

NOTICE OF FILING

Details of Filing

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File Title: OLIVIA IOB & ORS v LOVISA PTY LIMITED
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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



Form 17

Rule 8.05(1)(a)

Statement of claim

No. of 2025

Federal Court of Australia

District Registry: Victoria

Division: Fair Work

OLIVIA IOB

First Applicant

AYESHA KELSO

Second Applicant

FINN WESLEY (also known as Vivian Wesley)

Third Applicant

LOVISA PTY LIMITED (ACN 120 675 890)

Respondent

A. THE APPLICANTS AND GROUP MEMBERS

1. The Applicants bring this proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**):

Filed on behalf of The Applicants, Olivia Iob & Ors
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- a. for themselves; and
 - b. as representatives of a group constituted by all persons employed by Lovisa Pty Limited (**Respondent**):
 - i. on a part-time or full-time basis;
 - ii. in the positions of 'Team Member', 'Store Supervisor', 'Assistant Store Manager', 'Store Manager C', 'Store Manager B', 'Store Manager A' or 'Store Manager A+' (**Relevant Positions**); and
 - iii. during the period beginning 23 January 2019, and ending on 23 January 2025 (**Relevant Period**),
- (the '**Group**' or '**Group Members**').

Particulars

As to the alphabetic designation of the stores, the Applicants refer to particulars in paragraph 4 below.

2. The Applicants and the Group Members were at all material times during the Relevant Period (which periods varied depending on when the Applicants and Group Members were employed), 'national system employees' within the meaning of s.13 and s.14 of the *Fair Work Act 2009* (Cth) (**FWA**).
3. On the date of filing of the Originating Application, there are more than seven Group Members.

B. THE RESPONDENT

4. The Respondent at all material times during the Relevant Period:
 - a. was a company registered under the *Corporations Act 2001* (Cth) and liable to be sued;
 - b. employed the Applicants and the Group Members to undertake work in one or more jewellery stores operating under the brand name 'Lovisa' (**Lovisa Stores**); and

- c. by reason of subparagraph (b), was a 'national system employer' within the meaning of s.13 and s.14 of the FWA.

Particulars

At all material times during the Relevant Period, the Respondent designated each of the Lovisa Stores as 'C', 'B', 'A' or 'A+'. This classification was also adopted for use in the relevant enterprise agreements set out at paragraphs 32 and 140 below, and attached to 'Store Manager' positions.

C. THE APPLICANTS

C.1 Olivia Iob

5. By way of a contract dated in or about November 2017, the Respondent employed the First Applicant (**Ms Iob**) to work in the Lovisa Store in the Watergardens Shopping Centre, Taylors Lakes in Victoria (**Watergardens Store**) in the position of a part-time 'Christmas Team Member'.

Particulars

The contract was in writing and is no longer in possession of Ms Iob.

6. By way of a contract dated 22 February 2018, the Respondent employed Ms Iob to work in the Watergardens Store as a part-time 'Team Member'.

Particulars

The contract is in writing. A copy is available for inspection at the offices of the solicitors for the Applicants.

7. On or about 22 February 2018, Ms Iob commenced work in the Watergardens Store as a part-time 'Team Member'.
8. Ms Iob performed duties of a 'Team Member' including the following at the Watergardens Store:
 - a. general customer service and support, including greeting and assisting customers attending the store;
 - b. demonstrating knowledge of jewellery products and inventory;

- c. processing sales in respect to jewellery products and related items;
 - d. housekeeping and cleaning duties;
 - e. administrative tasks, including attending to emails and calls from management, customers and/or suppliers;
 - f. responding to customer concerns or queries in respect to specific jewellery products in store;
 - g. undertaking stocktake and inventory duties, including store layout changes; and
 - h. opening and closing the store, including balancing the cash register at the end of each shift.
9. By way of a contract dated 26 September 2019, the Respondent employed Ms Iob as a part-time 'Store Manager C' to work in the Westfield Airport West Shopping Centre, Airport West in Victoria (**Westfield Store**).

Particulars

The Westfield Store was classified by the Respondent as a 'C' store. The contract was in writing and was for a fixed term that commenced on 30 September 2019 and terminated on 12 January 2020. A copy is available for inspection at the offices of the solicitors for the Applicants.

10. On or about 30 September 2019, the Applicant commenced work in the Westfield Store as a part-time 'Store Manager C'.
11. By way of a contract dated on or about 1 January 2020 (**Ms Iob's 2020 Contract of Employment**), the Respondent employed Ms Iob as a full-time 'Store Manager C' in the Woodgrove Shopping Centre, Melton West in Victoria (**Woodgrove Store**).

Particulars

The Woodgrove Store was classified by the Respondent as a 'C' store. The contract is in writing. A copy is available for inspection at the offices of the solicitors for the Applicants.

12. On or about 1 January 2020, Ms Iob commenced working in the position of 'Store Manager C' in the Woodgrove Store.
13. By way of a contract dated 21 October 2020, the Respondent employed Ms Iob as a full-time 'Store Manager A' to work in the Northland Shopping Centre, Preston in Victoria (**Preston Store**).

Particulars

The Preston Store was classified by the Respondent as an 'A' store. The contract was in writing and is available for inspection at the offices of the solicitors for the Applicants.

14. On 2 November 2020, Ms Iob commenced work in the Preston Store as a full-time 'Store Manager A'.
15. Ms Iob performed the duties of a 'Store Manager C' (in the Westfield Store and the Woodgrove Store) and a 'Store Manager A' (in the Preston Store) including the following:
 - a. the tasks and duties outlined in paragraph 8 above;
 - b. maintaining appropriate records to ensure that there were no safety issues in store (for example broken mirrors or broken ladders);
 - c. ensuring staff and team members' confidence and ability to undertake customer bag checks;
 - d. training, coaching and mentoring staff and team members on how to achieve sales growth set by the Respondent;
 - e. monitoring the store's KPI targets on a daily, weekly and monthly basis;
 - f. completing stock audits weekly;
 - g. refilling stock from cupboards every day; and
 - h. logging all maintenance issues through the 'ZenDesk' or 'Service Desk' within 24 hours of those issues coming to the store's attention.
16. During her employment with the Respondent, Ms Iob was rostered to work:

- a. In the period between 22 February 2018 to 29 September 2019, approximately 10 to 20 hours per week;
- b. In the period between 30 September 2019 to 31 December 2019, approximately 30 hours per week; and
- c. In the period between 1 January 2020 to until around June 2021, 38 hours per week.

Particulars

Further particulars will be provided after discovery by the Respondent of Ms Iob's rosters which, despite requests by solicitors for Ms Iob, have not been provided.

17. In or around June 2021, Ms Iob resigned from her employment with the Respondent.

C.2 Ayesha Kelso

18. By way of a contract dated 15 September 2022, the Respondent employed the Second Applicant (**Ms Kelso**) to work in the Lovisa Store (**Canberra Store**) in the Australian Capital Territory in the position of a full-time 'Assistant Store Manager'.

Particulars

The contract was in writing. A copy is available for inspection at the offices of the solicitors for the Applicants.

19. On 26 September 2022, Ms Kelso commenced work in the Canberra Store as a full-time 'Assistant Store Manager'.
20. As an 'Assistant Store Manager', Ms Kelso performed the duties outlined in paragraph 15 for the Respondent, in partnership with the Store Manager at the Canberra Store.
21. By way of a contract dated 30 December 2022, the Respondent employed Ms Kelso as a full-time 'Store Manager B' to work in the Belconnen Store, in the Australian Capital Territory (**Belconnen Store**).

Particulars

The Belconnen Store was classified by the Respondent as a 'B' store. The contract was in writing. A copy is available for inspection at the offices of the solicitors for the Applicants.

22. On or about 9 January 2023, the Applicant commenced work in the Belconnen Store in the position of full-time 'Store Manager B'.
23. Ms Kelso performed the tasks and duties outlined in paragraph 15 above for the Respondent in her position as the Store Manager B at the Belconnen Store.
24. During her employment with the Respondent in the Canberra Store, Ms Kelso was rostered to work 38 hours per week from approximately 9.00am to 5.45pm Tuesday to Saturday.
25. During her employment with the Respondent in the Belconnen Store, Ms Kelso was rostered to work 38 hours per week from approximately:
 - a. 9.00 am to 5.45 pm Tuesday to Thursday and on Saturday; and
 - b. 1:15pm to 10:00pm, or 9:00am to 4:00pm, on each alternate week on Fridays.
26. In or around May 2023, Ms Kelso resigned from her employment with the Respondent.

C.3 Finn Wesley (also known as Vivian Wesley)

27. By way of a contract dated 23 August 2022, the Respondent employed the Third Applicant (**Ms Wesley**) to work in the Lovisa Store in the Craigieburn Shopping Centre, Craigieburn in Victoria (**Craigieburn Store**) in the position of a part-time 'Team Member'.

Particulars

The contract is in writing. A copy is available for inspection at the offices of the solicitors for the Applicants.

28. On or about 29 August 2022, Ms Wesley commenced work in the Craigieburn Store as a part-time 'Team Member'.
29. Ms Wesley performed the tasks and duties outlined in paragraph 8 above for the Respondent as a 'Team Member' at the Craigieburn Store.
30. During her employment with the Respondent, Ms Wesley was rostered to work:
 - a. a minimum of 6 hours per fortnight four to five days per week; and
 - b. approximately 15 hours per week.

Particulars

Further particulars will be provided after discovery by the Respondent of Ms Wesley's rosters.

31. On or about 15 July 2023, Ms Wesley resigned from her employment with the Respondent.

D. 2014 AGREEMENT

D.1 Coverage and Application

32. The Lovisa Enterprise Agreement 2014 (**2014 Agreement**):
 - a. came into operation on 4 August 2014; and
 - b. continued to operate until it was replaced by a new enterprise agreement, which came into operation on 18 October 2022.

Particulars

- (i) The 2014 Agreement was approved by the Fair Work Commission on 28 July 2014 and came into effect on 4 August 2014 in accordance with s. 54 of the FWA.
- (ii) The 2014 Agreement continued to operate until the 2022 Agreement (defined below at paragraph 140) came into effect on 18 October 2022 in accordance with s. 54 and s. 58 of the FWA. The Applicants refer to paragraph 140 below.

33. The 2014 Agreement covered and applied to the Applicants and the Group Members who were employed by the Respondent in the Relevant Positions during the period between 23 January 2019 and 18 October 2022 (**2014 Agreement Period**) for the purpose of s. 52 and s. 53 of the FWA (**2014 Agreement Group Members**).

Particulars

- (i) Clause 1.1 of the 2014 Agreement states that it will have application to all retail store team members of the Respondent who are classified within the 2014 Agreement.
- (ii) Part 3 of the 2014 Agreement is titled 'Wages and Classification Structure'. Clause 3.6 sets out the wage structure for each of the positions listed in the 'Classification' column in a table. The Relevant Positions are listed in the 'Classification' column. They relevantly include, in relation to Ms Iob and Ms Wesley, a Team Member. Further, in relation to Ms Iob, they include a Store Manager C and Store Manager A. In relation to Ms Kelso, they included an Assistant Store Manager.

D.2 2014 Agreement Roster Breaches

34. During the 2014 Agreement Period, the Respondent was required to draw up a roster for each fortnightly pay cycle for the Applicants and the 2014 Agreement Group Members who worked in the Relevant Positions.

Particulars

- See clause 4.2(a) of the 2014 Agreement. This fortnightly roster was to be made available 4 days in advance of the fortnightly pay period that it applied to.
35. During the 2014 Agreement Period, the Respondent drew up rosters that set out the start and finish times of each shift applicable to the Applicants, and the 2014 Agreement Group Members, that covered a period of only one week at a time.

Particulars

The rosters were drawn up by the Respondent and accessed by the Applicants and the 2014 Agreement Group Members on an IT platform called LOLA (**LOLA**).

36. By reason of paragraphs 34 and 35, the Respondent breached clause 4.2(a) of the 2014 Agreement in relation to each fortnightly period in which the Applicants and the 2014 Agreement Group Members were employed (**2014 Agreement Roster Breaches**).
37. By reason of the 2014 Agreement Roster Breaches, the Respondent contravened s. 50 of the FWA.

D.3 Unpaid Induction Training Breaches

38. During the 2014 Agreement Period, Ms Kelso, Ms Wesley and the 2014 Agreement Group Members were required by the Respondent to complete induction training through LOLA (**Induction Training**) prior to commencing work with the Respondent in accordance with their roster.

Particulars

- (i) The Respondent did not allocate any paid time for Ms Kelso or Ms Wesley to complete the Induction Training. Therefore, Ms Kelso and Ms Wesley were required by the Respondent to complete the Induction Training in their own time.
 - (ii) Ms Kelso was informed that the Regional Managers are unable to roster employees unless they completed the Induction Training via a notice contained either in the Respondent's policies or on the bulletin board at the Lovisa Stores in which Ms Kelso worked. Further particulars will be provided following discovery by the Respondent.
39. In or about August 2022, Ms Wesley:
 - a. completed the Induction Training over a period of approximately 3 hours;
and
 - b. was not paid for doing the Induction Training.
 40. In or about September 2022, Ms Kelso:

- a. completed the Induction Training over a period of 3 to 4 hours; and
 - b. was not paid for doing the Induction Training.
41. During the 2014 Agreement Period, some 2014 Agreement Group Members:
- a. completed the Induction Training over a period of approximately 3 to 5 hours; and
 - b. were not paid for doing the Induction Training.
42. By reason of clause 3.6 of the 2014 Agreement, Ms Wesley was entitled to have been paid \$18.91 per hour for completing the Induction Training.

Particulars

- (i) Clause 3.6 of the 2014 Agreement set out the ordinary rate of pay that will be applicable from the commencement of that Enterprise Agreement.
 - (ii) Clause 4 of Ms Wesley's employment contract dated 23 August 2022 states that Ms Wesley's ordinary rate of pay will be paid as an hourly rate of \$18.91.
 - (iii) On a proper construction of clause 3.6 of the 2014 Agreement, Induction Training constituted work for which Ms Wesley was entitled to be paid at least \$18.91 per hour.
43. By reason of clause 3.6 of the 2014 Agreement, Ms Kelso was entitled to have been paid \$25.04 per hour for completing the Induction Training.

Particulars

- (i) Clause 3.6 of the 2014 Agreement set out the ordinary rate of pay that will be applicable from the commencement of that Enterprise Agreement.
- (ii) Clause 4 of Ms Kelso's employment contract dated 15 September 2022 states that Ms Kelso's ordinary rate of pay will be paid as an hourly rate of \$25.04.
- (iii) On a proper construction of clause 3.6 of the 2014 Agreement, Induction Training constituted work for which Ms Kelso was entitled to be paid at least \$25.04 per hour.

