

NOTICE OF FILING

Details of Filing

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File Title: DAKOTA JACKSON & ANOR v MCDONALD'S AUSTRALIA & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA

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.

The date of the filing of the document is determined pursuant to the Court's Rules.

Dakota Jackson and another according to the Schedule

First Applicant

McDonald's Australia Limited and another according to the Schedule

First Respondent

STATEMENT OF CLAIM

A. THE PARTIES

1. The first applicant (**Ms Jackson**) was, during the period between about May 2014 and October 2021:
 - (a) employed by the first respondent (**MAL**) as a crew member on a casual basis;
and
 - (b) in her employment with MAL – a national system employee within the meaning of s 13 of the *Fair Work Act 2009* (Cth) (the **FW Act**).

2. The second applicant (**Mr Jennings**) was, during the period between about October 2017 and April 2024:
 - (a) employed by the second respondent (**Jameri**);
 - (b) employed:
 - (i) from around October 2017 to around October 2018 – as a crew member on a casual basis;
 - (ii) from around October 2018 to around February 2019 – as a crew trainer on a casual basis;
 - (iii) from around February 2019 to May 2021 – as a crew trainer on a part-time basis;
 - (iv) from around May 2021 to June 2021 – as a shift manager on a part-time basis; and

Filed on behalf of	The applicants, Dakota Jackson and Max Jennings.	
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- (v) from around June 2021 to April 2024 – as a shift manager on a casual basis; and
 - (c) in his employment with Jameri – a national system employee within the meaning of s 13 of the FW Act.
3. The first respondent (**MAL**):
- (a) is a body corporate capable of suing and being sued; and
 - (b) is, and at all material times was, in respect of its employment of Ms Jackson and those of the Group Members (defined below) employed by it, a national system employer within the meaning of s 14 of the FW Act.
4. The second respondent (**Jameri**):
- (a) is a body corporate capable of suing and being sued; and
 - (b) is, and at all material times was, in respect of its employment of Mr Jennings and those of the Group Members employed by it, a national system employer within the meaning of s 14 of the FW Act.

Group members

5. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by Ms Jackson and Mr Jennings on their own behalf and on behalf of all persons:
- (a) who in the period from 17 November 2019 to 31 December 2023 (the **Claim Period**):
 - (i) were employed by MAL; or
 - (ii) were employed by Jameri; or
 - (iii) were employed at a McDonald's store operated by any McDonald's franchisee other than Jameri;
 - (b) to whom, in their employment in (a):
 - (i) the *Fast Food Industry Award 2020* (the **Fast Food Award**), further or alternatively
 - (ii) the *McDonald's Australia Enterprise Agreement 2013* (the **McDonald's Agreement**), applied;
 - (c) who, during their employment in (a):
 - (i) were based in South Australia for work purposes;
 - (ii) on one or more Sundays during the said employment:
 - (1) performed work but were not paid at the public holiday rate(s) prescribed by the McDonald's Agreement or the Fast Food Award (as applicable) for that work; or

- (2) to the extent that the McDonald's Agreement applied to them – were engaged to work for less than a minimum of three hours; or
- (3) were employed on a full-time or part time basis and –
 - (a) took paid annual leave or paid personal/carer's leave on one or more such Sundays; and
 - (b) were taken by their employer to be on paid annual leave or paid personal/carer's leave on the Sunday(s) referred to in (3)(a); and
 - (c) by reason of (b) – had their annual or paid personal/carer's leave balance deducted in relation to the leave referred to in (3)(a);

(the said persons being **Group Members**).

- 6. Immediately prior to the commencement of this proceeding, there were more than seven persons who:
 - (a) had claims against MAL as described in this pleading; and/or
 - (b) had claims against Jameri as described in this pleading.

B. THE RESPONDENTS

B.1 MAL

MAL business

- 7. At all material times, MAL operated in Australia a business in the fast-food industry selling food from stores branded and trading as "McDonald's", both directly and through a network of franchisees (the **McDonald's Business**).
- 8. At all material times, the McDonald's Business was operated using a restaurant system known as the "McDonald's System".

Particulars

The McDonald's System is described in Far Horizons Pty Ltd v McDonald's Australia Ltd [2000] VSC 310 and McDonald's Australia Holdings Ltd v Industrial Relations Commission of New South Wales (2005) 223 ALR 78.

Further particulars may be provided after discovery.

9. At all material times, the McDonald's System:
- (a) included proprietary rights in certain valuable trademarks, service marks and trade names; and
 - (b) was operated and advertised widely within Australia.

Particulars

The intellectual property included: the trade names "McDonald's" and "McDonald's Hamburgers"; designs and colour schemes for restaurant buildings; signage and get-up; kitchen layouts and equipment designs; recipes, formulae and specifications for certain food products; methods of inventory and operation control; bookkeeping, accounting, and business practices and policies manuals covering business practices and policies. The Applicants further refer to and rely on the particulars to the preceding paragraph.

Further particulars may be provided after discovery.

10. At all material times, MAL:
- (a) was licensed by, *inter alia*, related entities in Australia and overseas to use valuable intellectual property, including trademarks, service marks, patents, copyrights, trade secrets and other proprietary information; and
 - (b) treated the trademarks "McDonald's" and "The Golden Arches" as being of material importance to its business.

MAL franchise network

11. In the course of operating the McDonald's Business, MAL entered into agreements (**Franchise Agreements**) with other entities in Australia (the **Franchisees**) pursuant to which the Franchisees were authorised *inter alia* to operate McDonald's stores in accordance with the terms of the Franchise Agreements.
12. Each Franchise Agreement was or was part of a franchise within the meaning of –
- (a) s 9 of the *Corporations Act 2001* (Cth) (the **McDonald's Franchise**); and
 - (b) in the premises in (a) – Division 4A of Part 4-1 of the FW Act.
13. Each Franchise Agreement required the relevant Franchisee to, *inter alia*:
- (a) operate a specific McDonald's store or stores according to standards prescribed by MAL in, *inter alia*, the Franchise Agreement(s);
 - (b) operate a specific McDonald's store or stores using the McDonald's System;

- (c) equip each McDonald's store with kitchen equipment, lighting, signage, seating, landscaping, air-conditioning and décor that met MAL's specifications;
- (d) use MAL's:
 - (i) formulae and specifications for menu items;
 - (ii) methods of operations, inventory control, bookkeeping, accounting and marketing;
 - (iii) trademarks;
 - (iv) concepts for restaurant design, signage and equipment layout; and
 - (v) information systems;
- (e) operate the Franchise according to MAL's Quality, Service, Cleanliness and Value standards;
- (f) maintain a maximum of 75% debt to notional restaurant value ratio for the term of the Franchise Agreement; and
- (g) pay fees to MAL, including:
 - (i) a monthly service fee to be calculated based on a percentage of the restaurant's gross sales;
 - (ii) a monthly rental, being a fixed base rent plus a percentage of the restaurant's gross sales; and
 - (iii) a monthly advertising contribution of not less than 4% of gross sales.

Particulars

The said features of the McDonald's Franchise are described in:

- (a) *Far Horizons Pty Ltd v McDonald's Australia Ltd [2000] VSC 310;*
- (b) *McDonald's Australia Holdings Ltd v Industrial Relations Commission of New South Wales (2005) 223 ALR 78; and*
- (c) *a document titled "Franchising Overview Booklet 2020" at pp 3, 10.*

Further particulars may be provided after discovery.

