

## NOTICE OF FILING

### Details of Filing

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File Title: ALISSAH MITCHELL v HUNGRY JACK'S PTY LTD  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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

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



## Defence

No. VID65 of 2026

Federal Court of Australia  
District Registry: Victoria  
Division: Fair Work

### **Alissah Mitchell**

Applicant

### **Hungry Jack's Pty Ltd**

Respondent

In answer to the Applicant's Statement of Claim filed 22 January 2026 (**SOC**), the Respondent says as follows, adopting the defined terms used in the SOC except where otherwise indicated:

#### **A The parties**

1. Save to say that the Applicant was employed by the Respondent in the period from 18 March 2021 to 2 November 2021, it admits the allegations in paragraph 1.
2. It admits the allegations in paragraph 2.
3. It does not plead to paragraph 3 as that paragraph makes no allegation against it.
4. It does not know and therefore does not admit the allegations in paragraph 4.

#### **B The Respondent**

5. It admits the allegations in paragraph 5.
6. It admits the allegations in paragraph 6.

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Filed on behalf of (name & role of party) The Respondent  
Prepared by (name of person/lawyer) Evan Stents  
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(include state and postcode) \_\_\_\_\_

[Form approved 01/08/2011]

## **C Industrial laws and instruments**

### *Public holidays — Fair Work Act*

7. Save to say that, at all material times prior to 11 December 2024, s 115(1)(vi) of the FW Act read 'the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory)', it admits the allegations in paragraph 7.
8. It admits the allegations in paragraph 8.
9. Save to say that:
  - (a) at all material times prior to 1 February 2023, the provision pleaded in paragraph 9 was numbered s 98, headed 'Employee taken not to be on paid personal/carer's leave on public holiday' and did not include the subheading 'Public holidays'; and
  - (b) at all material times from 1 February 2023, s 98 of the FW Act was headed 'Employee taken not to be on paid personal/carer's leave at certain times',it admits the allegations in paragraph 9.

### *Public holidays — Holidays Act 1910 (SA)*

10. It denies the allegations in paragraph 10 and says that:
  - (a) properly construed, s 115(1)(b) of the FW Act refers only to any other single day, or part-day, declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of the State or Territory, as a public holiday, other than a day or part-day, or a kind of day or part-day, that is excluded by the regulations from counting as a public holiday; and
  - (b) further or alternatively, properly construed, the *Holidays Act 1910 (SA)* did not, at any material time, declare or prescribe Sunday as a day to be observed generally within South Australia, or a region of South Australia, as a public holiday within the meaning of s 115(1)(b) of the FW Act, properly construed.
11. It denies the allegations in paragraph 11 and refers to paragraph 10 above.

### *SDA Hungry Jacks (South Australian and Northern Territory) Certified Agreement 1999*

12. It admits the allegations in paragraph 12.
13. As to paragraph 13, it:
  - (a) admits the allegations in subparagraph (a);

- (b) denies subparagraph (b) and says that, from 1 July 2009 to 23 December 2019 (**1999 HJ Agreement Period of Application**), the 1999 HJ Agreement bound the parties named in Schedule B to the 1999 HJ Agreement (including the Respondent) and their employees (other than managers) and the Shop Distributive and Allied Employees' Association, South Australian Branch (**Union**) as regards all persons employed by them who were members of the Union.

### Particulars

1999 HJ Agreement, clause 2.

14. Save to say that the relevant period is the 1999 HJ Agreement Period of Application, it admits the allegations in paragraph 14 and says that clause 18 of the 1999 HJ Agreement also included the following words: 'Where an employee is absent from employment on the working day before or after a public holiday without reasonable excuse or without the consent of the employer, the employee is not entitled to payment for the public holiday.'
15. Save to say that:
- (a) the relevant period is the 1999 HJ Agreement Period of Application; and
  - (b) clause 10 of the 1999 HJ Agreement also included additional terms that are not reproduced,
- it admits the allegations in paragraph 15.
16. Save to say that the relevant period is the 1999 HJ Agreement Period of Application, it admits the allegations in paragraph 16.
17. As to paragraph 17, it:
- (a) denies the allegations therein;
  - (b) refers to paragraph 13(b) above; and
  - (c) says that:
    - (i) properly construed, the reference in clause 18 of the 1999 HJ Agreement to 'Any other day which is declared to be a public holiday pursuant to the Holidays Act, 1910' refers only to any other single day which is declared to be a public holiday pursuant to the *Holidays Act 1910*;
    - (ii) further or alternatively, properly construed, and based on a common assumption adopted by the parties to the 1999 HJ Agreement, clause 18 of the 1999 HJ Agreement did not have the effect that employees performing work on Sundays in South Australia during the 1999 HJ

Agreement Period of Application were to be paid public holiday rates, except in circumstances where Sunday was a public holiday otherwise than by virtue only of it being a Sunday.

