

ENFORCEABLE UNDERTAKING

This undertaking is **given** by David Jones Pty Ltd and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 10 of this undertaking.

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by David Jones Pty Ltd (ABN 75 000 074 573) (**David Jones**) of Building 2 572 Swan Street, Burnley VIC 3121.

COMMENCEMENT

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by David Jones; and
 - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

BACKGROUND

3. David Jones is a retailer which operates the department stores of the same name. As at 9 November 2020, David Jones employed approximately 7531 employees.
4. The following industrial instruments apply or applied to David Jones and its employees within the period of 1 January 2013 to 30 September 2020 (being the period the contraventions admitted in this Undertaking relate to):
 - (a) for store managers — the *General Retail Industry Award 2010* (**2010 Award**)
 - (b) for store staff other than store managers:
 - (i) the *David Jones Enterprise Agreement 2012* (**DJ Store EA 2012**);
 - (ii) the *David Jones Enterprise Agreement 2018* (**DJ Store EA 2018**);
 - (c) David Jones Fulfilment Centre employees:
 - (i) the *David Jones Fulfilment Centre Enterprise Agreement 2012* (**DJ Fulfilment Centre EA 2012**);
 - (ii) the *David Jones Fulfilment Centre Enterprise Agreement 2015* (**DJ Fulfilment Centre EA 2015**);
 - (iii) the *David Jones Fulfilment Centre Enterprise Agreement 2018* (**DJ Fulfilment Centre EA 2018**);(collectively, the **Instruments**)
5. On 1 September 2020, David Jones notified the FWO that they had identified underpayments and that:

- (a) they would be apologising and communicating to employees on 5 September 2020;
 - (b) they would be making back payments, with interest, from the week commencing 5 October 2020; and
 - (c) they would be rectifying the superannuation underpayments and notifying the Australian Taxation Office by 7 September 2020.
6. On 9 November 2020 and 12 February 2021, David Jones notified the FWO that:
- (a) in around October 2019, that it commenced an upgrade of its time and attendance system;
 - (b) in around November 2019, David Jones commenced an audit (the **Existing Audit**) to ensure the accuracy of payroll processing outcomes. The Existing Audit included examining David Jones' compliance with the Instruments, the accuracy of salaried arrangements for store employees and superannuation payments within David Jones;
 - (c) the Existing Audit had identified:
 - (i) instances where David Jones failed to provide sufficient breaks between work periods in relation to employees of David Jones resulting in unpaid overtime entitlements where employees resumed work without a sufficient break (**Shift Break Issue**);
 - (ii) annualised salaries for some employees of David Jones that did not meet those employees' entitlements under the 2010 Award (**Annual Salary Issue**);
 - (iii) other instances where David Jones failed to correctly apply the relevant Instruments to employees of David Jones (Fulfilment Centre and store employees) (**Other Compliance Issues**);
 - (iv) failures to pay correct superannuation amounts to employees of David Jones due to the above items and incorrect pay code set up (**Superannuation Issue**);
 - (d) the issues identified by the Existing Audit had occurred across the following time periods, with the earliest starting on 1 April 2014, and the last issue being addressed on 30 September 2020:
 - (i) the Shift Break Issue — 31 March 2019 to 26 September 2020;
 - (ii) the Annual Salary Issue — 1 November 2019 to 30 September 2020;

(iii) the Other Compliance Issues:

- (A) David Jones (all store employees) — 31 March 2019 to 26 September 2020;
- (B) David Jones (wage averaging issue for full time store employees) — 1 January 2018 to 31 December 2018;
- (C) David Jones (classification of store employees working in women's apparel) — 1 April 2014 to 26 September 2020;
- (D) David Jones Fulfilment Centre — 1 April 2019 to 26 September 2020;

(iv) the Superannuation Issue — 1 July 2015 to 30 June 2020.

7. On 8 September 2021, following discussions with the FWO regarding calculation methods in the 2010 Award, David Jones agreed to re-calculate the underpayments arising from the Shift Break Issue (**Shift Break Issue Calculations**). David Jones notified the FWO that they had re-calculated the underpayments arising from the Shift Break Issue, including superannuation.
8. On 15 February 2022, David Jones notified the FWO that they had completed the payroll review with associated superannuation (incorporating the Shift Break Issue Calculations), and reviewed the Superannuation Issue, which had identified:
 - (a) \$480,000 in underpayments to employees of David Jones, with an associated \$90,000 in underpayments of superannuation to employees of David Jones; and
 - (b) \$1,319,000 in underpayments of superannuation to employees of David Jones arising from the Superannuation Issue.