Corporate and franchise stores – employees

14. At all material times during the Claim Period, McDonald's stores were either:
- (a) owned and operated by MAL directly (**Corporate Stores**); or
 - (b) operated by a Franchisee pursuant to a Franchise Agreement (**Franchise Stores**).

15. At all material times during the Claim Period, MAL employed persons (**Corporate Employees**) to perform work in the Corporate Stores in the State of South Australia who were:

- (a) engaged in:
 - (i) the preparation of,
 - (ii) the receipt of orders from customers for,
 - (iii) cooking, or
 - (iv) sale or serving of meals, snacks and/or beverages sold or to be sold to the public; or
- (b) engaged in cleaning or maintenance of Corporate Stores, and other work that did not require a trade certificate or other technical licence; or

Particulars

The said work included cleaning of toilets, janitorial duties, incidental cleaning of the food delivery area, minor equipment or facility maintenance, attending to gardens and grounds including mowing, and other handy work.

- (c) engaged primarily to deliver meals, snacks or beverages to members of the public; or
- (d) engaged in supervising or training employees described in (a) to (c) above; and/or
- (e) appointed to be in charge of a McDonald's store.

16. At all material times, Franchisees employed persons (**Franchise Employees**) to perform work in the Franchise Stores in the State of South Australia who were:

- (a) engaged in:
 - (i) the preparation of,
 - (ii) the receipt of orders from customers for,
 - (iii) cooking, or
 - (iv) sale or serving of meals, snacks or beverages sold or to be sold to the public;
- (b) engaged in cleaning or maintenance of Franchisee Stores, and other work that did not require a trade certificate or other technical licence;

Particulars

The said work included cleaning of toilets, janitorial duties, incidental cleaning of the food delivery area, minor equipment or facility maintenance, attending to gardens and grounds including mowing, and other handy work.

- (c) engaged primarily to deliver meals, snacks or beverages to members of the public;

- (d) engaged in supervising or training employees described in (a) to (c) above; and/or
- (e) appointed to be in charge of a McDonald's store.

B.2 Jameri

17. At all material times:
- (a) Jameri was a Franchisee of MAL; and
 - (b) the relationship between MAL and Jameri was regulated, in part, by a Franchise Agreement.
18. At all material times, Jameri operated McDonald's stores in the State of South Australia as a Franchisee of MAL (**Jameri Stores**).
19. At all material times, Jameri employed persons (**Jameri Employees**) to perform work in the Jameri Stores who were:
- (a) engaged in:
 - (i) the preparation of,
 - (ii) the receipt of orders from customers for,
 - (iii) cooking, or
 - (iv) sale or serving ofmeals, snacks or beverages sold or to be sold to the public;
 - (b) engaged in cleaning or maintenance of Jameri Stores, and other work that did not require a trade certificate or other technical licence;

Particulars

The said work included cleaning of toilets, janitorial duties, incidental cleaning of the food delivery area, minor equipment or facility maintenance, attending to gardens and grounds including mowing, and other handy work.

- (c) engaged primarily to deliver meals, snacks or beverages to members of the public;
- (d) engaged in supervising or training employees described in (a) to (c) above; and/or
- (e) appointed to be in charge of a McDonald's store.

C. INDUSTRIAL LAWS AND INSTRUMENTS

C.1 Public holidays – Fair Work Act

20. At all material times, s 115(1) of the FW Act was in the following terms:

The public holidays

(1) The following are public holidays:

(a) each of these days:

- (i) 1 January (New Year's Day);
- (ii) 26 January (Australia Day);
- (iii) Good Friday;
- (iv) Easter Monday;
- (v) 25 April (Anzac Day);
- (vi) the holiday for the birthday of the Sovereign (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);
- (vii) 25 December (Christmas Day);
- (viii) 26 December (Boxing Day);

(b) any other day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday.

21. At all material times, s 89(1) of the FW Act was in the following terms:

Employee not taken to be on paid annual leave at certain times

Public holidays

If the period during which an employee takes paid annual 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 annual leave on that public holiday.

22. At all material times, s 98(1) of the FW Act was in the following terms:

Employee not taken to be on paid personal/carer's leave at certain times

Public holidays

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.

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

23. At all material times up to 31 December 2023, Sunday was a public holiday in South Australia within the meaning of Division 10 of the FW Act.

Particulars

*The Holidays Act 1910 (SA) (**Holidays Act 1910**) regulated public holidays in South Australia from 1910 to 31 December 2023.*

Schedule 2 of the Holidays Act 1910 prescribed the dates that were public holidays in South Australia.

The list in Schedule 2 included Sunday.

24. National system employees who were based in South Australia for work purposes during the Claim Period and:
- (a) who, during a period in which they took paid annual leave, were absent from their employment on a Sunday were, in the premises in paragraphs 20, 21 and 23 above, taken not to be on paid annual leave on that Sunday; and
 - (b) who, during a period in which they took paid personal/carer's leave, were absent from their employment on a Sunday were, in the premises in paragraphs 20, 22 and 23 above, taken not to be on paid personal/carer's leave on that Sunday.

C.3 McDonald's Enterprise Agreement 2013

25. MAL:
- (a) was a bargaining representative within the meaning of s 176 of the FW Act in relation to the proposed enterprise agreement that became the McDonald's Agreement (the **proposed 2013 Agreement**);
 - (b) actively participated in negotiating the proposed 2013 Agreement;
 - (c) had primary responsibility for drafting the proposed 2013 Agreement;
 - (d) prepared materials for the purpose of explaining the terms of the proposed 2013 Agreement and the effect of those terms;
 - (e) for the purposes of complying with s 180(5) of the FW Act – distributed the materials in (d) to the Corporate Employees employed at the time who would be covered by the proposed 2013 Agreement;

- (f) asked the Corporate Employees employed at the time who would be covered by the proposed 2013 Agreement to approve the said Agreement by voting for it; and
- (g) lodged an application under s 185 of the FW Act for approval of the proposed 2013 Agreement.

26. On about 24 July 2013, the Fair Work Commission approved the McDonald's Agreement.

Particulars

Re McDonald's Australia Enterprise Agreement 2013 [2013]
FWCA 5001.

27. On about 25 February 2016, the Fair Work Commission approved an application to vary the McDonald's Agreement, with effect from 24 February 2016.

Particulars

Re McDonald's Australia Enterprise Agreement 2013 [2016]
FWCA 1209.

28. The McDonald's Agreement applied to:

- (a) Ms Jackson in the employment alleged at paragraph 1(a) above, up to 2 February 2020;
- (b) MAL in relation to Ms Jackson as alleged in (a);
- (c) Mr Jennings in the employment alleged at paragraph 2(a) above, up to 2 February 2020;
- (d) Jameri in relation to Mr Jennings as alleged in (c);
- (e) Corporate Employees engaged in a classification listed in Schedule A to the McDonald's Agreement (as in force from time to time) (**Corporate Agreement Employees**); and
- (f) MAL in relation to the employees identified in (e);
- (g) the Franchise Employees engaged in a classification listed in Schedule A to the McDonald's Agreement (as in force from time to time) (**Franchise Agreement Employees**);
- (h) the Franchisees who employed the employees identified in (g);
- (i) Jameri Employees engaged in a classification listed in Schedule A to the McDonald's Agreement (as in force from time to time) (**Jameri Agreement Employees**); and
- (j) Jameri in relation to the employees identified in (i).

