



Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Optus Retailco Pty Limited 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 12 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 Optus Retailco Pty Limited (**Optus Retail**), ABN 80 092 221 406, 1 Lyonpark Road, Macquarie Park, NSW, 2113.

COMMENCEMENT

2. This Undertaking comes into effect (**Commencement Date**) on the later of 1 February 2024 or the date when both:
 - (a) the Undertaking is executed by Optus Retail; and
 - (b) the FWO accepts the Undertaking so executed.

BACKGROUND

3. Optus Retail is an Australian private company that is a subsidiary of Singtel Optus Pty Limited (**Optus**). Optus is the second largest provider of telecommunication services in Australia by revenue. Optus and its subsidiaries employ more than 8,000 people nationally across the Optus group. Optus Retail employed 1,398 employees as at 30 June 2023.
4. On 17 September 2020, Optus reported to the FWO it had pro-actively commenced a broad review of employee entitlements across the Optus group. On 20 November 2020 Optus stated to the FWO that its review would focus initially on compliance with the *Optus Retail Agreement 2013* (**Optus Retail EA**) and compliance with superannuation obligations. The Optus Retail EA is underpinned by the *General Retail Industry Award 2010* and the *General Retail Industry Award 2020* (collectively referred to as the **GRIA**).
5. On 6 April 2021, Optus notified the FWO that it had engaged PricewaterhouseCoopers and MinterEllison to assist with its review and that its investigation to date had confirmed divergences between the Optus Retail EA and Optus Retail's practices. The initial scope of the review concerned approximately 5,500 current and former employees. Optus stated:
 - (a) it had identified the following divergences between the Optus Retail EA

(including undertakings given by Optus Retail to the Fair Work Commission as part of the approval of the Optus Retail EA) and its practices:

- (i) Retail Consultant employees not always being paid for all hours worked;
- (ii) paying some Retail Consultant employees, and some other employees, below the relevant minimum hourly rates;
- (iii) the requirement for 3 hour minimum engagements not always being met;
- (iv) not conducting a mandated annual reconciliation against entitlements under the GRIA;
- (v) not correctly determining some Store Manager classifications under the Optus Retail EA; and
- (vi) the minimum rate for Level 3 under the GRIA not always being paid when Retail Consultants are involved in store opening or closing;

6. During the course of investigating the report, the FWO subsequently identified that, contrary to the FWO's view of the correct approach:

- (a) Optus Retail had included incentive payments when conducting six-monthly reconciliations against entitlements under the GRIA for employees working in stores with extended trading hours as mandated by the Undertaking to the Optus Retail EA (**Six-monthly Reconciliation**).
- (b) Optus Retail was also considering whether it would apply the incentive payments paid as part of the Optus Retail Incentive Plan in satisfaction of all employee entitlements. The FWO took the view that this would not be the correct approach.

7. Prior to the execution of this Undertaking and as part of working constructively with the FWO, Optus Retail agreed:

- (a) to calculate the entitlements rising under the Retail Agreement without setting-off any incentive payments; and
- (b) to recalculate the Six-monthly Reconciliations without the inclusion of incentive payments.

8. In correspondence on 4 August 2021, Optus confirmed its intention to remediate underpayments it had identified from 1 January 2014. Through subsequent correspondence, Optus notified the FWO that it intended to calculate and remediate the underpayments in the following phases:

(a) **Phase One** – an assessment of entitlements paid to employees under the Optus Retail EA from 1 January 2014 to 17 March 2020;

(b) **Phase Two** –

(i) conducting annual reconciliations of amounts paid to employees under the Optus Retail EA against the amounts employees would otherwise have been paid under the GRIA from 1 January 2014 to 31 December 2019 in accordance with undertakings contained in the Optus Retail EA; and

(ii) the recalculation of the Six-monthly Reconciliations of amounts paid under the Optus Retail EA, excluding incentive payments, against amounts employees would otherwise have been paid under the GRIA from 1 January 2014 to 31 December 2019;

(c) **Phase Three** – conducting:

(i) the remaining assessment of entitlements paid to employees under the Optus Retail EA from 18 March 2020 to 3 July 2023 (noting that the New Optus Retail EA commenced operation on 4 July 2023, as referred to in paragraph 11);

(ii) the remaining annual reconciliations of amounts paid under the Optus Retail EA against amounts employees would otherwise have been paid under the GRIA from 1 January 2020 to 3 July 2023; and

(iii) the remaining recalculation of the Six-monthly Reconciliations of amounts paid under the Optus Retail EA, excluding incentive payments, against amounts employees would otherwise have been paid under the GRIA from 1 January 2020 to 3 July 2023.

