

Form F24C – Declaration in relation to termination of an enterprise agreement after the nominal expiry date

[Fair Work Act 2009](#), s.225; [Fair Work Commission Rules 2013](#), rule 26 and Schedule 1

This is a declaration in support of an application to the Fair Work Commission for termination of an enterprise agreement under Part 2-4 of the [Fair Work Act 2009](#).

I,	David Willet
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[insert name of person making the declaration]

37 Smith Street

[insert postal address of person making the declaration]

Fitzroy	VIC	3065
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[insert suburb]

[insert State or Territory]

[insert postcode]

Managing Director, Cambridge Clothing Pty Ltd ACN 613 716 635

[insert occupation of person making the declaration]

declare that:

Part 1 – Preliminary

1.1 What is the name of the Applicant for termination of the enterprise agreement?

Legal name of Applicant	Cambridge Clothing Pty Ltd
Applicant's ACN (if a company)	613 716 635
Applicant's trading name or registered business name (if applicable)	n/a
Applicant's ABN (if applicable)	23 613 716 635

1.2 What is the name of the enterprise agreement that is proposed to be terminated (the Agreement)?



Write the name exactly as it appears in the title clause of the Agreement and include the Agreement ID/Code Number if known.

Cambridge Clothing Company Enterprise Agreement (2014)
AG2015/1943

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1.3 What is the nominal expiry date of the Agreement? What is the number of the clause in the Agreement that specifies that date?

Nominal expiry date	8 April 2019
Clause number	21.1

Part 2 – Grounds for termination



Section 226(1) of the [Fair Work Act 2009](#) sets out 3 different grounds for termination of an enterprise agreement after the nominal expiry date.

If no employees are covered (or likely to be covered) by the Agreement, you should answer question 2.2.

If any employees are covered by the Agreement, you should answer question 2.1 or questions 2.3(a), (b) and (c).

Ground 1 – Unfairness

2.1 Explain why you believe that the continued operation of the Agreement would be unfair for the employees covered by the Agreement.



See section 226(1)(a) of the [Fair Work Act 2009](#).

1. I am the Managing Director of CCPL and have performed this position since 13 April 2016. As part of my position as Managing Director, I am responsible for considering remuneration arrangements for CCPL.
2. Cambridge Clothing Pty Ltd ACN 613 716 635 (**CCPL**), as an employer covered by the *Cambridge Clothing Company Enterprise Agreement (2014) (2014 EA)*, applies to terminate the 2014 EA as an enterprise agreement that has passed its nominal expiry date pursuant to section 225 of the *Fair Work Act 2009* (Cth) (**FWA**).
3. The 2014 EA has passed its nominal expiry date, being four years from the date that the 2014 EA was approved on 1 April 2015, which operated from 8 April 2015 pursuant to clause 21.1 of the 2014 EA.
4. CCPL is covered by the 2014 EA in respect of its employees employed in the classifications described in Schedule 1 of the 2014 EA.
5. If the 2014 EA is terminated by the Fair Work Commission, CCPL will be covered by, and apply, the *General Retail Industry Award 2020 (Retail Award)* in respect of its employees.
6. CCPL applies to terminate the 2014 EA pursuant to section 226(1)(a) of the FWA, being that the Fair Work Commission is satisfied that the continued operation of

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the 2014 EA would be unfair to the employees covered by the 2014 EA.

7. Should the FWC grant CCPL's application to terminate the 2014 EA pursuant to this application, CCPL seeks for the termination of the 2014 EA to come into effect immediately from the date of the decision granted by the Fair Work Commission pursuant to section 227 of the FWA.

Background

8. Cambridge Clothing was established in New Zealand in 1867 and has become a leading provider of men's tailored clothing (**Business**). The Business later expanded to Australia where it is now operated by CCPL, which is covered by the 2014 EA as a result of a 2016 decision of the Fair Work Commission: see *Cambridge Clothing Pty Ltd T/A Cambridge Clothing* (AG2016/5229) [2016] FWC 6091.
9. A more detailed history of the Business and how the 2014 EA came to cover CCPL, including its corporate structure, is provided in section 2.4 of the accompanying Form F24B.

CCPL's mistaken position in relation to the continued application of the 2014 EA

10. It recently came to my attention, as Managing Director of CCPL, that CCPL had mistakenly concluded that the 2014 EA did not cover and apply to CCPL in respect of its employees employed in the classifications described in Schedule 1 of the 2014 EA (**Retail Employees**) after the nominal expiry date of the 2014 EA on 8 April 2019.
11. CCPL did not take steps to terminate the 2014 EA after 8 April 2019 and the 2014 EA has not been replaced.
12. From about 8 April 2019 onwards, CCPL considered that it was covered by the Retail Award in respect of its Retail Employees and applied the Retail Award to its Retail Employees.
13. I now understand that the 2014 EA is still in operation and continued to cover CCPL and its Retail Employees after the nominal expiry date.
14. Prior to 8 April 2019, I had made the decision for the Retail Award to be applied to all Retail Employees as:
 - (a) I considered that the Retail Employees would be better off under the Retail Award for the work performed; and
 - (b) it would be unfair for CCPL to continue to apply the 2014 EA and would disadvantage the Retail Employees covered by the 2014 EA due to the 'loaded rate' under the 2014 EA.