29. At all material times, cl 32.1 and 32.2 of the McDonald's Agreement were in the following terms:

32.1 Weekly employees will be entitled to the following public holidays without loss of pay:

New Year's Day	Queen's Birthday
Australia Day	Christmas Day
Good Friday	Boxing Day
Easter Saturday (Except Tasmania)	Anzac Day
Easter Monday	Labour Day

32.2 Any additional declared or prescribed public holidays other than those prescribed above shall be additional public holidays for the purpose of this Agreement. As such, weekly employees will be entitled to the public holiday without loss of pay.

30. At all material times, cl 3 of the McDonald's Agreement defined "weekly employee" to mean an employee who was employed as a full-time or part-time employee.

31. At all material times, the McDonald's Agreement provided that or to the effect that:

(a) 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 (**MWW**) (the **MWW-based rate**) (which rate, in respect of casual employees, includes the casual loading provided for in clause 15.2) (cl 32.5); and

Particulars

The "minimum weekly wage" referred to at cl 32.5 is a reference to the minimum rates of pay set out at cl 19.4 for MAL Employees in South Australia.

For the avoidance of doubt, employees were entitled to be paid the MWW-based rate for work performed on a public holiday in addition to any other rates that the McDonald's Agreement entitled them to be paid for that work, such as overtime in accordance with cl 28.2.

- (b) employees who were working on a public holiday were to be engaged for minimum of 3 hours (cl 32.6).

Particulars

The “minimum weekly wage” referred to at cl 32.5 is a reference to the minimum rates of pay set out at cl 19.4 for Corporate Agreement Employees, Franchise Agreement Employees and Jameri Agreement Employees in South Australia.

32. By reason of the matters in paragraphs 26 to 31 above, the Corporate Agreement Employees, Franchise Agreement Employees, and Jameri Agreement Employees were:
- (a) other than level 4 employees – entitled to be paid for working on Sundays at the applicable MWW-based rate (cl 32.5); and
- (b) entitled to be engaged for minimum of 3 hours on Sundays (cl 32.6).
33. On 19 December 2019, the Fair Work Commission terminated the McDonald’s Agreement with effect from 3 February 2020.

Particulars

*Re McDonald’s Australia Enterprise Agreement 2013 [2019]
FWCA 8563.*

C.4 Fast Food Award

34. The Fast Food Award:
- (a) commenced operation on 1 January 2010;
- (b) is, and at all material times was, a modern award within the meaning of s 45 of the FW Act; and
- (c) was, until 27 July 2022, known as the *Fast Food Industry Award 2010*.
35. At all material times, the Fast Food Award covered and applied to:
- (a) Ms Jackson in the employment alleged at paragraph 1(a) above, on and from 3 February 2020;
- (b) MAL in relation to Ms Jackson in her employment in (a);
- (c) Mr Jennings in the employment alleged at paragraph 2(a) above, on and from 3 February 2020;
- (d) Jameri in relation to Mr Jennings in his employment in (c);
- (e) Corporate Employees, Franchise Employees and Jameri Employees (respectively, **Corporate Award Employees, Franchise Award Employees and Jameri Award Employees**) who:
- (i) in the period up to 3 February 2020:

1. were employed in a classification listed in Schedule B of the Fast Food Award (in accordance with cl 16.1); and
 2. to whom the McDonald's Agreement did not apply; or
- (ii) in the period on and from 3 February 2020 up to 27 July 2022 were employed in the classifications listed in Schedule B to the Fast Food Award (in accordance with cl 16.1); or
- (iii) in the period on and from 28 July 2022 were employed in the classifications listed in cl 12 of the Fast Food Award;
- (f) MAL in relation to the Corporate Award Employees identified in paragraph 35(e);
- (g) Franchisees in relation to the Franchise Award Employees identified in paragraph 35(e); and
- (h) Jameri in relation to the Jameri Award Employees identified in paragraph 35(e).
36. At all material times during the Claim Period up to 27 July 2022, cl 30 of the Fast Food Award provided:
- 30. Public holidays**
 - 30.1** Public holidays are provided for in the NES.
 - 30.2** An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES. 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.
 - 30.3** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES. If an employee works on either the part-day public holiday or the substitute part-day public holiday penalties apply. If both part-days are worked, the public holiday penalties must be paid on one part-day chosen by the employee.
 - 30.4** Work on a public holiday must be compensated by payment at the rate of 225% (250% for casual employees, inclusive of the casual loading).
- (bold emphases in original)
37. At all material times during the Claim Period from 28 July 2022, cl 27 of the Fast Food Award provided:

27. Public holidays

27.1 Public holiday entitlements are provided for in the NES.

27.2 Substitution of public holidays by agreement

- (a) An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES.
- (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

27.3 Payment for work on public holiday or substitute day

- (a) An employer must pay an employee who works on a public holiday, or on a day that is substituted for a public holiday, at the public holiday penalty rate set out in clauses 20 — Overtime and 21 — Penalty rates .
- (b) An employer must pay an employee who works on a part-day public holiday, or on a day that is substituted for a part-day public holiday, at the public holiday penalty rate set out in clauses 20 — Overtime and 21 — Penalty rates.
- (c) If an employee works on both a public holiday and on a day that is substituted for the public holiday, the public holiday penalty rate is applicable to only one of those days. The employee may choose which day is to be paid at the public holiday penalty rate.
- (d) If an employee works on both a part-day public holiday and on a part-day that is substituted for the part-day public holiday, the public holiday penalty rate is applicable to only one of those days. The employee may choose which part-day is to be paid at the public holiday penalty rate.

(bold emphases in original)

38. At all material times during the Claim Period, the Fast Food Award provided that an employer was required to:

- (a) pay a full-time employee at the applicable overtime rate for any hours worked:
 - (i) in excess of:

- (1) 38 ordinary hours per week or an average of 38 ordinary hours per week averaged over a 4 week period; or
 - (2) 5 days in one week (or 6 days in one week if, in the following week, ordinary hours are worked on not more than 4 days); or
 - (3) 11 ordinary hours on any one day;
 - (ii) before the employee's rostered start time on any one day; or
 - (iii) after the employee's rostered finish time on any one day; or
 - (iv) outside the ordinary hours of work,
(the times referred to in (i)-(iv) being the **full-time Award overtime hours**);
- (b) pay a part-time employee at the applicable overtime rate for any hours worked:
- (i) in excess of:
 - (1) 38 ordinary hours per week or an average of 38 ordinary hours per week averaged over a 4 week period; or
 - (2) 5 days in one week (or 6 days in one week if, in the following week, ordinary hours are worked on not more than 4 days); or
 - (3) 11 ordinary hours on any one day; or
 - (4) their agreed hours (as agreed or varied in accordance with the Fast Food Award); or
 - (5) their regular pattern of work in circumstances where there is no written record of an agreed variation to a particular rostered shift;
or
 - (ii) before the employee's rostered start time on any one day; or
 - (iii) after the employee's rostered finish time on any one day; or
 - (iv) outside the ordinary hours of work
(the times referred to in (i)-(iv) being the **part-time Award overtime hours**);
- (c) pay a casual employee at the applicable overtime rate for any hours worked in excess of:
- (i) 38 ordinary hours per week or, where the employee works in accordance with a roster, in excess of 38 ordinary hours per week averaged over the course of the roster cycle; or
 - (ii) 11 ordinary hours on any one day,
(the times referred to in (i)-(ii) being the **casual Award overtime hours**);
and
- (d) for any employee who had worked any overtime hours referred to in (a) to (c) above and had agreed to take time off (**TOIL**) at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime – give the employee that TOIL at the overtime equivalent, and pay the employee the balance of that overtime that had not been taken as TOIL, at the earliest of:

- (i) the employee requesting to be paid for the overtime instead of taking the TOIL;
- (ii) 6 months after the overtime was worked; or
- (iii) the termination of the employee's employment.

