



Australian Government

Fair Work

OMBUDSMAN

PROACTIVE COMPLIANCE DEED

Between

The Commonwealth of Australia

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

and

JB HI-FI Group Pty Ltd

(ABN: 37 093 114 286)

SCHEDULE 1

Details:

Parties: Fair Work Ombudsman (FWO) and JB HI-FI Group Pty Ltd (JB Group)

FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43884188232
	Address	The Fair Work Ombudsman GPO Box 9887 Melbourne VIC 3001
	Telephone	(03) 9954 2998
	Fax	(02) 6123 6802
	Attention	Greg Robertson Director – General Protections Team

JB Group	Name	JB HI-FI Group Pty Ltd
	ABN	37093114286
	Address	2 Chadstone Place Chadstone Shopping Centre Level 4 Office 1341 Dandenong Rd Chadstone Vic 3148
	Telephone	03 8530 7333
	Attention	Andrea Lund Group Human Resources Manager

JB Group Andrea Lund
Contact Person Group Human Resources Manager

OPERATIVE PROVISIONS:

1. Background

- 1.1 JB Group trades as JB HI-FI and JB HI-FI Home.
- 1.2 JB Group is a home entertainment, consumer electrical and movie and music software retailer.
- 1.3 As at the date of this Deed, JB Group operates approximately 147 JB HI-FI stores and 22 JB HI-FI HOME stores in Australia, and employs just under 6000 employees in Australia. About one quarter of JB Group's employees working its retail stores are engaged on a part-time basis.
- 1.4 JB Group and the FWO have enjoyed a long association of cooperation. In 2010 JB Group was invited to participate in the National Employer Program during 2010/2011 which was facilitated by the FWO. Throughout the program, FWO worked in partnership with JB Group to:
 - a) Strengthen JB Group's workplace relations policies and procedures (including reviewing JB Group's terms and conditions of employment and related processes and documents, including its then part-time employment arrangements);
 - b) Provide JB Group with tailored, specialised workplace relations advice, resources and information, as well as additional assurance that JB Group was meeting its obligations under the *Fair Work Act 2009*;
 - c) Assist JB Group to develop a greater understanding of the role of, and services and resources offered by, the FWO; and
 - d) Assist FWO to develop a greater understanding of JB Group's business.
- 1.5 During October 2013 the FWO received a small number of complaints relating to one store that had ceased trading in 2012. These complaints were resolved without the need for enforcement action.
- 1.6 In October 2014, the FWO and JB Group commenced discussions with the view to the parties entering into this Deed as a proactive workplace engagement opportunity. JB Group has stated its intention to continue to be an employer who is compliant with Commonwealth workplace laws and an employer of choice.
- 1.7 The parties agree as follows:

2. Acknowledgments

- 2.1 JB Group acknowledges that:
 - (a) it continues to place a high priority on continuous improvement in relation to its

workplace practices to ensure ongoing compliance with Commonwealth workplace laws;

- (b) there are opportunities for continuous improvement in relation to its workplace practices to ensure ongoing compliance with Commonwealth workplace laws;
- (c) the promises it has given in this Deed are reasonable in the circumstances;
- (d) the FWO may:
 - (i) make this Deed available (with relevant redactions to protect the privacy of current and former employees if applicable) for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au,
 - (ii) release a copy of this Deed (with relevant redactions to protect the privacy of current and former employees if applicable) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - (iii) issue a media release in relation to this Deed; and
 - (iv) from time to time, publicly refer to this Deed; and
- (e) if JB Group contravenes any of the terms of this Deed the FWO may take any enforcement action the FWO considers appropriate.

3. Promise to take proactive compliance activity

3.1 JB Group must do or cause to be done all those activities and things set out in **Attachment A** and **Attachment B** to this Deed.

4. Commencement of Proactive Compliance Deed

4.1 This Deed comes into effect when both JB Group and the FWO have executed this Deed.

4.2 This Deed will expire at the end of three (3) years after the commencement of this Deed, unless terminated earlier in accordance with its terms.