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Operation of the 2014 EA and the 2014 EA Loaded Rate

15. Pursuant to clause 13 of the 2014 EA, Retail Employees are provided with an all-inclusive base rate of pay for all ordinary hours of work, which includes all penalties, allowances, and any other payments that might otherwise apply, except for those specifically included in the 2014 EA (**2014 EA Loaded Rate**).
16. Clause 13.2 of the 2014 EA provides the following 2014 EA Loaded Rate for the following employment categories:
 - (a) Part-time employees:
 - i. Retail employee: \$21.00 per hour;
 - ii. Assistant/concession store manager: \$22.00 per hour; and
 - iii. Store manager: \$23.25 per hour;
 - (b) Casual employees:
 - i. \$25.13, which is inclusive of the 25% casual loading pursuant to clause 4.1(c) of the 2014 EA;
 - (c) Full-time employees:
 - i. Retail employee: \$41,500 minimum annual salary;
 - ii. Assistant/concession store manager: \$44,500 minimum annual salary; and
 - iii. Store manager: \$46,500 minimum annual salary.
17. As at the date of this application, CCPL's workforce covered by the 2014 EA consists of:
 - (a) part-time employees: 39;
 - (b) full-time employees: 43; and
 - (c) casual employees: 83, noting that in the pay period immediately preceding the date of this application, 72 casual employees performed work.
18. Pursuant to the 2014 EA, Retail Employees are paid the 2014 EA Loaded Rate for all ordinary hours of work and do have any entitlement to receive penalty rates for weekend work, public holidays worked or evenings worked.
19. Set out below is an explanation of how CCPL employees covered by the 2014 EA were paid for their rostered hours during the period that CCPL applied the 2014 EA:
 - (a) full-time and part-time employees were paid the 2014 EA Loaded Rate (set out above) for all ordinary hours of work;
 - (b) casual employees were paid the 2014 EA Loaded Rate, which was inclusive of the 25% casual loading (set out above), for all ordinary hours worked;

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- (c) the Retail Employees had no entitlement to be paid penalty rates for weekend work, public holidays worked or for evening work;
- (d) ordinary hours of work are defined in clause 7.1 of the 2014 EA as covering a greater span of hours than the Retail Award and encompasses weekday work, evening work and weekend work;
- (e) Retail Employees were entitled to time off in lieu for additional hours (overtime) performed pursuant to clause 13.7 of the 2014 EA. It was very rare for Retail Employees to perform additional hours; and
- (f) in addition to the 2014 EA Loaded Rate, Retail Employees were eligible to participate in a discretionary commission scheme (clause 13.4) and were entitled to an in charge allowance (clause 13.5) (where applicable), time off in lieu for public holidays worked for full-time employees (13.6) and a clothing allowance (clause 16).

20. Pursuant to clause 13.3 of the 2014 EA, there was no set requirement for CCPL to increase the 2014 EA Loaded Rate during the operation of the 2014 EA and any wage increase was at CCPL's discretion.
21. CCPL did not increase the 2014 EA Loaded Rate during the period that CCPL applied the 2014 EA on the understanding that the 2014 EA Loaded Rate was higher than the base rate of pay under the Retail Award.
22. During the period that CCPL applied the 2014 EA up until 8 April 2019, the 2014 EA Loaded Rate was greater than the base rate of pay under the Retail Award in considering the application of section 206 of the FWA and its interaction with the 2014 EA.
23. From 8 April 2019 onwards, the Retail Employees have received base rates of pay and minimum entitlements calculated by reference to the Retail Award and have been paid penalty rates for ordinary hours of work performed on weekends, public holidays and evenings in accordance with the span of ordinary hours provided for under the Retail Award.
24. I caused correspondence to be sent to the Fair Work Ombudsman (**FWO**) on 18 May 2023 seeking the FWO's determination of CCPL's application of the Retail Award from 8 April 2019 onwards and the application of section 206 of the FWA.

CCPL's decision not to apply the 2014 EA from 8 April 2019 onwards

25. I submit that the continued operation of the 2014 EA is unfair for the Retail Employees covered by the 2014 EA due to the 2014 EA Loaded Rate and was the reason that I determined to apply the Retail Award to Retail Employees from 8 April 2019 onwards.

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26. At the commencement of the 2014 EA, Retail Employees performed limited evening and weekend work and the 2014 EA Loaded Rate was in excess of Retail Award entitlements for the work performed by the Retail Employees.
27. In around February to March 2017, CCPL increased its offering in David Jones departments and implemented a new roster arrangement. This new roster arrangement required part-time Retail Employees to staff 'small doors' (**Small Doors Roster**).
28. Under the Small Doors Roster, applicable part-time Retail Employees were required to perform increased ordinary hours of work performed on weekends and evenings and received only the 2014 EA Loaded Rate for these ordinary hours of work performed.
29. Prior to the nominal expiry date of the Agreement on 8 April 2019, I caused a wage review to be conducted by CCPL and I determined that Retail Employees would be better off being paid in accordance with the Retail Award because Retail Employees would be entitled to:
 - (a) minimum rates of pay under the Retail Award that were comparable to the 2014 EA Loaded Rate as at 8 April 2019;
 - (b) penalty rates for ordinary hours of work performed on weekends, public holidays and evenings;
 - (c) overtime rates or time off in lieu in accordance with the Retail Award for additional hours performed in excess of ordinary hours of work; and
 - (d) allowances in accordance with the Retail Award, or greater entitlements under individual employment contracts (for example, CCPL retained the more beneficial clothing allowance provisions pursuant to the 2014 EA).
30. Based on the calculations at this time, I formed the view that CCPL's Retail Employees would be far better off under the provisions of the Retail Award compared against the 2014 EA and I wanted to ensure CCPL were fairly, adequately and appropriately remunerated for the work that they were performing.
31. It was also my position at this time that it would be unconscionable for CCPL to continue to rely on the provisions of the 2014 EA and the 2014 EA Loaded Rate in not being required to pay Retail Employees penalty rates for ordinary hours of work performed on weekends, public holidays and evenings.
32. Notwithstanding that it has now recently come to my attention that CCPL had mistakenly concluded that the 2014 EA did not operate past the nominal expiry date of the 2014 EA, I consider that:
 - (a) I have acted in the best interests of CCPL's Retail Employees by applying the Retail Award compared to the 2014 EA since 8 April 2019 onwards;