Particulars

- a. *cl 26 of the Fast Food Award up to and including 27 July 2022 and*
- b. *cII 20.2 to 20.4 and 20.7 of the Fast Food Award on and from 28 July 2022.*

39. At all material times during the Claim Period, the Fast Food Award provided that the rates of pay for overtime were:

For overtime worked:	Full-time and part-time employees	Casual employees
	% of minimum hourly rate	% of minimum hourly rate
Monday to Saturday— first 2 hours	150	175
Monday to Saturday— after 2 hours	200	225
Sunday—all overtime hours	200	225
Public holiday—all overtime hours	250	275

Particulars

- i. *cl 26.1 of the Fast Food Award up to and including 27 July 2022 and*
- ii. *cl 20.6 of the Fast Food Award on and from 28 July 2022.*

40. At all material times during the Claim Period, the Fast Food Award provided that the rates of pay for ordinary hours performed at the following times were:

For ordinary hours worked:	Full-time and part-time employees	Casual employees
	% of minimum hourly rate	% of minimum hourly rate
Monday to Friday—between 10.00 pm and midnight	110	135
Monday to Friday—between midnight and 6.00 am	115	140
Saturday—any time of day	125	150
Sunday (Level 1 employees)—any time of day	125	150
Sunday (Level 2 and 3 employees)—any time of day	150	175
Public holiday—any time of day	225	250

Particulars

- i. *cl 25.5 and 30.4, up to 27 July 2022; and*
- ii. *cl 21 on and from 28 July 2022.*

41. By reason of the matters in paragraphs 34 to 40, at all times during Claim Period the Corporate Award Employees, Jameri Award Employees and Franchise Award Employees were:
- (a) entitled to be paid for working ordinary hours on Sundays:
 - (i) up to and including 27 July 2022 – at the rates set out for public holidays in cl 30.4 of the Fast Food Award; and
 - (ii) on and from 28 July 2022 – at the rates set out for public holidays in cl 21 of the Fast Food Award; and
 - (b) entitled to be paid for working full-time Award overtime hours, part-time Award overtime hours or casual Award overtime hours (as the case may be) on Sundays:
 - (i) up to and including 27 July 2022 – at the rates set out for public holidays in cl 26.1 of the Fast Food Award; and
 - (ii) on and from 28 July 2022 – at the rates set out for public holidays in cl 20.6 of the Fast Food Award; and
 - (c) in the alternative to (a) and (b), if an employee and their employer had agreed that that employee would take TOIL – entitled to take TOIL at the overtime equivalent and be paid the balance of the overtime that had not been taken as TOIL, at the earliest of:

- (i) the employee requesting to be paid for the overtime instead of taking the TOIL;
 - (ii) 6 months after the overtime was worked; or
 - (iii) the termination of the employee's employment; or
- in accordance with:
- (iv) cl 20.7 of the Fast Food Award (on and from 28 July 2022); or
 - (v) cl 26.5 of the Fast Food Award (up to and including 27 July 2022).

D. CONTRAVENTIONS BY MAL

D.1 Ms Jackson

42. During the Claim Period, Ms Jackson:
- (a) was based in South Australia for work purposes;
 - (b) was, during the period in which she was a Corporate Agreement Employee, classified as a McDonald's Employee Level 2 under the McDonald's Agreement; and
 - (c) was, during the period in which she was a Corporate Award Employee, classified as a Fast Food Employee Level 1 under the Fast Food Award.

Underpaid Sunday hours – McDonald's Agreement

43. During that part of the Claim Period in which Ms Jackson was a Corporate Agreement Employee:
- (a) Ms Jackson from time to time performed hours of work on Sundays;
 - (b) MAL failed to pay Ms Jackson at the MWW-based rate for the hours in (a); and
 - (c) by reason of the matters in (b), MAL:
 - (i) contravened cl 32.5 of the McDonald's Agreement; and
 - (ii) thereby contravened s 50 of the FW Act.

Particulars

Particulars of the hours of work performed by Ms Jackson on Sundays will be provided after discovery.

Underpaid Sunday ordinary hours – Fast Food Award

44. During that part of the Claim Period in which Ms Jackson was a Corporate Award Employee:
- (a) Ms Jackson from time to time performed ordinary hours of work on Sundays;
 - (b) MAL failed to pay Ms Jackson at the public holiday rate prescribed by cll 30.4 and 21 of the Fast Food Award (as the case may be) for the hours in (a); and
 - (c) by reason of the matters in (b), MAL:
 - (i) contravened:
 - 1. up to 27 July 2022 – cl 30.4;
 - 2. on and from 28 July 2022 – cl 21;
 of the Fast Food Award; and
 - (ii) thereby contravened s 45 of the FW Act.

Particulars

Particulars of the hours of work performed by Ms Jackson on Sundays will be provided after discovery.

Underpaid Sunday overtime hours – Fast Food Award

45. During that part of the Claim Period in which Ms Jackson was a Corporate Award Employee:
- (a) Ms Jackson from time to time performed casual Award overtime hours of work on Sundays;
 - (b) MAL failed to pay Ms Jackson at the public holiday rate prescribed by cll 26.1 and 20.6 of the Fast Food Award (as the case may be) for the hours in (a); and
 - (c) by reason of the matters in (b), MAL:
 - (i) contravened:
 - 1. up to 27 July 2022 – cl 26.1;
 - 2. on and from 28 July 2022 – cll 20.6 and 27.3;
 of the Fast Food Award; and
 - (ii) thereby contravened s 45 of the FW Act.

Particulars

Particulars of the hours of work performed by Ms Jackson on Sundays will be provided after discovery.

Loss and damage

46. By reason of the contraventions alleged in section D.1 above, Ms Jackson suffered loss and damage.

Particulars

Ms Jackson suffered –

1. *loss of earnings, consisting of the difference between the amounts she was paid for working on Sundays and the amount she was entitled to be paid under the Fast Food Award or the McDonald's Agreement as the case may be; and*
2. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following discovery.

D.2 Corporate Agreement Employees*Underpaid Sunday hours*

47. During the Claim Period, some Corporate Agreement Employees worked hours on one or more Sundays.

Particulars

Particulars of the affected Corporate Agreement Employees may be provided following the trial of common questions or otherwise as the Court may direct.

48. During the Claim Period, MAL did not pay the Corporate Agreement Employees referred to in the preceding paragraph at the MWW-based rate for the hours referred to in the preceding paragraph.
49. By reason of the matters in the preceding paragraph MAL:
- (a) contravened cl 32.5 of the McDonald's Agreement; and
 - (b) thereby contravened s 50 of the FW Act.

Underpaid Sunday minimum hours

50. During the Claim Period, MAL engaged some Corporate Agreement Employees to work on Sundays for periods of less than three hours.

Particulars

Particulars of the affected Corporate Agreement Employees may be provided following the trial of common questions or otherwise as the Court may direct.

51. By reason of the matter in the preceding paragraph, MAL:
- (a) failed to comply with cl 32.6 of the McDonald's Agreement; and thereby
 - (b) contravened s 50 of the FW Act.

Loss and damage

52. By reason of the contraventions alleged in Section D.2 above, the Corporate Agreement Employees referred to therein suffered loss and damage.