5. Publicity

5.1 The FWO agrees to provide JB Group with 3 Business Days to view all FWO media releases (**Releases**) arising from this Deed prior to publication by the FWO.

5.2 Notwithstanding 5.1, JB Group agrees and acknowledges that, if JB Group makes any suggested edits or amendments to the Releases, the FWO is under no obligation to accept any of them.

5.3 The Releases will reflect the positive cooperation of JB Group.

- 5.4 FWO agrees and acknowledges that JB Group may, subject to clause 6 below, issue its own media releases in relation to this Deed.
- 5.5 JB Group agrees to provide FWO with 3 Business Days to view all JB Group releases arising under this Deed prior to the publication by JB Group.
- 5.6 Notwithstanding 5.5, FWO agrees and acknowledges that, if FWO makes any suggested edits or amendments to the Releases, JB Group is under no obligation to accept any of them.

6. No Inconsistent Statements

6.1 JB Group:

- (a) must not; and
- (b) must use reasonable endeavours to ensure that each of its officers, employees or agents do not;

make any statement, orally, in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the Acknowledgements made in this Deed.

7. Termination by the FWO

- 7.1 Without prejudice to any right or remedy the FWO may have, at any time the FWO may, by notice in writing, terminate this Deed (that is, immediately and without notice) if JB Group commits, in the opinion of the FWO, a serious or persistent breach or non-observance of a term or terms of this Deed.

8. Independent Legal Advice

8.1 JB Group acknowledges that:

- (a) before executing this Deed, JB Group was given the opportunity to seek independent legal and other advice of its choice;
- (b) in light of any advice provided, JB Group considered its position; and
- (c) JB Group fully understands the effect of this Deed.

9. Continuing obligations

The following clauses survive termination of this Deed for whatever reason (including termination by the FWO):

- (a) clause 2 (Acknowledgements); and
- (b) clause 6 (No Inconsistent Statements).

10. Legally binding

10.1 The terms of this document are intended to have immediate effect on all parties upon commencement of this Deed.

11. Entire agreement

11.1 This Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this Deed; or
- (b) constitutes any collateral agreement, warranty or understanding between the FWO and JB Group.

12. Construction

12.1 No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Deed or any part of it.

12.2 Unless expressed to the contrary in this document:

- (a) words in the singular include the plural and vice versa; and
- (b) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced.

13. Severance

13.1 If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

14. Governing law

14.1 This Deed shall be construed in accordance with the laws for the time being of the State of Victoria and the parties hereby submit to the jurisdiction of the Courts of that State and the Courts empowered to hear appeals from the Courts of that State.

15. Counterparts

15.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

16. Costs in respect of this Deed

16.1 The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this Deed and other related

documentation.

17. Notices

17.1 Any notice, request or other communication to be given or served pursuant to this Deed must be in writing and dealt with as follows:

- (a) if given by JB Group to the FWO at the address indicated in Schedule 1 or as otherwise notified by the FWO; or
- (b) if given by the FWO to JB Group, marked for the attention of the JB Group Contact Person with the address indicated in Schedule 1 or as otherwise notified by JB Group.

17.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically.

17.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, upon the expiration of 2 Business Days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

18. Date of this Deed

18.1 The date the parties execute the Deed, or, if it is executed on different dates, the date of last execution.

19. Definitions

In this Deed:

Business Day means a day in which the JB Group Head Office is open for business;

Deed means this Proactive Compliance Deed, including any Schedules and Attachments;

Commonwealth means the Commonwealth of Australia, including, but not limited to where the context so admits, the Commonwealth as represented by the Office of the Fair Work Ombudsman or any successor, including, without limitation, the Fair Work Ombudsman;

Commonwealth workplace laws means:

- the *Fair Work Act 2009*;
- the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*
- the *Fair Work Regulations 2009*;

- the *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*

JB Group means any one or more of the following brands that is operated by the JB Group or a Related Body Corporate:

- (a) JB HI-FI; and
- (b) JB HI-FI Home

JB Group Contact Person means the person nominated by JB Group in Schedule 1 to this Deed, or any other person specified by JB Group in writing and notified to the FWO.