44. By reason of clause 3.6 of the 2014 Agreement, the 2014 Agreement Group Members were entitled to have been paid the rate specified in their contract as 'ordinary rate of pay' per hour for completing the Induction Training.

Particulars

- (i) Clause 3.6 of the 2014 Agreement set out the ordinary rate of pay that will be applicable from the commencement of that Enterprise Agreement.
 - (ii) On a proper construction of clause 3.6 of the 2014 Agreement, Induction Training constituted work for which the 2014 Agreement Group Members were entitled to have been paid at the hourly rate specified in their contract of employment.
45. In breach of clause 3.6 of the 2014 Agreement, the Respondent did not pay:
- a. Ms Kelso;
 - b. Ms Wesley; and
 - c. the 2014 Agreement Group Members referred to in paragraph 41, their ordinary rate of pay for the time taken to complete the Induction Training.
46. By reason of paragraphs 38 to 45 above, the Respondent contravened s. 50 of the FWA.

D.4 Overtime Breaches

D4.1 Pre-Shift Work

47. During the 2014 Agreement Period, for any rostered shifts that commenced at the same time as the relevant Lovisa Store opened for trade, the Respondent required the Applicants and the 2014 Agreement Group Members to attend each shift for between 15 to 30 minutes prior to the start time specified in the roster (**2014 Agreement Pre-Shift Period**).

Particulars

- (i) The Respondent required the Lovisa Stores to be open and ready for trade at the start time specified in the roster.

- (ii) The Respondent further required, amongst other matters, that 'time to shine' (morning cleaning) was undertaken before the store opened and that store layout and all promotions were up to date. The requirement was communicated to Ms Iob and Ms Kelso in a position description provided to them with their contracts of employment as managers. In respect of Ms Wesley, further particulars will be provided following discovery by the Respondent of Ms Wesley's position descriptions.
- (iii) The amount of time that the Applicants or the Group Members attended prior to the rostered start time depended on the particular Applicant or Group Member and the Lovisa Store that they worked at in that particular time.
- (iv) The requirement to undertake the tasks specified in paragraph 48 below was further communicated to Ms Wesley verbally during induction training by her Store Manager and Regional Manager, Ms Arrabella Saracho (**Ms Saracho**).
- (v) The requirement to undertake the tasks specified in paragraph 48 below was further communicated to Ms Iob and Ms Kelso verbally by their Regional Managers or State Managers. When Ms Iob was a Team Member, the requirement to undertake the tasks specified in paragraph 48 below was communicated to Ms Iob by her Store Manager. In case of Ms Iob, the requirement was initially communicated to her by Ms Melissa Cairns (**Ms Cairns**) and Ms Krystal Rushton (**Ms Rushton**). In case of Ms Kelso, the requirement was communicated to her by Ms Maggie Horton (**Ms Horton**). Further, express reminders to undertake those tasks were posted on LOLA.
- (vi) Some Regional Managers attended certain stores 15 minutes early to ensure that Ms Iob and some 2014 Agreement Group Members arrived at least 15 minutes early to commence their shift. Ms Wesley's Regional Manager (Ms Saracho) called Ms Wesley on each occasion to ensure that the tasks specified in paragraph 48 were being undertaken on time.

48. During the 2014 Agreement Pre-Shift Period, the Respondent required the Applicants and the 2014 Group Members to perform the following duties:

- a. count the cash in the till (register);
- b. ensure the store was neat and tidy;
- c. set up the Respondent's point of sales system; and

- d. write down the Lovisa Budget Targets (defined in particulars below) in the store diary for the day.

(2014 Agreement Pre-Shift Work).

Particulars

- (i) The Applicants refer to particulars in paragraph 47 above in relation to the requirement to perform the duties. Further, during the 2014 Agreement Period, the Respondent set a daily 'wage budget' and 'Key Performance Indicator Goals' (**Lovisa Budget Targets**) for each Lovisa Store.
- (ii) The 'wage budget' refers to the wage percentage allocated to each store by the Regional Manager. A wage percentage was allocated to each store to ensure wages were maintained within a certain percentage of sales.
- (iii) Key Performance Indicator Goals for Store Managers included achieving sales growth targets, add-on percentages (which refers to selling additional items for a discounted price), piercing ratios (which refers to a percentage of piercing undertaken), expense control and reduction and ensuring the completion of training available through LOLA by team members.
- (iv) The requirement to achieve the Lovisa Budget Targets was specified in Ms Iob and Ms Kelso's job descriptions as a Store Manager and Assistant Store Manager respectively.

D4.2 Post-Shift Work

49. During the 2014 Agreement Period, for any rostered shift that ended at the same time as, or after, the relevant Lovisa Store closed for trade, the Respondent required the Applicants and the 2014 Agreement Group Members to remain in each Lovisa Store for between 15 to 60 minutes after the finish time that was specified in the roster (**2014 Agreement Post-Shift Period**).

Particulars

- (i) The Respondent required the Applicants and the 2014 Agreement Group Members to complete the tasks outlined in paragraph 50 below, which required the Applicants and the 2014 Agreement Group Members to remain in store for 15 to 60 minutes.

- (ii) In circumstances where the rostered shift ended after the relevant store closed for trade, the completion of the tasks outlined in paragraph 50 below still required those relevant 2014 Agreement Group Members to remain in store after the rostered finish time.
 - (iii) As to the way in which the requirement was communicated, see the particulars under paragraph 50 below.
 - (iv) The amount of time that the Applicants or the Group Members stayed back after the rostered finish time depended on the particular Applicant or Group Member and the Lovisa Store that they worked at in that particular time.
50. During the 2014 Agreement Post-Shift Period, the Respondent required the Applicants and the 2014 Agreement Group Members to perform some or all of the following duties:
- a. ensure that any customers remaining in the store were served;
 - b. balance the till (register);
 - c. place the banking bag in the safe;
 - d. complete the point of sale report;
 - e. sweep and mop the floors and otherwise ensure that the Lovisa Store was neat and tidy;
 - f. calculate and record if the Lovisa Budget Targets were met; and
 - g. keep the store open to make more sales to achieve the Lovisa Budget Targets.

(2014 Agreement Post-Shift Work).

Particulars

- (i) The requirements in subparagraphs (a) to (f) were communicated to Ms Iob and Ms Wesley during induction training and 'on the job' training by their managers. In case of Ms Iob, the requirement was communicated to her by Ms Cairns and Ms Rushton. In case of Ms Wesley, the requirement was communicated to her by Ms Saracho.

- (ii) Ms Iob and Ms Kelso's job descriptions as a Store Manager and an Assistant Store Manager respectively also required them, amongst other matters, to undertake end of day merchandising, achieve Lovisa Budget Targets and ensure the store was clean. Some Regional Managers (including Ms Kelso's Regional Manager, (Ms Horton)) required Store Managers to post photos and videos of the store into the store Whatsapp chat to monitor compliance with these tasks.
- (iii) As to subparagraph (g), further to the particulars under paragraph 48 above, during the 2014 Agreement Period, the Respondent required the Applicants and the 2014 Agreement Group Members to meet the Lovisa Budget Targets. This requirement was reflected in the following employment practices engaged in, or the following directions issued by, the Respondent:
 - a. If the Applicants or the 2014 Agreement Group Members did not meet the Lovisa Budget Targets, a Regional Manager employed by the Respondent would question the Store Manager why the targets were not met. The Regional Managers' eligibility for bonuses depended on the stores for which they were responsible for meeting Lovisa Budget Targets. As a result, the Regional Managers exerted pressure on Store Managers to meet Lovisa Budget Targets. Further, Store Manager position descriptions required Store Managers to meet key performance indicators and challenge team members to achieve key performance indicators.
 - b. The Applicants and the 2014 Agreement Group Members were required to read the Lovisa Budget Targets for the day at the start of each day and record this in the store diary. The requirement to track sales hourly in the store diary was communicated to some Store Managers through a job description attached to their contract of employment. Ms Iob and Ms Kelso's job descriptions as a Store Manager and an Assistant Store Manager respectively specified such requirements. In respect of Ms Wesley, further particulars will be provided after discovery.
 - c. At the end of the day, the Applicants and the 2014 Agreement Group Members were required to calculate if the Lovisa Budget Targets had been met and record the outcome in the store diary and the store computer system. Some Regional Managers required Store Managers to post a photo of the completed store diary in the store Whatsapp chat.

- d. The Respondent awarded prizes to Lovisa Stores achieving the most Lovisa Budget Targets.

These practices created an expectation, culture and/or pressure for the Applicants and the 2014 Agreement Group Members to keep the store open after its scheduled closing time (and after the rostered end time) to continue making sales to meet and/or exceed Lovisa Budget Targets.

D4.3 Additional Managerial Work on Rostered Days Off

- 51. During the 2014 Agreement Period, the Respondent required
 - a. Ms Iob (only while in her Store Manager roles);
 - b. Ms Kelso; and
 - c. the 2014 Agreement Group Members who were performing the role of a Store Manager or an Assistant Store Manager (**2014 Agreement Managers**),

to perform duties for an average of one to two hours per week on days, or during times, in which they were not rostered to work (**2014 Agreement Additional Managerial Work**).

Particulars

- (i) The performance of the 2014 Agreement Additional Managerial Work was required in order to undertake the duties set out in paragraph 52 below, which were expected or required by the Respondent to be performed.
 - (ii) Team management expectations were communicated to some Store Managers and Assistant Store Managers in a job description attached to their contracts of employment with the Respondent. This created an expectation for 2014 Agreement Managers to be available to answer calls and text messages from team members on their rostered days off.
- 52. The 2014 Agreement Additional Managerial Work performed by Ms Iob, Ms Kelso and the 2014 Agreement Managers included the following duties:

- a. answering phone calls from team members rostered on in Lovisa Stores requiring assistance;
- b. resolving conflicts between team members;
- c. attending 'call outs' if a team member did not have access to the relevant Lovisa Store;
- d. arranging staff members to cover shifts when some staff members were unable to attend their shifts; and
- e. reporting any changes in shifts resulting from staff unavailability to the Respondent's relevant Regional Manager.

D4.4 Training Outside of Rostered Hours

53. During the 2014 Agreement Period, the Respondent required the Applicants and the 2014 Agreement Group Members to undertake training from time to time outside of their rostered hours of work (**2014 Agreement Training Outside of Rostered Hours**).

Particulars

- (i) The Applicants and the 2014 Agreement Group Members were required to undertake training from time to time through LOLA (**LOLA Training**) when additional training became available.
- (ii) LOLA Training was required to be undertaken outside of the Applicants and the 2014 Agreement Group Members' rostered hours of work as the Respondent did not allocate any paid time within their rosters to complete the LOLA Training.
- (iii) The requirements in (i) and (ii) above were communicated to the Applicants and some 2014 Agreement Group Members orally by their managers. In case of Ms Iob, the requirement was initially communicated to her by Ms Celeste Durso. In case of Ms Kelso, the requirement was communicated by Ms Horton. In case of Ms Wesley, the requirement was communicated to her by Ms Saracho.
- (iv) Some 2014 Agreement Group Members were provided with job descriptions in writing which required completing LOLA Training.

- (v) Some Store Managers and Assistant Store Managers were provided with job descriptions in writing that required them to achieve a target percentage of LOLA Training completed by team members.
- (vi) Ms Iob's Store Manager position descriptions relevantly required her to ensure the team members have completed LOLA Training and were up to date with company communication. Ms Kelso's Assistant Store Manager job description relevantly required her to ensure all team members had completed their LOLA Training and maintained a 90%+ LOLA completion rate.

D4.5 Unpaid Meal Breaks

54. During the 2014 Agreement Period, the Applicants and some 2014 Agreement Group Members worked shifts that were more than 5 hours up to 9 hours, or more than 9 hours, in a shift.

Particulars

- (i) Further particulars will be provided after the discovery by the Respondent of Ms Iob's rosters which, despite requests by solicitors for Ms Iob, have not been provided by the Respondent.
 - (ii) Ms Kelso worked the shifts as specified in paragraph 25 above. Further particulars will be provided after the discovery by the Respondent of Ms Kelso's rosters.
 - (iii) Ms Wesley worked the hours as specified in paragraph 30 above. Further particulars will be provided after the discovery by the Respondent of Ms Wesley's rosters.
55. By reason of clause 4.7(a) of the 2014 Agreement, the Applicants and the 2014 Agreement Group Members who worked:
- a. more than 5 hours up to 9 hours in a shift during the 2014 Agreement Period, were entitled to a 40-minute unpaid meal break.
 - b. more than 9 hours in a shift during the 2014 Agreement Period, were entitled to two 40-minute unpaid meal breaks.
56. During the 2014 Agreement Period, the Applicants and some 2014 Agreement Group Members who worked:
- a. more than 5 hours up to 9 hours, in a shift did not receive a full 40-minute unpaid meal break and were required to work during this period; and/or

- b. more than 9 hours in a shift did not receive two 40-minute unpaid meal breaks and were required to work during these periods

(2014 Agreement Work During Meal Breaks).

Particulars

- (i) Ms Iob did not receive a 40-minute unpaid meal break in the period between late November and early January in the year after (**Christmas Periods**) during her period of employment with the Respondent as she was required to be available to serve customers during her break.
- (ii) Ms Kelso received an unpaid meal break that was approximately 20-30 minutes long. Ms Kelso was required to be 'on-call' to serve customers during her 20-30 minute unpaid meal break.
- (iii) The requirement not to take unpaid meal breaks was further communicated in Ms Iob and Ms Kelso's job descriptions as managers which required them to ensure 'exceptional customer experience' and therefore be available to assist as and when needed. This created an expectation for Ms Iob and Ms Kelso to be available to assist customers during their meal breaks as there was inadequate staffing resources.
- (iv) Ms Wesley had interrupted unpaid meal breaks as she was asked to provide assistance to other staff while on her break. Ms Wesley was asked and expected to be available to assist customers as and when needed.
- (v) The Applicants also refer to particulars contained in paragraphs 48 and 50 above regarding the requirement to meet Lovisa Budget Targets.
- (vi) Further particulars may be provided following discovery.

D4.6 Paid Rest Breaks

- 57. During the 2014 Agreement Period, the Applicants and some 2014 Agreement Group Members worked shifts that were more than 4 hours up to 9 hours, or more than 9 hours, in a shift.

Particulars

- (i) Further particulars will be provided after the discovery by the Respondent of Ms lob's rosters which, despite requests by solicitors for Ms lob, have not been provided by the Respondent.
- (ii) Ms Kelso worked the shifts as specified in paragraph 25 above. Further particulars will be provided after the discovery by the Respondent of Ms Kelso's rosters.
- (iii) Ms Wesley worked the hours as specified in paragraph 30 above. Further particulars will be provided after the discovery by the Respondent of Ms Wesley's rosters.

