

Compliance Agreement

Between

Victorian Equal Opportunity and Human Rights Commission

and

Bakers Delight Holdings Ltd

Parties

Name Victorian Equal Opportunity and Human Rights Commission
ABN 23 158 288 152
Address Level 3, 204 Lygon Street, Carlton, VIC 3053
Telephone
Email
Contact Emily Howie, General Counsel and Director of Dispute Resolution

Name Bakers Delight Holdings Ltd
ABN 88 052 528 202
Address Level 1, 293 Camberwell Road, Camberwell, VIC 3124
Telephone
Email
Contact

1 Background

- 1.1 In 2021, the Victorian Equal Opportunity and Human Rights Commission (**Commission**) commenced an investigation under section 127 of the *Equal Opportunity Act 2010* (Vic) (**Equal Opportunity Act**) into Bakers Delight Holdings Ltd's (**BDH**) compliance with its positive duty under section 15 of the Equal Opportunity Act to take reasonable and proportionate measures to eliminate workplace sexual harassment as far as possible (**the Investigation**).
- 1.2 By letter dated 9 September 2021, the Commission formally notified BDH of the Investigation.
- 1.3 The Commission has undertaken the Investigation with the cooperation of BDH.
- 1.4 On 11 April 2022, the Commission provided BDH with an Evidence Brief which sets out the Commission's findings from the Investigation and the steps required for BDH to close gaps in compliance under the Equal Opportunity Act.
- 1.5 By letter dated 11 April 2022, the Commission proposed to BDH that BDH enter into a Compliance Agreement with the Commission under section 139 of the Equal Opportunity Act to agree on steps BDH will take to comply with the positive duty under the Equal Opportunity Act to take reasonable and proportionate measures to eliminate workplace sexual harassment as far as possible.

2 Acknowledgements

- 2.1 The Commission considers BDH has been transparent and constructive in its dealings with the Commission concerning the Investigation and has fully cooperated with the Investigation.
- 2.2 BDH acknowledges that:
- 2.2.1 Under section 15 of the Equal Opportunity Act it has a positive duty to take reasonable and proportionate measures to eliminate sexual harassment as far as possible. This means BDH has a legal obligation to take steps to prevent sexual harassment, not just respond to it.
 - 2.2.2 The Investigation has highlighted gaps in its compliance with section 15 of the Equal Opportunity Act and the Commission has articulated the measures that are necessary to close any gaps in BDH's compliance with that provision.
 - 2.2.3 The measures agreed to in this Compliance Agreement are reasonable and proportionate in the circumstances.
 - 2.2.4 The Commission may make this Compliance Agreement publicly available, including by posting it on its website and by referring publicly to this Compliance Agreement.

The Parties agree as follows:

Operative Provisions

3 Agreement

- 3.1 This Compliance Agreement is made pursuant to section 139(2)(b) of the Equal Opportunity Act.
- 3.2 BDH agrees to:
- 3.2.1 Complete each of the steps to comply with the positive duty under the Equal Opportunity Act set out in Annexure 1 (**agreed steps**) within 12 months of this Compliance Agreement being executed;
 - 3.2.2 Provide the Commission a written report on BDH's compliance with each of the agreed steps within 13 months of this Compliance Agreement being executed (**First Report**).
- 3.3 If BDH fails to complete an agreed step within 12 months and, in the Commission's opinion, BDH provides a reasonable excuse for failing to complete an agreed step(s) in the First Report, BDH agrees to provide the Commission with:
- 3.3.1 a plan for rectifying the failure as soon as practicable, but no later than within 6 months of the First Report being received by the Commission; and

3.3.2 a written report on BDH's compliance with the relevant agreed step(s) within 7 months of the First Report being received by the Commission.

4 Request for information

4.1 The Commission may at any time request information from BDH regarding its compliance with the terms of this Compliance Agreement.

4.2 BDH agrees to provide the Commission with the information it requests regarding its compliance with the terms of this Compliance Agreement in good faith.

5 Enforceability

5.1 At any time, any party to this Compliance Agreement may register it with the Victorian Civil and Administrative Tribunal (**Tribunal**) pursuant to section 140(1) of the Equal Opportunity Act.

5.2 Upon registration, the Compliance Agreement will, pursuant to section 140(4) of the Equal Opportunity Act, be taken to be an order of the Tribunal in accordance with its terms and may be enforced accordingly.

6 Timing

6.1 This Compliance Agreement comes into effect when both BDH and the Commission have executed this Compliance Agreement.

7 Governing Law

7.1 This Compliance Agreement is governed by the law of the State of Victoria, Australia.

8 Counterparts

8.1 The parties may sign this Compliance Agreement electronically. This Compliance Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

Executed as a DEED

SIGNED SEALED and DELIVERED

**Signed on behalf of the Victorian Equal Opportunity and Human Rights Commission
(ABN 23 158 288 152) pursuant to section 139(2)(b) of the Equal Opportunity Act 2010
on the 2nd day of August 2022**

By



Ro Allen

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.....

(Printed name)

(Signature)

Commissioner

2 August 2022

.....

.....

(Title)

(Date)

In the presence of:



.....

Susan Rajan (Witness)

**Signed on behalf of Bakers Delight Holdings Pty Ltd (ABN 88 052 528 202) in
accordance with s 127(1) of the *Corporations Act 2001* on the 2 day of
August 2022**

By:



Elise Gillespie

.....

.....

(Printed name)

Director (Signature)

David Christie

.....



