalty rates pleaded at paragraphs 53 to 59 of the SOC.

### **Particulars**

The purpose of the payments pleaded at subparagraph 67C(c)(ii) above was to compensate each Level 3 manager for the work they performed (such payment calculated on an annualised basis). The purpose of the entitlements alleged at paragraphs 53 to 59 of the SOC is to compensate each Level 3 manager for the hours of work they performed (such payments calculated on an hourly basis, with loadings and allowances calculated separately).

- (v) by reason of the matters pleaded at subparagraph (iv) above, a part of the amounts paid to each Level 3 manager is entitled to be set off against the amount of the entitlements alleged at paragraphs 53 to 59 of the SOC;
- (vi) in the premises pleaded at subparagraphs (i) to (v) above, and insofar as the payments pleaded at subparagraph 67C(c)(ii) above:
  - (A) across the Claim Period; or alternatively
  - (B) across each pay period –exceed the amounts payable under the McDonald's Agreement across that period, MAL denies the alleged contraventions.
- (vii) alternatively to subparagraph (vi) above, in the premises pleaded at subparagraphs (i) to (v) above and insofar as the payments pleaded at subparagraph 67C(c)(ii) above:
  - (A) across the Claim Period; or alternatively
  - (B) across each pay period –

do not exceed the amounts payable under the McDonald's Agreement, the payments pleaded at subparagraph 67C(c)(ii) above should be brought into account when assessing each Level 3 manager's compensable loss for the purposes of s 545 of the FW Act.

## **E ALLEGED CONTRAVENTIONS BY JAMERI**

### **E.1 Mr Jennings**

68. MAL does not know and therefore cannot admit paragraph 68.

#### ***"Underpaid Sunday hours – McDonald's Agreement"***

69. In response to paragraph 69:

- (a) MAL admits subparagraph (a);
- (b) MAL does not know and therefore cannot admit subparagraph (b); and
- (c) MAL denies subparagraph (c).

#### ***"Underpaid Sunday ordinary hours – Fast Food Award"***

70. In response to paragraph 70:

- (a) MAL does not know and therefore cannot admit subparagraph (a);
- (b) MAL does not know and therefore cannot admit subparagraph (b); and
- (c) MAL denies subparagraph (c).

#### ***"Underpaid Sunday overtime hours – Fast Food Award"***

71. In response to paragraph 71:

- (a) MAL does not know and therefore cannot admit subparagraph (a);
- (b) MAL does not know and therefore cannot admit subparagraph (b); and
- (c) MAL denies subparagraph (c).

72. MAL denies paragraph 72.

## **E.2 Jameri Agreement Employees**

### ***"Underpaid Sunday hours"***

73. Save that MAL admits during the Claim Period up to and including 3 February 2020, some Jameri Agreement Employees worked on Sundays, it otherwise denies paragraph 73.
74. MAL does not know and therefore cannot admit paragraph 74.
75. MAL denies paragraph 75.

### ***"Underpaid Sunday minimum hours"***

76. Save that MAL admits that some Jameri Agreement Employees worked on Sundays for periods of less than three hours, MAL otherwise does not know and therefore cannot admit paragraph 76.
77. MAL denies paragraph 77.

### ***"Loss and damage"***

78. MAL denies paragraph 78.

## **E.3 Jameri Award Employees**

### ***"Underpaid Sunday ordinary hours"***

79. MAL does not know and therefore cannot admit paragraph 79.
80. MAL does not know and therefore cannot admit paragraph 80.
81. MAL denies paragraph 81.

### ***"Underpaid Sunday overtime hours"***

82. MAL does not know and therefore cannot admit paragraph 82.
83. MAL does not know and therefore cannot admit paragraph 83.
84. MAL denies paragraph 84.

### ***"Loss and damage"***

85. MAL denies paragraph 85.

#### **E.4 All full-time and part time Jameri Group Members**

##### ***"Deducted Sunday leave"***

86. MAL does not know, and therefore cannot admit, the allegations in paragraph 86.
87. MAL denies paragraph 87.
88. MAL does not know and therefore cannot admit paragraph 88.
89. In response to paragraph 89:
- (a) MAL does not know and therefore cannot admit the allegations that Jameri deducted the annual leave balances of full-time and part-time Jameri Employees who took paid annual leave on NES Public Holidays falling on a Sunday; and
  - (b) MAL otherwise denies paragraph 89.
90. MAL denies paragraph 90.
91. MAL does not know and therefore cannot admit paragraph 91.
92. In response to paragraph 92:
- (a) MAL does not know and therefore cannot admit the allegation that Jameri deducted the personal/carer's leave balances of full-time and part-time Jameri Employees who took paid personal/carer's leave on NES Public Holidays falling on a Sunday; and
  - (b) MAL otherwise denies paragraph 92.

##### ***"Loss and damage"***

93. MAL denies paragraph 93.

#### **F ALLEGED CONTRAVENTIONS BY FRANCHISEES OTHER THAN JAMERI**

## **F.1 Franchise Agreement Employees**

### ***"Underpaid Sunday hours"***

94. MAL admits that during the Claim Period up to and including 3 February 2020, some Franchise Agreement Employees worked hours on one or more Sundays and otherwise denies paragraph 94.