58. By reason of clause 4.7(a) of the 2014 Agreement, the Applicants and the 2014 Agreement Group Members who worked:

- a. more than 4 hours but less than 7 hours in a shift during the 2014 Agreement Period, were entitled to a 10-minute paid break; or
- b. more than 7 hours up to 9 hours in a shift, or more than 9 hours in a shift during the 2014 Agreement Period, were entitled to two 10-minute paid breaks.

59. During the 2014 Agreement Period, the Applicants and some 2014 Agreement Group Members who worked:

- a. more than 4 hours but less than 7 hours in a shift did not always receive their entitlement to a 10-minute paid rest break, and were required to work during that time; and/or
- b. more than 7 hours up to 9 hours in a shift, or more than 9 hours in a shift did not always receive two 10-minute paid rest breaks and were required to work in that time

(2014 Agreement Work During Meal Breaks).

Particulars

- (i) Ms lob did not receive some of her paid rest breaks as she was required to be available to serve customers during her rest breaks. In particular, during morning shifts, Ms lob was required to keep the store open. As there were no other team members present, Ms lob was required to be available to serve customers during her rest breaks.

- (ii) Ms Kelso rarely received paid rest breaks as she was required to be available to serve customers during her rest breaks.
- (iii) Ms Wesley did not receive some of her paid rest breaks as she was often rostered on her own. Ms Wesley was required to keep the store open. As there were no other team members present, Ms Wesley was required to be available to serve customers during her rest breaks.
- (iv) The requirement was further communicated in Ms Iob and Ms Kelso's job descriptions as managers which required them to ensure 'exceptional customer experience' and therefore be available to assist as and when needed. This created an expectation for Ms Iob and Ms Kelso to be available to assist customers during their paid rest breaks as there was inadequate staffing resources.
- (v) The Applicants also refer to particulars contained in paragraphs 48 and 50 regarding the requirement to meet Lovisa Budget Targets.
- (vi) Further particulars may be provided following discovery.

D.5 Failure to Pay Overtime

D4.1 2014 Agreement Part-Time Pre-Shift Work

60. Ms Iob (during her employment as a part-time Team Member and part-time Store Manager), Ms Wesley (during the period in which her part-time employment was covered by the 2014 Agreement), and 2014 Agreement Group Members who were employed part-time by the Respondent (**Part-Time 2014 Agreement Period Group Members**), worked:
- a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Pre-Shift Work; and/or
 - b. outside of the agreed hours per fortnightly roster cycle for the purposes of clause 4.3(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Pre-Shift Work; and
 - c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Pre-Shift Work was outside of Ms Iob and Ms Wesley's rostered hours because it constituted work performed prior to their rostered start time.
- (ii) In relation to subparagraph (b), the 2014 Agreement Pre-Shift Work was outside of Ms Iob and Ms Wesley's rostered hours because it was in excess of their agreed ordinary hours per fortnightly roster cycle.
- (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
- (iv) Further particulars will be provided in respect of Ms Iob and Ms Wesley after discovery of their rosters. In the case of Ms Iob, despite request, the Respondent has not provided the rosters.

61. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Pre-Shift Work was approved by the relevant line managers prior to Ms Iob and the Part-Time 2014 Agreement Period Group Members performing that work.

Particulars

- (i) Ms Iob's line managers Ms Cairns, Ms Rushton or Ms Briony Saunders (**Ms Saunders**) approved the 2014 Agreement Pre-Shift Work by reason of the matters referred to in paragraphs 47 and 48 above.
- (ii) Ms Wesley's Regional Manager, Ms Saracho, (or other line managers responsible for Ms Wesley from time to time) approved the 2014 Agreement Pre-Shift Work by reason of the matters referred to in paragraphs 47 and 48 above.

62. By reason of paragraphs 60 and 61 above, Ms Iob (as a part-time employee), Ms Wesley and the Part-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Pre-Shift Work in accordance with clause 4.6(d) of the 2014 Agreement.

63. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in part-time roles), Ms Wesley or the Part-Time 2014 Agreement Period Group Members overtime in respect of their performance

of the 2014 Agreement Pre-Shift Work, in each fortnight in which those employees worked.

64. By reason of paragraphs 60 to 63, the Respondent breached s. 50 of the FWA.

D4.2 2014 Agreement Full-Time Pre-Shift Work

65. Ms Iob (during her employment as a full-time Store Manager), Ms Kelso (during the period in which her full-time employment was covered by the 2014 Agreement), and Group Members who were employed full-time by the Respondent during the 2014 Agreement Period (**Full-Time 2014 Agreement Period Group Members**) worked:

- a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Pre-Shift Work; and/or
- b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.3(a) of the 2014 Agreement by reason of them performing the 2014 Agreement Pre-Shift Work; and
- c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Pre-Shift Work was outside of Ms Iob and Ms Kelso's rostered hours because it constituted work performed prior to their rostered start time.
- (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clause 2.2 of the 2014 Agreement). The performance of the 2014 Agreement Pre-Shift Work meant that Ms Iob and Ms Kelso worked more than 76 hours per fortnight.
- (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

- (iv) Further particulars will be provided after discovery of Ms Iob and Ms Kelso's rosters. In case of Ms Iob, despite request, the Respondent has not provided the rosters.
66. The 2014 Agreement Pre-Shift Work was approved by the relevant line managers prior to Ms Iob, Ms Kelso and the Full-Time 2014 Agreement Period Group Members performing that work for the purposes of clause 4.6(c) of the 2014 Agreement.

Particulars

- (i) Ms Iob's line managers Ms Saunders, Kimberley Galea (**Ms Galea**) or Ms Cairns approved the 2014 Agreement Pre-Shift Work by reason of the matters referred to in paragraphs 47 and 48 above.
 - (ii) Ms Kelso's line manager Pooja Thakar (**Ms Thakar**) approved the 2014 Agreement Pre-Shift Work by reason of the matters referred to in paragraphs 47 and 48 above.
67. By reason of paragraphs 65 and 66 above, Ms Iob (as a full-time employee), Ms Kelso and the Full-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Pre-Shift Work in accordance with clause 4.6(d) of the 2014 Agreement.
68. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in full-time roles), Ms Kelso and the Full-Time 2014 Agreement Period Group Members overtime in respect of the 2014 Agreement Pre-Shift Work, in each fortnight in which those employees worked.
69. By reason of paragraphs 65 to 68 above, the Respondent breached s. 50 of the FWA.

D4.3 2014 Agreement Part-Time Post-Shift Work

70. Ms Iob (during her employment as a part-time Team Member and part-time Store Manager), Ms Wesley (during the period in which her employment was covered by the 2014 Agreement) and Part-Time 2014 Agreement Period Group Members, worked:

- a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Post-Shift Work; and/or
- b. outside of the agreed hours per fortnightly roster cycle for the purposes of clause 4.3(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Post-Shift Work; and
- c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Post-Shift Work was outside of Ms Iob and Ms Wesley's rostered hours because it constituted work performed after their rostered finish time.
 - (ii) In relation to subparagraph (b), the 2014 Agreement Post-Shift Work was outside of Ms Iob and Ms Wesley's roster because it was in excess of their agreed ordinary hours per fortnightly roster cycle.
 - (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
 - (iv) Further particulars in respect of Ms Iob and Ms Wesley will be provided after discovery of their rosters. In the case of Ms Iob, despite requests, the Respondent has not provided the rosters.
71. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Post-Shift Work was approved by the relevant line managers prior to Ms Iob, Ms Wesley and the Part-Time 2014 Agreement Period Group Members performing that work.

Particulars

- (i) Ms Iob's line managers Ms Cairns, Ms Rushton or Ms Saunders approved the Post-Shift Work by reason of the matters referred to in paragraphs 49 and 50 above.
- (ii) Ms Wesley's Regional Manager, Ms Saracho, (or other line managers responsible from time to time) approved the 2014 Agreement Post-Shift Work by reason of the matters referred to in paragraphs 49 and 50 above.

72. By reason of paragraphs 70 and 71 above, Ms Iob (as a part-time employee), Ms Wesley, and Part-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Post-Shift Work in accordance with clause 4.6(d) of the 2014 Agreement.
73. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in part-time roles), Ms Wesley or the Part-Time 2014 Agreement Period Group Members overtime in respect of their performance of the 2014 Agreement Post-Shift Work, in each fortnight in which those employees worked.
74. By reason of paragraphs 70 to 73 above, the Respondent breached s. 50 of the FWA.

D4.4 2014 Agreement Full-Time Post-Shift Work

75. Ms Iob (during her employment as a full-time Store Manager), Ms Kelso (during the period in which her full-time employment was covered by the 2014 Agreement), and Full-Time 2014 Agreement Period Group Members worked:
- a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Post-Shift Work; and/or
 - b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.3(a) of the 2014 Agreement by reason of them performing the 2014 Agreement Post-Shift Work; and
 - c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Post-Shift Work was outside of their rostered hours because it constituted work performed after their rostered finish time.

- (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clause 2.2 of the 2014 Agreement). The performance of the 2014 Agreement Post-Shift Work meant that Ms Iob, Ms Kelso and the Full-Time 2014 Agreement Period Group Members worked more than 76 hours per fortnight.
 - (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
 - (iv) Further particulars in respect of Ms Iob and Ms Kelso will be provided after discovery of their rosters. In respect of Ms Iob, despite requests, the Respondent has not provided the rosters.
76. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Post-Shift Work was approved by the relevant line managers prior to Ms Iob, Ms Kelso and the Full-Time 2014 Agreement Period Group Members performing that work.

Particulars

- (i) Ms Iob's line managers Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Post-Shift Work by reason of the matters referred to in paragraphs 49 and 50 above.
 - (ii) Ms Kelso's line manager Ms Thakar approved the 2014 Agreement Post-Shift Work by reason of the matters referred to in paragraphs 49 and 50 above.
77. By reason of paragraphs 75 and 76 above, Ms Iob (as a full-time employee), Ms Kelso and the Full-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Post-Shift Work in accordance with clause 4.6(d) of the 2014 Agreement.
78. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in full-time roles), Ms Kelso and the Full-Time 2014 Agreement Period Group Members overtime in respect of the 2014 Agreement Post-Shift Work, in each fortnight in which those employees worked.
79. By reason of paragraphs 75 to 78 above, the Respondent breached s. 50 of the FWA.

D4.5 2014 Agreement Additional Managerial Work on Rostered Days Off (Part-Time Managers)

80. Ms lob (during her employment as a part-time Store Manager) and Group Members who performed the role of a part-time Store Manager or a part-time Assistant Store Manager for the Respondent in the 2014 Agreement Period (**Part-Time Managers in the 2014 Agreement Period**), worked:
- a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Additional Managerial Work; and/or
 - b. outside of the agreed hours per fortnightly roster cycle for the purposes of clause 4.3(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Additional Managerial Work; and
 - c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Additional Managerial Work was outside of Ms lob's rostered hours because it constituted work performed during hours that were not included in her roster.
 - (ii) In relation to subparagraph (b), the 2014 Agreement Additional Managerial Work was outside of Ms lob's roster because it was in excess of her agreed ordinary hours per fortnightly roster cycle.
 - (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
 - (iv) Further particulars in respect of Ms lob will be provided after discovery, which despite requests, the Respondent has not provided.
81. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Additional Managerial Work was approved by the relevant line managers prior to Ms lob and the Part-Time Managers in the 2014 Agreement Period performing that work.

Particulars

Ms Iob's line managers Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Additional Managerial Work by reason of the matters referred to in paragraphs 51 and 52 above.

82. By reason of paragraphs 80 and 81 above, Ms Iob (as a part-time Store Manager), and the Part-Time Managers in the 2014 Agreement Period were entitled to overtime in relation to the performance of the 2014 Agreement Additional Managerial Work in accordance with clause 4.6(d) of the 2014 Agreement.
83. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in part-time Store Manager roles) or the Part-Time Managers in the 2014 Agreement Period overtime in respect of their performance of the 2014 Agreement Additional Managerial Work, in each fortnight in which those employees worked.
84. By reason of paragraphs 80 to 83, the Respondent breached s. 50 of the FWA.

D4.6 2014 Agreement Additional Managerial Work on Rostered Days Off (Full-Time Managers)

85. Ms Iob (during her employment as a full-time Store Manager), Ms Kelso (during the period in which her full-time employment was covered by the 2014 Agreement), and Group Members who performed the role of a full-time Store Manager or a full-time Assistant Store Manager for the Respondent in the 2014 Agreement Period (**Full-Time Managers in the 2014 Agreement Period**), worked:
 - a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Additional Managerial Work; and/or
 - b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.3(a) of the 2014 Agreement by reason of them performing the 2014 Agreement Additional Managerial Work; and

- c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Additional Managerial Work was outside of Ms Iob and Ms Kelso's rostered hours because it constituted work performed during hours that were not included in their roster.
 - (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clause 2.2 of the 2014 Agreement). The performance of the 2014 Agreement Additional Managerial Work meant that Ms Iob and Ms Kelso worked more than 76 hours per fortnight.
 - (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
 - (iv) Further particulars will be provided in respect of Ms Iob and Ms Kelso after discovery of their rosters. In case of Ms Iob, despite request, the Respondent has not provided the rosters.
86. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Additional Managerial Work was approved by the relevant line managers prior to Ms Iob, Ms Kelso and the Full-Time Managers in the 2014 Agreement Period performing that work.

Particulars

- (i) Ms Iob's line manager at the time Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Additional Managerial Work by reason of the matters referred to in paragraphs 51 and 52 above.
 - (ii) Ms Kelso's line manager, Ms Horton, approved the 2014 Agreement Additional Managerial Work by reason of the matters referred to in paragraphs 51 and 52 above.
87. By reason of paragraphs 85 and 86 above, Ms Iob (as a full-time Store Manager), Ms Kelso and the Full-Time Managers in the 2014 Agreement Period were entitled to overtime in relation to the performance of the 2014 Agreement Additional Managerial Work in accordance with clause 4.6(d) of the 2014 Agreement.

88. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in full-time Store Manager roles), Ms Kelso or the Full-Time Managers in the 2014 Agreement Period overtime in respect of the 2014 Agreement Additional Managerial Work, in each fortnight in which those employees worked.
89. By reason of paragraphs 85 to 88 above, the Respondent breached s. 50 of the FWA.