(Phased Remediation Plan).

9. As of 14 October 2022, Optus informed the FWO that it had identified it had underpaid

the employees named in Column B of Schedule A to this Undertaking (**Schedule A Employees**) \$5,460,282.37 plus \$2,420,965.07 in interest (calculated at 5.5%) and superannuation in regards to Phases One and Two of its Phased Remediation Plan. Of this sum, Optus confirmed, as of 20 January 2024, it had paid \$6,910,747.72 (including interest and superannuation) to 308 current and 2,427 former employees for Phases One and Two (**Phase One and Two Underpayments**), with \$970,499.72 (including interest and superannuation) still to be paid to 1,017 former employees (who Optus had written to) – noting that:

- There are 5 former employees out of the 1,017 former employees who have since been rehired;
- There are 8 individuals who were paid for Phase One but have not been paid for Phase Two;
- Optus also apologised to each of the Schedule A Employees.

10. As of 14 October 2023, Optus confirmed it had not yet established the quantum of underpayments under Phase Three of its remediation. The employees falling within the scope of Phase Three are listed in Schedule B to this Undertaking (**Schedule B Employees**).

11. On 25 May 2023, the Fair Work Commission approved the *Optus Retail Agreement 2023 (New Optus Retail EA)*. The New Optus Retail EA commenced operation on 4 July 2023.

ADMISSIONS

12. The FWO has a reasonable belief, and Optus Retail admits, that Optus Retail contravened:

- (a) section 50 of the FW Act from 1 January 2014 to 17 March 2020 (**Relevant Period**) in relation to each employee listed in Column B of Schedule A to this Undertaking (**Affected Employee**) and marked with an “X” in the relevant Column, by failing to comply with the following obligations in relation to that employee:
 - (i) Column C — by failing to pay that employee sufficient ordinary hours

- (ii) Column D - by failing to pay that employee, as an adult full-time, part-time or casual employee a sufficient base rate of pay as specified in Part 3 of the Optus Retail EA due to either non-payment for all hours worked or applying the incorrect classification;
- (iii) Column E — by failing to pay that employee, as a junior employee a sufficient base rate of pay as specified in Part 3 of the Optus Retail EA due to either non-payment for all hours worked or applying the incorrect classification;
- (iv) Column F — by failing to pay that employee loadings for Saturday, Sunday or Public Holiday work, as specified in Part 4 of the Optus Retail EA;
- (v) Column G — by failing to comply with the obligation in Part 2 of the Optus Retail EA to guarantee that an employee, as either a part-time or casual employee, a minimum of 3 hours for any shift;
- (vi) Column H — by failing to pay a meal allowance to the employee as specified in Part 3 of the Optus Retail EA;
- (vii) Column I — by failing to pay the employee overtime rates as specified in Part 4 of the Optus Retail EA;
- (viii) Column J — by failing to correctly apply paid annual and personal leave entitlements as specified in Part 5 of the Optus Retail EA and provided by sections 90(1), 90(2) and 99 of the FW Act;
- (ix) Column K – by failing to pay the employee the penalty rate specified in Part 4 of the Optus Retail EA when the employee was not provided with a 10 hour break between periods of duty;
- (x) Column L — by failing to ensure that the employee’s total annual remuneration was no less than the amount the employee would have received under the GRIA, as required by Part 1 of the Optus Retail EA;
- (xi) Column M – by failing to ensure on a six-monthly basis that employees who work in a store with extended trading hours total remuneration was no less than the amount the employee would have received under the GRIA, as

required by the Undertaking to the Optus Retail EA (which constitutes a term of the agreement pursuant to section 191 of the FW Act);

- (xii) Column N – by failing to pay sufficient superannuation in accordance with the *Superannuation Guarantee (Administration) Act 1992* as required by Part 3 of the Optus Retail EA.

13. The contraventions identified in clause 12 of this Undertaking do not include:

- (a) any contraventions which relate to or arise as a consequence of Optus Retail failing to correctly apply the Optus Retail EA to any employee not listed in Schedule A or Schedule B to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of Optus Retail failing to correctly apply the Optus Retail EA 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 Optus Retail (whether or not those contraventions are identified in the Independent Audits described at clause 34 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 Optus Retail 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 which will be identified as part of Phase Three.

