



Australian Government

Fair Work  
OMBUDSMAN

## ENFORCEABLE UNDERTAKING

This undertaking is **given** by Best & Less Pty Limited (ACN 003 724 696) and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 12 of this undertaking.

## ENFORCEABLE UNDERTAKING

### PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by Best & Less Pty Limited (ACN 003 724 696), 657 – 673 Parramatta Road, Leichhardt NSW 2040 (**Best & Less**).

### COMMENCEMENT

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

### BACKGROUND

3. Best & Less is an Australian private company that derives revenue from the retailing of clothing and household items. In Australia, Best & Less operates 189 stores, in addition to an online retailing platform. As of June 2023, Best & Less employed 3,526 staff across Australia. Best & Less's revenue in Financial Year 2023 was \$517.7 million.
4. In December 2019, Best & Less was purchased by Aus VR Investments Pty Ltd (ACN 637 190 562), a subsidiary company of Allegro Funds Pty Ltd from the previous owners Greenlit Brands Pty Ltd.
5. In August 2020, Aus VR Investments Pty Ltd transferred its shares in Best & Less Group Pty Ltd to Best and Less Group Holdings Ltd (ACN 642 843 221) (**BLGH**).
6. On 8 December 2020, Best & Less first notified the FWO that:
  - (a) it identified that it had underpaid salaried Store Managers and Assistant Store Managers (**Salaried Managers**) under terms of the *General Retail Industry Award 2010* (**GRIA 2010**) in that their salaries did not adequately remunerate these employees for their award entitlements to allowances, penalty rates, overtime and annual leave loading;
  - (b) it had undertaken an investigation into the period of 1 October 2013 to 30

September 2020 (**Relevant Period**), aided by law firm Hall & Wilcox and accountants KPMG (**Internal Investigation**); and

(c) the Internal Investigation identified and remediated underpayments under the GRIA 2010 to 686 current and former employees and identified a total underpayment of \$5,220,531.24 during the Relevant Period (excluding superannuation); and

(d) that it had notified affected employees and the Shop, Distributive and Allied Employees' Association Union.

7. Best & Less further notified the FWO that it had:

(a) conducted the Internal Investigation and rectification of underpayments to a 7 year period;

(b) excluded from its calculation of back payments owed to employees the effect of bonuses and incentives paid to those employees during the Relevant Period; and

(c) applied a 9.5% superannuation payment to the entire quantum of back payments, including amounts attributable to overtime or allowances throughout the Relevant Period, resulting in a total superannuation payment to affected employees of \$496,867.19.

8. Best & Less notified the FWO that, amongst other things, it had taken the following steps to prevent future contraventions of the *General Retail Industry Award 2020* (**GRIA 2020**):

(a) implementing material annual salary increases for Salaried Managers;

(b) new rostering practices including use of electronic attendance systems;

(c) constraints on hours of work in excess of rostered hours; and

(d) rectification processes if shortfalls occur.

9. Prior to the execution of this Undertaking, Best & Less notified the FWO that it had:

(a) calculated the underpayment owed to each of the employees referred to in Column A of Schedule A to this Undertaking (**Schedule A Employees**) to be the amount referred to in Column B of Schedule A (**Underpayments**);

- (b) calculated an associated superannuation payment (in a manner consistent with paragraph 7(c) above) for each Schedule A Employee, to be the amount referred to in Column C of Schedule A to this Undertaking (**Superannuation Underpayment**); and
  - (c) made payment of the amounts referred to in Column B and Column C to each of the Schedule A Employees marked with a 'Yes' in Column D of Schedule A to this Undertaking, totalling \$5,164,681.59 in wages and \$490,723.73 in superannuation paid to 654 employees, leaving \$55,849.65 in wages and \$6,143.46 in superannuation owing to 32 employees who it was not able to contact.
10. In July 2021 BLGH was officially listed on the ASX.
11. In May 2023 BLGH was the subject of a takeover offer. The offer went unconditional in June 2023 and as a result BLGH ownership has changed and BLGH has been withdrawn from the ASX.