Particulars

The Corporate Agreement Employees suffered –

1. *as to the contraventions alleged in paragraph 49 – loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays and the amount that they were entitled to be paid under the McDonald's Agreement;*
2. *as to the contraventions alleged in paragraph 51 – loss of earnings consisting of the difference between the amounts that they were paid to work on the given Sunday and the amounts that they would have been paid had they been engaged to work for a minimum of three hours; and*
3. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

D.3 Corporate Award Employees

Underpaid Sunday ordinary hours

53. During the Claim Period, some or all Corporate Award Employees worked ordinary hours on one or more Sundays.

Particulars

Particulars of the affected Corporate Award Employees may be provided following the trial of common questions or otherwise as the Court may direct.

54. During the Claim Period, MAL did not, for the ordinary hours worked by Corporate Award Employees on a Sunday, pay to those employees the public holiday rates in:
- (a) up to 27 July 2022 – cl 30.4; or
 - (b) on and from 28 July 2022 – cl 21; of the Fast Food Award.
55. By reason of the matters in the preceding paragraph, MAL:
- (a) contravened:
 - (i) up to 27 July 2022 – cl 30.4; and
 - (ii) on and from 28 July 2022 – cl 27.3 and 21; of the Fast Food Award; and
 - (b) thereby contravened s 45 of the FW Act.

Underpaid Sunday overtime hours

56. During the Claim Period, some or all 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.

Particulars

Particulars of the affected Corporate Award Employees may be provided following the trial of common questions or otherwise as the Court may direct.

57. During the Claim Period, MAL did not:
- (a) pay Corporate Award Employees who were full-time employees or part-time employees 250% of their minimum hourly rate of pay for the full-time Award overtime hours or part-time Agreement overtime hours (as the case may be) they worked on Sundays;
 - (b) pay Corporate Award Employees who were casual employees 275% of their minimum hourly rate of pay for the casual Award overtime hours they worked on Sundays;
 - (c) if any Corporate Award Employee and MAL had agreed that the employee would take TOIL –
 - (i) give the employee TOIL at the overtime equivalent;

- (ii) pay that employee the balance of the overtime that had not been taken as TOIL, at the earliest of:
 1. the employee requesting to be paid for the overtime instead of taking the TOIL;
 2. 6 months after the overtime was worked; or
 3. the termination of the employee's employment.
58. By reason of the matters in the preceding paragraph, MAL:
- (a) contravened:
 - (i) up to 27 July 2022 – cl 26;
 - (ii) on and from 28 July 2022 – cl 20.6 or 20.7 (as the case may be) and cl 27.3;
 of the Fast Food Award; and
 - (b) thereby contravened s 45 of the FW Act.

Loss and damage

59. By reason of the contraventions pleaded in Section D.3 above, the Corporate Award Employees suffered loss and damage.

Particulars

The Corporate Award Employees suffered –

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays, and the amount that they were entitled to be paid under the Fast Food Award;*
2. *to the extent that any Corporate Award Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Fast Food Award for that work on a Sunday;*
3. *to the extent that any Corporate Award Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, but did not in fact take that TOIL, the difference between the amount they were paid out for that TOIL and*

the value of the time worked under the Fast Food Award for that Sunday; and

4. *superannuation on those amounts, to the extent that superannuation was payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

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

Deducted Sunday leave

60. From time to time during the Claim Period, some or all Corporate Employees who were based in South Australia for work purposes and who were employed on a full-time or part-time basis took:
- (a) paid annual leave; or
 - (b) paid personal carer's leave;
- on a Sunday.
61. By reason of the matters alleged at paragraph 24 above, on each occasion that a full-time or part-time Corporate Employee took paid annual leave on a Sunday:
- (a) that employee was taken not to be on paid annual leave on that Sunday; and
 - (b) MAL was not authorised or permitted to deduct that employee's annual leave balance in respect of that Sunday.
62. During the Claim Period MAL deducted the annual leave balances of full-time and part-time Corporate Employees who took paid annual leave on a Sunday.
63. By reason of the matters in the preceding paragraph, MAL:
- (a) contravened s 89 of the FW Act; and
 - (b) thereby contravened s 44 of the FW Act.
64. By reason of the matters alleged at paragraph 24 above, on each occasion that a full-time or part-time Corporate Employee took paid personal/carer's leave on a Sunday:
- (a) that employee was taken not to be on paid personal/carer's leave on that Sunday; and
 - (b) MAL was not authorised or permitted to deduct that employee's personal/carer's leave balance in respect of that Sunday.

65. During the Claim Period MAL deducted the personal/carer's leave balances of full-time and part-time Corporate Employees who took paid personal/carer's leave on a Sunday.
66. By reason of the matters in the preceding paragraph, MAL:
- (a) contravened s 98 of the FW Act; and
 - (b) thereby contravened s 44 of the FW Act.

Loss and damage

67. By reason of the contraventions pleaded in Section D.4 above, Corporate Employees who were employed on a full-time or part-time basis suffered loss and damage.

Particulars

The Corporate Employees suffered–

1. *as to the contraventions alleged in paragraph 63 – loss of the annual leave that was deducted from their annual leave balances for Sundays when they took paid annual leave; and*
2. *as to the contraventions alleged in paragraph 66 – loss of the personal/carer's leave that was deducted from their personal/carer's leave balance for Sundays when they took paid personal/carer's leave;*
3. *further as to the contraventions alleged in paragraph 66 – lost income from days on which they took unpaid personal/carer's leave because they had insufficient paid personal/carer's leave by reason of the unlawful deduction of their personal/carer's leave for Sundays when they took paid personal/carer's leave; and*
4. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

E. CONTRAVENTIONS BY JAMERI

E.1 Mr Jennings

68. During the Claim Period, Mr Jennings:
- (a) was based in South Australia for work purposes;

- (b) was, during the period in which he was a Jameri Agreement Employee, classified as a McDonald's Employee Level 2 under the McDonald's Agreement; and
- (c) was, during the period in which he was a Jameri Award Employee, classified as:
 - (i) from 3 February 2020 to 14 May 2021, a Fast Food Employee Level 1;
 - (ii) from 15 May 2021 to April 2024, a Fast Food Employee Level 2; under the Fast Food Award.

Underpaid Sunday hours – McDonald's Agreement

69. During that part of the Claim Period when Mr Jennings was a Jameri Agreement Employee:
- (a) Mr Jennings from time to time performed hours of work on Sundays;
 - (b) Jameri failed to pay Mr Jennings at the MWW-based rate for the hours in (a); and
 - (c) by reason of the matters in (b), Jameri:
 - (i) contravened cl 32.5 of the McDonald's Agreement; and
 - (ii) thereby contravened s 50 of the FW Act.

Particulars

Particulars of the hours of work performed by Mr Jennings on Sundays will be provided after discovery.

Underpaid Sunday ordinary hours – Fast Food Award

70. During that part of the Claim Period when Mr Jennings was a Jameri Award Employee:
- (a) Mr Jennings from time to time performed ordinary hours of work on Sundays;
 - (b) Jameri failed to pay Mr Jennings for the hours in (a) at the public holiday rate prescribed by:
 - (i) up to 27 July 2022 – cl 30.4; and
 - (ii) on and from 28 July 2022 – cl 21, of the Fast Food Award; and
 - (c) by reason of the matters in (b), Jameri:
 - (i) contravened:
 1. up to 27 July 2022 – cl 30.4 of the Fast Food Award;
 2. on and from 28 July 2022 – cl 27.3 and 21 of the Fast Food Award;
 and
 - (ii) thereby contravened s 45 of the FW Act.