UNDERTAKINGS

14. Optus Retail will take the actions set out at clauses 15 to 59 below.

Review and rectification of underpayments

Phase One and Two rectification and evidence

15. Within 45 days of the Commencement Date, Optus Retail will provide the FWO evidence of all payments made to the Schedule A Employees to rectify the Phase One and Two Underpayments, including interest and superannuation.

Phase One and Two review

16. Within 180 days of the Commencement Date, Optus Retail will recalculate the Phase One and Two Underpayments in accordance with the Agreed Methodology, as set out in clause 26.
17. Within 240 days of the Commencement Date, Optus Retail will:
 - (a) provide to the FWO an updated Schedule A reflecting any adjustments made in applying the Agreed Methodology;
 - (b) for any current and former employees owed any additional underpayment after applying the Agreed Methodology, pay to the current employees and take reasonable steps to pay to former employees:
 - (i) the additional underpayment amount owing to them;
 - (ii) any superannuation payments which may be required by law, by making payment to their chosen superannuation fund;
 - (iii) interest on the amount referred to in (i), calculated on a simple basis using an interest rate of 5.5% per annum up to 17 March 2020 and 7.5% per annum thereafter (**Phase Three Interest Rate**); and
 - (c) provide to the FWO evidence that it has made the payments required by clause 17(b) above.

Phase Three remediation

18. Subject to clauses 19 and 20 below, Optus Retail must complete Phase Three of the Phased Remediation Plan within 180 days of the Commencement Date.
19. If Optus Retail considers it will not be able to complete the Phase Three of the Phased Remediation Plan within 180 days of the Commencement Date, it must notify the FWO in writing as early as practicable and in doing so:
 - (a) set out why Optus Retail considers it will be unable to complete Phase Three within 180 days of the Commencement Date; and
 - (b) nominate an alternative timeframe or date by which Optus Retail considers it will be able to complete Phase Three.

20. If Optus Retail gives the FWO a notice in accordance with clause 19, the FWO:
- (a) will consider the notice; and
 - (b) may, at its discretion (exercised reasonably), specify in writing to Optus Retail an alternative date by which Optus is required to complete Phase Three.
21. Optus will notify the FWO as soon as possible, and no later than 7 days, after it completes Phase Three.

Phase Three rectification and evidence

22. Within 210 days of the Commencement Date, Optus Retail will prepare and provide to the FWO a report for Phase Three (**Phase Three Report**). The Phase Three Report must include for each Affected Employee, and any other employee identified as being underpaid in conducting Phase Three:
- (a) the underpayment quantum calculated under Phase Three, with dedicated columns for underpayments (**Phase Three Underpayments**), superannuation, and interest on the Phase Three Underpayments calculated using the Phase Three Interest Rate; and
 - (b) the clauses of the Optus Retail EA that Optus Retail has contravened in relation to that employee.
23. Optus Retail will apply the Agreed Methodology (as set out in clause 26) in completing Phase Three of the Phased Remediation Plan.
24. Within 240 days of the Commencement Date, Optus Retail will pay each of the Employees identified in the Phase Three Report (**Phase Three Employees**):
- (a) any Phase Three Underpayment owing to them;
 - (b) any superannuation payments which may be required by law, by making payment to their chosen superannuation fund; and
 - (c) interest on the Phase Three Underpayments, calculated using the Phase Three Interest Rate;
25. Within 240 days of the Commencement Date, Optus Retail will provide the FWO evidence of all payments made to the Phase Three Employees to rectify the Phase

Three Underpayments.

Agreed methodology

26. Optus Retail agrees that for the purposes of any calculations required to be conducted under this Enforceable Undertaking, the following methodology will be applied:

- (a) for the purposes of reconciliations against the GRIA, a part-time employee with flexible hours of work is to be treated as a casual employee up to and including 26 September 2021. From 27 September 2021 onwards, such employees are to be treated as part-time employees under the GRIA.
- (b) paid leave and absences on a public holiday where an employee is entitled to be paid count towards the cumulative total of ordinary hours for full-time and part-time employees in respect of reconciliations against the GRIA.
- (c) Optus Retail may not apply incentive payments to offset entitlements arising under the Optus Retail EA.
- (d) Optus Retail may not include incentive payments for the purposes of the Six-monthly Reconciliations.
- (e) Optus Retail may include the incentive payments when conducting the annual reconciliations against the GRIA.

