

Undertaking to the Australian Competition and Consumer Commission

Given under section 87B of the *Competition and Consumer Act 2010* (Cth) by Davie Clothing Pty Ltd
ABN 629 766 703

1. Person giving the Undertaking

- 1.1. This undertaking is given to the Australian Competition and Consumer Commission (**ACCC**) by Davie Clothing Pty Ltd ABN 629 766 703 (**Davie Clothing**) for the purposes of section 87B of the *Competition and Consumer Act 2010* (**CCA**).

2. Background

Davie Clothing

- 2.1. Davie Clothing is an online retailer that sells comfort wear, which includes wearable blankets called Oodie and wearable hooded towels for children called Kids Beach Oodie, to consumers in Australia and internationally.

3. The ACCC's concerns

- 3.1. Supplying, or offering to supply, a product that does not comply with an Australian mandatory safety standard is a contravention of section 106 of the Australian Consumer Law (**ACL**). The *Consumer Goods (Children's Nightwear and Limited Daywear and Paper Patterns for Children's Nightwear) Safety Standard 2017* (Cth) declares Australian/New Zealand Standard AS/NZS 1249:2014 *Children's nightwear and limited daywear* (**the Standard**) to be a safety standard for children's nightwear and limited daywear in Australia.
- 3.2. The Standard provides that blankets or towels, which incorporate sleeves or arm openings, must include a high fire danger warning label stating, "WARNING HIGH FIRE DANGER KEEP AWAY FROM HEAT AND FLAME".
- 3.3. Between 29 September 2022 and 14 July 2023, Davie Clothing supplied 2,460 units of Kids Beach Oodie (**the Product**) to consumers in Australia. The Product did not contain a high fire danger warning label as required by the Standard.
- 3.4. By supplying the Product during the Relevant Period without a high fire danger warning label as required by the Standard, Davie Clothing contravened section 106(1) of the ACL.
- 3.5. By offering to supply the Product without the high fire danger warning label being (i) affixed to the Product and (ii) displayed on its website (<https://theoodie.com>), as required by the Standard, Davie Clothing contravened section 106(2) of the ACL.
- 3.6. The ACCC is concerned that failure to alert consumers to the high fire risk and the need to keep the Product away from heat and flame, increases the potential for serious risk of injury or death from burns.

4. Resolution and Admission

- 4.1. As a result of the ACCC's investigations and in response to the ACCC's concerns, Davie Clothing:

- (a) admits that its conduct contravened or was likely to contravene section 106 of the ACL;
- (b) has ceased the relevant conduct;
- (c) has taken steps to ensure future compliance with the Standard, including conducting a voluntary recall of the Product and commissioning relevant compliance testing and warning labels for any further supply of the Product after 15 July 2023;
- (d) has cooperated with and assisted the ACCC during its investigation; and
- (e) offers this undertaking to the ACCC to resolve the ACCC's concerns.

4.2. On 14 June 2024 the ACCC issued 6 infringement notices to Davie Clothing in relation to the supply of the Product, which were paid by Davie Clothing on 5th July 2024

5. Commencement of this Undertaking

5.1. This Undertaking comes into effect when:

- (a) this Undertaking is executed by Davie Clothing, and
- (b) this Undertaking so executed is accepted by the ACCC (the **Commencement Date**).

5.2. The Undertaking has effect for 3 years from the Commencement Date (**Term**).

5.3. Upon the Commencement Date, Davie Clothing undertakes to assume the obligations set out in Section 6 of this Undertaking below for the purposes of section 87B of the CCA.

6. Undertaking

ACL compliance program

6.1. Davie Clothing undertakes that it will:

- (a) establish and implement a Consumer Law Compliance Program (**Compliance Program**) in accordance with the requirements set out in **Annexure A**, being a program designed to minimise Davie Clothing's risks of future breaches of the ACL and to ensure awareness of its obligations under the ACL;
- (b) maintain and continue to implement the Compliance Program for the Term of this Undertaking; and
- (c) provide, at its own expense, a copy of any documents required by the ACCC in accordance with this Undertaking, including **Annexure A**.

Corrective Notice

6.2. Davie Clothing undertakes that it will, within seven calendar days of the Commencement Date, publish the corrective notice set out in **Annexure B** on its website for a period of at least 90 days from the date it is first accessible on the website, and take all reasonable steps to ensure the corrective notice:

- (a) is located at the URL <https://theoodie.com>;
- (b) is accessible by a one-click link displayed in the menu bar of the homepage of the website entitled 'The Oodie | Oversized Wearable Blankets & Accessories'; and
- (c) is displayed in accordance with the following requirements:
 - i the headings 'Corrective Notice' and 'Davie Clothing Pty Ltd', to be in font of no less than 14 point, bold, black Arial font on a white background; and
 - ii the remaining text, to be in font of no less than 12 point, black Arial font on a white background.

7. Administration

7.1 The ACCC may authorise a member of the ACCC or an ACCC staff member to exercise a decision making function under this Undertaking on its behalf.

7.2 The ACCC may, from time to time, extend the date by which any of the obligations in this Undertaking is to be satisfied. Such a request for an extension must be express and in writing.

8. ACCC Enquiries

- 8.1. For the purpose of monitoring compliance with this Undertaking, the ACCC may make reasonable enquiries with Davie Clothing, and Davie Clothing will respond to such enquiries at its own expense within a reasonable time.
- 8.2. If requested by the ACCC during the Term of this Undertaking, Davie Clothing will, at its own expense, cause to be produced and provide to the ACCC copies of such documents (excluding legally privileged documents) in its power, possession or control evidencing Davie Clothing's compliance with the obligations set out in this Undertaking.