Particulars

Particulars of the hours of work performed by Mr Jennings on Sundays will be provided after discovery,

Underpaid Sunday overtime hours – Fast Food Award

71. During that part of the Claim Period when Mr Jennings was a Jameri Award Employee:
- (a) Mr Jennings from time to time performed overtime hours of work on Sundays;
 - (b) Jameri failed to pay Mr Jennings for the hours in (a) at the public holiday rate prescribed by:
 - (i) up to 27 July 2022 – cl 26; and
 - (ii) on and from 28 July 2022– cl 20.6 of the Fast Food Award; and
 - (c) by reason of the matters in (b), MAL:
 - (i) contravened:
 - (1) up to 27 July 2022, cl 26; and
 - (2) on and from 28 July 2022, cll 20.6 and 27.3, of the Fast Food Award; and
 - (ii) thereby contravened s 45 of the FW Act.
72. By reason of the contraventions of the FW Act pleaded in Section E.1 above, Mr Jennings suffered loss and damage.

Particulars

Mr Jennings suffered –

1. *loss of earnings, consisting of the difference between the amounts he was paid for working on Sundays and the amount he was entitled to be paid under the Fast Food Award or the McDonald's Agreement as the case may be.*
2. *superannuation on those amounts, to the extent that superannuation is payable.*

E.2 Jameri Agreement Employees

Underpaid Sunday hours

73. During the Claim Period, some or all Jameri Agreement Employees worked hours on one or more Sundays.

Particulars

Particulars of the hours worked by Jameri Agreement Employees on Sundays may be provided following the trial of common questions or otherwise as the Court may direct.

74. During the Claim Period, Jameri did not pay the Jameri Employees referred to in the preceding paragraph at the MWW-based rate for the hours in the preceding paragraph.
75. By reason of the matters in the preceding paragraph Jameri:
- (a) contravened cl 32.5 of the McDonald's Agreement; and
 - (b) thereby contravened s 50 of the FW Act.

Underpaid Sunday minimum hours

76. During the Claim Period, Jameri engaged some Jameri Agreement Employees to work on Sundays for periods of less than three hours.

Particulars

Particulars of the affected Employees may be provided following the trial of common questions or otherwise as the Court may direct.

77. By reason of the matter in the preceding paragraph, Jameri:
- (a) failed to comply with cl 32.6 of the McDonald's Agreement; and thereby
 - (b) contravened s 50 of the FW Act.

Loss and damage

78. By reason of the contraventions pleaded in Section E.2 above, the Jameri Agreement Employees suffered loss and damage.

Particulars

The Jameri Agreement Employees suffered –

1. *as to the contraventions alleged in paragraph 75 – loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays and the amount that they were entitled to be paid under the McDonald's Agreement;*
2. *as to the contraventions alleged in paragraph 77 –loss of earnings consisting of the difference between the amounts*

that they were paid to work on the given Sunday and the amounts that they would have been paid had they been engaged to work for a minimum of three hours;

3. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

E.3 Jameri Award Employees

Underpaid Sunday ordinary hours

79. During the Claim Period, some or all Jameri Award Employees worked ordinary hours on one or more Sundays.

Particulars

Particulars of the hours worked by Jameri Award Employees on Sundays may be provided following the trial of common questions or otherwise as the Court may direct.

80. During the Claim Period, Jameri did not, for the ordinary hours worked by the Employees referred to in the preceding paragraph, pay to those employees the public holiday rates in:
 - (a) up to 27 July 2022 (inclusive) – cl 30.4; or
 - (b) from 28 July 2022– cl 21
 of the Fast Food Award.

81. By reason of the matters in the preceding paragraph, Jameri:
 - (a) contravened:
 - (i) up to 27 July 2022 (inclusive) – cl 30.4;
 - (ii) on and from 28 July 2022 – cl 27.3 and 21
 of the Fast Food Award; and
 - (b) thereby contravened s 45 of the FW Act.

Underpaid Sunday overtime hours

82. During the Claim Period, some or all Jameri Award Employees worked full-time Award overtime hours, part-time Award overtime hours and casual Award overtime hours (as the case may be) on one or more Sundays.

Particulars

Particulars of the hours worked by Jameri Award Employees on Sundays may be provided following the trial of common questions or otherwise as the Court may direct.

83. During the Claim Period, Jameri did not:
- (a) pay the Jameri Award Employees who were full-time employees or part-time employees 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) they worked on Sundays; or
 - (b) pay Jameri Award Employees who were casual employees 275% of their minimum hourly rate of pay for the casual Award overtime hours they worked on Sundays; or
 - (c) if any Jameri Award Employee and Jameri had agreed that the employee would take TOIL –
 - (i) give the employee TOIL at the overtime equivalent;
 - (ii) pay that employee the balance of the overtime that had not been taken as TOIL, at the earliest of:
 1. the employee requesting to be paid for the overtime instead of taking the TOIL;
 2. 6 months after the overtime was worked; or
 3. the termination of the employee's employment.
84. By reason of the matters in the preceding paragraph, Jameri:
- (a) contravened:
 - (i) up to 27 July 2022– cl 26;
 - (ii) on and from 28 July 2022– cl 20.6 or 20.7 (as the case may be) and cl 27.3;
 of the Fast Food Award; and
 - (b) thereby contravened s 45 of the FW Act.

Loss and damage

85. By reason of the contraventions pleaded in Section E.3 above, the Jameri Award Employees suffered loss and damage.

Particulars

The Jameri Award Employees suffered –

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays and*

the amount that they were entitled to be paid under the Fast Food Award;

2. *to the extent that any Jameri Award Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Fast Food Award for that work on a Sunday;*
3. *to the extent that any Jameri Award Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, but did not in fact take that TOIL, the difference between the amount they were paid out for that TOIL and the value of the time worked under the Fast Food Award for that Sunday; and*
4. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

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

Deducted Sunday leave

86. From time to time during the Claim Period, some or all Jameri Employees who were based in South Australia for work purposes and who were employed on a full-time or part-time basis took paid annual leave or paid personal/carer's leave on a Sunday.
87. By reason of the matters alleged at paragraph 24 above, on each occasion that a full-time or part-time Jameri Employee took paid annual leave on a Sunday:
 - (a) the employee was taken not to be on paid annual leave on that Sunday; and
 - (b) Jameri was not authorised or permitted to deduct that employee's annual leave balance in respect of that Sunday.
88. During the Claim Period Jameri deducted the annual leave balances of full-time and part-time Jameri Employees who took paid annual leave on a Sunday.

89. By reason of the matters in the preceding paragraph, Jameri:
- (a) contravened s 89 of the FW Act; and
 - (b) thereby contravened s 44 of the FW Act.
90. By reason of the matters alleged at paragraph 24 above, on each occasion that a full-time or part-time Jameri Employees took paid personal/carer's leave on a Sunday:
- (a) the employee was taken not to be on paid personal/carer's leave on that Sunday; and
 - (b) Jameri was not authorised or permitted to deduct that employee's personal/carer's leave balance in respect of that Sunday.
91. During the Claim Period Jameri deducted the personal/carer's leave balances of full-time and part-time Jameri Employees who took paid personal/carer's leave on a Sunday.
92. By reason of the matters in the preceding paragraph, Jameri:
- (a) contravened s 98 of the FW Act; and
 - (b) thereby contravened s 44 of the FW Act.

Loss and damage

93. By reason of the contraventions pleaded in Section E.4 above, Jameri Employees who were employed on a full-time or part-time basis suffered loss and damage.