(Agreed Methodology)

Unclaimed Monies

Underpaid employees that cannot be located

27. Within 120 days of the completion of Phase Three if any of the Schedule A or Schedule B Employees to whom payments are owed under this Undertaking cannot be located, Optus Retail will pay the underpayment amounts owing to those employees (excluding superannuation and interest) to the Commonwealth of Australia in accordance with section 559 of the FW Act. Optus Retail will complete the required documents supplied by the FWO for this purpose.

Former employees located by the FWO

28. In the event that the FWO is able to locate and contact any former Optus Retail

employees to whom clause 27 applies, the FWO will (in addition to its obligations under section 559 of the FW Act) notify Optus Retail in writing of the name and contact details of the former employee. Optus Retail will then contact the former employees within 14 days and within 28 days of receiving their bank account and superannuation fund details Optus Retail will:

- (a) pay to the former employee interest on the amount already paid by Optus Retail 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 90 days after Optus Retail first attempted to contact the employee, using the Phase Three Interest Rate; and
- (b) pay to the former employee's nominated superannuation fund an amount equal to the amount that would have been required by law, had Optus Retail paid the underpayment directly to the former employee.

Training, systems, processes and corporate governance

29. Within 60 days of the Commencement Date, Optus Retail will provide to the FWO:

- (a) detailed information about the systems and processes that it has put in place to ensure compliance with its obligations under the FW Act and the New Optus Retail EA. This information will include (but is not limited to) payroll systems and processes, as well as time and attendance systems; and
- (b) information on the training that Optus Retail has implemented or will implement for payroll and human resources employees about the requirements of the New Optus Retail EA; and
- (c) details of systems and processes implemented to ensure appropriate corporate governance and oversight in relation to Optus Retail's compliance with its obligations under the FW Act and the New Optus Retail EA, which must include mechanisms for regular reporting on compliance with workplace obligations to Optus' board of directors.

30. The FWO may, within 30 days of receiving the information under clause 29, seek reasonable further information regarding the matters in clause 29 from Optus Retail

by issuing a written notice to Optus Retail specifying the additional information required. Optus Retail must provide the information specified in such a notice within 30 days of receipt.

31. Within 120 days of receiving the information under clause 29, or any further information sought under clause 30, the FWO may give Optus Retail written notices specifying additional measures or additional training that Optus Retail must consider implementing to ensure compliance with and oversight of its obligations under the FW Act and the New Optus Retail EA.

No limitation on use of information

32. When providing information under clauses 29 and 30, Optus Retail will state in writing that it does so without qualification and without seeking to place any limitation on how the FWO may use the information in the lawful performance of its statutory functions and powers. Optus Retail will not assert, or seek to assert, any limitation on how the FWO may use or rely on the information in the lawful performance of its statutory functions and powers.

Letter of Assurance

33. Within 60 days of the completion of Phase Three, Optus Retail will provide the FWO a Letter of Assurance signed by the Chief Financial Officer in the terms as set out at Attachment A.

Independent Audits

34. Optus Retail 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 of Optus Retail compliance with the FW Act and FW Regulations, in relation to the New Optus Retail EA, and any future agreements that replace the New Optus Retail EA (**Audits**).
35. Optus Retail will notify the FWO of its proposed Independent Auditor within 30 days of the Commencement Date. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Optus Retail 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 Optus Retail.

36. Optus Retail must ensure that each of the Audits conducted by the Independent Auditor includes:

- (a) an assessment of 5% of all employees to whom the New Optus Retail EA applies, across a range of classifications, locations and employment types (full time, part time and casual employment), during the relevant audit period (**Sampled Employees**) in respect of their employment by Optus Retail;
- (b) an assessment of whether the Sampled Employees have been correctly classified by Optus Retail;
- (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 New Optus Retail EA (or replacement instruments);
- (d) direct contact with Sample Employees by way of site visits to at least five different sites, to ensure accuracy of hours worked;
- (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; and
- (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 Optus Retail, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Optus Retail 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

37. Optus Retail must ensure the Independent Auditor commences the first of the Audits by no later than 1 September 2024 (**First Audit**).
38. The relevant audit period for the First Audit must be at least two full consecutive pay periods falling within the period 1 July 2024 to 30 August 2024.
39. By 1 August 2024, Optus Retail will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
40. Optus Retail will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO within 28 days of the completion of the audit, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. Optus Retail will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Optus Retail without the FWO's approval.
41. Optus Retail will use its best 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 28 days of FWO providing any comments on the draft report to the Independent Auditor. Optus Retail will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to Optus Retail without the FWO's approval.