#### **ADMISSIONS**

12. The FWO has a reasonable belief, and Best & Less admits, that during the Relevant Period Best & Less contravened:
- (a) section 45 of the FW Act by paying each of the Schedule A Employees an annual salary which failed to sufficiently compensate the Schedule A Employees for their monetary entitlements under the GRIA 2010 in relation to allowances, penalty rates, overtime and annual leave loading; and
  - (b) section 535 of the FW Act by failing to make and keep employee records as required by regulation 3.33 and 3.34 of the *Fair Work Regulations 2009 (FW Regulations)* in respect of each of the employees listed in Schedule B to this Undertaking (**Schedule B Employees**).
13. The contraventions identified in clause 12 of this Undertaking do not include:
- (a) any contraventions which relate to or arise as a consequence of Best & Less failing to correctly apply the GRIA 2010 to any employee not listed in Schedule A to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this

Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of Best & Less failing to correctly apply the GRIA 2010 and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or

- (b) any contraventions which have not yet occurred at the date that the Relevant Period ended (whether or not those contraventions are identified in the Independent Audits described at clause 18 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by Best & Less and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## **UNDERTAKINGS**

- 14. Best & Less will take the actions set out at clauses 15 to 53 below.

### **Review and rectification of underpayments**

- 15. Within 30 days of the Commencement Date, for each Schedule A Employee who has not been paid the relevant Underpayment and Superannuation Underpayment, Best & Less will either:
  - (a) pay to the Schedule A Employee:
    - (i) the Underpayment; and
    - (ii) the Superannuation Underpayment, by making payment to their chosen superannuation fund; or
  - (b) provide to the FWO evidence of Best & Less' attempts to locate the Schedule A Employee.
- 16. For each Schedule A Employee to whom an Underpayment is owed who cannot be located within 60 days of the Commencement Date, Best & Less will pay the Underpayments owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. Best & Less will complete the required documents supplied by the FWO for this purpose.
- 17. In the event that the FWO is able to locate and contact any of the Schedule A Employees

to whom Underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify Best & Less in writing of the name and contact details of the current or former employee. Within 21 days of receiving any such notice Best & Less will pay to the Schedule A Employee's nominated superannuation fund the Superannuation Underpayment.

### **Independent Audits**

18. Best & Less must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits of Best & Less' compliance with the FW Act and FW Regulations, in relation to the GRIA 2020, and/or any replacement instruments that replace the GRIA 2020 (**Audits**).
19. Best & Less has notified the FWO of its proposed Independent Auditor, and the FWO has approved the use of this auditor as at 17 July 2023.
20. Best & Less must ensure that each of the Audits conducted by the Independent Auditor includes:
  - (a) an assessment of 10% of all employees to whom the GRIA 2020 applies, across a range of classifications, locations and employment types (full time, part time and casual employment), during the relevant audit period (**Sampled Employees**) in respect of their employment by Best & Less;
  - (b) an assessment of whether the Sampled Employees have been correctly classified by Best & Less under the GRIA 2020;
  - (c) an assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period is in compliance with the FW Act and GRIA 2020 (or replacement instruments);
  - (d) direct contact with Sampled Employees by way of a combination of in-person site visits and virtual video interviews, to at least 15 different sites, with a minimum of 1 site to be located in each state and territory where Best & Less has a retail presence, to ensure accuracy of hours worked;
  - (e) the production of a written report on each of the Audits setting out the

Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and

- (f) that each of the written reports referred to in (e) above contains the following declarations from the Independent Auditor:
  - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
  - (ii) notwithstanding that the Independent Auditor is retained by Best & Less, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Best & Less in preparing the report;
  - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
  - (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

#### The First Audit

- 21. Best & Less must ensure the Independent Auditor commences the first of the Audits by no later than 30 November 2023 (**First Audit**).
- 22. The relevant audit period for the First Audit must be at least two full pay periods falling within the period 1 June 2023 to 31 October 2023.
- 23. By 31 October 2023, Best & Less will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 24. Best & Less will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 30 April 2024, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. Best & Less will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Best & Less without the FWO's approval.
- 25. Best & Less will use its best endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit (**First Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to

the Independent Auditor. Best & Less will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to Best & Less without the FWO's approval.

#### The Second Audit

26. Best & Less must ensure the Independent Auditor commences the second of the Audits by no later than 30 November 2024 (**Second Audit**).
27. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 1 June 2024 to 31 October 2024.
28. By 31 October 2024, Best & Less will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
29. Best & Less will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 30 April 2025, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. Best & Less will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Best & Less without the FWO's approval.
30. Best & Less will use its best endeavours to ensure the Independent Auditor finalises the Second Audit and provides a written report of the Second Audit (**Second Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. Best & Less will ensure the Independent Auditor does not provide the written report, or a copy of the same, to Best & Less without the FWO's approval.

