

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

JPA Manchester Pty Ltd
(ABN: 95111143483)

Section 715 ENFORCEABLE UNDERTAKING

Parties

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:
 - (a) JPA Manchester Pty Ltd (ABN: 95111143483) (**the Company**)for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. The Company owns and operates six (6) retail outlets in New South Wales (**NSW**) and one (1) online store selling bed linen and homewares to retail customers.
3. The six (6) retail outlets in NSW are located at:
 - (a) Engadine: Shop 17, 101 Caldarra Avenue (Engadine Court Shopping Centre)
 - (b) Redfern: 11 Cope Street & 155 Redfern Street
 - (c) Neutral Bay: 182 Military Road
 - (d) Randwick: Shop 12, Randwick Plaza
 - (e) Gordon: G1 & G2, 741 Pacific Highway
 - (f) Surry Hills: Shop 6, Surry Hills Shopping Village, 2-28 Baptist St, Redfern
4. The online store is at www.bensonaustralia.com.au.
5. A request for assistance was made to the FWO on the 6 March 2014. The Company employed the employee between 5 April 2010 and 20 February 2014.
6. The employee was employed as a casual Shop Assistant working at various retail outlets for the period between 5 April 2010 and 4 March 2012.
7. The employee was employed as a full time Online Sales Manager in the office located at 11 Cope Street Redfern NSW for the period between 5 March 2012 and 20 February 2014.

Contraventions

8. The FWO has determined, and the Company admits, that the Company contravened:

For the period between 05 April 2010 and 27 May 2012

Wages

- (a) subsection 45 of the FW Act by failing to pay the employee her correct minimum base hourly rate of pay in accordance with clause 17 of *General Retail Industry Award 2010* (**the Modern Award**).

For the period between 05 April 2010 and 04 March 2012

Casual Loading

- (b) subsection 45 of the FW Act by failing to pay the employee a casual loading in accordance with clause 13.2 of the Modern Award.

At time of termination

Annual leave

- (c) subsection 90.2 of the FW Act by failing to pay the employee some of her accrued annual leave entitlement at the time of termination.

Annual leave loading

- (d) subsection 45 of the FW Act by failing to pay the employee annual leave loading on the unpaid annual leave entitlement at the time of termination in accordance with clause 32.3 of the Modern Award.

(collectively the **Contraventions**)

9: As a result of the Contraventions, the employee was underpaid \$27,967.91.

Commencement of Undertaking

- 10. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by the Company; and
 - (b) the FWO accepts the Undertaking so executed.
- 11. Upon the commencement of this Undertaking, the Company undertakes to assume the obligations set out below.

Undertakings

12. For the purposes of section 715 of the FW Act, the Company undertakes to:

Rectify Underpayments

- (a) pay the amount of \$27,967.91 less taxation to the employee arising from the Contraventions within 28 days of the execution of this Undertaking;
- (b) self-rectify on a voluntary basis any additional wage disputes received by and to the satisfaction of the FWO within 60 days in the event that the Company admits such contraventions;

Public Notices

- (c) place a notice within the workplaces which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking for a total consecutive period of seven (7) days in the terms set out in Attachment A;
- (d) provide a copy of the **Workplace Notice** and photographic evidence of its display to the FWO within seven (7) days of the display of the notice;

Future Workplace Relations Compliance

- (e) provide the FWO, within 28 days of the date of the execution of this Undertaking, details of systems and processes already in place or to be implemented to ensure ongoing compliance with Commonwealth workplace laws and instruments, including but not limited to the *Fair Work Act 2009* and the *General Retail Industry Award 2010*;
- (f) develop and implement within 28 days of the execution of this Undertaking demonstrable systems and processes in relation to payroll to ensure ongoing compliance in relation to the contraventions including rates of pay, loadings, penalties, taxation and superannuation;

Self-audits and Reporting

- (g) have completed by an external accounting professional (e.g. Certified Practicing Accountant), audit specialist or employment law specialist (at the Company's own expense), six (6) monthly for two (2) years of the execution of this Undertaking, an audit of its compliance with Commonwealth workplace laws. Specifically:

- (i) the Company must demonstrate compliance relating to the wages and entitlements of its employees and the Contraventions identified;
- (ii) each audit is to include the first full single pay period at the commencement of each six (6) monthly period; and
- (iii) the Company must provide a copy of the audit to the FWO within seven (7) days of its completion.

Workplace Relations Training

- (h) provide or design and implement within 90 days of the commencement of this Undertaking, an ongoing training program so that all persons responsible, either directly or indirectly, are made aware of the Company's obligations under Commonwealth workplace laws;
- (i) provide training material to participants in the training including material on:
 - (i) compliance with the FW Act, Fair Work Regulations and the *General Retail Industry Award 2010*;
 - (ii) employer obligations in respect to employee record keeping and pay slips;
 - (iii) options available to persons to make complaints and FWO contact information; and
 - (iv) access to FWO resources to calculate rates of pay.
- (j) ensure the training is conducted by an accredited workplace trainer, such person or organisation to be approved by the FWO and paid for by the Company;
- (k) provide the training materials to be used in the training to the FWO no later than 14 days before the Training is to be conducted;
- (l) within 7 days of the training being conducted, provide the FWO with evidence of attendance at the training (including the name and position of all attendees and the date on which the training was attended);
- (m) for a period of 2 years following the Commencement Date, to ensure that training is conducted in the manner prescribed by paragraphs 12(h)-(m) above in relation to any persons who acquire managerial responsibilities that include human resource, recruitment or payroll functions for or on behalf of the Company.

Acknowledgements

13. The Company acknowledges that:

- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at www.fwo.gov.au (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
- (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
- (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
- (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by The Company;
- (e) 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 in this Undertaking;

- • (f) if the FWO considers that the Company has contravened any of the terms of this Undertaking 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;
- (g) consistent with section 715(3) of the FW Act, the Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

Executed as an undertaking

EXECUTED by JPA Manchester Pty Ltd (ABN: 95111143483) in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

JIA PING OU

(Name of director)

(Name of director/company secretary)

19/9/2014

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

JIA LIU

(Name of witness)

(Name of witness)

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



Steven Ronson
Executive Director
Dispute Resolution and Compliance

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

29 September 2014

(Date)



(Signature of witness)

PIA MORGAN

(Name of Witness)

Attachment A – Form of Workplace Notice

Contraventions of the *Fair Work Act 2009* and the *General Retail Industry Award 2010* by JPA Manchester Pty Ltd (the Company).

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that JPA Manchester Pty Ltd contravened the *Fair Work Act 2009* and the *General Retail Industry Award 2010*.

The Company owns and operates six (6) retail outlets in New South Wales (NSW) and one (1) online store and no previous contraventions of Commonwealth workplace laws have been determined against the Company.

The FWO has found that the Company contravened the *Fair Work Act 2009* and the *General Retail Industry Award 2010* by:

1. failing to pay an employee the correct minimum base hourly rates of pay for time worked;
2. failing to pay a casual employee the casual loading for all hours worked ;
3. failing to pay a full time employee accrued annual leave entitlement at time of termination;
4. failing to pay a full time employee annual leave loading on accrued annual leave entitlement at time of termination.

The Company has formally admitted to the FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fwo.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments to the employee affected by the contraventions and changing workplace practices.

The Company expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, The Company gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for the Company and have queries or questions relating to your employment, please contact Jania Liu in the first instance on telephone 02 9698 6602. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.