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and

- (b) the Retail Employees have at least received minimum rates and entitlements in accordance with the Retail Award since 8 April 2019 onwards, which are significantly greater than the 2014 EA Loaded Rate as the 2014 EA Loaded Rate only equals the base rate of pay under the Retail Award pursuant to section 206 of the FWA.

33. Attached and marked as **Annexure A** is a comparison of the 2014 EA Loaded Rate (which is the base rate of pay under the Retail Award only) compared to the minimum rates and entitlements CCPL currently provides to Retail Employees pursuant to the Retail Award.

Additional considerations

34. As at 1 May 2023, I caused an approximate comparison of the terms of the 2014 EA as against the Retail Award to be conducted, which provides a comparison of the 2014 EA terms, the Retail Award terms and additional benefits provided under individual employment contracts.

35. Attached and marked as **Annexure B** is a copy of the 2014 EA comparison table.

36. On 18 May 2015, I caused a memo to be emailed to all CCPL employees that:

- (a) explained CCPL’s mistaken conclusion that the 2014 EA ceased to cover CCPL and the Retail Employees after the nominal expiry date and that as a result the 2014 EA still covers CCPL and the Retail Employees;
- (b) explained CCPL’s intention to file this application in the FWC to terminate the 2014 EA pursuant to sections 225 and 226 of the FWA;
- (c) attached CCPL’s 2014 EA comparison table (refer to **Annexure B**); and
- (d) invited all employees to express their views, provide feedback or raise any concerns on CCPL’s intention to file this application to me by way of my email address or mobile phone number by Thursday, 25 May 2023.

37. Attached and marked as **Annexure C** is a copy of the 18 May 2015 memo that I emailed to all employees.

38. As at the date of this application, I did not receive any substantive responses, concerns, feedback or issues from CCPL employees regarding this application.

39. The 2014 EA does not cover any employee organisations.

40. With regards to section 226(4) of the FWA, CCPL does not intend, and has never intended, to replace the 2014 EA and no bargaining for a proposed enterprise agreement has occurred.

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CCPL’s application to terminate the 2014 EA

- 41. Accordingly, for the reasons set out in this declaration, I submit that the continued operation of the 2014 EA, specifically in light of the 2014 EA Loaded Rate, would be unfair for employees and that CCPL’s application should be granted by the FWC pursuant to section 226(1)(a) of the FWA.

- 42. Further, I submit that in accordance with section 226(1A) of the FWA, it is appropriate in all the circumstances to terminate the 2014 EA and for CCPL and its employees to be covered by the Retail Award in accordance with CCPL’s current practices.

Ground 2 – Coverage

2.2 Are there any employees covered or likely to be covered by the Agreement?



See section 226(1)(b) of the [Fair Work Act 2009](#).

Yes

No

Don’t know

If you answered **Yes** – you should answer question 2.1 or questions 2.3(a), (b) and (c).

If you answered **No** – you do not need to answer questions 2.1 or 2.3.

Ground 3 – Viability of business, potential terminations of employment and termination entitlements

2.3(a) Explain how the continued operation of the Agreement would pose a significant threat to the viability of a business carried on by the employer, or employers, covered by the Agreement.



See section 226(1)(c)(i) of the [Fair Work Act 2009](#).

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2.3(b) Explain how the termination of the Agreement would be likely to reduce the potential of terminations of employment covered by section 226(2) for the employees covered by the Agreement.



See sections 226(1)(c)(ii) and 226(2) of the [Fair Work Act 2009](#).

2.3(c) Does the Agreement contain terms providing entitlements of the kind set out in section 226A(3) relating to the termination of employees’ employment?



See sections 226(1)(c)(iii) and 226A of the [Fair Work Act 2009](#).

Yes

No

If you answered **Yes** – specify which clause(s) in the Agreement provide such entitlements.

Part 3 – Bargaining for a proposed new enterprise agreement

3 Has the process of making a proposed new enterprise agreement started?



Section 226(4) of the [Fair Work Act 2009](#) requires the Commission to consider whether the process of making a proposed new enterprise agreement has started and, if it has, whether terminating the Agreement would adversely affect the bargaining position of employees.

Yes

No

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If you answered **Yes** – specify:

- the date of the notification time for the proposed new enterprise agreement,
- whether the proposed new agreement will cover the same, or substantially the same, group of employees as the existing Agreement,
- whether bargaining for the proposed new enterprise agreement is occurring, and
- whether the termination of the existing Agreement would adversely affect the bargaining position of the employees that will be covered by the proposed new enterprise agreement.