SIGNING PAGE

EXECUTED BY JB HI-FI GROUP PTY LTD ABN 37093114286 in accordance with section 127(1) of the *Corporations Act 2001* (Cth)



(Signature of Director/Secretary)

Richard Murray

(Name of Director/Secretary)

19/12/14

(Date)



(Signature of Director)

NICK WELLS

(Name of Director)

19/12/14

(Date)

SIGNED FOR and on behalf of the **COMMONWEALTH OF AUSTRALIA** as represented by the Office of the Fair Work Ombudsman.

Michael Campbell

(Printed Name)



(Signature)

Deputy Fair Work Ombudsman

(Title)

19 December 2014

(Date)

In the presence of :

Glen Robertson

(Name of witness in full)



(Signature)

Director General Protections, Miscellaneous

19 December 2014

Attachment A - (Proactive Compliance Activities)

Section 1 - Internal Communication – The Deed

1. Within 10 Business Days of the execution of the Deed, JB Group will communicate the existence of the Deed to all current employees via an internal communication method such as email, internal memo or intranet, and make a copy of the Deed available to all staff.
2. That communication is to be in the following form:

“JB HI-FI has taken the proactive step of entering into a Proactive Compliance Deed (Deed) with the Office of the Fair Work Ombudsman (FWO).

As background, JB and FWO have enjoyed a long association of cooperation. In 2010 JB was invited to participate in the National Employer Program during 2010/2011 which was facilitated by the FWO. Throughout the program, FWO worked in partnership with JB to

- a) *Strengthen JB's workplace relations policies and procedures;*
- b) *Provide JB with tailored, specialised workplace relations advice, resources and information, as well as additional assurance that JB was meeting its obligations under the Fair Work Act 2009;*
- c) *Assist JB to develop a greater understanding of the role of, and services and resources offered by, the FWO; and*
- d) *Assist FWO to develop a greater understanding of JB's business.*

By entering into the Deed, JB demonstrates that it continues to be committed to working with the FWO to ensure proactive compliance with Commonwealth workplace laws and promote a harmonious, productive and cooperative workplace.

The Deed commits JB to undertake, among other things, the following

- a) *Implementation and review of Systems and Processes;*
- b) *Complaint Resolution*
- c) *Payroll Audits*
- d) *Providing necessary resources*
- e) *Employee and Management Training*

We wish to remind you that should you have any queries at work you are able to access information about your entitlements and rights at work by contacting HR Support (details are listed on Sharepoint), or by visiting the FWO website at www.fairwork.gov.au or speaking to a Fair Work Advisor on 13 13 94.”

Section 2 - Implement Systems and Processes

3. JB Group must ensure that it complies at all times and in all respects with relevant Commonwealth workplace laws by developing systems and processes to ensure

ongoing compliance.

4. JB Group will provide the FWO, if it has not already done so, within 20 Business Days of the date of the execution of this Deed, details of the systems and processes already in place or to be implemented to ensure ongoing compliance with relevant Commonwealth workplace laws (**Provided Information**).
5. FWO will respond to JB Group within 20 Business Days with any comments it has in relation to the Provided Information and to assist JB Group ensure ongoing compliance with relevant Commonwealth workplace laws.

Section 3 - Resolution of Complaints

Current and former employees

6. Within 5 Business Days of receiving a workplace complaint relating to JB Group (from either a current or former employee), the FWO will notify JB Group of the complaint and provide details supplied by the complainant.
7. JB Group will attempt to resolve the workplace complaint, including by making rectification of any substantiated underpayments and/or other issues identified by the FWO, within 20 Business Days of notification by the FWO.
8. Within 5 Business Days of resolving the complaint, JB Group will provide the FWO with evidence that the workplace complaint has been resolved and any identified underpayments and other issues identified by the FWO have been rectified.
9. Where the complaint cannot be resolved by agreement between JB Group and the complainant within 20 Business Days of notification by the FWO, JB Group must provide the FWO with a written report addressing the reasons why the matter could not be resolved between the parties and the steps taken by JB Group to resolve the complaint.
10. The report is to be provided to the FWO no later than 5 Business Days after the expiry of the 20 Business Days from notification by the FWO.
11. The FWO reserves its rights to investigate any complaint that it considers serious or in the public interest to investigate or that JB Group has been unable to resolve within 20 Business Days.
12. Further details regarding public interest considerations may be found on the FWO website.