*Hungry Jack's National Enterprise Agreement 2019*

18. As to paragraph 18, it:
- (a) says that, on or about 16 December 2019, the Fair Work Commission approved the 2019 HJ Agreement, with effect from 23 December 2019; and
  - (b) otherwise admits the allegations therein.
19. Save to say that:
- (a) the relevant period is the period from 23 December 2019 to 31 December 2023 **(2019 HJ Agreement Period of Application)**; and
  - (b) the Applicant's employment is the employment pleaded in paragraph 1 above, it admits the allegations in paragraph 19.
20. Save to say that the relevant period is the 2019 HJ Agreement Period of Application, it admits the allegations in paragraph 20 and says further that, during the 2019 HJ Agreement Period of Application, clause 25 of the 2019 HJ Agreement also included the following terms:

**25.7 Penalty Rates**

...

**(c) Sunday work – Crew members & Crew Members – Team Lead**

(i) ...

(ii) From 1 July 2019 - A 25% loading will apply for all hours of work on a Sunday for full-time and part-time Crew Members and Crew Members – Team Lead employees. A 50% loading will apply for all hours of work on a Sunday for casual Crew Members and Crew Members – Team Lead employees (inclusive of the casual loading).

**(d) Sunday work – Shift Supervisor, Assistant Managers and Restaurant Managers**

A 50% loading will apply for all hours of work on a Sunday for full-time and part-time Shift Supervisor, Assistant Manager and Restaurant Manager employees. A 75% loading will apply for all hours of work on a Sunday for casual Shift Supervisor, Assistant Manager and Restaurant Manager employees (inclusive of the casual loading).

**25.8 Award Mirroring – Sunday Penalty Rates**

Sunday penalty rates in this Agreement will move in line with the Fast Food Industry Award 2010. If the same Sunday penalty rates in the Fast Food Industry Award are increased or decreased, the corresponding

increase or decrease will apply to the Sunday penalty rates in this Agreement from the first full pay period after that Award is amended by the FWC.

21. Save to say that the relevant period is the 2019 HJ Agreement Period of Application, it admits the allegations in paragraph 21.
22. Save to say that the relevant period is the 2019 HJ Agreement Period of Application, and subject to reference to the full terms of clauses 26.2–26.4 and 26.6 of the 2019 HJ Agreement, it admits the allegations in paragraph 22.
23. Save to say that the relevant period is the 2019 HJ Agreement Period of Application, it admits the allegations in paragraph 23 and says further that, during the 2019 HJ Agreement Period of Application, clause 26.1 of the 2019 HJ Agreement also provided that the rates of pay for overtime on a Sunday were:
  - (a) for full-time and part-time employees, double time; and
  - (b) for casual employees, double time and a quarter of the ordinary hourly rate.
24. As to paragraph 24, on the assumption that the reference to 'HJ Employees' was intended to be a reference to the '2019 HJ Agreement Employees', it:
  - (a) denies the allegations therein;
  - (b) refers to paragraph 10 above; and
  - (c) says that, properly construed, and on the basis of a common assumption adopted by the parties to the 2019 HJ Agreement, the 2019 HJ Agreement did not have the effect that employees performing work on Sundays in South Australia during the 2019 HJ Agreement Period of Application were to be paid public holiday rates, except in circumstances where Sunday was a public holiday within the meaning of s 115(1) of the FW Act, properly construed.

#### *Fast Food Award*

25. It admits the allegations in paragraph 25.
26. It denies the allegations in paragraph 26 and says that, at all material times, there were no HJ Employees covered by the Fast Food Award to whom the Fast Food Award applied.
27. Save to say that, at all material times prior to 28 July 2022, clause 30 of the Fast Food Award also contained the words 'NOTE: For provisions relating to part-day public holidays see Schedule E—Part-day Public Holidays', it admits the allegations in paragraph 27.

28. Save to say that, from 28 July 2022 to 14 November 2022, clause 27 of the Fast Food Award also contained the words 'NOTE: For provisions relating to part-day public holidays see Schedule F—Part-day Public Holidays', it admits the allegations in paragraph 28.
29. Subject to reference to the full terms of clause 26 of the Fast Food Award (prior to 28 July 2022) and clauses 20.2–20.4 and 20.7 (from 28 July 2022), it admits the allegations in paragraph 29 and says further that, at all material times, clause 20.5 of the Fast Food Award provided that 'If an employee works overtime on a Sunday and the overtime is not immediately before or after ordinary hours, then the employer must pay the employee at the overtime rate in clause 20.6 for a minimum of 4 hours, even if the employee is required to work for a shorter time.'
30. It admits the allegations in paragraph 30.
31. Subject to reference to the full terms of clauses 25.5 and 30.4 of the Fast Food Award (prior to 28 July 2022) and clause 21 (from 28 July 2022), it admits the allegations in paragraph 31.
32. As to paragraph 32, it:
  - (a) denies the allegations therein;
  - (b) refers to paragraph 26 above; and
  - (c) says that, properly construed, the Fast Food Award did not have the effect that employees performing work on Sundays in South Australia during the Claim Period were to be paid public holiday rates, except in circumstances where Sunday was a public holiday within the meaning of s 115(1) of the FW Act, properly construed.