#### **Outcome of Audits**

31. If any of the Audits identify underpayments to any current or former employees, Best & Less will:
  - (a) rectify any underpayments identified in the relevant audit period; and
  - (b) conduct a reconciliation of the amounts paid and owed to those employees in the 12 month period immediately prior to the relevant audit period, and rectify any underpayments that are identified.



32. Best & Less will provide to the FWO evidence of such rectification within 28 days of being informed by the FWO of the requirement to undertake the reconciliation.
33. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of each Audit, Best & Less will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Best & Less will complete the required documents supplied by the FWO for this purpose.
34. If any of the Audits identify an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, Best & Less will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the GRIA 2020 (or replacement instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by Best & Less, and be finalised including remediation to any impacted workers and evidence provided to the FWO, within 6 months of the FWO identifying to Best & Less that such an audit must take place.
35. If requested by the FWO, Best & Less will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 7 days of such a request.

#### **Employee Hotline**

36. Within 14 days of the Commencement Date Best & Less will, at its own expense, establish a dedicated telephone number and email address for all current and former employees administered by an independent provider, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.
37. Best & Less will:
  - (a) ensure the Employee Hotline remains operational for a period of 3 months;
  - (b) communicate the existence and purpose of the Employee Hotline by way of the

Notification Letter (see clause 39, below);

- (c) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
- (d) provide a de-identified list of enquiries received by the Employee Hotline to the FWO at the end of the 3 month period.

## **Notices – Internal and External**

### Media Release

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

### Notification Letter

39. Within 7 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, Best & Less will issue a letter (**Notification Letter**) in the form of Attachment A to:
- (a) impacted current employees; and
  - (b) the last known address or email address of each of its former employees listed in Schedule A to this Undertaking.
40. Within 21 days of the Commencement Date, Best & Less will provide the FWO with written assurance in the form of a letter or an email, to confirm that each Affected Employee has been issued with a copy of the Notification Letter.

### Workplace Notice

41. Within 28 days of, but not prior to, the Commencement Date, Best & Less will cause to be displayed in each of their stores where the current Affected Employees work a notice in the form of Attachment B to this Undertaking (**Workplace Notice**).
42. Best & Less must ensure the Workplace Notice is:
- (a) at least A3 size;
  - (b) clearly displayed in a location to which all employees have access (for example,

by placement on a staff noticeboard); and

(c) displayed for a period of 28 continuous days.

43. Within 7 days of first displaying the Workplace Notice, Best & Less will provide photographic evidence to the FWO of the display and location of the Workplace Notice in at least 20 different sites, with a minimum of 1 site to be located in each state and territory where Best & Less has a retail presence.
44. At the end of the 28 day period referred to in paragraph 42 above, Best & Less will provide written confirmation to the FWO in the form of a letter or an email, that the Workplace Notice has been continuously displayed at each location for the required period.

#### Website Notice

45. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, Best & Less will place a notice on the Best & Less website, accessible through a clearly visible hyperlink on the front page of [www.bestandless.com.au](http://www.bestandless.com.au) (**Website Notice**).
46. The Website Notice must:
  - (a) be in the form of Attachment B;
  - (b) be displayed in at least size 10 font; and
  - (c) remain on the website for a period of 1 month.
47. Within 7 days of placing the Website Notice on its website, Best & Less will provide to the FWO evidence of its placement.

#### Social Media Notice

48. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, Best & Less will place a post on its Facebook and Instagram pages (**Social Media Notice**).
49. The Social Media Notice must:
  - (a) be posted to the Best & Less timeline, and pinned to the top of the Facebook and Instagram pages in public view;

- (b) remain on these pages for a continuous period of at least 1 month; and
  - (c) be in the form of Attachment B.
50. Within 7 days of posting the Social Media Notice to its Facebook and Instagram pages, Best & Less will provide to the FWO evidence of the posts.

#### **Contribution Payment**

51. Within 90 days of the Commencement Date, Best & Less will make a contribution payment to the Consolidated Revenue Fund of \$200,000.00 in respect of the underpayments referred to in Schedule A.
52. Best & Less will provide evidence to the FWO of any contribution payment within 14 days of making payment to the Consolidated Revenue Fund.