Section 173(2) of the [Fair Work Act 2009](#) defines the ‘notification time’ for a proposed enterprise agreement.

Part 4 – Any other relevant matter

4 Is there any other relevant matter that you believe the Commission should consider in deciding whether to terminate the Agreement?

Yes

No

If you answered **Yes** – please provide further details:



See sections 226(1A) and 226(5) of the [Fair Work Act 2009](#).

Part 5 – Statistical information



This information is necessary to enable the General Manager of the Fair Work Commission to comply with the statutory reporting obligations in section 653 of the [Fair Work Act 2009](#).

5.1 What is the primary activity of the employer?



For example music retailer, plumbing contractor, steel fabricator, etc.

Clothing retailer

5.2 Tick the relevant boxes for the states and territories the Agreement operates in:

- Australian Capital Territory
- New South Wales
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria
- Western Australia
- An external territory

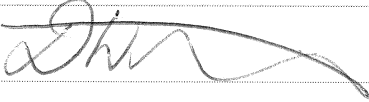
5.3 Of the employees covered by the Agreement, how many employees are in the following demographic groups?


Demographic group	Number of employees
Female	68
Non-English speaking background	
Aboriginal or Torres Strait Islander	
Disabled	
Part-time	39

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Casual	83
Under 21 years of age	17
Over 45 years of age	39

Signature		Date:	25 May 2023
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	<p>Giving false or misleading information is a serious offence.</p> <p>A person who knowingly gives false or misleading information or knowingly produces a false or misleading document in support of an application for termination of an enterprise agreement is guilty of an offence, the punishment for which is imprisonment for up to 12 months - see s.137.1 and s.137.2 of the Criminal Code.</p>
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Annexure A - 2014 EA Loaded Rate vs CCPL Retail Award Rates 2023

A. Part-time employees

Classification		2014 EA Loaded Rate	Award Rate (Base)	Saturday penalty rate	Saturday hourly rate	Sunday penalty rate	Sunday hourly rate	Public holidays	Public holiday rate	Evening work ¹	Evening work penalty rate
1 July 2022 to 30 June 2023	Retail Employee (equivalent level 1 classification Retail Award)	\$23.38	\$23.38	125%	\$29.23	150%	\$35.07	225%	\$52.16	125%	\$29.23
	Assistant/ Concession store manager (equivalent level 3 classification Retail Award)	\$24.29	\$24.29	125%	\$30.36	150%	\$36.44	225%	\$54.65	125%	\$30.36
	Store manager (equivalent level 4 classification Retail Award)	\$24.76	\$24.76	125%	\$30.95	150%	\$37.14	225%	\$55.71	125%	\$30.95

¹ Monday to Friday after 6pm

B. Casual employees

	Classification	2014 EA Loaded Rate	Award Rate (Base) incl casual loading	Saturday penalty rate	Saturday hourly rate	Sunday penalty rate	Sunday hourly rate	Public holidays	Public holiday rate	Evening work ²	Evening work penalty rate
1 July 2022 to 30 June 2023	Retail Employee (equivalent level 1 classification Retail Award) – casual employees over 20 years of age	\$25.13	\$29.23 ³	125%	\$35.07	150%	\$40.92	225%	\$58.45	125%	\$35.07

Casual employees under 20 years of age receive junior rates in accordance with clause 17.2 of the Retail Award.

C. Full-time employees

Pursuant to paragraph 17 of the Form 24C Declaration there are 43 full-time employees currently employed that are covered by the classifications of the 2014 EA. Of these current full-time employees, the lowest annual salary is **\$52,000 (gross)** plus superannuation plus incentives/commissions.

² Monday to Friday after 6pm.

³ Base rate of \$23.38 per hour plus \$5.85 25% casual loading, being a total of \$29.23 per hour.

ANNEXURE B - Comparison of 2014 EA v Retail Award (current)