D4.7 2014 Agreement Training Outside of Rostered Hours (Part-Time)

90. Ms Iob (during her employment as a part-time Team Member and part-time Store Manager) and Part-Time 2014 Agreement Period Group Members worked:
- a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Training Outside of Rostered Hours; and/or
 - b. outside of the agreed hours per fortnightly roster cycle for the purposes of clause 4.3(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Training Outside of Rostered Hours; and
 - c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Training Outside of Rostered Hours was outside of Ms Iob's rostered hours because the time taken to perform that work was not included in her roster.
- (ii) In relation to subparagraph (b), the 2014 Agreement Training Outside of Rostered Hours was outside of Ms Iob's roster because it was in excess of her agreed ordinary hours per fortnightly roster cycle.
- (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

- (iv) Further particulars will be provided in respect of Ms lob after discovery of Ms lob's rosters. Despite requests, the Respondent has not provided Ms lob's rosters.

91. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Training Outside of Rostered Hours was approved by the relevant line managers prior to Ms lob and the Part-Time 2014 Agreement Period Group Members performing that work

Particulars

Ms lob's line managers Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Training Outside of Rostered Hours by reason of the matters referred to in paragraph 53 above.

- 92. By reason of paragraphs 90 and 91 above, Ms lob (as a part-time employee) and the relevant Part-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Training Outside of Rostered Hours in accordance with clause 4.6(d) of the 2014 Agreement.
- 93. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms lob (while in part-time roles) and the relevant Part-Time 2014 Agreement Period Group Members overtime in respect of their performance of the 2014 Agreement Training Outside of Rostered Hours, in each fortnight in which those employees did that training.
- 94. By reason of paragraphs 90 to 93 above, the Respondent breached s. 50 of the FWA.

D4.8 2014 Agreement Training Outside of Rostered Hours (Full-Time)

- 95. Ms lob (during her employment as a full-time Store Manager) and some Full-Time 2014 Agreement Period Group Members worked:
 - a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Training Outside of Rostered Hours; and/or

- b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.3(a) of the 2014 Agreement by reason of performing the 2014 Agreement Training Outside of Rostered Hours; and
- c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Training Outside of Rostered Hours was outside of Ms lob's rostered hours because the time taken to perform that work was not included in her roster.
 - (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clause 2.2 of the 2014 Agreement). The performance of the 2014 Agreement Training Outside of Rostered Hours meant that Ms lob worked more than 76 hours per fortnight in each fortnight when she did that training.
 - (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
 - (iv) Further particulars will be provided in respect of Ms lob after discovery of Ms lob's rosters. Despite requests, the Respondent has not provided Ms lob's rosters.
96. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Training Outside of Rostered Hours was approved by the relevant line managers prior to Ms lob and the Full-Time 2014 Agreement Period Group Members performing that work.

Particulars

Ms lob's line managers Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Training Outside of Rostered Hours by reason of the matters referred to in paragraph 53 above.

97. By reason of paragraphs 95 and 96 above, Ms lob (as a full-time employee) and the relevant Full-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement

Training Outside of Rostered Hours in accordance with clause 4.6(d) of the 2014 Agreement.

98. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in full-time roles), and the relevant Full-Time 2014 Agreement Period Group Members, overtime in respect of the 2014 Agreement Training Outside of Rostered Hours, in each fortnight in which those employees did that training.
99. By reason of paragraphs 95 to 98 above, the Respondent breached s. 50 of the FWA.

D4.9 2014 Agreement Work during Meal Breaks (Part-Time)

100. Ms Iob (during her employment as a part-time Team Member and part-time Store Manager), Ms Wesley (during the period in which her part-time employment was covered by the 2014 Agreement) and some Part-Time 2014 Agreement Period Group Members worked:
 - a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Work During Meal Breaks; and/or
 - b. outside of the agreed hours per fortnightly roster cycle for the purposes of clause 4.3(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Work During Meal Breaks; and
 - c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Work During Meal Breaks was outside of Ms Iob and Ms Wesley's rostered hours because it constituted work performed during a time she ought to have been on a rostered unpaid break.
- (ii) In relation to subparagraph (b), the 2014 Work During Meal Breaks was outside of Ms Iob and Ms Wesley's roster because it was work

performed in excess of their agreed ordinary hours per fortnightly roster cycle.

(iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

(iv) Further particulars will be provided in respect of Ms Iob and Ms Wesley after discovery of Ms Iob and Ms Wesley's rosters. Despite requests by the Applicants' solicitors, the Respondent has not provided Ms Iob's rosters.

101. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Work During Meal Breaks was approved by the relevant line managers prior to Ms Iob, Ms Wesley and some Part-Time 2014 Agreement Period Group Members performing that work.

Particulars

(i) Ms Iob's line managers Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Work During Meal Breaks by reason of the matters referred to in particulars in paragraph 56 above.

(ii) Ms Wesley's Regional Manager, Ms Saracho (or other line managers responsible from time to time) approved the 2014 Agreement Work During Meal Breaks by reason of the matters referred to in particulars in paragraph 56 above.

102. By reason of paragraphs 100 and 101 above, Ms Iob (as a part-time employee), Ms Wesley and some Part-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Work During Meal Breaks in accordance with clause 4.6(d) of the 2014 Agreement.

103. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in part-time roles), Ms Wesley and some Part-Time 2014 Agreement Period Group Members overtime in respect of their performance of the 2014 Agreement Work During Meal Breaks, in each fortnight in which those employees performed that work.

104. By reason of paragraphs 100 to 103 above, the Respondent breached s. 50 of the FWA.

105. Further, by not providing Ms Iob (as a part-time employee), Ms Wesley and some Part-Time 2014 Agreement Period Group Members with the required unpaid meal breaks, the Respondent breached clause 4.7(a) of the 2014 Agreement.
106. By reason of paragraph 105 above, the Respondent breached s. 50 of the FWA.

D4.10 2014 Agreement Work during Meal Breaks (Full-Time)

107. Ms Iob (during her employment as a full-time Store Manager), Ms Kelso (during the period in which her full-time employment was covered by the 2014 Agreement), and some Full-Time 2014 Agreement Period Group Members worked:
 - a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Work During Meal Breaks; and/or
 - b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.3(a) of the 2014 Agreement by reason of them performing the 2014 Agreement Work During Meal Breaks; and
 - c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Work During Meal Breaks was outside of their rostered hours because it constituted work performed during a time she ought to have been on a set rostered unpaid break.
- (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clause 2.2 of the 2014 Agreement). The performance of the 2014 Agreement Work During Meal Breaks meant that Ms Iob, Ms Kelso and some Full-Time 2014 Agreement Period Group Members worked more than 76 hours per fortnight.

- (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
 - (iv) Further particulars in respect of Ms Iob and Ms Kelso will be provided after discovery of Ms Iob's and Ms Kelso's rosters. Despite requests, the Respondent has not provided Ms Iob's rosters.
108. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Work During Meal Breaks was approved by the relevant line managers prior to Ms Iob, Ms Kelso and the relevant Full-Time 2014 Agreement Period Group Members performing that work.

Particulars

- (i) Ms Iob's line managers Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Work During Meal Breaks by reason of the matters referred to in particulars in paragraph 56 above.
 - (ii) Ms Kelso's line managers Ms Thakar or Ms Horton approved the 2014 Agreement Work During Meal Breaks by reason of the matters referred to in particulars in paragraph 56 above.
109. By reason of paragraphs 107 and 108 above, Ms Iob (as a full-time employee), Ms Kelso and some Full-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Work During Meal Breaks in accordance with clause 4.6(d) of the 2014 Agreement.
110. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob, Ms Kelso and the Full-Time 2014 Agreement Period Group Members overtime in respect of the 2014 Agreement Work During Meal Breaks, in each fortnight in which those employees performed that work.
111. By reason of paragraphs 107 to 110, the Respondent breached s. 50 of the FWA.
112. Further, by not providing Ms Iob, Ms Kelso and the Full-Time 2014 Agreement period Group Members unpaid meal breaks to which they were entitled to, the Respondent breached clause 4.7(a) of the 2014 Agreement.
113. By reason of paragraph 112, the Respondent breached s. 50 of the FWA.

D4.11 2014 Agreement Work during Rest Breaks (Part-Time)

114. Ms Iob (during her employment as a part-time Team Member and part-time Store Manager), Ms Wesley (during the period in which her part-time employment was covered by the 2014 Agreement), and some Part-Time 2014 Agreement Period Group Members worked:
- a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Work During Rest Breaks; and/or
 - b. outside of the agreed hours per fortnightly roster cycle for the purposes of clause 4.3(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Work During Rest Breaks; and
 - c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Work During Rest Breaks was outside of Ms Iob and Ms Wesley's rostered hours because it constituted work performed during a time they ought to have been on a rostered paid break.
 - (ii) In relation to subparagraph (b), the 2014 Agreement Work During Rest Breaks was outside of Ms Iob and Ms Wesley's roster because it was work performed in excess of their agreed ordinary hours per fortnightly roster cycle.
 - (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
 - (iv) Further particulars will be provided in respect of Ms Iob and Ms Wesley after discovery of Ms Iob and Ms Wesley's rosters. In respect of Ms Iob, despite request, the Respondent has not provided the rosters.
115. For the purposes of clause 4.6(c) of the 2014 Agreement, the 2014 Agreement Work During Rest Breaks was approved by the relevant line managers prior to Ms Iob, Ms Wesley and some Part-Time 2014 Agreement Period Group Members performing that work.

Particulars

- (i) Ms Iob's line managers Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Work During Rest Breaks by reason of the matters referred to in particulars in paragraph 59 above.
 - (ii) Ms Wesley's Regional Manager Ms Saracho (or other line managers responsible from time to time) approved the 2014 Agreement Work During Rest Breaks by reason of the matters referred to in particulars in paragraph 59 above.
116. By reason of paragraphs 114 and 115 above, Ms Iob, Ms Wesley and some Part-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Work During Rest Breaks in accordance with clause 4.6(d) of the 2014 Agreement.
117. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in part-time roles), Ms Wesley and some Part-Time 2014 Agreement Period Group Members overtime in respect of their performance of the 2014 Agreement Work During Rest Breaks, in each fortnight in which those employees performed that work.
118. By reason of paragraphs 114 to 117 above, the Respondent breached s. 50 of the FWA.
119. Further, by not providing Ms Iob (as a part-time employee), Ms Wesley and some part-time 2014 Agreement Period Group Members with the rest breaks to which they were entitled, the Respondent breached clause 4.7(a) of the 2014 Agreement.
120. By reason of paragraph 119 above the Respondent breached s. 50 of the FWA.

D4.12 2014 Agreement Work during Rest Breaks (Full-Time)

121. Ms Iob (during her employment as a full-time Store Manager), Ms Kelso (during the period in which her full-time employment was covered by the 2014 Agreement), and some Full-Time 2014 Agreement Period Group Members worked:

- a. outside of their rostered hours for the purposes of clause 4.2(a) of the 2014 Agreement on each day in which they performed the 2014 Agreement Work During Rest Breaks; and/or
- b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.3(a) of the 2014 Agreement by reason of them performing the 2014 Agreement Work During Rest Breaks; and
- c. by reason of sub-paragraphs (a) and/or (b) above, outside the conditions set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.

Particulars

- (i) In relation to subparagraph (a) above, the 2014 Agreement Work During Rest Breaks was outside of their rostered hours because it constituted work performed while they ought to have been on a rostered paid break.
 - (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clause 2.2 of the 2014 Agreement). The performance of the 2014 Agreement Work During Rest Breaks meant that Ms Iob, Ms Kelso and some Full-Time 2014 Agreement Period Group Members worked more than 76 hours per fortnight.
 - (iii) In relation to subparagraph (c), clauses 4.2(a) and 4.3(a) are set out in the 'Part 4 - Hours of Work' part of the 2014 Agreement.
 - (iv) Further particulars in respect of Ms Iob and Ms Kelso will be provided after discovery of Ms Iob and Ms Kelso's rosters. Despite requests, the Respondent has not provided Ms Iob's rosters.
122. The 2014 Agreement Work During Rest Breaks was approved by the relevant line managers prior to Ms Iob, Ms Kelso and the relevant Full-Time 2014 Agreement Period Group Members performing that work for the purposes of clause 4.6(c) of the 2014 Agreement.

Particulars

- (i) Ms Iob's line managers Ms Saunders, Ms Galea or Ms Cairns approved the 2014 Agreement Work During Rest Breaks by reason of the matters referred to in the particulars in paragraph 59 above.

- (ii) Ms Kelso's line managers Ms Thakar or Ms Horton approved the 2014 Agreement Work During Rest Breaks by reason of the matters referred to in the particulars in paragraph 59 above.
123. By reason of paragraphs 121 and 122 above, Ms Iob (as a full-time employee), Ms Kelso and some Full-Time 2014 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2014 Agreement Work During Rest Breaks in accordance with clause 4.6(d) of the 2014 Agreement.
124. In breach of clause 4.6(d) of the 2014 Agreement, the Respondent did not pay Ms Iob (while in full-time roles), Ms Kelso and the Full-Time 2014 Agreement Period Group Members overtime in respect of the 2014 Agreement Work During Rest Breaks, in each fortnight in which those employees performed that work.
125. By reason of paragraphs 121 to 124, the Respondent breached s. 50 of the FWA.
126. Further, by not providing Ms Iob, Ms Kelso and the relevant Full-Time 2014 Agreement Period Group Members the paid rest breaks to which they were entitled, the Respondent breached clause 4.7(a) of the 2014 Agreement.
127. By reason of paragraph 126, the respondent breached s. 50 of the FWA.

D.6 2014 Agreement Failure to Pay Travel Allowance

128. During the 2014 Agreement Period, on one or more occasions, the Respondent required Ms Iob, Ms Kelso and some 2014 Agreement Group Members to travel outside of their normal travel to and from their designated Lovisa Store.

Particulars

- (i) In or about 2020, Ms Iob travelled an approximate distance of 56km to the Lovisa Store in Craigieburn from her designated Melton West Store and then returned to her home located approximately 34km from the Craigieburn Store. Ms Iob was required to travel to the Craigieburn Store by her Regional Manager to train the Craigieburn Store's Store Manager at the time.

- (ii) In or about September 2022, Ms Kelso was required to travel to the Lovisa Store in Tuggeranong (**Tuggeranong Store**) instead of her designated Canberra Store for a period of approximately 1 week for training. Ms Kelso was directed by Ms Horton to attend training at the Tuggeranong Store.

129. The travel described in paragraph 128 above was at the request of the Respondent for the purposes of its business and outside of Ms Iob, Ms Kelso and the relevant 2014 Agreement Group Members' normal travel to and from work.

Particulars

The Applicants refer to the particulars under paragraph 128 above.

130. By reason of paragraphs 128 and 129, Ms Iob, Ms Kelso and some 2014 Agreement Group Members undertook authorised travel for work purposes within the meaning of clause 6.9 of the 2014 Agreement.

131. In breach of clause 6.9 of the 2014 Agreement, the Respondent did not pay Ms Iob, Ms Kelso or some of the 2014 Group Members 82 cents per kilometre where the authorised travel was by a motor vehicle (**2014 Agreement Failure to Pay Travel Allowance**).