### **Alleged contraventions by Hungry Jack's**

#### *Ms Mitchell*

33. As to paragraph 33:
  - (a) save that it admits that the Applicant was, during the period of her employment with the Respondent as pleaded in paragraph 1, based in South Australia for work purposes, it does not know and therefore does not admit the allegations in subparagraph (a); and
  - (b) save to say that the period during which the Applicant was an HJ Employee was the period pleaded in paragraph 1 above, it admits the allegations in subparagraph (b).

34. As to paragraph 34, it:
- (a) admits the allegations in subparagraph (a);
  - (b) admits that it did not pay the Applicant 250% of her base rate for the hours in subparagraph (a), but says that it was under no obligation to do so and otherwise denies the allegations in subparagraph (b); and
  - (c) denies the allegations in subparagraph (c) and refers to paragraph 24 above.
35. It denies the allegations in paragraph 35.

*Group Members*

- 35A. As to the whole of sections D.2–D.5 of the SOC, it says that further pleas by way of defence in respect of each Group Member’s claims cannot be determined until after the Group Member’s claims have been identified for the purposes of those claims being heard and determined following the trial of common questions or otherwise as the Court may direct, and it reserves the right to make such further pleas at that time.

*1999 HJ Agreement Employees*

36. As to paragraph 36, it:
- (a) admits that, during the 1999 HJ Agreement Period of Application, some 1999 HJ Agreement Employees worked ordinary hours on one or more Sundays; and
  - (b) otherwise denies the allegations therein.
37. Save to say that the relevant period is the 1999 HJ Agreement Period of Application, it admits the allegations in paragraph 37 but says that it was under no obligation to make the payments referred to therein.
38. It denies the allegations in paragraph 38 and refers to paragraph 17 above.
39. As to paragraph 39, it:
- (a) admits that, during the 1999 HJ Agreement Period of Application, some 1999 HJ Agreement Employees worked overtime hours in accordance with clause 11 of the 1999 HJ Agreement on one or more Sundays; and
  - (b) otherwise denies the allegations therein.
40. Save to say that the relevant period is the 1999 HJ Agreement Period of Application, it admits the allegations in paragraph 40 but says that it was under no obligation to make the payments or provide the TOIL referred to therein.
41. It denies the allegations in paragraph 41 and refers to paragraph 17 above.
42. It denies the allegations in paragraph 42 and refers to paragraphs 38 and 41 above.

*2019 HJ Employment Agreement Employees*

43. As to paragraph 43, it:
- (a) admits that, during 2019 HJ Agreement Period of Application, some 2019 HJ Agreement Employees worked ordinary hours on one or more Sundays;
  - (b) otherwise denies the allegations therein.
44. Save to say that the relevant period is the 2019 HJ Agreement Period of Application, it admits the allegations in paragraph 44 but says that it was under no obligation to make the payments referred to therein.
45. It denies the allegations in paragraph 45 and refers to paragraph 24 above.
46. As to paragraph 46 it:
- (a) admits that, on one or more Sundays during 2019 HJ Agreement Period of Application, some 2019 HJ Agreement Employees worked full-time 2019 HJ Agreement overtime hours, part-time 2019 HJ Agreement overtime hours or casual 2019 HJ Agreement overtime hours in accordance with clause 26 of the 2019 HJ Agreement; and
  - (b) otherwise denies the allegations therein.
47. Save to say that the relevant period is the 2019 HJ Agreement Period of Application, it admits the allegations in paragraph 47 but says that it was under no obligation to make the payments or give the TOIL referred to therein.
48. It denies the allegations in paragraph 48 and refers to paragraph 24 above.
49. It denies the allegations in paragraph 49 and refers to paragraph 48 above.

*HJ Award Employees*

50. It denies the allegations in paragraph 50 and refers to paragraph 26 above.
51. It denies the allegations in paragraph 51 and refers to paragraph 50 above.
52. It denies the allegations in paragraph 52 and refers to paragraph 51 above.
53. It denies the allegations in paragraph 53 and refers to paragraph 26 above.
54. It denies the allegations in paragraph 54 and refers to paragraph 53 above.
55. It denies the allegations in paragraph 55 and refers to paragraph 54 above.
56. It denies the allegations in paragraph 56 and refers to paragraph 55 above.