Term	EBA	General Retail Industry Award [MA000004] (Retail Award)	Comparison	CCPL contract terms
Remuneration Clause 13.1	The base rates of pay contained in the agreement are an 'all-inclusive rate' which includes all penalties, allowances and other payments the employees would otherwise be entitled to receive.	Allowances, overtime and penalties are provided on top of base rate of pay and are set out in section 2 below.	Retail Award is better off based on penalties, overtime and allowances provided.	David Jones staff – receive sales commission of 2% of sales value of seasonal products only (discretionary)
Hours of work Clause 7	<p>Full time: maximum of 38 ordinary hours per week averaged over 4 weeks (Note: cl 4 of the EBA provides that full-time employees are to work a maximum of 40 hours, however undertaking was given that employees would not be required to work more than a maximum of 38 hours in accordance with the Retail Award).</p> <p>Part time: Employees are engaged for a minimum of 12 hours per week and a maximum of less than 38 ordinary hours averaged over a 4 week period. Engagements are a minimum of 3 hours.</p> <p>Casual: engaged on an hourly basis. Engagement is a minimum of three (3) consecutive hours provided that:</p> <ul style="list-style-type: none"> casual employees attending compulsory training and staff meetings may be engaged for less than 3 hours for up to four training sessions per annum; a casual employee may agree to work a shift of not less than 2 consecutive hours for the purpose of providing lunch cover at a store; and casual employees who attend secondary school may be engaged for a minimum of 1.5 hours from Monday to Friday between 3.30pm and 6.30pm. 	<p>Full time: An employee who is engaged to work an average of 38 ordinary hours per week in accordance with an agreed hours of work arrangement is a full-time employee.</p> <p>Part time: An employee engaged to work for fewer than 38 ordinary hours per week and whose hours of work are reasonably predictable. No minimum hours. Engagement for minimum of 3 hours.</p> <p>Casual: Minimum of 3 hours or 1.5 hours for employees who attend secondary school may be engaged for a minimum of 1.5 hours from Monday to Friday between 3.00 and 6.30pm (with parental consent) and employment for a longer period is not possible either because of the operational requirements of the employer or the unavailability of the employee.</p>	<p>Full time: same</p> <p>Part time: same</p> <p>Casual: The Retail award is better off on the basis that there is no ability for casuals (that do not attend high school) to be engaged for 2 hours to provide lunch cover. On this basis, employees would be paid a minimum of 3 hours as opposed to two.</p>	
Span of ordinary hours Clauses 7.1 and 7.2	Ordinary hours can be worked between: <ul style="list-style-type: none"> Monday to Friday: <ul style="list-style-type: none"> non-peak needs: 7am to 10pm; peak needs: 7am to 12am; Saturday: 8am to 7pm; Sunday: 9am to 6pm. 	Ordinary hours can be worked between: <ul style="list-style-type: none"> Monday to Friday: non-peak needs: 7am to 9pm; Saturday: 7am to 6pm; Sunday: 9am to 6pm. 	Retail Award.	
Additional hours/ overtime Clause 13.7	<p>Full time and part time employees: Employees who work outside their ordinary hours (Additional Hours) will receive time off in lieu (TOIL). All permanent employees will be entitled to TOIL for:</p> <ul style="list-style-type: none"> all Additional Hours worked – being where employees work more than 160 hours in a 4 week period;¹ 	Employees who work additional hours outside of their ordinary hours are entitled to an overtime rate or TOIL. <p>Overtime rates</p>	Under the EBA, whilst the maximum hours of work for full time employees is 38 hours over a four week period, overtime is not payable until 160 hours are worked. On this basis, the	Generally, CCPL employees do not exceed ordinary hours unless under an annual salary arrangement.

¹ The undertaking addressed that full-time employees would not perform more than 38 hours per week in a 4 week period – this undertaking was not then applied to overtime for full-time employees in clause 4.1(a) and on a technical reading overtime does not apply until a full-time employee performs more than 160 ordinary hours in a 4 week period.

	<ul style="list-style-type: none"> all hours worked beyond 11 Ordinary Hours on any one day; or all hours worked outside the relevant span of ordinary hours (set out above). <p>TOIL will be for a period equal to the Additional Hours worked. Approval for such time off duty is subject to our operational requirements and must be taken within 28 days.</p> <p>Casual employees: will be paid the base rate of pay (and loading) for any additional hours worked.</p>	<p><i>Full time and part time employees overtime hours:</i></p> <ul style="list-style-type: none"> Monday to Saturday: first 3 hours 150% and 200% after 3 hours; Sunday: 200%; and public holidays: 250%. <p>Casual employees overtime hours:</p> <ul style="list-style-type: none"> Monday to Saturday: first 3 hours 175% and 225% after 3 hours Sunday: 225% public holidays: 275%. <p>TOIL</p> <p>An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee. The period of time off that an employee is entitled to take is equivalent to the overtime payment that would have been made. Time off must be taken within the period of 6 months after the overtime is worked.</p> <p>EXAMPLE: an employee who worked 2 overtime hours at the rate of 150% is entitled to 3 hours' time off.</p>	<p>Retail Award is better off as full time employees receive overtime/accrue TOIL once they have worked 152 hours as opposed to 160 hours. Additionally, TOIL is provided at the overtime rate under the Retail Award, whereas under the EBA it is only applied to the ordinary rate.</p> <p>The Retail Award is better off for casual employees as they receive overtime rates in addition to base rate of pay and casual loading.</p>
<p>Annual leave loading</p> <p>Clause 13.1</p>	<p>No annual leave loading</p> <p><i>Note: undertaking was given that the EBA entitlements includes four weeks of annual leave which is paid at the applicable base rate (which was higher than the Award), resulting in employees being better off overall under the EBA.</i></p>	<p>During a period of paid annual leave the employer must pay an employee an additional payment for the employee's ordinary hours of work in the period (which is accrued).</p> <p>The additional payment is the greater of:</p> <ul style="list-style-type: none"> 17.5% of the employee's minimum hourly rate for all ordinary hours of work in the period; or the minimum hourly rate for all ordinary hours of work in the period inclusive of penalty rates. 	<p>Retail Award is better off as it provides for annual leave loading or the rate of pay including penalties. The base rate of pay under the EBA did not incorporate annual leave loading applied.</p>
<p>Penalty Rates</p> <p>Clause 13.1</p>	<p>No penalty rates payable for weekends and public holidays-- included in base rate of pay.</p> <p><i>Note: at the time of commencement, it was established that the higher remuneration for all employees under the EBA compensated for the loss of penalties.</i></p>	<p>Full time and part time employees:</p> <ul style="list-style-type: none"> Monday to Friday after 6:00pm: 125% of minimum hourly rate; 125% for any ordinary hours on a Saturday; 150% for any ordinary hours on a Sunday; and 225% for any ordinary hours on a public holiday. <p>Casual employees:</p> <ul style="list-style-type: none"> Monday to Friday after 6:00pm: 150% of minimum hourly rate; 150% for any ordinary hours on a Saturday; 175% for any ordinary hours on a Sunday; and 250% for any ordinary hours on a public holiday. 	<p>Retail Award is better off as penalty rates are payable.</p>