Particulars

The Jameri Employees suffered –

1. *as to the contraventions alleged in paragraph 89 – loss consisting of the annual leave that was deducted from their annual leave balances for Sundays when they took paid annual leave; and*
2. *as to the contraventions alleged in paragraph 92 – loss consisting of the personal/carer's leave that was deducted from their personal/carer's leave balance for Sundays when they took paid personal/carer's leave;*
3. *further as to the contraventions alleged in paragraph 92 – lost income from days on which they were took unpaid personal/carer's leave because they had insufficient paid personal/carer's leave by reason of the unlawful deduction of their personal/carer's leave for Sundays when they took paid personal/carer's leave; and*

4. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

F. CONTRAVENTIONS BY FRANCHISEES OTHER THAN JAMERI

F.1 Franchise Agreement Employees

Underpaid Sunday hours

94. During the Claim Period, some or all Franchise Agreement Employees worked hours on one or more Sundays.

Particulars

Particulars of the hours worked by Franchise Agreement Employees on Sundays may be provided following the trial of common questions or otherwise as the Court may direct.

95. During the Claim Period, Franchisees who employed the Franchise Agreement Employees referred to in the preceding paragraph did not pay those employees at the MWW-based rate for the hours referred to in the preceding paragraph.

96. By reason of the matters in the preceding paragraph, the Franchisees referred to in the preceding paragraph:

- (a) contravened cl 32.5 of the McDonald's Agreement; and
- (b) thereby contravened s 50 of the FW Act.

Underpaid Sunday minimum hours

97. During the Claim Period, Franchisees engaged some Franchise Agreement Employees to work on Sundays for periods of less than three hours.

Particulars

Particulars of the hours worked by Franchise Agreement Employees on Sundays may be provided following the trial of common questions or otherwise as the Court may direct.

98. By reason of the matter in the preceding paragraph, the Franchisees referred to in the preceding paragraph:

- (a) failed to comply with cl 32.6 of the McDonald's Agreement; and thereby
- (b) contravened s 50 of the FW Act.

Loss and damage

99. By reason of the contraventions of the FW Act pleaded in Section F.1 above, the Franchise Agreement Employees referred to therein suffered loss and damage.

Particulars

The Franchise Agreement Employees suffered –

1. *as to the contraventions alleged in paragraph 96 – loss of earnings consisting of the difference between the amounts they were paid for working on Sundays and the amount they were entitled to be paid for working on a public holiday;*
2. *as to the contraventions alleged in paragraph 98 – loss of earnings consisting of the difference between the amounts that they were paid to work on the given Sunday and the amounts that they would have been paid had they been engaged to work for a minimum of three hours; and*
3. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

F.2 Franchise Award Employees

Underpaid Sunday ordinary hours

100. During the Claim Period, some or all Franchise Award Employees worked ordinary hours on one or more Sundays.

Particulars

Particulars of the hours worked by Franchise Award Employees on Sundays may be provided following the trial of common questions or otherwise as the Court may direct.

101. During the Claim Period, Franchisees did not, for the ordinary hours worked by their Franchise Award Employees on a Sunday, pay to those employees the public holiday rates in:
- (a) up to 27 July 2022 (inclusive) – cl 30.4; or

(b) from 28 July 2022 – cl 21;
of the Fast Food Award.

102. By reason of the matters in the preceding paragraph, Franchisees:

(a) contravened:

- (i) up to 27 July 2022 (inclusive) – cl 30.4;
- (ii) on and from 28 July 2022 – cl 27.3 and cl 21;
of the Fast Food Award; and

(b) thereby contravened s 45 of the FW Act.

Underpaid Sunday overtime hours

103. During the Claim Period, some or all Franchise Award Employees worked full-time Award overtime hours, part-time Award overtime hours and casual Award overtime hours (as the case applied) on one or more Sundays.

Particulars

Particulars of the affected Franchise Award Employees may be provided following the trial of common questions or otherwise as the Court may direct.

104. During the Claim Period, the Franchisees did not:

- (a) pay Franchise Award Employees who were full-time employees or part-time employees 250% of their minimum hourly rate of pay for the full-time Award overtime hours or part-time Agreement overtime hours (as the case may be) they worked on Sundays;
- (b) pay Franchise Award Employees who were casual employees 275% of their minimum hourly rate of pay for the casual Award overtime hours they worked on Sundays; or
- (c) if any Franchise Award Employee and Franchisee had agreed that the employee would take TOIL –
 - (i) give the employee TOIL at the overtime equivalent;
 - (ii) pay that employee the balance of the overtime that had not been taken as TOIL, at the earliest of:
 1. the employee requesting to be paid for the overtime instead of taking the TOIL;
 2. 6 months after the overtime was worked; or
 3. the termination of the employee's employment.

105. By reason of the matters in the preceding paragraph, the Franchisees:

- (a) contravened:
 - (i) up to 27 July 2022 – cl 26 of the Fast Food Award;
 - (ii) on and from 28 July 2022 – cl 20.6 or 20.7 (as the case may be) and cl 27.3 of the Fast Food Award; and
- (b) thereby contravened s 45 of the FW Act.

Loss and damage

106. By reason of the contraventions pleaded in Section F.2 above, the Franchise Award Employees suffered loss and damage.

Particulars

The Franchise Award Employees suffered –

1. *loss of earnings consisting of the difference between the amounts that they were paid for working on Sundays and the amount that they were entitled to be paid under the Fast Food Award;*
2. *to the extent that any Franchise Award Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, and in fact took that TOIL, the difference between the value of the TOIL that was taken and the amount they were entitled to be paid under the Fast Food Award for that work on a Sunday;*
3. *to the extent that any Franchise Award Employee elected to take TOIL at a rate equivalent to the overtime payment that would have been made instead of being paid for that overtime, but did not in fact take that TOIL, the difference between the amount they were paid out for that TOIL and the value of the time worked under the Fast Food Award for that Sunday; and*
4. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

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

Deducted Sunday leave

107. From time to time during the Claim Period, some or all Franchise Employees who were based in South Australia for work purposes and were employed on a full-time or part-time basis took paid annual leave or paid personal/carer's leave on a Sunday.
108. By reason of the matters alleged at paragraph 24 above, on each occasion that a full-time or part-time Franchise Employee took paid annual leave on a Sunday:
- (a) the employee was taken not to be on paid annual leave on that Sunday; and
 - (b) the Franchisees who employed the Franchisee Group Members were not authorised or permitted to deduct the employee's annual leave balance in respect of that Sunday.
109. During the Claim Period the Franchisees referred to in the preceding paragraph deducted the annual leave balances of the said Employees.
110. By reason of the matters in the preceding paragraph, the said Franchisees:
- (a) contravened s 89 of the FW Act; and
 - (b) thereby contravened s 44 of the FW Act.
111. By reason of the matters alleged at paragraph 24 above, on each occasion that a full-time or part-time Franchise Employee took paid personal/carer's leave on a Sunday:
- (a) that employee was taken not to be on paid personal/carer's leave on that Sunday; and
 - (b) the Franchisee that employed the Franchise Employee was not authorised or permitted to deduct that employee's personal/carer's leave balance in respect of that Sunday.
112. During the Claim Period the Franchisees referred to in the preceding paragraph deducted the personal/carer's leave balances of the said Employees.
113. By reason of the matters in the preceding paragraph, the said Franchisees:
- (a) contravened s 98 of the FW Act; and
 - (b) thereby contravened s 44 of the FW Act.

Loss and damage

114. By reason of the contraventions pleaded in Section F.3 above, Franchise Employees who were employed on a full-time or part-time basis suffered loss and damage.