#### **No Inconsistent Statements**

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

#### **ACKNOWLEDGEMENTS**

54. Best & Less acknowledges that:
- (a) the FWO may;
    - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
    - (ii) release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
    - (iii) issue a media release in relation to this Undertaking;
    - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and

- (v) rely upon the admissions made by Best & Less set out in clause 12 above in respect of decisions taken regarding enforcement action in the event that Best & Less is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Best & Less to comply with its obligations under this Undertaking;
- (b) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
- (c) consistent with section 715(3) of the FW Act, Best & Less may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if Best & Less contravenes any of the terms of this Undertaking:
  - (i) the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
  - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by Best & Less in clause 12 above, and also in respect of the question of costs.

**Executed as an undertaking**

EXECUTED by Best & Less Pty Limited in accordance with section 127(1) of the *Corporations Act 2001*:

Andrew B. Moore  
(Signature of director)

John Andrew Barrington Moore  
(Name of director)

10/8/23  
(Date)

in the presence of:

[Signature]  
(Signature of witness)

JOSEPH VAN DIJK  
(Name of witness)

[Signature]  
(Signature of director/company secretary)

LILY AFORO - ADOO  
(Name of director/company secretary)

10/8/23  
(Date)

in the presence of:

[Signature]  
(Signature of witness)

JOSEPH VAN DIJK  
(Name of witness)

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

[Signature]  
Mark Scully, Deputy Fair Work  
Ombudsman – Compliance and  
Enforcement

14 August 2023  
(Date)

Delegate for the FAIR WORK  
OMBUDSMAN

in the presence of:

[Signature]  
(Signature of witness)

Phoebe Nicholas  
(Name of Witness)

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**SCHEDULE A — DETAILS OF UNDERPAYMENTS**

**See attached**



**SCHEDULE B — EMPLOYEES AFFECTED BY RECORD KEEPING FAILURES**

**See attached**

## Attachment A – Letter to employees

Dear <insert name >

As you may be aware, in 2019 Best & Less identified it had not paid certain employees correctly.

In 2020 Best & Less admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) (**FW Act**) by paying annual salaries to Store Managers and Assistant Store Managers which were insufficient to meet all minimum entitlements under the *General Retail Industry Award 2010*, and thereby underpaid those employees.

Best & Less understands that you may have questions and concerns relating to this. To address these concerns a hotline has been established for all employees to access. The hotline is being operated by Stoplevel Pty Ltd, an independent party that can assist you with your enquiries. Stoplevel can be contacted on 1300 30 45 50 or at [bestandless@stopline.com.au](mailto:bestandless@stopline.com.au) and, if required, on a confidential basis.

Best & Less is committed to ensuring its employees are paid correctly. When the underpayments were identified Best & Less implemented further changes to minimise the risk of underpayments occurring again.

We are confident these changes have worked, but should you wish to discuss your concerns directly with Best & Less you can contact us at [employeecontact@bestandless.com.au](mailto:employeecontact@bestandless.com.au) . We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry.

Alternatively, anyone can contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.

Best & Less expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Yours sincerely

<Employer name>

## **Attachment B – Form of Website, Social Media and Workplace Notice**

In 2019 Best & Less Pty Limited (**Best & Less**) undertook a review of its payroll systems and processes and determined that it contravened the *Fair Work Act 2009* (Cth) by underpaying certain staff under the General Retail Industry Award 2010 (**GRIA 2010**), and by failing to keep all employee records it was legally obligated to keep.

Best & Less has formally admitted to the Fair Work Ombudsman (**FWO**) that contraventions of the GRIA 2010 had occurred and consequently a number of employees had been underpaid.

Best & Less apologised to employees and rectified the underpayments in 2020. Best & Less also implemented further changes to minimise the risk of underpayments occurring again.

Best & Less has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

Best & Less is committed to ensuring its employees are paid correctly. Best & Less will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance, such as conducting two independent audits.

Best & Less expresses its sincerest regrets and apologises for these contraventions.

If you worked for Best & Less during the period of 1 October 2013 to 30 September 2020 and have questions relating to your employment, please contact the Hotline established by Best & Less for all current and former employees to access. The hotline can be contacted on 1300 30 45 50 or at [bestandless@stoptline.com.au](mailto:bestandless@stoptline.com.au) and, if required, on a confidential basis.

Alternatively, anyone can contact the FWO via <http://www.fairwork.gov.au> or on 13 13 94.