Section 4 - Self-Audits

13. The FWO and JB Group acknowledge and agree that JB Group will conduct a broad audit of its stores in accordance with the scope and methodology set out in Attachment B (**Broad Audit**).

Section 5 - Resources

14. JB Group must commit all necessary resources, financial or otherwise, and meet all necessary expenses associated with the effective implementation of the Broad Audit.
15. JB Group must make available a specified person or persons to act as Employee

Liaison officers for all queries from JB Group employees, which concern any complaints referred by the FWO.

16. JB Group must notify the FWO in writing of the name or names of the JB Group's Employee Liaison Officer/s within 5 Business Days of the commencement of this Deed, and must notify the FWO in writing within 5 Business Days of any change to the JB Group's Employee Liaison Officer/s.
17. JB Group has identified in Schedule 1 to the Deed a single national contact person to whom all queries from the FWO which concern the implementation of the program, or any complaints referred by the FWO, can be directed. JB Group must notify the FWO in writing within 5 Business Days of any change to the JB Group's national contact person.
18. The FWO will identify a single national contact person (**the FWO Liaison Officer**) to whom all queries from the JB Group can be directed. This officer may change from time to time.

Section 6 – Reporting

19. One year after the commencement of the Deed, JB Group will provide the FWO with a report addressing the following matters:
 - (a) The actions by JB Group to address the requirements of the Deed;
 - (b) the number of complaints referred to JB Group;
 - (c) the number of complaints resolved by JB Group;
 - (d) the average time taken to resolve; and
 - (e) the average amount of underpayments.
20. One year after providing the above report, JB Group must provide a second report in the same terms as set out above.
21. Each report must be provided to the FWO no later than 20 Business Days after the completion of the reporting period.
22. At the expiry of the Deed, JB Group will provide the FWO with a report addressing the following matters:
 - (a) the actions by JB Group to address the requirements of the Deed;
 - (b) the number of complaints referred to JB Group;
 - (c) the number of complaints resolved by JB Group;
 - (d) the average time taken to resolve; and
 - (e) the average amount of underpayments.
23. The report must be provided to the FWO no later than 20 Business Days after the expiry of the Deed.
24. The FWO may publish the reports provided by JB Group and will reflect the positive cooperation of the JB Group during the life of the Deed.

25. The FWO may publish its own report regarding the Deed and will provide JB Group with a reasonable opportunity to comment on the report prior to publishing.
26. The FWO's report will reflect the positive cooperation of JB Group.

Section 7 - Workplace Relations Training

27. Within 100 Business Days of the commencement of this Deed, JB Group will design and implement an ongoing training program so that all persons who are employed by JB Group are made aware of their rights and entitlements pursuant to Commonwealth Workplace laws (**Employee Training**).
28. Within 100 Business Days of the commencement of this Deed, JB Group will design and implement an ongoing training program so that all persons who hold management positions are made aware of their workplace obligations pursuant to Commonwealth Workplace laws (**Management Training**).
29. The Employee Training will include material on:
 - a) JB Group's obligations under the *Fair Work Act 2009* (Cth) and Fair Work Instruments, including in particular the General Retail Industry Award 2010;
 - b) the requirements of the *Fair Work Act 2009* (Cth) and the General Retail Industry Award 2010 with respect to part-time employees and the rights and entitlements of part-time employees;
 - c) JB Group's procedures and policies with respect to hours of work and variation of hours of work for part-time employee; and
 - d) the options available to persons to make complaints, for example, references to the complaints process in the Deed and FWO's procedures to lodge a complaint.
30. The Management Training will include material on:
 - (a) JB Group's obligations under the *Fair Work Act 2009* (Cth) and Fair Work Instruments, including in particular the General Retail Industry Award 2010;
 - (b) the requirements of the *Fair Work Act 2009* (Cth) and the General Retail Industry Award 2010 with respect to part-time employees and the rights and entitlements of part-time employees;
 - (c) accessorial liability under section 550 of the *Fair Work Act 2009* (Cth); and
 - (d) JB Group's procedures and policies with respect to hours of work and variation of hours of work for part-time employees.
31. JB Group will provide the proposed materials to be used in the Employee Training and the Management Training to the FWO no later than 20 Business Days before the first training session commences so that the FWO can make any suggestions for amendments to the content of the training to be discussed with JB Group in a timely manner.
32. Despite the provisions of clauses 29 and 30, nothing in the Deed prevents FWO from providing JB Group with recommended materials and/or content suitable for the purposes of the training which JB Group is required to undertake under the terms of this Deed. For the avoidance of doubt nothing in this Deed prevents JB Group including any of the FWO's materials and/or content in JB Group's employee induction packs.
33. Subject to clause 34, JB Group will provide evidence to FWO of its compliance with the Employee Training and the Management Training, in such manner as is agreed.