132. By reason of paragraphs 128 to 131 above, the Respondent breached s. 50 of the FWA.

D.7 2014 Agreement Failure to Provide 10-hour Break between Shifts

133. By reason of clause 4.3(g) of the 2014 Agreement, the Respondent was required to observe a 10-hour break between the completion of one day's work and the commencement of the next day's work.

134. During the Christmas Periods in the 2014 Agreement Period, Ms Iob and some 2014 Agreement Group Members were rostered by the Respondent to work shifts with less than a 10-hour break in between the completion of one day's work and the commencement of the next day's work.

Particulars

Further particulars will be provided after discovery of Ms lob's rosters from the Respondent, which despite requests have not been provided by the Respondent.

135. By reason of paragraphs 133 and 134 above, the Respondent breached clause 4.3(g) of the 2014 Agreement (**2014 Agreement Failure to Provide 10-hour Breaks between Shifts**).
136. By reason of paragraphs 133 to 135 above, the Respondent breached s. 50 of the FWA.

D.8 Ms lob's Shortfall in Pay

137. Pursuant to clause 4 of Ms lob's 2020 Contract of Employment, the Respondent was required to pay Ms lob \$24.25 per hour for all ordinary hours of work and in respect of any accrued annual leave or sick leave.
138. In breach of clause 4 of Ms lob's 2020 Contract of Employment, in the period between 13 January 2020 and 2 February 2020, the Respondent paid Ms lob at a rate of \$21.65 per hour (**Incorrect Base Rate**) for:
 - a. all ordinary hours worked; and
 - b. in respect of accrued annual leave and sick leave taken during this period.

Particulars

- (i) Ms lob's payslips for the pay period between 13 January 2020 and 2 February 2020 indicate that she was paid at the Incorrect Base Rate during this period.
 - (ii) In the pay period between 20 January 2020 and 26 January 2020, Ms lob was paid at the Incorrect Base Rate for a day of sick leave taken.
 - (iii) In the pay period between 27 January 2020 to 2 February 2020, Ms lob was paid at the Incorrect Base Rate for annual leave taken.
139. Ms lob suffered loss as a result of the Respondent's breach in paragraph 138.

E. 2022 AGREEMENT

E.1 Coverage and Application

140. The Lovisa Enterprise Agreement 2022 (**2022 Agreement**):

- a. came into operation on 18 October 2022; and
- b. continues to operate during the remainder of the Relevant Period.

Particulars

The 2022 Agreement was approved by the Fair Work Commission on 11 October 2022 and came into effect on 18 October 2022 in accordance with s. 54 of the FWA. The 2022 Agreement has not been replaced by another enterprise agreement.

141. The 2022 Agreement covered and applied to Ms Kelso and the Group Members who were employed by the Respondent in the Relevant Positions during the period between 18 October 2022 and the end of the Relevant Period (**2022 Agreement Period**) for the purpose of s. 52 and s. 53 of the FWA (**2022 Agreement Group Members**).

Particulars

- (i) Clause 1.1(a) of the 2022 Agreement states that it will have application to all retail store team members of the Respondent who are classified within the 2022 Agreement.
- (ii) Part 3 of the 2022 Agreement is titled 'Wages and Classification Structure'. Clause 3.6 sets out the wage structure for each of the positions listed in Attachment B. The Relevant Positions are listed in the 'Classification' column. They relevantly include, in relation to Ms Kelso, an Assistant Store Manager and a Store Manager B. In relation to Ms Wesley, they include a Team Member.

E.2 2022 Agreement Roster Breaches

142. During the 2022 Agreement Period, the Respondent was required to draw up a roster for each fortnightly pay cycle for Ms Kelso, Ms Wesley and the 2022 Agreement Group Members who worked in the Relevant Positions.

Particulars

See clause 4.2(a) of the 2022 Agreement. This fortnightly roster was to be made available 4 days in advance of the fortnightly pay period that it applied to.

143. During the 2022 Agreement Period, the Respondent drew up rosters that set out the start and finish times of each shift applicable to Ms Kelso, Ms Wesley and the 2022 Agreement Group Members that covered a period of only one week at a time.

Particulars

The rosters were drawn up by the Respondent and accessed by Ms Kelso, Ms Wesley and the 2022 Agreement Group Members on LOLA.

144. By reason of paragraphs 142 and 143 above, the Respondent breached clause 4.2(a) of the 2022 Agreement in relation to each fortnightly period in which Ms Kelso, Ms Wesley and the 2022 Agreement Group Members were employed (**2022 Agreement Roster Breaches**).
145. By reason of the 2022 Agreement Roster Breaches, the Respondent contravened s. 50 of the FWA.

E.3 Overtime Breaches

E3.1 Pre-Shift Work

146. During the 2022 Agreement Period, for any rostered shifts that commenced at the same time as the relevant Lovisa Store opened for trade, the Respondent required Ms Kelso, Ms Wesley and the 2022 Agreement Group Members to attend each shift for between 15 to 30 minutes prior to the start time specified in the roster (**2022 Agreement Pre-Shift Period**).

Particulars

- (i) The Applicants refer to the particulars under paragraphs 47 and 48 above as it relates to Ms Kelso and Ms Wesley.
- (ii) The amount of time that Ms Kelso, Ms Wesley or the Group Members attended prior to the rostered start time depended on the particular

Applicant or Group Member and the Lovisa Store that they worked at in that particular time.

- (iii) The requirement to undertake the tasks specified in paragraph 147 below was further communicated to Ms Kelso and Ms Wesley verbally by their managers. Further, express reminders to undertake those tasks were posted on LOLA.
- (iv) Ms Kelso also received a document titled 'Assistant Store Manager Position Description and Key Measures' and a document titled 'Store Manager Job Description' annexed to her contract of employment with the Respondent dated 15 September 2022 and 30 December 2022 respectively. These job descriptions relevantly required her to undertake 'time to shine' (morning cleaning), ensure the store is always clean and tidy for customers, track sales hourly using the store diary and ensure that sale set ups are completed as per sale guidelines and on time.
- (v) Ms Kelso was required by her Regional Manager, Ms Horton, or State Manager, Ms Linda Samuel (**Ms Samuel**), via a verbal direction to upload a photo of the completed store diary in the store Whatsapp chat.
- (vi) Ms Kelso was also required by Ms Horton, or Ms Samuel, via a verbal direction to take photos and videos of the store and provide updates on the store Whatsapp chat.
- (vii) Ms Wesley was required by a verbal direction given to her by her Regional Manager, Ms Saracho, to undertake the work referred to in paragraph 147 below. The Regional Manager called Ms Wesley on each occasion to confirm the work referred to in paragraph 147 was completed within the first few minutes of commencing her shift.
- (viii) Some Regional Managers also conducted random audits to ensure completion of the work referred to in paragraph 147 below.

147. During the 2022 Agreement Pre-Shift Period, the Respondent required Ms Kelso and the 2022 Agreement Group Members to perform the following duties:

- a. count the cash in the till (register);
- b. ensure the store is neat and tidy;
- c. set up the Respondent's point of sales system; and

- d. write down the Lovisa Budget Targets in the store diary for the day.

(2022 Agreement Pre-Shift Work).

Particulars

The Applicants refer to the particulars under paragraph 146 above. In relation to the Lovisa Budget Targets, the Applicants refer to paragraph 48 above.

E3.2 Post-Shift Work

148. During the 2022 Agreement Period, for any rostered shift that ended at the same time as, or after, the relevant Lovisa Store closed for trade, the Respondent required Ms Kelso, Ms Wesley and the 2022 Agreement Group Members to remain in each Lovisa Store for between 15 to 60 minutes after the finish time that was specified in the roster (**2022 Agreement Post-Shift Period**).

Particulars

- (i) The Applicants refer to the particulars under paragraphs 49 and 50 above as it relates to Ms Kelso and Ms Wesley.
 - (ii) In circumstances where the rostered shift ended after the relevant store closed for trade, the completion of the tasks outlined in paragraph 149 below still required those relevant 2022 Agreement Group Members to remain in store after the rostered finish time.
 - (iii) The amount of time that Ms Kelso, Ms Wesley or the Group Members stayed back after the rostered finish time depended on the particular Applicant or Group Member and the Lovisa Store that they worked at in that particular time.
 - (iv) As to the way in which the requirement was communicated, see the particulars under paragraph 149 below.
149. During the 2022 Agreement Post-Shift Period, the Respondent required Ms Kelso, Ms Wesley and the 2022 Agreement Group Members to perform some or all of the following duties:
 - a. ensure that any customers remaining in the store were served;

- b. balance the till (register);
- c. place the banking bag in the safe;
- d. complete the point of sale report;
- e. sweep and mop the floors and otherwise ensure that the Lovisa Store was neat and tidy;
- f. calculate and record if the Lovisa Budget Targets were met; and
- g. keep the store open to make more sales to achieve the Lovisa Budget Targets.

(2022 Agreement Post-Shift Work).

Particulars

- (i) The Applicants refer to the particulars under paragraphs 49 and 50 above as it relates to Ms Kelso and Ms Wesley.
- (ii) Ms Kelso's job descriptions relevantly required her to undertake 'recovery' (end of day merchandising) daily, deliver a clean store and a well merchandised store, achieve Lovisa Budget Targets and ensure that signage/ all promotions were up to date. In relation to the requirement to meet Lovisa Budget Targets, the Applicants further refer to particulars in paragraph 50 above.
- (iii) Ms Kelso was required by Ms Horton, to upload a photo of the completed store diary in the store Whatsapp chat. Ms Kelso was also required by Ms Horton to take photos and videos of the store and provide updates on the store Whatsapp chat.
- (iv) Ms Wesley was required by her Store Managers and Regional Manager (Ms Saracho) to undertake the tasks referred to in paragraph 149 above. It was necessary for Ms Wesley to work additional time after the end of her shift specified in her roster to comply with the requirement to perform the work referred to in paragraph 149 above.

E3.3 Additional Managerial Work on Rostered Days Off

- 150. During the 2022 Agreement Period, the Respondent required Ms Kelso, and the 2022 Agreement Group Members who were performing the role of a Store Manager or an Assistant Store Manager (**2022 Agreement Managers**)

to perform duties for an average of one to two hours per week on days, or during times, in which they were not rostered to work (**2022 Agreement Additional Managerial Work**).

Particulars

- (i) The performance of the 2022 Agreement Additional Managerial Work was required in order to undertake the duties set out in paragraph 151 below, which were expected or required by the Respondent to be performed.
- (ii) Team management expectations were communicated to some Store Managers and Assistant Store Managers in a job description attached to their contracts of employment with the Respondent. This created an expectation for 2022 Agreement Managers to be available to answer calls and text messages from team members on their rostered days off.
- (iii) Ms Kelso's job descriptions relevantly required her to coach and support team members, which created an expectation for Ms Kelso to be available to assist team members on her rostered days off.

151. The 2022 Agreement Additional Managerial Work performed by Ms Kelso, and the 2022 Agreement Managers, during the 2022 Agreement Period included the following duties:

- a. answering phone calls from team members rostered on in Lovisa Stores requiring assistance;
- b. resolving conflicts between team members;
- c. attending 'call outs' if a team member did not have access to the relevant Lovisa Store;
- d. arranging staff members to cover shifts when some staff members were unable to attend their shifts; and
- e. reporting any changes in shifts resulting from staff unavailability to the Respondent's relevant Regional Manager.

E3.4 Training Outside of Rostered Hours

152. During the 2022 Agreement Period, the Respondent required Ms Kelso, Ms Wesley and the 2022 Agreement Group Members to undertake training from time to time outside of their rostered hours of work (**2022 Agreement Training Outside of Rostered Hours**).

Particulars

- (i) Ms Kelso, Ms Wesley and the 2022 Agreement Group Members were required to undertake LOLA Training from time to time when additional training became available.
- (ii) LOLA Training was required to be undertaken outside of Ms Kelso, Ms Wesley and the 2022 Agreement Group Members' rostered hours of work as the Respondent did not allocate any paid time within their rosters to complete the LOLA Training.
- (iii) The requirement in (i) and (ii) were communicated to Ms Kelso, Ms Wesley and some 2022 Agreement Group Members orally by their managers. In case of Ms Kelso, the requirement was communicated by Ms Horton. In case of Ms Wesley, the requirement was communicated to her by Ms Saracho.
- (iv) Some 2022 Agreement Group Members were provided with job descriptions in writing which required completing LOLA Training.
- (v) Some Store Managers and Assistant Store Managers were provided with job descriptions in writing that required them to achieve a target percentage of LOLA Training completed by team members.
- (vi) Ms Kelso's job descriptions relevantly required her to ensure all team members have completed their LOLA Training and maintain a 90%+ LOLA completion rate.

E3.5 Unpaid Meal Breaks

153. During the 2022 Agreement Period, Ms Kelso, Ms Wesley and some 2022 Agreement Group Members worked shifts that were more than 5 hours up to 9 hours, or more than 9 hours, in a shift.

Particulars

- (i) Ms Kelso worked the shifts as specified in paragraph 25 above. Further particulars will be provided after the discovery by the Respondent of Ms Kelso's rosters.
 - (ii) Ms Wesley worked the hours as specified in paragraph 30 above. Further particulars will be provided after the discovery by the Respondent of Ms Wesley's rosters.
154. By reason of clause 4.6(a) of the 2022 Agreement, Ms Kelso, Ms Wesley and the 2022 Agreement Group Members who worked:
- a. more than 5 hours up to 9 hours in a shift, during the 2022 Agreement Period were entitled to one 45-minute unpaid meal break; or
 - b. more than 9 hours in a shift during the 2022 Agreement Period were entitled to two 45-minute unpaid meal breaks.
155. During the 2022 Agreement Period, Ms Kelso, Ms Wesley and some 2022 Agreement Group Members who worked:
- a. more than 5 hours up to 9 hours in a shift did not receive a 45-minute unpaid meal break and were required to work during that period; and/or
 - b. more than 9 hours in a shift did not receive two 45-minute unpaid meal breaks and were required to work during that period

(2022 Agreement Work During Meal Breaks).

Particulars

- (i) Ms Kelso received an unpaid meal break that was approximately 20-30 minutes long. Ms Kelso was required to be 'on-call' to serve customers during her unpaid meal break.
- (ii) The requirement not to take unpaid meal breaks was further communicated in Ms Kelso's job descriptions which required her to ensure 'exceptional customer experience' and therefore be available to assist as and when needed. This created an expectation for Ms Kelso to be available to assist customers during her meal breaks as there was inadequate staffing resources.
- (iii) Ms Wesley had interrupted unpaid meal breaks as she was asked to provide assistance to other staff while on her break. Ms Wesley was

asked and expected to be available to assist customers as and when needed.