The majority of these underpayments have been remediated at the Commencement Date, with approximately \$25,000 outstanding to former employees yet to be located.

Conduct admitted and remediation actions already taken by David Jones

9. Prior to the execution of this Undertaking, David Jones notified the FWO that it had:
 - (a) calculated the amount of the underpayment to each employee listed in Column A & B of Part 1 of Schedule A to this Undertaking (**Affected Employees**) to be the amount listed in Column C (**Underpayments**). Column G indicates whether the employees named in Column B were Retail – Non-Management (RT), Fulfilment Centre (FC) or Management (MG) employees;

- (b) calculated the amount of superannuation on the underpayment amount (including interest on that superannuation payment) payable to each Affected Employee to be the amount listed in Column E of Part 1 of Schedule A to this Undertaking (**Superannuation Underpayments**), and paid that amount to the employee's nominated superannuation fund;
- (c) calculated an amount of interest on each Underpayment, calculated using the relevant Reserve Bank of Australia cash rate for the period the underpayment related to, plus an additional 6% on a compounding basis, to be the amount listed in Column D of Part 1 of Schedule A to this Undertaking (**Interest**);
- (d) made payments of the amounts referred to in Columns C and D to each of the Affected Employees who are marked with a 'yes' in Column F of Part 1 of Schedule A to this Undertaking; and
- (e) made standalone superannuation payments (with interest) of the amounts referred to in column C of Part 2 of Schedule A to the employees listed in columns A & B of Part 2 of Schedule A.

ADMISSIONS

10. The FWO has a reasonable belief, and David Jones admits, that David Jones contravened:

- (a) section 50 of the FW Act:

David Jones non-management store employees

- (i) between 1 April 2014 and 26 September 2020, in relation to each Affected Employee listed in Part 1 of Schedule A to this Undertaking, by failing to correctly classify and pay those employees in accordance with (as applicable at the relevant time):
 - (A) clauses 6.1 and 6.2 and Appendix A of the DJ Store EA 2012; or
 - (B) clause 8.2 and Appendix A of the DJ Store EA 2018;
- (ii) between 1 January 2018 and 31 December 2018, in relation to each Affected Employee listed in Part 1 of Schedule A to this Undertaking, by failing to pay those employees a sufficient amount to comply with clause 6.5.2 of the DJ Store EA 2012, due to David Jones engaging in wage averaging of ordinary hours over a 4-week roster cycle for full time employees, in a manner not permitted by the DJ Store EA 2012;

- (iii) between 31 March 2019 and 26 September 2020, by contravening the following clauses of the DJ Store EA 2018, in relation to each Affected Employee listed in Part 1 of Schedule A to this Undertaking:
- (A) clause 8.3.2, by failing to pay permanent employees a 25% penalty rate for ordinary hours worked after 6pm Monday to Friday;
 - (B) clause 8.3.3, by failing to pay permanent employees a 25% penalty rate for ordinary hours worked after 6pm on a Saturday;
 - (C) clause 8.3.6(b), by failing to pay casual employees a 30% loading for all ordinary hours worked after 6pm Monday to Friday;
 - (D) clause 8.3.6(e), by failing to pay casual employees a 150% loading for all time worked on a public holiday;
 - (E) clause 9.1.6, by failing to pay those employees at double the rate they would otherwise be entitled to after they recommenced work without a 12 hour break between shifts;
 - (F) clause 11.1.6(a) by failing to pay employees overtime for work outside the spread of ordinary hours; and
 - (G) clause 11.1.9, by failing to pay casual employees overtime for hours in excess of 38 hours per week or 76 hours per fortnight;
- (iv) between 1 July 2015 and 30 June 2020, in relation to each Affected Employee with a Superannuation Underpayment listed in Part 2 of Schedule A to this Undertaking, by failing to make superannuation contributions as required by (as applicable at the relevant time):
- (A) clause 6.6 of the DJ Store EA 2012; or
 - (B) clause 8.6 of the DJ Store EA 2018;

David Jones Fulfilment Centre employees

- (v) between 1 April 2019 and 26 September 2020, in relation to each Affected Employee with an Underpayment listed in Part 1 of Schedule A to this Undertaking, by contravening one or more of the following clauses of the DJ Fulfilment Centre EA 2018:
- (A) clause 7.10.4 by failing to pay employees overtime for work outside the spread of ordinary hours;