(Printed name)

Director/ (Signature)

Annexure 1 – Agreed steps

Training

1. Develop a e-learning module that can be accessed by employees in the corporate office and company owned bakeries that covers prevention and response to workplace sexual harassment and that aligns with the Commissions Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010 and:

- is rolled out to employees on induction and completed as refresher training annually
- includes definitions of sexual harassment, sex discrimination and victimisation with reference to applicable legislation
- includes guidance on identifying sexual harassment, with a range of behavioural examples that include less overt forms of sexual harassment
- includes information on the gendered drivers of sexual harassment
- includes information on the importance of bystander interventions and practical guidance on the steps available to bystanders
- includes clear direction on the reporting and complaint pathways available, including internal and external channels

2. Provide (either internally or externally sourced) face-to-face training for Managers in the corporate office and company owned bakeries on induction, with refresher training every two years to assist them in their role of preventing and responding to sexual harassment in the teams they manage. This training may be delivered in an online classroom session if required, however it must be a live and interactive session, not an e-learning module.

3. Ensure all members of the BDH Human Resources (**HR**) team undergo face-to-face training on induction, with refresher training every two years to assist them in their specific role of preventing and responding to sexual harassment in the workplace. This training may be delivered in an online classroom session if required, however it must be a live and interactive session, not an e-learning module.

Responding to reports

4. Develop an internal HR policy (and associated procedures) which outline:

- how BDH will respond to reports of sexual harassment occurring in its head office, company owned stores and franchise stores, including a clear threshold for when BDH will conduct an investigation, or assist a franchisee owner to conduct an investigation
- what information will be shared with different parties.

5. Update and finalise the DRAFT *Complaints and Grievance Policy* to align with the Commissions Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010 to include:

- a list of the types of conduct that are covered by the *Complaints and Grievance Policy*
- a reference and clear link to the *Discrimination, Bullying and Harassment Policy*

- the contact details of equal opportunity officers or work health and safety officers
- who the key decision makers are, for example who decides whether an investigation is to be conducted.

6. Develop a central register of sexual harassment reports made to BDH that is only accessible by the HR team and is used to report to BDH board of directors every six months. This register must record:

- date report received and date that the reported incident took place
- summary of incident
- which bakery the incident is connected to (or corporate office)
- whether the alleged harasser is a customer or Bakers Delight worker
- name of the alleged harasser and position title
- whether the reported behaviour may constitute a potential criminal offence
- whether the report relates to a person under the age of 18
- BDH's response and justification for that response (whether it will be investigated and if not, why not)
- franchisee owner's response (if the incident occurred in a franchise bakery)
- location where relevant documents and records can be found, for example the original report, notes from interviews and investigation reports.

Survey

7. Improve upon the Bullying and Harassment survey conducted by BDH in 2021 by:

- conducting the survey annually
- feeding the data into the annual refresh of the Bullying and Harassment Plan
- surveying all employees (corporate office and company owned bakeries).
- asking respondents which work group they belong to ('corporate office', 'company owned bakery', 'franchise bakery', 'don't know')
- asking separate questions regarding whether respondents have experienced or witnessed bullying, harassment or sexual harassment to ensure clear data on the prevalence of sexual harassment within the network.

Risk assessment

8. Improve upon the Bullying and Harassment risk assessment conducted by BDH in 2021 by:

- refreshing the risk assessment at least annually
- feeding the data into the annual refresh of the Bullying and Harassment Plan
- ensuring all listed mitigation controls are mandatory in all company owned bakeries:
 - reference checks on new employees
 - closing shifts must be worked by at least one employee 18 years or over where possible

- ensuring there are always two employees working at one time where possible
- security cameras
- authorisation being obtained before putting employee phone numbers on the bakery employee contact list.

Prevention Plan

9. Develop a Prevention Plan that

- outlines measures BDH will take to prevent and respond to sexual harassment in its workplaces
- outlines roles and responsibilities between BDH and franchisee owners for measures to prevent and respond to sexual harassment
- aligns with the Commissions Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010.

10. Develop a communication plan (as part of the Prevention Plan) that outlines how key messages will be communicated from senior leadership to all employees, at least annually, with key messages including:

- a zero-tolerance stance for sexual harassment and victimisation
- the location of relevant policies
- how employees can make a complaint
- encouragement for those who have experienced or witnessed sexual harassment to come forward and assurance they will not be victimised for doing so

11. Develop posters for mandatory use in company owned bakeries that outline:

- a zero-tolerance stance for sexual harassment and victimisation
- the location of relevant policies
- how employees can make a complaint
- encouragement for those who have experienced or witnessed sexual harassment to come forward and that they will not be victimised for doing so.

12. Update and finalise the DRAFT *Discrimination, Bullying and Harassment Policy* (for direct employees) to align with the Commissions Guideline: Preventing and responding to workplace sexual harassment - Complying with the Equal Opportunity Act 2010 and include:

- that a single incident of sexual harassment can be enough to be defined as sexual harassment, it does not need to be a repeated behaviour
- a clear statement that sexual harassment is unacceptable
- a clear statement that BDH has a legal obligation to take steps to prevent and respond to sexual harassment in its direct workplaces
- an acknowledgement that sexual harassment is driven by gender inequality
- information on external agencies that can provide advice and support on sexual harassment
- a statement that people who experience sexual assault can report their experience to the Police

- a statement that the *Discrimination, Bullying and Harassment Policy* covers sexual harassment perpetrated by customers.

Resourcing Human Resources team

13. Consider whether the resourcing of HR is sufficient to ensure BDH complies with the positive duty and key work health and safety legislation across jurisdictions.