<p>Public holidays</p> <p>Clauses 4.1 and 15</p>	<p>Full time and part time employees: receive time off duty with pay for a period equal to the ordinary hours worked on the Public Holidays.</p> <p>Salaried Assistant Managers and Managers: receive equivalent TOIL for hours worked on public holidays to be taken at times approved by the business.</p> <p>Casual employees: will be paid in accordance with the base rate of pay for any time worked on a public holiday.</p> <p>Where an additional day is declared as a public holiday, and the employee is required to work both days, they will only be entitled to payment for one of the two days, with the second paid at their ordinary rate of pay.</p>	<p>Employees working public holidays may receive either penalty rates or TOIL.</p> <p>Penalty rates (set out above).</p> <p>TOIL</p> <p>An employer and a full-time or part-time employee may agree that, instead of penalty rates being paid, the employee may be paid at the minimum hourly rate for hours worked on the public holiday and an amount of paid time equivalent to the hours worked on the public holiday is to be added to the employee's annual leave or the employee is to be allowed to take that time off within a period of 28 days after the public holiday. Time off not taken within that period of 28 days must be paid out.</p>	<p>Retail Award is better off for full time and part time employees as it provides the option for penalty rates or the option for TOIL. Under the Retail Award, the employee will still be paid the minimum rate of pay and receive TOIL whereas, only TOIL at base rate is provided in the EBA.</p> <p>Retail Award is better off for casual employees as they receive penalty rates in addition to base rate of pay and casual loading.</p>	
<p>Casual loading</p> <p>Clauses 4.1 and 13.2</p>	<p>Casual employees on any shift will be paid a casual loading of 25% in addition to the applicable base rate of pay – this is represented in the all-inclusive casual rate set out in clause 13.1(b).</p>	<p>Casual employees receive a 25% casual loading in addition to the base rate of pay.</p>	<p>Award more beneficial as employees are entitled to increases to the base rate of pay plus in the 25% casual loading, which is arguably not available to casual employees under the 2014 EA by operation of section 206 of the FWA.</p>	
<p>Rostering and breaks between shifts</p> <p>Clause 8</p>	<p>(a) Employees may be required to work a maximum of 11 ordinary hours on any one day.</p> <p>(b) Employee may be required to work on a maximum of 10 days in a two week period, unless agreed otherwise.</p> <p>(c) Employees will be given a 10 hour break between the completion of one work period and the commencement of another work period, unless otherwise agreed.</p>	<p>(a) The maximum number of ordinary hours that can be worked on any day is 9 hours. However, an employer may roster an employee to work up to 11 ordinary hours on one day per week.</p> <p>(b) The employer must not roster an employee to work ordinary hours on more than 5 days per week.</p> <p>(c) An employee must have a minimum break of 12 hours between when the employee finishes work on one day and starts work on the next. However, the employer and an individual employee may agree that for a minimum break to be reduced to 10 hours.</p> <p>(d) If an employee starts work again without having had 12 hours off work, the employer must pay the employee at the rate of 200% of the rate they would be entitled to until the employee has a break of 12 consecutive hours.</p>	<p>Arguably EBA better off.</p>	<p>Retail Award applied.</p>
<p>Meal and rest breaks</p> <p>Clause 9</p>	<p>Where an employee works more than 4 hours but less than 7 hours – entitled to a paid 10 minute break, with two paid 10 minute breaks where they work in excess of 7 hours.</p> <p>Where an employee's daily hours of work exceed 5 hours they will receive an unpaid meal break of 30 minutes.</p>	<ul style="list-style-type: none"> 4 hours or more but no more than 5 – 10 minute paid rest break; More than 5 hours but less than seven – 10 minute paid rest break and one unpaid meal break of at least 30 minutes and not more than 60 minutes 	<p>Retail Award is better off.</p>	

		<ul style="list-style-type: none"> 7 hours or more but less than 10 – two 10 minute paid rest breaks (taken at first and second half of shift) and one unpaid meal break of at least 30 minutes and not more than 60 minutes. 10 hours or more - two 10 minute paid rest breaks (taken at first and second half of shift) and two unpaid meal break of at least 30 minutes and not more than 60 minutes. 		
Wage increase Clause 13.3	The wage rates and the salaries may be increased annually at CCPL's discretion. <i>Note: section 206 of the FWA operates so that the base rate of pay under the EBA must not be less than that under the Retail Award.</i>	Increased in accordance with yearly modern award review performed by FWC.	Retail Award better off as provides for wage increase mechanism.	
Commission Clause 13.4	Commission scheme in place - all items sold attract commission, and so all employees can expect to earn commission. Varied at CCPL's discretion.	Not applicable.	EBA is better off.	Bonus/commission is discretionary and changes from time to time.
In charge allowance/higher duties Clause 13.5	Any retail employee responsible for opening and closing of a store will be entitled to an allowance of \$0.50 per hour for work performed on that day.	Where an employee: <ul style="list-style-type: none"> performs for more than 2 hours on any particular engagement, duties of a classification higher than their classification, the minimum hourly rate for that higher classification for the whole engagement. performs for 2 hours or less on any particular engagement duties of a classification higher than their classification, the minimum hourly rate for that higher classification for the time during which those duties were performed. 	EBA.	CCPL does not open or close department stores. This is not applicable.
Clothing allowance Clause 16	(a) Male employees will be provided, each season, with a full seasonal outfit including a suit, shirt and tie. (b) Female employees will be paid an allowance each season (varied at CCPL's discretion) - currently \$100 each season for part time employees and \$200 each season for full time employees. Note: two seasons each calendar year	The employer must reimburse an employee who is required to wear special clothing for the cost of purchasing any such clothing that is not supplied or paid for by the employer.	EBA.	<p>Male</p> <p>Full-time: you will be provided, each season, with two full seasonal outfits including suits, shirts, and ties.</p> <p>Part-time: you will be provided, each season, with a full seasonal outfit including a suit, shirt, and tie.</p> <p>Female</p> <p>Full-time: you will be provided with a seasonal clothing allowance \$300.</p> <p>Full-time: you will be provided with a seasonal clothing allowance \$150.</p> <p>For the avoidance of doubt, we identify that there are two seasons in each calendar year.</p>