- (iv) The Applicants also refer to particulars contained in paragraphs 48 and 50 above regarding the requirement to meet Lovisa Budget Targets.
- (v) Further particulars may be provided following discovery.

E3.6 Paid Rest Breaks

156. During the 2022 Agreement Period, Ms Kelso, Ms Wesley and some 2022 Agreement Group Members worked shifts that were more than 4 hours up to 9 hours in a shift, or more than 9 hours in a shift.

Particulars

- (i) Ms Kelso worked the shifts as specified in paragraph 25 above. Further particulars will be provided after the discovery by the Respondent of Ms Kelso's rosters.
 - (ii) Ms Wesley worked the hours as specified in paragraph 30 above. Further particulars will be provided after the discovery by the Respondent of Ms Wesley's rosters.
157. By reason of clause 4.6(a) of the 2022 Agreement, Ms Kelso, Ms Wesley and the 2022 Agreement Group Members who worked:
- a. more than 4 hours but less than 7 hours in a shift during the 2022 Agreement Period, were entitled to a 10-minute paid break; or
 - b. more than 7 hours up to 9 hours in a shift, or more than 9 hours in a shift during the 2022 Agreement Period, were entitled to two 10-minute paid breaks.

158. During the 2022 Agreement Period, Ms Kelso, Ms Wesley and some 2022 Agreement Group Members who worked:

- a. more than 4 hours up to 7 hours in a shift did not always receive a 10-minute paid rest break and were required to work in that time; and/or

- b. 7 hours up to 9 hours in a shift, or more than 9 hours in a shift did not always receive two 10-minute paid rest breaks, and were required to work in that time

(2022 Agreement Work During Rest Breaks).

Particulars

- (i) Ms Kelso rarely received paid rest breaks as she was required to be available to serve customers during her rest breaks.
- (ii) The requirement was further communicated in Ms Kelso's job descriptions as a manager which required her to ensure 'exceptional customer experience' and therefore be available to assist as and when needed.
- (iii) Ms Wesley did not receive some of her paid rest breaks as she was often rostered on her own. Ms Wesley was required to keep the store open. As there were no other team members present, Ms Wesley was required to be available to serve customers during her rest breaks.
- (iv) The Applicants also refer to particulars contained in paragraphs 48 and 50 regarding the requirement to meet Lovisa Budget Targets.
- (v) Further particulars may be provided following discovery.

E4.1 Failure to pay overtime

E4.2 2022 Agreement Pre-Shift Work (Part-Time)

159. Ms Wesley (during the period in which her part-time employment was covered by the 2022 Agreement) and 2022 Agreement Group Members who were employed part-time by the Respondent (**Part-Time 2022 Agreement Period Group Members**) worked:

- a. outside of their roster conditions for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Pre-Shift Work; and/or
- b. in excess of the regular pattern of work and/or their ordinary hours of work per fortnightly roster cycle for the purposes of clause 4.5(a)(ii) of

the 2022 Agreement on each day in which they performed the 2022 Agreement Pre-Shift Work.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Pre-Shift Work was outside of the roster conditions because it constituted work performed prior to the rostered start time by Ms Wesley (clause 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), the 2022 Agreement Pre-Shift Work was in excess of the agreed pattern of work (clause 2.3(a) of the 2022 Agreement) and her ordinary hours of work because it was in excess of the ordinary hours per fortnightly roster cycle.
160. By reason of paragraph 159 above, Ms Wesley and the Part-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Pre-Shift Work in accordance with clause 4.5(b)(i) of the 2022 Agreement.
161. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Wesley or the Part-Time 2022 Agreement Period Group Members overtime in respect of their performance of the 2022 Agreement Pre-Shift Work, in each fortnight in which those employees worked.
162. By reason of paragraphs 159 to 161 above, the Respondent breached s. 50 of the FWA.

E4.3 2022 Agreement Pre-Shift Work (Full-Time)

163. Ms Kelso (during the period in which her full-time employment was covered by the 2022 Agreement) and 2022 Agreement Group Members employed by the Respondent full-time (**Full-Time 2022 Agreement Period Group Members**) worked:
- a. outside of their rostered conditions for the purposes of clause 4.5(a)(i) of the 2022 Agreement on each day in which they performed the 2022 Agreement Pre-Shift Work; and/or

- b. in excess of their 76 ordinary hours per fortnight for the purposes of clause 4.5(a)(i) of the 2022 Agreement by reason of them performing the 2022 Agreement Pre-Shift Work.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Pre-Shift Work was outside of Ms Kelso's roster conditions because it constituted work performed before her rostered start time (clauses 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clauses 2.2 and 4.3(a) of the 2022 Agreement). The performance of the 2022 Agreement Pre-Shift Work meant that Ms Kelso worked more than 76 hours per fortnight and therefore in excess of her ordinary hours.
 - (iii) Further particulars in respect of Ms Kelso will be provided after discovery of Ms Kelso's rosters.
164. By reason of paragraph 163 above, Ms Kelso and the Full-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Pre-Shift Work in accordance with clause 4.5(b)(i) of the 2022 Agreement.
165. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Kelso or the Full-Time 2022 Agreement Period Group Members overtime in respect of the 2022 Agreement Pre-Shift Work, in each fortnight in which they worked.
166. By reason of 163 to 165 above, the Respondent breached s. 50 of the FWA.

E4.4 2022 Agreement Post-Shift Work (Part-Time)

167. Ms Wesley (during the period in which her part-time employment was covered by the 2022 Agreement), and Part-Time 2022 Agreement Period Group Members, worked:

- a. outside of their roster conditions for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Post-Shift Work; and/or
- b. in excess of the regular pattern of work and/or their ordinary hours of work per fortnightly roster cycle for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Post-Shift Work.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Post-Shift Work was outside the roster conditions because it constituted work performed by Ms Wesley after her rostered finish time ((clause 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), the 2022 Agreement Post-Shift Work was in excess of the agreed pattern of work (clause 2.3(a) of the 2022 Agreement) and her ordinary hours of work because it was in excess of the agreed ordinary hours per fortnightly roster cycle.
168. By reason of paragraph 167 above, Ms Wesley and the Part-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Post-Shift Work in accordance with clause 4.5(b)(i) of the 2022 Agreement.
169. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Wesley or the Part-Time 2022 Agreement Period Group Members overtime in respect of their performance of the 2022 Agreement Post-Shift Work, in each fortnight in which those employees worked.
170. By reason of paragraphs 167 to 169 above, the Respondent breached s. 50 of the FWA.

E4.5 2022 Agreement Post-Shift Work (Full-Time)

171. Ms Kelso (during the period in which her full-time employment was covered by the 2022 Agreement), and Full-Time 2022 Agreement Period Group Members, worked:

- a. outside of their rostered conditions for the purposes of clause 4.5(a)(i) of the 2022 Agreement on each day in which they performed the 2022 Agreement Post-Shift Work; and/or
- b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.5(a)(i) of the 2022 Agreement by reason of them performing the 2022 Agreement Post-Shift Work.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Post-Shift Work was outside of Ms Kelso's roster conditions because it constituted work performed after her rostered finish time (clauses 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clauses 2.2 and 4.3(a) of the 2022 Agreement). The performance of the 2022 Agreement Post-Shift Work meant that Ms Kelso worked more than 76 hours per fortnight, therefore in excess of her ordinary hours.
 - (iii) Further particulars will be provided in respect of Ms Kelso after discovery of Ms Kelso's rosters.
172. By reason of paragraph 171 above, Ms Kelso and the Full-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Post-Shift Work in accordance with clause 4.5(b)(i) of the 2022 Agreement.
173. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Kelso and the Full-Time 2022 Agreement Period Group Members overtime in respect of the 2022 Agreement Post-Shift Work, in each fortnight in which those employees worked.
174. By reason of paragraphs 171 to 173 above, the Respondent breached s. 50 of the FWA.

E4.6 2022 Agreement Additional Managerial Work (Part-Time)

175. Part-Time 2022 Agreement Period Group Members, who performed the role of a part-time Store Manager or a part-time Assistant Store Manager for the Respondent in the 2022 Agreement Period (**Part-Time Managers in the 2022 Agreement Period**), worked:
- a. outside of their rostered conditions for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Additional Managerial Work; and/or
 - b. in excess of the regular pattern of work and/or their ordinary hours of work per fortnightly roster cycle for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Additional Managerial Work.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Additional Managerial Work was outside of their roster conditions because it constituted work performed during hours that were not included in their roster (clause 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), the 2022 Agreement Additional Managerial Work was in excess of the agreed pattern of work (clause 2.3(a) of the 2022 Agreement) and their ordinary hours of work because it was in excess of their agreed ordinary hours per fortnightly roster cycle.
176. By reason of paragraph 175 above, the Part-Time Managers in the 2022 Agreement Period were entitled to overtime in relation to the performance of the 2022 Agreement Additional Managerial Work in accordance with clause 4.5(b)(i) of the 2022 Agreement.
177. In breach of clause 4.6(b)(i) of the 2022 Agreement, the Respondent did not pay the Part-Time Managers in the 2022 Agreement Period overtime in respect of their performance of the 2022 Agreement Additional Managerial Work, in each fortnight in which those employees worked.

178. By reason of paragraphs 175 to 177 above, the Respondent breached s. 50 of the FWA.

E4.7 2022 Agreement Additional Managerial Work (Full-Time)

179. Ms Kelso (during the period in which her full-time employment was covered by the 2022 Agreement), and the Full-Time 2022 Agreement Period Group Members who performed the role of a full-time Store Manager or a full-time Assistant Store Manager for the Respondent in the 2022 Agreement Period (**Full-Time Managers in the 2022 Agreement Period**) worked:

- a. outside of their roster conditions for the purposes of clauses 4.5(a)(i) of the 2022 Agreement on each day in which they performed the 2022 Agreement Additional Managerial Work; and/or
- b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.5(a)(i) of the 2022 Agreement by reason of them performing the 2022 Agreement Additional Managerial Work.

Particulars

- (iv) In relation to subparagraph (a) above, the 2022 Agreement Additional Managerial Work was outside of Ms Kelso's roster conditions because it constituted work performed during hours that were not included in her rostered hours (clauses 4.2(b) of the 2022 Agreement).
 - (i) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clauses 2.2 and 4.3(a) of the 2022 Agreement). The performance of the 2022 Agreement Additional Managerial Work meant that Ms Kelso worked more than 76 hours per fortnight, therefore in excess of her ordinary hours.
 - (ii) Further particulars will be provided in respect of Ms Kelso after discovery of Ms Kelso's rosters.
180. By reason of paragraph 179 above, Ms Kelso and the Full-Time Managers in the 2022 Agreement Period were entitled to overtime in relation to the performance of the 2022 Agreement Additional Managerial Work in accordance with clause 4.5(b)(i) of the 2022 Agreement.

181. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Kelso or the Full-Time Managers in the 2022 Agreement Period overtime in respect of the 2022 Agreement Additional Managerial Work, in each fortnight in which those employees worked.
182. By reason of paragraphs 179 to 181 above, the Respondent breached s. 50 of the FWA.

E4.8 2022 Agreement Training Outside of Rostered Hours (Part-Time)

183. Ms Wesley (during the period in which her part-time employment was covered by the 2022 Agreement), and some Part-Time 2022 Agreement Period Group Members, worked:
- a. outside of their roster conditions for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Training Outside of Rostered Hours; and/or
 - b. in excess of the regular pattern of work and/or their ordinary hours of work per fortnightly roster cycle for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Training Outside of Rostered Hours.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Training Outside of Rostered Hours was outside of the roster conditions because the time taken to perform that work was not included in their roster (clause 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), the 2022 Agreement Training Outside of Rostered Hours was in excess of the agreed pattern of work (clause 2.3(a) of the 2022 Agreement) and their ordinary hours of work because it was in excess of their agreed ordinary hours per fortnightly roster cycle.
184. By reason of paragraph 183 above, Ms Wesley and the relevant Part-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Training Outside of Rostered Hours in accordance with clause 4.5(b)(i) of the 2022 Agreement.

185. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Wesley and the relevant Part-Time 2022 Agreement Period Group Members overtime in respect of their performance of the 2022 Agreement Training Outside of Rostered Hours, in each fortnight in which those employees did that training.
186. By reason of paragraphs 183 to 185 above, the Respondent breached s. 50 of the FWA.

E4.9 2022 Agreement Training Outside of Rostered Hours (Full-Time)

187. Ms Kelso (during the period in which her full-time employment was covered by the 2022 Agreement), and some Full-Time 2022 Agreement Period Group Members, worked:
- a. outside of their roster conditions for the purposes of clauses 4.5(a)(i) of the 2022 Agreement on each day in which they performed the 2022 Agreement Training Outside of Rostered Hours; and/or
 - b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.5(a)(i) of the 2022 Agreement by reason of them performing the 2022 Agreement Training Outside of Rostered Hours.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Training Outside of Rostered Hours was outside of Ms Kelso's roster conditions because the time taken to perform that work was not included in her roster (clauses 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clauses 2.2 and 4.3(a) of the 2022 Agreement). The performance of the 2022 Agreement Training Outside of Rostered Hours meant that Ms Kelso worked more than 76 hours per fortnight.
 - (iii) Further particulars will be provided in respect of Ms Kelso after discovery of her rosters.
188. By reason of paragraph 187 above, Ms Kelso and Full-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the

performance of the 2022 Agreement Training Outside of Rostered Hours in accordance with clause 4.5(b)(i) of the 2022 Agreement.

189. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Kelso and the Full-Time 2022 Agreement Period Group Members overtime in respect of the 2022 Agreement Training Outside of Rostered Hours, in each fortnight in which those employees did that training.
190. By reason of paragraphs 187 to 189 above, the Respondent breached s. 50 of the FWA.

E4.10 2022 Agreement Work during Meal Breaks (Part-Time)

191. Ms Wesley (during the period in which her part-time employment was covered by the 2022 Agreement Period), and some Part-Time 2022 Agreement Period Group Members, worked:
 - a. outside of their roster conditions for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Work During Meal Breaks; and/or
 - b. in excess of the regular pattern of work and/or their ordinary hours of work per fortnightly roster cycle for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Work During Meal Breaks.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Work During Meal Breaks was outside of Ms Wesley's roster conditions because it constituted work performed during a time she ought to have been on a set rostered unpaid break (clause 4.2(b) of the 2022 Agreement).
- (ii) In relation to subparagraph (b), the 2022 Agreement Work During Meal Breaks was in excess of their agreed pattern of work (clause 2.3(a) of the 2022 Agreement) and in excess of their ordinary hours of work because it was in excess of the agreed ordinary hours per fortnightly roster cycle.