- (B) clause 7.10.7 by failing to pay casual employees overtime for work in excess of 38 hours per week;
- (C) clause 21.4.1 by failing to pay employees a 150% loading for work on a public holiday;
- (vi) between 1 July 2015 and 30 June 2020, in relation to each Affected Employee with a Superannuation Underpayment listed in Part 2 of Schedule A to this Undertaking, by failing to make superannuation contributions as required by clause 6.6 of each of the DJ Fulfilment Centre EA 2012, the DJ Fulfilment Centre EA 2015 and the DJ Fulfilment Centre EA 2018 (as applicable at the relevant time);

David Jones management-level store employees

- (b) section 45 of the FW Act:
 - (i) between 1 November 2019 and 30 September 2020, in relation to each Affected Employee with an Underpayment listed in Part 1 of Schedule A to this Undertaking, by failing to pay those employees a sufficient salary to satisfy the minimum weekly wage for their correct classification, as required by clause 17 of the 2010 Award;
 - (ii) between 1 July 2015 and 30 June 2020, in relation to each Affected Employee with a Superannuation Underpayment listed in Part 2 of Schedule A to this Undertaking, by contravening clause 22.2 of the 2010 Award by failing to make such superannuation contributions to a superannuation fund for the benefit of those employees.

11. The contraventions identified in clause 10 of this Undertaking do not include:

- (a) any contraventions which relate to or arise as a consequence of David Jones failing to correctly apply the Instruments to any employee not listed in Schedule A to this Undertaking (**Non-schedule Employees**) or David Jones failing to correctly apply the Instruments to the Affected Employees in any way but as set out in clause 10 above and in Schedule A to this Undertaking. For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of David Jones failing to correctly apply the Instruments and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or
- (b) any contraventions which have not yet occurred at the date that this Undertaking is offered by David Jones (whether or not those contraventions are identified in

the Independent Audits described at clause 23 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by David Jones and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention; or

- (c) any contraventions of a particular clause of one of the Instruments by David Jones which occurred outside of the relevant time period referred to in clause 10.

UNDERTAKINGS

- 12. David Jones will take the actions set out at clauses 13 to 59 below.

Rectification of underpayments

- 13. By 5 April 2023 of the Commencement Date, David Jones will provide to the FWO evidence of the payments made by David Jones to rectify the Underpayments, Interest and Superannuation Underpayments prior to the Commencement Date.
- 14. David Jones confirms that it has made reasonable attempts to make payments to former employees marked 'No' in schedule A and that by 11 April 2023, David Jones will pay any Underpayments owing to those Affected Employees (excluding superannuation and interest) to the Commonwealth of Australia in accordance with section 559 of the FW Act. David Jones will complete the required documents supplied by the FWO for this purpose.
- 15. In the event that the FWO is able to locate and contact any former Affected Employees to whom amounts are owed, the FWO will (in addition to its obligations under s 559 of the FW Act) notify David Jones in writing of the name and contact details of the former Affected Employee. Within 14 days of receiving any such notice David Jones will pay the former Affected Employee interest on the amount already paid by David Jones to the Commonwealth of Australia in respect of that employee, calculated for each financial year from the date that the employee first became entitled to that amount until the date on which that amount is paid to the Commonwealth, using the relevant RBA cash rate for each financial year.

New systems and processes

- 16. By 11 April 2023, David Jones will provide to the FWO information about the new systems and processes that have been put in place to ensure compliance with its obligations under the FW Act and relevant industrial instruments. If the FWO provides written notice that it requires reasonable additional information, David Jones must provide that additional information within 30 days of that written notice.

17. Within 120 days of receiving the information referred to in clause 16 (including any additional information requested), the FWO may give one or more written notices to David Jones requesting additional measures that David Jones should consider implementing to ensure compliance with its obligations under the FW Act.
18. If the FWO gives David Jones written notice under clause 17, David Jones must, subject to clause 19, within 60 days of receiving the notice:
 - (a) use reasonable endeavours to implement any reasonable additional measure identified in the notice; and
 - (b) provide evidence to the FWO that it has implemented the additional measure.
19. If David Jones disputes that an additional measure, or the timeframe for implementation, identified in a notice under clause 17 is reasonable or necessary to ensure compliance with the FW Act, it must:
 - (a) notify the FWO of this position as soon as reasonably practicable; and
 - (b) take all reasonable steps necessary to reach agreement with the FWO on additional measures necessary to ensure David Jones' compliance with the FW Act, and the timeframe to implement those measures; and
 - (c) implement any measures agreed with the FWO, and provide evidence that it has done so, within the timeframe agreed.
20. When providing the information or evidence under clauses 16 or 18, David Jones will state in writing that they do so without qualification and without seeking to place any limitation on how the FWO may use the information or evidence in the lawful performance of its statutory functions and powers. David Jones will not assert, or seek to assert, any limitation on how the FWO may use or rely on the information or evidence in the lawful performance of its statutory functions and powers.