				The employee discount and clothing allowance are in accordance with any policy introduced or amended from time to time, at the Company's discretion.
Personal / carer's leave Clause 14.2	In accordance with the NES.	In accordance with the NES.	Same.	
Compassionate leave Clause 14.3	In accordance with the NES.	In accordance with the NES.	Same.	
Parental leave Clause 14.4	In accordance with the NES.	In accordance with the NES.	Same.	
Annual leave Clause 14.1	In accordance with the NES.	In accordance with the NES.	Same.	
Long service leave Clause 14.5	In accordance with applicable legislation.	In accordance with applicable legislation.	Same.	
Other provisions (a) Clause 5 (b) Clause 10 (c) Clause 12 (d) Clause 17 (e) Clauses 17.1 and 17.2 (f) Clause 17.7 (g) Clause 19 (h) Clause 19.3	EBA also provides for the following which are less beneficial than the Retail Award: (a) Probationary Period (b) Medical Testing and Alcohol and Other Drugs (c) Confidential Information (d) Termination of Employment (e) Notice of Termination (f) Abandonment of Employment (g) Redundancy (h) Transfer of Business/Outsourcing			(a), (c), (d), (e), (f), (g) in current employment agreements. CCPL pay meal allowances as per the Retail Award, although this is relatively rare.

ANNEXURE C - Memo to employees

From: David Willett

Sent: Thursday, May 18, 2023 12:35 PM

To: Myer Stores <myerstores@cambridgeclothing.com>; Joe Black Stores <joeblackstores@joeblack.com.au>

Cc: Regionals <Regionals@cambridgeclothing.com>

Subject: Notice to employees of Cambridge Clothing Pty Ltd

1. We are writing to notify you of some issues that have recently come to Cambridge Clothing Pty Ltd ACN 613 716 635 (**CCPL** or **Company**) attention regarding the applicable terms of your employment with CCPL.
2. These issues relate to the application of the *Cambridge Clothing Company Enterprise Agreement 2014 (2014 EA)* to CCPL employees employed as Retail Employees, Assistant/Concession Store Managers and Store Managers.
3. For your understanding, an enterprise agreement is an agreement negotiated with employees that contains terms and conditions of employment, including wages, for a specific enterprise. Where an enterprise agreement applies to an employee, these terms will govern their employment rather than any applicable modern award.
4. You can access a copy of the 2014 EA [here](#).

Background

5. The Cambridge Clothing business is one of the leading men's tailored clothing specialists in New Zealand and Australia (**Business**). Our Business has a long history, being established in New Zealand back in 1867. In the 1930s, the Business set up a New Zealand entity called Cambridge Clothing Company Limited (**CCCL**). The Business later expanded into Australia.
6. Upon entering the Australian market in around 2014, CCCL had difficulties using a New Zealand based payroll system to administer the applicable Australian modern award to employees (i.e. the *General Retail Industry Award 2020 [MA000004] (Retail Award)*).

7. To remedy these issues, CCCL bargained the 2014 EA. Under the 2014 EA, employees would be paid a “loaded rate” – being a higher flat rate of pay intended to compensate employees for all penalties, allowances, loadings and other payments that might otherwise apply to them under the Retail Award.
8. The 2014 EA was approved by the Fair Work Commission (**FWC**) on 1 April 2015, who had to be satisfied that employees would be better off overall under the 2014 EA than the Retail Award. From 1 April 2015, the 2014 EA covered CCCL and all of its retail employees in Australia set out in the classifications of the 2014 EA (Retail Employees, Assistant/Concession Store Managers and Store Managers).
9. In 2016, the Business underwent a restructure. As a result, the Business in Australia is now operated by CCPL and a separate entity in New Zealand (Cambridge Clothing Limited (Company number 5976467)).
10. In 2016, CCPL was not initially covered by the 2014 EA. As part of the restructure, a number of Australian employees employed in Australia transferred from CCCL to CCPL and were transferring employees for the purposes of the FWA. As such, the transferring employees continued to be covered by the 2014 EA.
11. Around this time, CCPL applied to the FWC to extend the coverage of the 2014 EA to all new employees of CCPL. This was approved by the FWC on 2 September 2016.
12. This is how the 2014 EA came to cover CCPL and applicable employees (Retail Employees, Assistant/Concession Store Managers and Store Managers) (**2014 EA Retail Employees**).