192. By reason of paragraph 191 above, Ms Wesley and the relevant Part-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Work During Meal Breaks in accordance with clause 4.5(b)(i) of the 2022 Agreement.
193. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Wesley and the relevant Part-Time 2022 Agreement Period Group Members overtime in respect of their performance of the 2022 Agreement Work During Meal Breaks, in each fortnight in which those employees performed that work.
194. By reason of paragraphs 191 to 193 above, the Respondent breached s. 50 of the FWA.
195. Further, by not providing Ms Wesley and some Part-Time 2022 Agreement Period Group Members their unpaid meal break to which they were entitled, the Respondent breached clause 4.6(a) of the 2022 Agreement.
196. By reason of paragraph 195 above, the Respondent breached s. 50 of the FWA.

E4.11 2022 Agreement Work during Meal Breaks (Full-Time)

197. Ms Kelso (during the period in which her full-time employment was covered by the 2022 Agreement), and some Full-Time 2022 Agreement Period Group Members, worked:
 - a. outside of their roster conditions for the purposes of clause 4.5(a)(i) of the 2022 Agreement on each day in which they performed the 2022 Agreement Work During Meal Breaks; and/or
 - b. in excess of 76 ordinary hours per fortnight for the purposes of clause 4.5(a)(i) of the 2022 Agreement by reason of them performing the 2022 Agreement Work During Meal Breaks.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Work During Meal Breaks was outside of Ms Kelso's rostered hours

because it constituted work performed during a time she ought to have been on a set rostered unpaid break (clauses 4.2(b) of the 2022 Agreement).

- (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clauses 2.2 and 4.3(a) of the 2022 Agreement). The performance of the 2022 Agreement Work During Meal Breaks meant that, Ms Kelso and some Full-Time 2022 Agreement Period Group Members worked more than 76 hours per fortnight.

198. By reason of paragraph 197 above, Ms Kelso and some Full-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Work During Meal Breaks in accordance with clause 4.5(b)(i) of the 2022 Agreement.

199. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Kelso and the Full-Time 2022 Agreement Period Group Members overtime in respect of the 2022 Agreement Work During Meal Breaks, in each fortnight in which those employees performed that work.

200. By reason of paragraphs 197 to 199, the Respondent breached s. 50 of the FWA.

201. Further, by not providing Ms Kelso and some Full-Time 2022 Agreement Period Group Members their unpaid meal breaks to which they are entitled, the Respondent breached clause 4.6(a) of the 2022 Agreement.

202. By reason of paragraph 201 above, the Respondent breached s. 50 of the FWA.

E4.12 2022 Agreement Work during Rest Breaks (Part-Time)

203. Ms Wesley (during the period in which her part-time employment was covered by the 2022 Agreement Period), and some Part-Time 2022 Agreement Period Group Members, worked:

- a. outside of their roster conditions for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Work During Rest Breaks; and/or

- b. in excess of the regular pattern of work and/or their ordinary hours of work per fortnightly roster cycle for the purposes of clause 4.5(a)(ii) of the 2022 Agreement on each day in which they performed the 2022 Agreement Work During Rest Breaks.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Work During Rest Breaks was outside of the roster conditions because it constituted work performed during a time they ought to have been on a rostered paid break (clause 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), the 2022 Agreement Work During Rest Breaks was in excess of their agreed pattern of work (clause 2.3(a) of the 2022 Agreement) and in excess of their ordinary hours of work because it was in excess of the agreed ordinary hours per fortnightly roster cycle.
204. By reason of paragraph 203 above, Ms Wesley and some Part-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Work During Rest Breaks in accordance with clause 4.5(b)(i) of the 2022 Agreement.
205. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Wesley and some Part-Time 2022 Agreement Period Group Members overtime in respect of their performance of the 2022 Agreement Work During Rest Breaks, in each fortnight in which those employees performed that work.
206. By reason of paragraphs 203 to 205 above, the Respondent breached s. 50 of the FWA.
207. Further, by not providing Ms Wesley and some Part-Time 2022 Agreement Period Group Members their unpaid meal breaks to which they were entitled, the Respondent contravened clause 4.6(a) of the 2022 Agreement.
208. By reason of paragraph 207 above, the Respondent breached s. 50 FWA.

E4.13 2022 Agreement Work during Rest Breaks (Full-Time)

209. Ms Kelso (during the period in which her full-time employment was covered by the 2022 Agreement), and some Full-Time 2022 Agreement Period Group Members, worked:
- a. outside of their roster conditions for the purposes of clause 4.5(a)(i) of the 2022 Agreement on each day in which they performed the 2022 Agreement Work During Rest Breaks; and/or
 - b. in excess of 76 ordinary hours of work per fortnight for the purposes of clause 4.5(a)(i) of the 2022 Agreement by reason of them performing the 2022 Agreement Work During Rest Breaks.

Particulars

- (i) In relation to subparagraph (a) above, the 2022 Agreement Work During Rest Breaks was outside of their roster conditions because it constituted work performed while they ought to have been on a rostered paid rest break (clauses 4.2(b) of the 2022 Agreement).
 - (ii) In relation to subparagraph (b), a full-time employee of the Respondent was one who worked 76 hours per fortnight as their ordinary hours (clauses 2.2 and 4.3(a) of the 2022 Agreement). The performance of the 2022 Agreement Work During Rest Breaks meant that Ms Kelso and some Full-Time 2022 Agreement Period Group Members worked more than 76 hours per fortnight.
210. By reason of paragraph 209 above, Ms Kelso and some Full-Time 2022 Agreement Period Group Members were entitled to overtime in relation to the performance of the 2022 Agreement Work During Rest Breaks in accordance with clause 4.5(b)(i) of the 2022 Agreement.
211. In breach of clause 4.5(b)(i) of the 2022 Agreement, the Respondent did not pay Ms Kelso and the Full-Time 2022 Agreement Period Group Members overtime in respect of the 2022 Agreement Work During Rest Breaks, in each fortnight in which those employees performed that work.
212. By reason of paragraphs 209 to 211 above, the Respondent breached s. 50 of the FWA.

213. Further, by not providing Ms Kelso and some Full-Time 2022 Agreement Period Group Members the paid rest break to which they were entitled, the Respondent breached clause 4.6(a) of the 2022 Agreement.

214. By reason of paragraph 213 above, the Respondent breached s. 50 of the FWA.

E.4 2022 Agreement Failure to Pay Travel Allowance

215. During the 2022 Agreement Period, on one or more occasions, the Respondent required Ms Kelso and some 2022 Agreement Group Members to travel outside of their normal travel to and from their designated Lovisa Store.

Particulars

(i) In or about late April 2023 or early May 2023, Ms Kelso was required by Ms Horton to travel to the Tuggeranong Store from her designated Belconnen Store as there were no other staff available to keep the Tuggeranong Store open from about 6 pm until the store closing time at 9 pm. After closing the Tuggeranong Store, Ms Kelso was required to return to her designated Belconnen Store to assist with closing that store as the staff member in the Belconnen Store was not sufficiently experienced to close the store on her own.

(ii) Ms Kelso was required to travel an approximate distance of 24km each way to and from her designated Belconnen Store to the Tuggeranong Store.

216. The travel described in paragraph 215 above was at the request of the Respondent for the purposes of its business and outside of Ms Kelso's, and the relevant 2022 Agreement Group Members', normal travel to and from work.

Particulars

The Applicants refer to the particulars under paragraph 215 above.

217. By reason of paragraphs 215 and 216, Ms Kelso and some 2022 Agreement Group Members undertook authorised travel for work purposes within the meaning of clause 6.10 of the 2022 Agreement.

218. In breach of clause 6.10 of the 2022 Agreement, the Respondent did not pay Ms Kelso or some of the 2022 Group Members, the applicable travel allowance amount specified in Attachment B of the 2022 Agreement, which was 91 cents per kilometre where the authorised travel was by a motor vehicle (**2022 Agreement Failure to Pay Travel Allowance**).
219. By reason of paragraphs 215 to 218 above, the Respondent breached s. 50 of the FWA.

E.5 2022 Agreement Special Clothing Allowance Claim

220. During the 2022 Agreement Period, the Respondent required Ms Kelso, Ms Wesley and some 2022 Agreement Group Members to wear five pieces of 'Lovisa jewellery' per shift.

Particulars

- (i) Ms Kelso's job descriptions required her to wear 'team pieces' or Lovisa jewellery at all times and 'inspire Team to wear products'. Ms Kelso was further informed by Ms Horton that she needed to wear a headband, earrings, necklace, bracelet and earrings sold by the Respondent on each shift, which was referred to as 'Lovisa High-5'.
 - (ii) Ms Kelso was also provided with a document outlining dress requirements when she commenced employment with the Respondent, which required her to wear the 'Lovisa High-5'.
 - (iii) Ms Wesley was informed by her Regional Manager, Ms Saracho, that she needed to wear rings, necklaces and bracelets sold by the Respondent.
221. Further, during the 2022 Agreement Period, the Respondent required Ms Kelso, Ms Wesley and some 2022 Agreement Group Members to wear dress shoes or shoes of a particular type

Particulars

- (i) Ms Kelso was informed by Ms Horton that shoes she wore while working in the store had to be dress shoes and no shoes with laces could be worn.
- (ii) Ms Wesley was informed by Ms Saracho (Regional Manager) that brown, black or tan leather shoes or sandals in similar colours had to

be worn. Ms Saracho informed Ms Wesley that no laces or zippers, sneakers, boots, or sport shoes could be worn on her shifts. For example, in or about early 2023, Ms Wesley wore sneakers for her shift at the Craigieburn Store. During her shift, Ms Saracho attended the Craigieburn Store. Ms Saracho told Ms Wesley that the sneakers were not compliant with the Respondent's policies and that she will be given 15 minutes to leave the store and purchase women's shoes in place of the sneakers that she wore.

- (iii) Ms Kelso and Ms Wesley were aware that other employees had been sent home without pay for failing to comply with the requirement to wear dress shoes.

222. Ms Kelso, Ms Wesley and some 2022 Agreement Group Members purchased dress shoes and/or 'Lovisa jewellery' to comply with the requirement referred to in paragraphs 220 and 221 above.

Particulars

- (i) Ms Kelso and Ms Wesley purchased shoes that were compliant with the requirement referred to in paragraph 221 that were sufficiently comfortable for them to wear for work as they needed to move around frequently during their shifts. They did not have any existing dress shoes appropriate for this purpose.
- (ii) Ms Kelso and Ms Wesley purchased 'Lovisa jewellery' to comply with the requirement referred to in paragraph 220 as the shared bag of basic jewellery provided by the Respondent for Ms Kelso and Ms Wesley to wear while working in the store (referred to as 'team pieces') did not last long. Ms Kelso observed that some of the 'team pieces' often turned the skin green. Therefore, Ms Kelso and Ms Wesley were required, as an alternative, to instead purchase 'Lovisa jewellery'.

223. Each of the:

- a. dress shoes; and/or
- b. 'Lovisa jewellery',

constituted 'special clothing' for the purposes of clause 3.8(d) of the 2022 Agreement.

224. In breach of clause 3.8(d) of the 2022 Agreement, the Respondent did not reimburse Ms Kelso, Ms Wesley and other 2022 Agreement Group Members who incurred costs of purchasing dress shoes and/or 'Lovisa jewellery' as a result of the requirements referred to in paragraphs 220 and 221 above **(2022 Agreement Failure to Pay Special Clothing Allowance)**.
225. By reason of paragraphs 220 to 224 above, the Respondent breached s. 50 of the FWA.

E.6 2022 Agreement Higher Duties Allowance

226. During the 2022 Agreement Period, on one or more occasions, Ms Kelso and some 2022 Agreement Group Members carried out duties that were of a higher classification (and therefore subject to a higher rate of pay) under the 2022 Agreement.

Particulars

- (i) From on or about 14 January 2023 on every Friday and Saturday, Ms Kelso was asked by Ms Horton (Ms Kelso's Regional Manager at the time) to perform some of her duties on Ms Horton's days off on Fridays and Saturdays.
 - (ii) During the periods in which Ms Kelso performed Ms Horton's duties on Fridays and Saturdays, Ms Kelso had all calls of Ms Horton transferred to her to manage and deal with.
 - (iii) These calls ranged from dealing with disgruntled customers, piercing queries, refund queries and team members calling in sick (which required organising cover within a short timeframe) across seven different Lovisa Stores.
227. In breach of clause 3.8(a) of the 2022 Agreement, the Respondent did not pay Ms Kelso and some 2022 Agreement Group Members:
- a. at the higher rate of pay applicable to the higher classification (in Ms Kelso's case the Regional Managers' rate of pay) for that entire day or shift where they performed the duties of the higher classification (in Ms Kelso's case, the Regional Manager classification) for more than 2 hours during one day or shift; and

- b. at the higher rate of pay applicable to the higher classification (in Ms Kelso's case the Regional Managers' rate of pay) for the time worked in the higher classification, if they performed the duties of the higher classification (in Ms Kelso's case, the Regional Manager classification) for 2 hours or less during one day or shift.

(2022 Agreement Failure to Pay Higher Duties Allowance).

- 228. By reason of paragraphs 226 to 227 above, the Respondent breached s. 50 of the FWA.

E.7 2022 Agreement Failure to Provide 12-hour Break between Shifts

- 229. By reason of clause 4.3(g) of the 2022 Agreement, the Respondent was required to observe a 12-hour break between the completion of one day's work and the commencement of the next day's work.
- 230. During the Christmas Periods in the 2022 Agreement Period, Ms Kelso and some 2022 Agreement Group Members were rostered by the Respondent to work shifts with less than a 12-hour break in between the completion of one day's work and the commencement of the next day's work.

Particulars

Further particulars will be provided after discovery of Ms Kelso's rosters from the Respondent.

- 231. By reason of paragraphs 229 and 230 above, the Respondent breached clause 4.3(g) of the 2022 Agreement (**2022 Agreement Failure to Provide 12-hour Breaks between Shifts**).
- 232. By reason of paragraphs 229 to 231 above, the Respondent breached s. 50 of the FWA.

F. FAILURE TO KEEP ACCURATE RECORDS

- 233. From the start of the Relevant Period until in or about 2019, the Respondent required Ms Iob, and the Group Members who were employed in that period, to record their start and finish time as specified on their roster for each shift

on an IT platform called 'Etivity' or through a platform available through LOLA called 'Preceda'.

Particulars

Ms lob was requested by her line managers to record her clock-in and clock-out times on 'Etivity'.

234. From in or about 2019 until the end of the Relevant Period, the Respondent required the Applicants, and the Group Members who were employed in that period, to record their start and finish time as specified on their roster for each shift on an IT platform called 'Kronos'.