Letter of Assurance

21. By 11 April 2023, David Jones will provide to the FWO a Letter of Assurance signed by the Chief Financial Officer of David Jones in the terms as set out at Attachment A.
22. The FWO will accept the Letter of Assurance and information about the new systems and processes (referred to in clause 166).

Independent Audits

23. David Jones must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits (the **Audits**) of its compliance with the

FW Act and the *Fair Work Regulations 2009* (Cth), in relation to the current applicable Instruments, and any replacement instruments (**Relevant Instruments**). The Relevant Instruments includes the *General Retail Award 2020* (**2020 Award**), which has replaced the 2010 Award.

24. David Jones will notify the FWO of its proposed Independent Auditor by no later than 11 April 2023. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require David Jones to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be approved by the FWO in writing prior to being engaged by David Jones.
25. David Jones must ensure that each of the Audits conducted by the Independent Auditor includes:
 - (a) an assessment of 10 per cent of the employees of David Jones to whom the Relevant Instruments apply, across a range of classifications, locations and employment types (full time, part time and casual employment), during the relevant pre-audit period (**Sampled Employees**) in respect of their employment by David Jones;
 - (b) an assessment of whether the Sampled Employees have been correctly classified by David Jones;
 - (c) an assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period is in compliance with the FW Act and the Relevant Instruments;
 - (d) direct contact with 15 Sample Employees for each Audit by way of site visits or remote conversations covering at least three different sites;
 - (e) the production of a written report on each of the Audits setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO;
 - (f) that each of the written reports referred to in (e) above contains the following declarations from the Independent Auditor:
 - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - (ii) notwithstanding that the Independent Auditor is retained by David Jones, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from David Jones in preparing the report;
 - (iii) the report is provided in accordance with applicable professional standards

(which will be listed in the report); and

- (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

The First Audit

- 26. David Jones must ensure the Independent Auditor commences the first of the Audits by no later than 25 May 2023. **(First Audit)**.
- 27. For the First Audit, the relevant pre-audit period to assess Sampled Employees is 31 March 2022 to 31 March 2023.
- 28. The relevant audit period for the First Audit must be at least two full pay periods falling within the period 1 April 2023 to 31 May 2023.
- 29. By 5 May 2023, David Jones will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 30. David Jones will use its reasonable endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 24 August 2023, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. David Jones will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to David Jones without the FWO's approval.
- 31. David Jones will use its reasonable endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit **(First Audit Report)** directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. David Jones will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to David Jones without the FWO's approval.
- 32. Following the First Audit, the FWO will meet with (or authorise the Independent Auditor to meet with) David Jones within 30 days of receipt of the First Audit Report to discuss any findings of the Independent Auditor to enable David Jones to act on any findings in a timely manner.

The Second Audit

- 33. David Jones must ensure the Independent Auditor commences the second of the Audits by no later than 26 April 2024. **(Second Audit)**.
- 34. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 31 March 2023 to 31 March 2024.

35. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 3 April 2024 to 31 May 2024.
36. By 29 March 2024, David Jones will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
37. David Jones will use its reasonable endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 23 August 2024, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. David Jones will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to David Jones without the FWO's approval.
38. David Jones will use its reasonable endeavours to ensure the Independent Auditor finalises the Second Audit and provides a written report of the Second Audit (**Second Audit Report**) directly to the FWO within 30 days of FWO providing any comments on the draft report to the Independent Auditor. David Jones will ensure the Independent Auditor does not provide the Second Audit Report, or a copy of the same, to David Jones without the FWO's approval.
39. Following the Second Audit, the FWO will meet with David Jones within 30 days of receipt of the Second Audit Report to discuss any findings of the Independent Auditor to enable David Jones to act on any findings in a timeous manner.