Application of the 2014 EA

13. During the term of the 2014 EA from 8 April 2015 until its nominal expiry date on 8 April 2019, 2014 EA Retail Employees covered by the 2014 EA were paid for their rostered hours as follows:
 - (a) full-time and part-time employees were paid a “loaded rate” (i.e. an all-inclusive base rate of pay including all penalties, allowances, loadings and other payments that may otherwise apply) for all ordinary hours worked (**2014 EA Loaded Rate**);
 - (b) the 2014 EA Loaded Rate was calculated to compensate employees for all ordinary hours worked and was higher than the base rates of pay under the Retail Award and employees had no additional entitlement to penalty rates for ordinary hours of work performed on weekends, evenings and public holidays;
 - (c) casual employees received the 2014 EA Loaded Rate, which was inclusive of a 25% casual loading, for all hours worked; and
 - (d) full-time and part-time employees that performed overtime were entitled to time off in lieu pursuant to clause 13.7 of the 2014 EA (although overtime was very rarely performed).
14. When the 2014 EA first came into effect, 2014 EA Retail Employees were performing limited evening and weekend work. As a result, the 2014 EA Loaded Rate was well in excess of the minimum entitlements that would have otherwise been payable under the Retail Award.
15. However, around February to March 2017, CCPL implemented a new roster arrangement which saw an increase in its 2014 EA Retail Employees performing ordinary hours on weekends and evenings (when penalty rates would have been payable under the Retail Award).
16. Around this time, senior management of CCPL who had knowledge of the 2014 EA approval process left the Business. New senior management of CCPL were not aware of the interaction between the 2014 EA and the Retail Award. There was no automatic mechanism under the 2014 EA that operated to increase the 2014 EA Loaded Rate.

CCPL's application of the Retail Award

17. While enterprise agreements have a nominal expiry date, they continue to operate until they are replaced by a new agreement or terminated by the FWC. The 2014 EA had a nominal expiry date

of 8 April 2019, but has not been replaced or terminated and continues to apply to 2014 EA Retail Employees.

18. It only recently came to CCPL's attention that it had mistakenly concluded that the 2014 EA did not apply to the 2014 EA Retail Employees after the nominal expiry date of 8 April 2019.
19. Our misunderstanding at this time was compounded by CCPL determining that its 2014 EA Retail Employees were better off being paid in accordance with the Retail Award compared to the 2014 EA.
20. CCPL has at all times intended to act in the best interests of its employees and ensure all employees are adequately, appropriately and fairly remunerated for the work that they are performing.
21. Accordingly, from 9 April 2019 onwards, CCPL has paid all its 2014 EA Retail Employees in accordance with the base rates of pay provided for in the Retail Award, together with entitlements to penalty rates, loadings and allowances, or greater rates of pay, entitlements and conditions provided under individual employment contracts.
22. Due to the operation of the *Fair Work Act 2009* (Cth) (**FWA**), however the 2014 EA continues to cover and apply to 2014 EA Retail Employees, and technically means that the 2014 EA Retail Employees are being overpaid as they are receiving benefits in excess of the 2014 EA Loaded Rate for ordinary hours worked (with no entitlement to penalty rates for ordinary hours performed on weekends, public holidays or evenings).
23. For the reasons set out above, CCPL has determined its 2014 EA Retail Employees are better off under the Retail Award as CCPL has applied since 8 April 2019 as compared to the 2014 EA.
24. Accordingly, CCPL intends to make an application to the FWC to terminate the 2014 EA pursuant to sections 225 and 226 of the FWA, on the grounds that its continued operation would be unfair to employees.

CCPL's application to terminate the 2014 EA

25. CCPL is committed to ensuring its 2014 EA Retail Employees have been fairly, appropriately and adequately remunerated for the hours of work they perform. At all times, CCPL has endeavoured to act in the best interests of its employees and has made the decision to terminate the 2014 EA on this basis and preserve the payment of your entitlements in accordance with the Retail Award.
26. CCPL also wishes to advise its employees that it is currently in discussions with the Fair Work Ombudsman (**FWO**) regarding the issues raised in this memo and to confirm CCPL's application of the 2014 EA to ensure that there has been no underpayment of wages. To be clear, based on the operation of the 2014 EA and the FWA, there has been no underpayment of wages and all CCPL employees have been paid strictly in accordance with the 2014 EA or in excess of the 2014 EA.
27. CCPL is in the process of preparing its application to terminate the 2014 EA and submit this to the FWC. Prior to finalising this application, CCPL wanted to:
 - (a) make its employees aware of this issue and how this has arisen;
 - (b) set out the reasons for the application to terminate the 2014 EA; and
 - (c) give its employees an opportunity to express their views on, or support of, the application to terminate the 2014 EA, or raise any concerns.
28. As part of considering CCPL's application to terminate the 2014 EA, please see **attached** a table that compares the terms of the 2014 EA against the provisions of the Retail Award as at 1 May 2023.
29. If you have any questions or concerns with the above, or would like to express your views on, or support of, CCPL's proposed course of action, please contact me by email on DavidW@cambridgeclothing.com or by phone on 0429607087 by no later than close of business on **Thursday, 25 May 2023**.

Yours sincerely

David Willett
Managing Director