Particulars

'Kronos' was accessed by the Applicants and the relevant Group Members either on their phone via an app or on a tablet referred to as a 'Honeywell' (a device that is available in Lovisa Stores).

235. During the Relevant Period, the Respondent engaged in one or more of the following practices in relation to recording start and finish times:
- a. The Respondent required the Applicants and the Group Members to record only the time set out in their roster on the relevant platform, instead of the actual hours worked.

Particulars

- (i) Ms lob's line managers instructed Ms lob to record only the hours specified in her roster.
- (ii) Ms Kelso was instructed by Ms Horton to record only the hours specified in her roster. Ms Horton expressly requested Ms Kelso not to clock in earlier than 5 minutes before the rostered start time.
- (iii) Ms Wesley witnessed other team members being told off by her managers for recording actual hours worked as opposed to the hours specified in the roster.
- b. If an Applicant or a Group Member did not record a start or a finish time for a shift on the relevant platform, the Respondent inserted a start or a finish time that accorded with the rostered hours into the relevant platform rather than the actual hours worked.

Particulars

Ms Iob did not always remember to clock-out. On these occasions, Ms Iob's rostered finish time was inserted by her Regional Managers as her finishing time.

- c. If an Applicant or a Group Member recorded a start or a finish time on the relevant platform that was inconsistent with their roster, the Respondent amended the records of the hours worked by that Applicant or the Group Member such that those hours were consistent with the rostered hours rather than the hours actually worked.

Particulars

- (i) If Ms Iob recorded a time inconsistent with her roster, Ms Iob's recorded time was altered by her Regional Managers to reflect the hours specified in the roster.
 - (ii) Ms Kelso recorded her actual finish time on Kronos, but she was never paid for the additional hours of work undertaken and her payslips did not record those additional hours.
 - (iii) Initially when Ms Wesley commenced employment with the Respondent, she recorded her actual start and finish time. However, after witnessing other team members being told off for this practice, Ms Wesley clocked in and out in accordance with the hours specified in her roster.
 - (iv) Ms Wesley was never paid for the additional hours of work undertaken and her payslips did not record those additional hours.
- d. The Respondent required the Applicants and the Group Members not to record the time taken in the performance of the 2014 Agreement Additional Managerial Work, 2022 Agreement Additional Managerial Work, 2014 Agreement Training Outside of Rostered Hours and 2022 Agreement Training Outside of Rostered Hours.

Particulars

The Applicants repeat particulars in sub-paragraph (a) above.

- e. The Respondent did not require Applicants and the Group Members to clock-in and clock-out when taking their unpaid meal breaks or rest breaks during the Relevant Period.

Particulars

The Applicants were not required to clock-in and clock-out during breaks. The breaks were automatically included as having been taken on the relevant platform.

- 2. By reason of paragraph 235, the hours actually worked by the Applicants and the Group Members were not always accurately recorded on the relevant platform.

236. At all material times, by reason of s. 535(1) of the FWA read with regulation 3.34 of the *Fair Work Regulations 2009* (Cth) (**FWR**), the Respondent was required to keep records of:

- a. the number of overtime hours worked by the Applicants and the Group Members; or
- b. when the Applicants and the Group Members started and ceased working overtime hours,

for a period of 7 years.

237. By reason of paragraphs 235 to 236 above, the Respondent failed to keep any records, or alternatively proper records, of:

- a. the number of overtime hours worked by the Applicants and the Group Members; and/or
- b. when the Applicants and the Group Members started and ceased working overtime hours.

Particulars

The Applicants repeat paragraph 235 above and the particulars contained therein. By reason of the practices referred to in that paragraph, the Respondent failed to keep any records, or alternatively proper records, of the actual hours worked by the Applicants and the Group Members

and therefore, the overtime hours worked by the Applicants and the Group Members.

238. By reason of paragraph 237 above, the Respondent failed to comply with regulation 3.34 of the FWR and therefore s. 535(1) of the FWA.

G. KEEPING FALSE AND MISLEADING RECORDS

239. By reason of paragraph 235 above, the records required to be kept by the Respondent pursuant to s. 535(1) of the FWA, read with regulation 3.34 of the FWR, were false or misleading as to the actual hours of overtime worked by the Applicants.

240. By reason of paragraph 239, the Respondent contravened s. 535(4) of the FWA.

Particulars

The Applicants refers to paragraph 235 above and the particulars contained therein.

H. FAILURE TO PROVIDE INSPECTION OF RECORDS

241. At all material times, by reason of s. 535(1) of the FWA read with regulation 3.38 of the FWR, the Respondent was required to keep records of any individual flexibility arrangement under the FWA in respect of the Applicants and the Group Members.

Particulars

The Applicants and some Group Members entered into individual flexibility arrangements with the Respondent during Christmas Periods. By reason of s. 535(1) of the FWA read with regulation 3.38 of the FWR, the Respondent was required to have kept records of those individual flexibility arrangements for a period of 7 years.

242. Section 535(3) of the FWA read together with regulation 3.42 of the FWR required the Respondent to make a copy of the records referred to in paragraph 236 and 241 above available for inspection upon request by an employee within 14 days of that request.

243. On each of 26 February 2024, 15 March 2024, 23 April 2024 and 4 June 2024, the solicitors for the Applicants (on behalf of Ms Iob and other Group Members) requested the Respondent to make available for inspection of the following records of Ms Iob and a number of other Group Members:

- a. the records referred in paragraph 236 above; and
- b. any correspondence or documentation varying the terms of any of the above records, which included any individual flexibility arrangements varying the hours of overtime worked.

Particulars

- (i) A letter dated 26 February 2024 from Adero Law addressed to Mr Trindale of the Respondent's solicitors requested Ms Iob's records including relevantly:
 - a. Record of actual hours worked, including overtime; and
 - b. Any correspondence or documentation varying the terms of any of the above records.
- (ii) A letter dated 15 March 2024 from Adero Law addressed to Mr Trindale of the Respondent's solicitors made a further request for Ms Iob's records including:
 - a. Schedule/roster data; and
 - b. Records of actual hours worked, including overtime hours worked.
- (iii) Further letters dated 23 April 2024 and 4 June 2024 from Adero Law addressed to Mr Trindale of the Respondent's solicitors made further requests for Ms Iob's records of overtime hours worked.

244. Despite requests, the Respondent failed to make available for inspection records referred to in paragraph 243 above in respect of Ms Iob and other Group Members named in the Applicants' solicitors correspondence referred to in paragraph 243 above.

Particulars

In a letter dated 12 March 2024, the Respondent's solicitors provided records of Ms Job's earnings history, payslips and some contracts of employment but failed to provide:

- a. records of the overtime hours worked; and
- b. individual flexibility arrangements entered into by Ms Job (and the relevant Group Members on behalf of whom the request for records were made) that had the effect of varying the overtime hours worked.

245. By reason of paragraphs 241 to 244 above the Respondent breached s. 535(3) of the FWA and regulation 3.42 of the FWR.

I. APPLICATION OF SECTION 557C

246. These proceedings allege that during the Relevant Period, the Applicants, and the Group Members performed the following overtime:

- a. The 2014 Agreement Pre-Shift Work and the 2022 Agreement Pre-Shift Work;
- b. The 2014 Agreement Post-Shift Work and the 2022 Agreement Post-Shift Work;
- c. The 2014 Agreement Additional Managerial Work and the 2022 Agreement Additional Managerial Work;
- d. The 2014 Agreement Training Outside of Rostered Hours and the 2022 Agreement Training Outside of Rostered Hours;
- e. The 2014 Agreement Work During Unpaid Meal Breaks and the 2022 Agreement Work During Unpaid Meal Breaks;
- f. The 2014 Agreement Work During Paid Rest Breaks and the 2022 Agreement Work During Paid Rest Breaks.

247. By reason of paragraphs 238 and 245 above, the Respondent bears the burden of disproving, pursuant to s 557C(1) of the FWA, that the Applicants Group Members worked the overtime hours alleged in this proceeding.

J. SERIOUS CONTRAVENTIONS

248. In the period between the commencement of the Relevant Period until 26 February 2024:

a. the Respondent knowingly contravened:

- i. Section 535(1);
- ii. Section 535(3); and/or
- iii. Section 353(4)

of the FWA (**Section 535 Serious Contraventions**).

Particulars

- (i) It can be inferred that the Respondent knew that its conduct pleaded at paragraph 233 above meant that:
 - a. it would not be keeping records, or proper records of overtime hours worked, by the Applicants and the Group Members; and
 - b. records kept by the Respondent would be misleading as to the actual hours of overtime worked by the Applicants and the Group Members in breach of s.535 of the FWA.
- (ii) Further it can be inferred that the Respondent knew that its conduct pleaded at paragraphs 244 and 245 above was in breach of s.535 of the FWA.
- (iii) These matters can all be inferred because:
 - a. at all material times, the Respondent was a large, sophisticated employer who knew, or ought to have known, of its obligations pursuant to s. 535 of the FWA.
 - b. in relation to the requirement to provide records for inspection upon request of an employee, at the time when some of the requests for the relevant records were made, the Respondent was legally represented and therefore ought to have been aware of its obligations as pleaded in paragraph **Error! Reference source not found..**

(iv) Further particulars will be provided after discovery.

249. The Section 535 Serious Contraventions were a part of a systemic pattern of conduct relating to the Applicants and the Group Members.

Particulars

- (i) The Respondent engaged in and encouraged, or alternatively tacitly or impliedly authorised, a pattern of conduct over a significant period of time (pleaded in paragraph 235) that had the effect of failing to record the actual hours worked by the Applicants and the Group Members and therefore failed to accurately record the overtime hours worked by the Applicants and the Group Members.
- (ii) Further, the Respondent engaged in and encouraged, or alternatively tacitly or impliedly authorised, a pattern of conduct over a significant period of time (pleaded in paragraph 235) that had the effect of recording and retaining false or misleading records of the actual hours worked by the Applicants and the Group Members. Therefore, the Respondent created and retained false or misleading records of the overtime hours worked by the Applicants and the Group Members.
- (iii) Further, the Respondent engaged in and encouraged, or alternatively expressly authorised, a pattern of conduct over a period of approximately 5 months (pleaded in paragraphs 244 to 245) in failing to make a copy of the relevant records available for inspection upon request by an employee within 14 days of that request. The Respondent also failed to adequately respond to Adero's complaints about its conduct in this respect.

250. Further, in the period between 27 February 2024 until the end of the Relevant Period, by reason of paragraph 235, the Respondent knowingly engaged in the Section 535 Contraventions.

Particulars

The Applicants repeat the particulars in paragraph 248 above and the particulars thereunder.

251. Alternatively to paragraph 250, in the period between 27 February 2024 until the end of the Relevant Period, the Respondent was reckless as to whether the Section 535 Contraventions would occur.

Particulars

The Applicants refer to paragraph 249 and 250 above and the particulars thereunder. Further particulars will be provided after discovery.

252. By reason of paragraphs 248 to 251, the Section 535 Contraventions were serious contraventions within the meaning of s. 557A of the FWA in operation at the relevant time.

K. RELIEF CLAIMED

253. Ms Iob claims damages for loss suffered in respect of paragraph 139.

254. The Applicants claim on their own behalf, and on behalf of Group Members:

- a. A declaration pursuant to s 545(1) of the FWA that the Respondent contravened civil remedy provisions in relation to the Applicants' and the Group Members' employment:

(i) Section 50 of the FWA in respect of 2014 Agreement Roster Breaches and 2022 Agreement Roster Breaches;

(ii) Section 50 in respect of failing to pay for Induction Training in the 2014 Agreement Period;

(iii) Section 50 in respect of failing to pay overtime in the 2014 Agreement Period and the 2022 Agreement Period in respect of:

a. 2014 Agreement Pre-Shift Work and 2022 Agreement Pre-Shift Work;

b. 2014 Agreement Post-Shift Work and 2022 Agreement Post-Shift Work;

c. 2014 Agreement Additional Managerial Work and 2022 Agreement Additional Managerial Work;

d. 2014 Agreement Training Outside of Rostered Hours and 2022 Agreement Training Outside of Rostered Hours;

- e. 2014 Agreement Work During Unpaid Meal Breaks and 2022 Agreement Work During Unpaid Meal Breaks;
 - f. 2014 Agreement Work During Paid Rest Breaks and 2022 Agreement Work During Paid Rest Breaks.
- (iv) Section 50 in respect of the Respondent failing to provide unpaid meal breaks as referred to in paragraphs 105, 112, 195 and 201;
 - (v) Section 50 in respect of the Respondent failing to provide paid rest breaks as referred to in paragraphs 119, 126, 207 and 213;
 - (vi) Section 50 in respect of the 2014 Agreement Failure to Pay Travel Allowance and the 2022 Agreement Failure to Pay Travel Allowance;
 - (vii) Section 50 in respect of 2022 Agreement Failure to Pay Special Clothing Allowance;
 - (viii) Section 50 in respect of 2022 Agreement Failure to Pay Higher Duties Allowance;
 - (ix) Section 50 in respect of 2014 Agreement Failure to Provide 10-hour Breaks between Shifts, and 2022 Agreement Failure to Provide 12-hour Breaks between Shifts;
 - (x) Section 535(1) in respect of the Respondent's failure to keep accurate records of a kind required to be kept by the Regulations in the 2014 Agreement Period and the 2022 Agreement Period.
 - (xi) Section 535(4) in respect of the records being kept by the Respondent being false and misleading as pleaded in paragraph 239.
 - (xii) Section 535(3) in respect of the matters pleaded in paragraphs 241 to 244.

- b. orders pursuant to s.545 of the FWA awarding compensation to the Applicants and Group Members in respect of the Respondent's contraventions, being:
 - i. an order pursuant to s.33Z(1)(f) and/or s.33Z(1)(g) and/or s.33ZF of the FCA Act awarding damages on an aggregate basis in respect of compensation; or in the alternative,
 - ii. an order pursuant to s.33Z(1)(e) and/or s.33Z(1)(g) and/or s.33ZF of the FCA Act awarding damages for group members, sub-group members or individual group members, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies.
- c. an order pursuant to s.546 of the FWA that the Respondent pay a pecuniary penalty to the Applicants or the relevant Group Members.
- d. an order pursuant to s.546 of the FWA that the Respondent pay a pecuniary penalty to the Applicants or the relevant Group Members on the basis that Section 535 Contraventions were serious contraventions within the meaning of s. 557A of the FWA as was in operation at the relevant time.
- e. an order pursuant to s.547 of the FWA and/or s. 51A of the FCA Act awarding interest up to judgment on the above amounts; and
- f. such further or other relief as the Court deems fit.
- g. Date: 23 January 2025

Marc Felman KC

Nilanka Goonetillake

Counsel for the Applicants



Signed by Rory Markham

Lawyer for the Applicants