*All full-time and part-time HJ Employees*

- 57. It admits the allegations in paragraph 57.
- 58. It denies the allegations in paragraph 58 and refers to paragraph 11 above.
- 59. It admits the allegations in paragraph 59.
- 60. It denies the allegations in paragraph 60 and refers to paragraph 58 above.
- 61. It denies the allegations in paragraph 61 and refers to paragraph 11 above.
- 62. It admits the allegations in paragraph 62.
- 63. It denies the allegations in paragraph 63 and refers to paragraph 61 above.
- 64. It denies the allegations in paragraph 64 and refers to paragraphs 60 and 63 above.
- 65. It does not plead to paragraph 65 as that paragraph makes no allegation against it.

**Mistaken payments**

- 66. For each Sunday during the Claim Period that was taken as annual leave by Group Members, the Respondent paid the Group Members an annual leave loading.

**Particulars**

1999 HJ Agreement, clause 24(i)

2019 HJ Agreement, clause 29.3

- 67. If (which is denied) the Respondent was obliged to treat as public holidays the Sundays during the Claim Period that were taken as annual leave by Group Members, then:
  - (a) the Group Members were not entitled to be paid an annual leave loading;
  - (b) the Respondent mistakenly believed the Group Members were entitled to be paid an annual leave loading;
  - (c) but for the mistaken belief pleaded in subparagraph (b) above, the Respondent would not have paid the Group Members an annual leave loading;
  - (d) by reason of the matters pleaded in subparagraphs (a)–(c) above, the Group Members have been unjustly enriched at the expense of the Respondent and the Respondent is entitled to restitution of the annual leave loadings paid;
  - (e) accordingly, the Respondent is entitled to set off, and hereby sets off, against the amounts claimed in the SOC in respect of Group Members, the amounts referred to in subparagraph (d) above;

- (f) alternatively, if the Court concludes that the amounts referred to in paragraph (d) above cannot be set off against any amounts claimed in the SOC in respect of Group Members, then it would not be appropriate, within the meaning of s 545 of the FW Act, to make an order for compensation in respect of the Group Members in circumstances where such an order failed to accord with the compensatory and remedial purposes of s 545 by failing to take into account the amounts paid to the Group Members referred to in subparagraph (d) above.

### **Limitation defence**

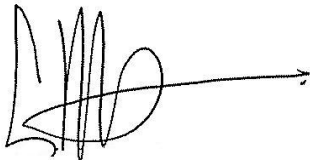
68. By the SOC, the Applicant alleges contraventions of civil remedy provisions within the meaning of s 539 of the FW Act during the period from 15 December 2019 to 21 January 2026 (**Statute-Barred Alleged Contraventions**).

### **Particulars**

SOC, paragraphs 3, 38, 41, 45, 48, 52, 55, 60, 63.

69. By her originating application filed on 22 January 2026, the Applicant seeks orders in relation to the Statute-Barred Alleged Contraventions, including orders under ss 545 and 546 of the FW Act, both of which are in Division 2 of Part 4-1 of the FW Act.
70. Pursuant to s 544 of the FW Act, a person may apply for an order under Division 2 of Part 4-1 of the FW Act in relation to a contravention of a civil remedy provision only if the application is made within 6 years after the day on which the contravention occurred.
71. Pursuant to s 545(5) of the FW Act, a court must not make an order under s 545 in relation to an underpayment that relates to a period that more than 6 years before the proceedings concerned commenced.
72. The Applicant commenced these proceedings and applied for orders under Division 2 of Part 4-1 of the FW Act on 22 January 2026.
73. In the premises:
- (a) the Applicant is statute-barred from applying for orders under Division 2 of Part 4-1 of the FW Act in relation to the Statute-Barred Contraventions; and
  - (b) to the extent any of the Statute-Barred Allegations are established, the Court must not make an order under s 545 in relation to any underpayments arising therefrom.

**Date:** 14 April 2026

A handwritten signature in black ink, appearing to be 'E. Stents', with a long horizontal line extending to the right from the end of the signature.

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**Signed by Evan Stents**  
Lawyers for the Respondent

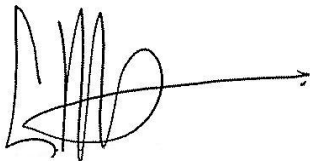
This pleading was prepared by Charles Parkinson KC and Rowan Minson of Counsel

### **Certificate of lawyer**

I Evan Stents certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 14 April 2026

A handwritten signature in black ink, appearing to be 'E. Stents', with a long horizontal line extending to the right from the end of the signature.

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Signed by Evan Stents  
Lawyer for the Respondent