The Second Audit

42. Optus Retail must ensure the Independent Auditor commences the second of the Audits by no later than 1 September 2025 (**Second Audit**).
43. The relevant audit period for the Second Audit must be at least two full consecutive pay periods falling within the period 1 July 2025 to 31 August 2025.
44. By 1 August 2025, Optus Retail will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
45. Optus Retail will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO within 28 days of the

completion of the audit, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. Optus Retail will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Optus Retail without the FWO's approval.

46. Optus Retail will use its best 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 28 days of FWO providing any comments on the draft report to the Independent Auditor. Optus Retail will ensure the Independent Auditor does not provide the written report, or a copy of the same, to Optus Retail without the FWO's approval.

Outcome of Audits

47. If any of the Audits identify underpayments to any current or former employees, Optus Retail will:
- (a) rectify any underpayments identified in the relevant audit period; and
 - (b) conduct a reconciliation of the amounts paid and owed to those employees in the 12 month period immediately prior to the relevant audit period and rectify any underpayments that are identified.
48. Optus Retail will provide to the FWO evidence of such rectification within 28 days of being informed by the FWO of the requirement to undertake the reconciliation.
49. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of each Audit, Optus Retail will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Optus Retail will complete the required documents supplied by the FWO for this purpose.
50. If any of the Audits identify an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, Optus Retail will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the New Optus Retail EA (or replacement

instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by Optus Retail.

51. If requested by the FWO, Optus Retail will provide the FWO with all primary records and documents used to conduct any or all of the Audits (including any Additional Audit), within 14 days of such a request.

Employee Helpline

52. Within 30 days of the Commencement Date, at its own expense, Optus Retail will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the Optus Retail EA applies, or had applied, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Helpline**). Employees will have the option of making enquiries on a confidential basis.

53. The independent organisation must be approved by the FWO prior to being engaged by Optus Retail to operate the Employee Helpline.

54. Optus Retail will:

- (a) ensure the Employee Helpline remains operational for a period of 6 months;
- (b) ensure that the telephone number and email address are included on the apology letter (see clauses 55 to 56);
- (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 received by the Employee Helpline to the FWO every three months from the establishment of the Employee Helpline.

Apology to Employees

55. Within 30 days of the completion of Phase Three remediation, Optus Retail will send an apology letter to all Phase Three Employees who have been underpaid (**Apology Letter**). The Apology Letter will be in the same form as Attachment B to this

Undertaking.

56. Optus Retail will provide evidence to the FWO that the Apology Letter has been sent to all Phase Three Employees within 7 days of the letter being sent.

Contribution Payment

57. Optus Retail will make the following contribution payments to the Consolidated Revenue Fund:

- (a) within 30 days of the Commencement Date, a payment of \$450,000; and
- (b) within 30 days of the completion of Phase Three of the Phased Remediation Plan, a further payment equal to 4% of the total Phase Three Underpayments.

58. Optus Retail will provide evidence to the FWO of any contribution payment within 14 days of making payment to the Consolidated Revenue Fund.

No Inconsistent Statements

59. Optus Retail 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.

ACKNOWLEDGEMENTS

60. Optus Retail acknowledges that:

- (a) the FWO may;
 - (i) make this Undertaking (and any of the Attachments hereto) 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 (and any of the Attachments hereto) 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

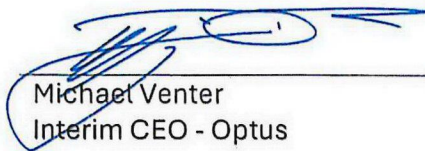
Attachments hereto) and its terms; and

- (v) rely upon the admissions made by Optus Retail set out in clause 12 above in respect of decisions taken regarding enforcement action in the event that Optus Retail is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Optus Retail 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 set out herein;
- (c) consistent with section 715(3) of the FW Act, Optus Retail may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if Optus Retail 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 Optus Retail in clause 12 above, and also in respect of the question of costs.