Outcome of Audits

40. The FWO will provide the First Audit Report and the Second Audit Report to David Jones within 30 days of receiving the final report from the Independent Auditor.
41. If any of the Audits identify underpayments to one or more current or former employees of David Jones, David Jones will conduct a reconciliation of the amounts paid to those employees during the relevant pre-audit period and will rectify any underpayments that are identified. The reconciliation period for each identified employee will be from the start of the relevant pre-audit period to the end of the relevant audit period.
42. David Jones will provide to the FWO evidence of such rectification within 30 days of receiving a copy of the relevant audit report from the FWO.
43. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the reconciliation being completed, David Jones will pay those amounts to the Commonwealth of Australia (through the FWO) in

accordance with section 559 of the FW Act. David Jones will complete the required documents supplied by the FWO for this purpose.

44. If any of the Audits identify an underpayment of minimum entitlements to one or more employees of David Jones, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, subject to the FWO's determination of the level of materiality, the FWO may require David Jones to conduct their own audit or engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all potentially affected employees to whom the Relevant Instruments apply (or a particular cohort of employees within this group), as determined by the FWO after consultation with David Jones (**Additional Audit**).
45. Any Additional Audit must be paid for by David Jones.
46. If requested by the FWO, David Jones will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 20 days of such a request.

Employee Hotline

47. David Jones confirms that it has in place an independent hotline available to all employees, currently managed by Deloitte. David Jones will:
 - (a) ensure the Employee Hotline remains operational for a period of 6 months from the Commencement Date;
 - (b) ensure that the telephone number and email address are included on a communication to employees to whom the Instruments apply as contained in the Public Notices (see clauses 49 to 51), the Website Notices (see clauses 52 to 54) and Attachment B – Communication to Employees;
 - (c) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
 - (d) provide a de-identified list of enquiries related to the Undertaking received by the Employee Hotline to the FWO every three months from the Commencement Date.

Notices – Internal and External

Media Release

48. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking.

Public Notice

49. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, David Jones will place a notice in weekend editions of the *Australian Financial Review* and *The Australian* (**Public Notices**).
50. The Public Notices must:
- (a) bear the name and logo of David Jones;
 - (b) appear within the first 5 pages of the *Australian Financial Review* and *The Australian*;
 - (c) be at least 10 cm x 8 cm; and
 - (d) contain wording in the form of Attachment C.
51. David Jones will inform the FWO when the Public Notices will be published and provide a copy to the FWO within 10 days of their publication.

Website Notice

52. Within 30 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, David Jones will place a notice on its website, accessible through a hyperlink on the front page of www.davidjones.com (**Website Notice**).
53. The Website Notice must:
- (a) be in the form of the Website Notice set out at Attachment C;
 - (b) be displayed in at least size 10 font; and
 - (c) remain on the website for a period of 1 month.
54. Within 10 days of the Website Notice being placed on the David Jones website, David Jones will provide to the FWO evidence of its placement.

Contribution Payment

55. Within 15 days of the Commencement Date, David Jones will make a contribution payment of \$130,000 for the Underpayments to the Consolidated Revenue Fund.
56. David Jones will provide evidence to the FWO of the contribution payment within 15 days of making payment to the Consolidated Revenue Fund.

No Inconsistent Statements

57. David Jones must not and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

Extension of times for completion

58. David Jones may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. David Jones will provide information setting out the basis for such a request and make the request for extension of time at least 10 days prior to the time that David Jones is required to complete the action as set out in this Undertaking, or such shorter period agreed in writing between David Jones and the FWO. The FWO will not unreasonably withhold agreement on a request for an extension of time.
59. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

ACKNOWLEDGEMENTS


60. David Jones acknowledges that:
- (a) the FWO may:
 - (i) make this Undertaking (including any of the Attachments) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking (including any of the Attachments) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this Undertaking;
 - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
 - (v) rely upon the admissions made by David Jones set out in clause 10 in respect of decisions taken regarding enforcement action in the event that David Jones are found to have failed to comply with its workplace relations

obligations in the future, including but not limited to any failure by David Jones to comply with its obligations under this Undertaking;

- (b) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct and admitted contraventions set out herein;
- (c) consistent with section 715(3) of the FW Act, David Jones may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if David Jones contravenes any of the terms of this Undertaking:
 - (i) the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
 - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by David Jones in clause 10, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by David Jones in accordance with section 127(1) of the Corporations Act 2001:


(Signature of director)


(Signature of director/company secretary)

EKATERINI KARABASAS
(Name of director)

MATTHEW FITZGERALD
(Name of director/company secretary)

20/02/2023
(Date)

21/02/2023
(Date)

in the presence of:

in the presence of:



(Signature of witness)


(Signature of witness)

Elise Simpson
(Name of witness)

Elise Simpson
(Name of witness)


ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the Fair Work Act 2009 on:


Mark Scully, Deputy Fair Work
Ombudsman – Compliance and
Enforcement

23/2/23
(Date)

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:


(Signature of witness)

Caroline Braithwaite
(Name of Witness)

SCHEDULE A — David Jones Employees

Part 1 — Wages

David Jones Non-Management Store Employees (RT)

David Jones Fulfilment Centre Employees (FC)

David Jones Management-level Store Employees (MG)

SCHEDULE A — David Jones Employees (All)

Part 2 — Standalone Superannuation

Attachment A – Letter of Assurance

Sandra Parker
The Fair Work Ombudsman
Fair Work Ombudsman
GPO Box 9987
MELBOURNE VIC 3001

Dear Sandra

I am writing on behalf of David Jones Pty Ltd (**David Jones**) in my capacity as the Chief Financial Officer of David Jones. This letter follows a process where David Jones self-reported that:

- it had identified instances of non-compliance with the *General Retail Industry Award 2010 (Award)* and applicable enterprise agreements by David Jones; and
- these instances of non-compliance had resulted in underpayments of approximately \$389,000 in wages and \$1.4 million in superannuation entitlements to employees.

I write to provide the Fair Work Ombudsman with my assurance that I am satisfied that:

- a. the process by which David Jones calculated the underpayments of wages and superannuation to its current and former employees was correctly undertaken. In its review, David Jones engaged the services of an external legal firm and audit firm;
- b. that David Jones is compliant with the *Fair Work Act 2009* as it relates to the 2020 GRIA Award and the applicable enterprise agreements;
- c. as of [date] all former and current employees impacted by the underpayments, apart from those who have not been able to be located by David Jones, have been paid their entitlements (plus interest) under the Award and applicable enterprise agreements by David Jones; and
- d. David Jones has implemented changes to its systems and processes as a result of the findings of the third party review set out in (a) and continues to implement systems and processes to ensure compliance with the *Fair Work Act 2009* (Cth) as it relates to the 2020 Award and the applicable enterprise agreements.

Sincerely

<Insert Signature block of the CFO or CEO>

Attachment B – Communication to employees

Dear <insert name >

As you may be aware, David Jones Pty Ltd (**David Jones**) has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) in relation to entitlements payable to Employees under:

- for in-store employees in non-management positions, the *David Jones Enterprise Agreement 2012* and the *David Jones Enterprise Agreement 2018*;
- for in-store employees in management positions, the *General Retail Industry Award 2010*;
- for employees in David Jones Logistics, the *David Jones Fulfilment Centre Enterprise Agreement 2012*, the *David Jones Fulfilment Centre Enterprise Agreement 2015*, and the *David Jones Fulfilment Centre Enterprise Agreement 2018*.

David Jones has entered into a formal enforceable undertaking with the FWO setting out these admissions and the steps David Jones will take to address these contraventions and avoid future contraventions.

David Jones understands that you may have questions and concerns relating to this and other employment issues. To address these concerns a hotline is in place for all employees to access. The hotline is being operated by Deloitte, an independent party that can assist you with your enquiries. Deloitte can be contacted on 1800 504 994 or at <insert email address> and, if required, on a confidential basis.

Should you wish to discuss your concerns directly with David Jones you can contact on PeopleAssist@davidjones.com.au. We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.

David Jones expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Yours sincerely

<David Jones>

Attachment C – Form of Public Notice and Website Notice

In November 2019, David Jones undertook an audit of its payroll processes and systems and as a result David Jones determined that it had contravened the *Fair Work Act 2009* (Cth) in relation to entitlements payable to employees.

The errors identified in the review process relate to configuration and integration errors within our payroll systems and, in some instances, have led to the underpayment of wages and superannuation entitlements with varying impacts for individual team members across our business.

Additionally, as part of the review process, in September 2020, David Jones voluntarily disclosed to the Fair Work Ombudsman (FWO).

David Jones has personally notified its current and former employees impacted, with a letter outlining payments owed and what these payments relate to. David Jones unreservedly apologises for the contraventions, and we have taken all necessary steps to remedy the contravention.

David Jones has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

David Jones will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance, such as conducting two independent audits.

If you worked for David Jones and have queries or questions relating to your employment, please contact:

- the hotline being operated by independent third-party Deloitte on 1800 504 994. This hotline can be contacted on a confidential basis; or
- David Jones directly, through our non-confidential enquiry line on PeopleAssist@davidjones.com.au

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.