95. MAL does not know and therefore cannot admit paragraph 95.

96. MAL denies paragraph 96.

### ***"Underpaid Sunday minimum hours"***

97. Save that MAL admits during the Claim Period up to and including 3 February 2020, some Franchise Agreement Employees worked on Sundays for periods of less than three hours, MAL otherwise does not know and therefore cannot admit paragraph 97.

98. MAL denies paragraph 98.

### ***"Loss and damage"***

99. MAL denies paragraph 99.

## **F.2 Franchise Award Employees**

### ***"Underpaid Sunday ordinary hours"***

100. MAL does not know and therefore cannot admit paragraph 100.

101. MAL does not know and therefore cannot admit paragraph 101.

102. MAL denies paragraph 102.

### ***"Underpaid Sunday overtime hours"***

103. MAL does not know and therefore cannot admit paragraph 103.

104. MAL does not know and therefore cannot admit paragraph 104.

105. MAL denies paragraph 105.

### ***"Loss and damage"***

106. MAL denies paragraph 106.

### **F.3 All full-time and part time Franchise Employees**

#### ***"Deducted Sunday leave"***

107. MAL does not know and therefore cannot admit paragraph 107.
108. MAL denies paragraph 108.
109. MAL does not know and therefore cannot admit paragraph 109.
110. In response to paragraph 110:
- (a) MAL does not know and therefore cannot admit the allegations that Franchisees deducted the annual leave balances of full-time and part-time Franchise Employees who took paid annual leave on NES Public Holidays falling on a Sunday; and
  - (b) MAL otherwise denies paragraph 110.
111. MAL denies paragraph 111.
112. MAL does not know and therefore cannot admit paragraph 112.
113. In response to paragraph 113:
- (a) MAL does not know and therefore cannot admit the allegation that Franchisees deducted the personal/carer's leave balances of full-time and part-time Franchise Employees who took paid personal/carer's leave on NES Public Holidays falling on a Sunday;
  - (b) MAL otherwise denies paragraph 113.

#### ***"Loss and damage"***

114. MAL denies paragraph 114.

### **G. ALLEGED MAL FRANCHISOR CONTRAVENTIONS – S 558B**

115. MAL admits paragraph 115.
116. MAL admits paragraph 116.
117. In respect of paragraph 117:

- (a) MAL admits subparagraph (a); and
  - (b) MAL denies subparagraph (b).
118. MAL denies paragraph 118.
119. In response to paragraph 119:
- (a) MAL admits that for part of the Claim Period, it employed persons with human resources and industrial relations expertise; and
  - (b) it otherwise denies paragraph 119.
120. In response to paragraph 120:
- (a) in the absence of proper particulars as to the basis of MAL's alleged knowledge, the paragraph ought be struck out on the basis that it is likely to cause prejudice and embarrassment in the proceeding; and
  - (b) under cover of that objection, MAL denies paragraph 120.
121. In response to paragraph 121:
- (a) absent proper particularisation of the relevant context of the "reasonable steps", the paragraph ought be struck out on the basis that it is likely to cause prejudice and embarrassment in the proceeding; and
  - (b) under cover of that objection, MAL denies paragraph 121.
122. MAL denies paragraph 122.
123. MAL denies paragraph 123.
124. MAL denies paragraph 124.
- "Section 558B contraventions – loss and damage"**
125. MAL denies paragraph 125.
126. MAL denies the Applicants and Group Members are entitled to the relief set out in the Originating Application filed on 18 November 2025, or at all.
127. Further or alternatively, and in answer to each of the contraventions alleged herein against MAL concerning the Jameri Contraventions and Franchisee Contraventions:

- (a) to the extent that the Franchisee Employee, or Jameri Employee, was paid:
- (i) annual leave loading in accordance with clause 30.2 of the McDonald's Agreement, clause 28.3 of the Fast Food Award (up to and including 27 July 2022) or clause 22.2 of the Fast Food Award (on and from 28 July 2022) for Ordinary Sundays during a period of annual leave taken during the Claim Period; and/or
  - (ii) amounts pursuant to a contractual term of the kind referred to at subparagraphs 67B(a), 67C(a)(i), 67C(b)(i) and 67C(c)(i) above; then
- (b) the amounts paid to the Franchisee Employee, or Jameri Employee, should be brought into account when assessing each employee's compensable loss for the purposes of s 545 of the FW Act.

128. Further or in the alternative to the whole of the SOC, if, which is denied, MAL is liable to pay any pecuniary penalty or to have contravened a civil remedy provision, MAL will rely upon ss 556 and 557 of the FW Act.

Date: 15 April 2026

  
Signed by Ian Bolster  
Ashurst Australia  
Lawyer for the First Respondent

This pleading was prepared by R A Dick SC, D Snyder and F Leoncio of Counsel.

### Certificate of lawyer

I Ian Bolster certify to the Court that, in relation to the defence filed on behalf of the First Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 15 April 2026



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Signed by Ian Bolster  
Ashurst Australia  
Lawyer for the First Respondent