Executed as an undertaking

EXECUTED by Optus Retailco Pty Limited, ABN 80 092 221 406, by an authorised officer:

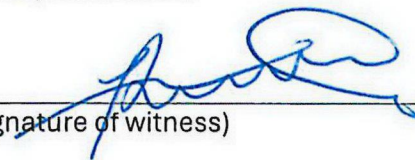


Michael Venter
Interim CEO - Optus

6 February 2024

(Date)

in the presence of:




(Signature of witness)

Nicholes Paul Kusalic

(Name of Witness)

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



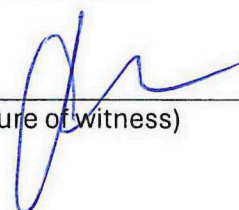
Mark Scully
Deputy Fair Work Ombudsman
Compliance and Enforcement

7 February 2024

(Date)

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:



(Signature of witness)

Daina Hopkins-Farrow

(Name of Witness)

SCHEDULE A – Affected Employees

Refer to Schedule A in the attached Schedules

SCHEDULE B – Affected employees

Refer to Schedule B in the attached Schedules

Attachment A – Letter of Assurance

Anna Booth
Fair Work Ombudsman
GPO Box 9887
SYDNEY NSW 2001

Dear Ms Booth

I am writing on behalf of Optus Retailco Pty Limited (**Optus Retail**) in my capacity as the Chief Financial Officer of Optus. This letter follows a process where Optus Retail self-reported that it had breached clauses of the *Optus Retail Agreement 2013 (EA)* by failing to correctly apply various entitlements under the EA, including failing to conduct annual reconciliations of employee's payments under the EA with what they would have been entitled to under the *General Retail Industry Award 2010* and the *General Retail Industry Award 2020*.

I write to provide you with my assurance that I am satisfied, to the best of my knowledge and having made reasonable inquiries:

- a. The three-phase remediation process by which Optus Retail, as assisted by MinterEllison and PricewaterhouseCoopers, calculated the underpayments to their current and former employees was correctly undertaken; and
- b. that Optus Retail is compliant with the *Fair Work Act 2009* as it relates to the *Optus Retail Agreement 2013* and the *Optus Retail Agreement 2023*; and
- c. as of [date] all former and current employees impacted by the underpayments, apart from those who either have not been able to be located by Optus Retail or have not provided the necessary information, have been paid their entitlements (plus interest) under the *Optus Retail Agreement 2013* by Optus Retail.

Optus Retail has remediated all issues as a matter of priority and is committed to minimising the risk of future non-compliance.

Sincerely

<CFO name>

Attachment B – Letter of Apology: Phase Three Employees

FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

At Optus, we value the contribution of our amazing people and we are committed to ensuring everyone receives their correct entitlements.

In 2020, Optus took the proactive step of commencing a review of its payroll practices, following a number of changes made to payroll processes and systems in recent years.

As part of Phase Three of this review, Optus has identified that you have received incorrect payments, which has resulted in a shortfall. Further details as to how your pay has been affected, as well as the back-payment you will be receiving shortly, are set out below.

Back-payment Details

This shortfall amount is [*Insert Gross Pay Amount*] (gross) (Shortfall).

Superannuation and interest are also paid on this amount, meaning the total amount payable to you (before tax withholding) will be as follows:

Back-payment details	
Shortfall amount (gross)	[<i>Insert Gross Pay Amount</i>]
Interest (on Shortfall)	[<i>Insert Interest on Shortfall Amount</i>]
Superannuation (including interest)	[<i>Insert Superannuation Amount, including interest</i>]

Note: Your Shortfall amount will be reported on your payment summary and PAYG tax will be withheld on it. No tax will be withheld on the interest or superannuation components.

Additional information and assistance

Optus Retail has formally admitted to the FWO that Optus Retail did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy of which will be available at www.fairwork.gov.au.

As part of the Enforceable Undertaking, we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Optus has also established a dedicated Retail Review Contact Centre to provide affected individuals with assistance in relation to the information contained in this letter.

The Contact Centre will be available until [insert].

If you do require further assistance, please reach out to the Contact Centre on [insert] (Monday to Friday, between 9.00am and 5.00pm, AEST) or alternatively, by email at: retail.review@optus.com.au.

For verification purposes, you may be asked to provide your reference number – this can be found at the top of this letter.

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

<Employer name>