34. Subsequently, new employees and new managers will receive the training as part of their induction with JB Group. JB Group shall not be required to provide evidence of this induction to FWO on an ongoing basis.

Section 8 – Review of Part-Time Employment Documentation

35. JB Group has conducted a review of the policies, procedures, agreements or forms currently in use with respect to the engagement of part-time employees and provided relevant documents to FWO to consider whether those documents accurately represent the entitlements of part-time employees and the requirements of the *General Retail Industry Award 2010*, including with respect to:
- (a) the applicable minimum daily engagement period;
 - (b) the times at which employees are entitled to take meal breaks;
 - (c) the requirement that any variation of agreed hours or pattern of work to be agreed in writing in order to have effect; and
 - (d) the circumstances in which overtime rates may apply.
36. FWO will use its best endeavours to respond to JB Group as soon as is practicable considering JB Group's training obligations under this Deed.
37. JB Group will advise FWO of any changes it intends to make to its part-time policies, procedures, agreements or forms and seek FWO's views in relation to the proposed changes.

ATTACHMENT B - (SCOPE AND METHODOLOGY OF BROAD AUDIT)

The FWO and JB Group agree that the scope and methodology of the Broad Audit are as follows:

1. The self-audit period will be for 2 consecutive pay periods within the first 12 months after the execution of this Deed.
2. The Broad Audit must be completed within 60 Business Days of the end of the first 12 months after the execution of this Deed.
3. The Broad Audit will be conducted in relation to three JB Group stores in each of the States or Territories of Australia in which JB Group operates (**Identified Stores**).
4. The Identified Stores must include at least 5 JB HI-FI HOME stores.
5. The Broad Audit will include a sample of at least 20% of employees from each of Identified Stores, and at least 50% of the employees included in the self-audit at each Identified Store must be part time employees (where possible).
6. The sample of employees included in the audit must include, at each Identified Store:
 - (a) employees engaged in supervisory roles;
 - (b) at least 3 employees engaged at each of the classification levels in the *General Retail Industry Award 2010* under which JB Group engages its employees at that store;
 - (c) employees engaged under any other award or industrial instrument if applicable; and
 - (d) a mix of full time, part time and casual employees where applicable.
7. The Broad Audit conducted by JB Group must identify any contraventions of the relevant Commonwealth Workplace Laws including those relating to underpayments of:
 - (e) wages;
 - (f) loadings;
 - (g) allowances; and
 - (h) penalties
8. JB Group must rectify each contravention, including identified underpayments, within 28 days of the self-audit period ending.
9. Within 45 Business Days of the end of the self-audit period, JB Group must provide the FWO with an audit report relating to the Broader Audit which includes the methodology applied, details of employees audited, contraventions identified, reasons for the contraventions and evidence of rectification of contraventions and or underpayments. The report must be signed off by an independent certified practicing accountant (CPA) or equivalent professional approved in advance by the FWO.
10. The FWO reserves its rights to conduct its own audit or investigation if not satisfied with the conduct of the self-audit or with the accuracy of the audit report.