Particulars

The Franchise Employees suffered loss consisting of –

1. *as to the contraventions alleged in paragraph 110 – annual leave that was deducted from their annual leave balances for Sundays when they took paid annual leave;*
2. *as to the contraventions alleged in paragraph 113 – personal/carer's leave that was deducted from their personal/carer's leave balance for Sundays when they took paid personal/carer's leave;*
3. *further as to the contraventions alleged in paragraph 113 – lost income from days on which they were required to take unpaid personal/carer's leave because they had insufficient paid personal/carer's leave by reason of the unlawful deduction of their personal/carer's leave for Sundays when they took paid personal/carer's leave; and*
4. *superannuation on those amounts, to the extent that superannuation is payable.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

G MAL FRANCHISOR CONTRAVENTIONS – s 558B

115. At all material times, the Franchise Stores, including the Jameri Stores, were substantially or materially associated with intellectual property relating to the McDonald's franchise.

Particulars

The applicants rely on paragraphs 7-12 above.

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

116. By reason of the matters pleaded in paragraphs 11, 12 and 115 above, during the Claim Period each of the Franchisees (including Jameri) was a franchisee entity of McDonald's within the meaning of s 558A of the FW Act.

117. At all material times, MAL:

- (a) was a franchisor in relation to the McDonald's Franchise; and
- (b) had a significant degree of influence or control over the Franchisees' affairs; within the meaning of s 558A(1) of the FW Act.

Particulars

The applicants rely on paragraphs 7-13 above.

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

118. By reason of the matters in paragraphs 115 to 117 above, at all material times during the Claim Period, MAL was a responsible franchisor entity within the meaning of s 558A of the FW Act for each of the Franchisees.

119. At all material times, MAL employed:

- (a) specialist human resources advisers; and
- (b) specialist industrial relations advisers;

in organising and managing its franchise network, the Franchisees and the employees and work practices of the Franchisees.

120. At all material times, MAL:

- (a) knew that Corporate Employees and Franchise Employees were national system employees within the meaning of the FW Act;
- (b) knew that the FW Act defined public holidays to include, in addition to the list of prescribed days, "any other day, or part-day, declared or prescribed by or

- under a law of a State or Territory to be observed generally within the State or Territory”;
- (c) knew that, for the purposes of complying with the FW Act, it was necessary for MAL to identify any day or part-day declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory as a public holiday;
 - (d) knew that the McDonald’s Agreement contained provisions that regulated the amount that Corporate Agreement Employees, Franchise Agreement Employees and Jameri Agreement Employees were entitled to be paid for working on a public holiday;
 - (e) knew that the McDonald’s Agreement defined a public holiday to include any declared or prescribed public holidays;
 - (f) knew that, for the purpose of complying with the McDonald’s Agreement as described in the preceding subparagraph, it was necessary for MAL to identify any declared or prescribed public holidays;
 - (g) knew that the Fast Food Award contained provisions that regulated the amount that Corporate Award Employees, Franchise Award Employees and Jameri Award Employees were entitled to be paid for working on a public holiday;
 - (h) knew that the Fast Food Award provided that public holidays were as provided for in the NES;
 - (i) knew that, for the purpose of complying with the Fast Food Award, it was necessary for MAL to identify any day or part-day declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory as a public holiday;
 - (j) knew that, in South Australia, Sunday was a day declared or prescribed by or under a law of that State to be observed generally as a public holiday within South Australia; and
 - (k) knew that Sunday was a public holiday for the purposes of –
 - (i) the FW Act,
 - (ii) the McDonald’s Agreement and
 - (iii) the Fast Food Award
 for Corporate Employees and Franchise Employees who were based in South Australia.

Particulars

So far as the Applicants are able to say prior to discovery, the knowledge of MAL as alleged above is to be inferred from:

- (i) as to (a)-(c) and (g)-(i):
 - (a) MAL’s status as a large, established and well-resourced employer in Australia;

- (b) *MAL's employment of specialist human resources and industrial relations advisers, as pleaded in paragraph 119 above; and*
- (ii) *as to (d)-(f):*
 - (a) *the matters in (i) above;*
 - (b) *the conduct of MAL in negotiating, and applying for approval of, the McDonald's Agreement, as pleaded in paragraph 25 above;*
 - (c) *the terms of cl 32.2 of the McDonald's Agreement, as pleaded in paragraph 29 above; and*
 - (d) *MAL's employment of specialist human resources and industrial relations advisers, as pleaded in paragraph 119 above.*

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

121. MAL did not, at any time, take any or any reasonable step to:
- (a) alert or inform Franchisees that Sunday was; or
 - (b) require or direct Franchisees to treat Sunday as;
- a public holiday for Franchise Employees in South Australia for the purposes of the FW Act, the McDonald's Agreement or the Fast Food Award.
122. Each of:
- (a) the contraventions by Jameri pleaded in Section E above (the **Jameri Contraventions**); and
 - (b) the contraventions by the Franchisees pleaded in Section F above (the **Franchisee Contraventions**);
- occurred in the relevant Franchisee's capacity as a franchisee entity of MAL.
123. At the time of the Contraventions referred to in the preceding paragraph, MAL could reasonably be expected to have known that a contravention by each of the Franchisees, including Jameri, of the same or a similar character to the Jameri Contraventions, was likely to occur.

Particulars

The reasonableness of the said expectation is to be inferred from the circumstances (together or in any combination) that:

- (i) *MAL, by means of the Franchise Agreements, exercised a high degree of control over the operation of each Franchise Store, as pleaded in paragraphs 11-14 above;*
- (ii) *MAL had the knowledge pleaded in paragraph 120 above;*

- (iii) *MAL did not treat Sunday as a public holiday in South Australia for the purposes of its employment of Corporate Employees, as pleaded in Sections D.2, D.3 and D.4;*
 - (iv) *MAL did not alert or inform the Franchisees that Sunday was a public holiday in South Australia for the purposes of the FW Act, the McDonald's Agreement or the Fast Food Award, as pleaded in paragraph 121 above; and*
 - (v) *MAL did not require or direct the Franchisees, including Jameri, to treat Sunday as a public holiday for Franchise Employees in South Australia, for the purposes of compliance with the FW Act, the McDonald's Agreement or the Fast Food Award, as pleaded in paragraph 121 above.*
- Further particulars may be provided after discovery.*

124. By reason of the matters in paragraphs 115 to 123 above, McDonald's contravened s 558B of the FW Act.

Section 558B contraventions – loss and damage

125. By reason of the contraventions pleaded in Section G above, the Jameri Employees, including Mr Jennings, and the Franchise Employees suffered loss and damage.

Particulars

As to Mr Jennings and the Jameri Employees, the applicants rely on the loss pleaded in Sections E.1, E.2, E.3 and E.4.

As to the Franchise Employees, the applicants rely on the loss pleaded in Sections F.1, F.2 and F.3.

Further particulars may be provided following the trial of common questions or otherwise as the Court may direct.

AND THE APPLICANTS CLAIM on their own behalf and on behalf of the Group Members the relief set out in the Originating Application.

A handwritten signature in black ink, appearing to be 'M. Kelly', written over a horizontal line.

Signed by [REDACTED]
Lawyer for the Applicant

This pleading was prepared by LWL Armstrong KC, Siobhan Kelly SC and Declan Murphy, counsel for the applicants.

Certificate of lawyer

I Vicky Antzoulatos certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 17 November 2025



Signed by [REDACTED]
Lawyer for the Applicant

Schedule

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

No. VID of 2025

Max Jennings
Second Applicant

Jameri Pty Ltd
Second Respondent

Date: 17 November 2025