9. Acknowledgements

9.1. Davie Clothing acknowledges that:

- (a) the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- (b) the ACCC will, from time to time, make public reference to this Undertaking including in news media statements and in ACCC publications;
- (c) this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct; and
- (d) nothing in this Undertaking is intended to restrict the right of the ACCC to take action under the ACL and the CCA for penalties or other remedies in the event Davie Clothing does not fully implement and/or perform its obligations under this Undertaking or in relation to any other event.

Executed as an Undertaking

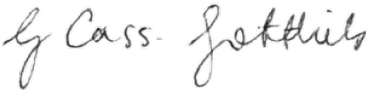
Executed by Davie Clothing Pty Ltd ABN 629 766 703 pursuant to section 127(1) of the *Corporations Act 2001* by:


Signature of CEO
Belinda Barlow
Name of CEO (print)
Date 11 th July 2024

Accepted by the Australian Competition and Consumer Commission pursuant to section 87B of the *Competition and Consumer Act 2010 (Cth)* on:

Date 15 July 2024

and signed on behalf of the Commission:

Chair 

Date 15 July 2024

ANNEXURE A CONSUMER COMPLIANCE PROGRAM

Davie Clothing Pty Ltd (**Davie Clothing**) will establish a consumer compliance program (**Compliance Program**) that complies with each of the following requirements:

Appointments

1. Within 2 months of the undertaking under s 87B of the *Competition and Consumer Act 2010* (Cth) (**CCA**) provided by Davie Clothing to the ACCC (**Undertaking**) coming into effect (**Commencement Date**), Davie Clothing will appoint a director or a senior manager with suitable qualifications or experience in corporate compliance to be responsible for ensuring the Compliance Program is effectively designed, implemented and maintained (**Compliance Officer**).

Compliance Officer Training

2. Within 2 months of the Commencement Date, Davie Clothing will ensure that the Compliance Officer attends practical training focusing on the ACL and the Standard.
3. Davie Clothing will ensure that the training is conducted by a suitably qualified compliance professional with expertise in competition and consumer law.

Compliance Policy

4. Davie Clothing will, within 2 months of the Commencement Date, issue a policy statement outlining Davie Clothing's commitment to compliance with the CCA (**Compliance Policy**).
5. Davie Clothing will ensure the Compliance Policy:
 - 5.1. contains a statement of commitment to compliance with the Australian Consumer Law (**ACL**) in Schedule 2 to the CCA;
 - 5.2. contains an outline of how commitment to the CCA will be realised within Davie Clothing;
 - 5.3. contains a requirement for all staff to report any Compliance Program related issues and ACL compliance concerns to the Compliance Officer; and
 - 5.4. contains a clear statement that Davie Clothing will take action internally against any persons who are knowingly or recklessly concerned in a contravention of the ACL and will not indemnify them in the event of any court proceedings in respect of that contravention.

Staff Training and Induction

6. Davie Clothing will ensure that the Compliance Program includes a requirement for product safety and ACL compliance training at least once a year (**Staff Training**) for all:
 - 6.1. officers, employees, representatives and agents of Davie Clothing, whose duties could result in them being concerned with conduct that may contravene ACL; and
 - 6.2. executive and non-executive directors of Davie Clothing.
7. Davie Clothing will ensure that the Compliance Program includes a requirement that awareness of Davie Clothing's obligations under the ACL forms part of the induction (**Induction**) of all new:

- 7.1. officers, employees, representatives and agents of Davie Clothing whose duties could result in them being concerned with conduct that may contravene the ACL; and
 - 7.2. executive or non-executive directors of Davie Clothing.
8. Davie Clothing will ensure that the Staff Training and Induction is conducted by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law.

Complaints Handling System

9. Within 4 months of the Commencement Date, Davie Clothing will develop and implement procedures for identifying, classifying, storing and responding to competition and consumer law complaints (**Complaints Handling System**).
10. Davie Clothing will use its best endeavours to ensure the Complaints Handling System is consistent with the Australian/New Zealand Standard **AS/NZS 10002:2022 Guidelines for complaint management in organizations**, as in force or existing at the Commencement Date, tailored as required to Davie Clothing's circumstances.
11. Davie Clothing will ensure that staff and customers are made aware of the Complaints Handling System.

Product Safety Testing and Compliance

12. Davie Clothing will:
- 12.1. maintain up-to-date copies, at its business premises, of all mandatory safety and information standards made or declared under the ACL that relate to products that Davie Clothing supplies, including the AS/NZS 1249:2014 of the *Consumer Goods (Children's Nightwear and Limited Daywear and Paper Patterns for Children's Nightwear) Safety Standard 2017*;
 - 12.2. ensure that products supplied that are subject to any Mandatory Standards comply with the relevant standard, including testing by suitably qualified compliance professionals (where required) to ensure products comply with relevant standard; and
 - 12.3. in the event of any material change in the design or manufacture of any existing product model or the introduction of any new product model to which a product safety mandatory standard applies, Davie Clothing will, prior to supplying any new product model, obtain an independent testing report (or reports) that the standard requires to demonstrate compliance.
13. Davie Clothing will ensure that the Compliance Program includes procedures that enable it to address, in a timely manner, any safety issues that it becomes aware of that affect the safe use of the products it supplies (Product Safety Procedures), whether by way of:
- 13.1. actions unrelated to Davie Clothing products themselves (e.g., amending instructions in user manuals and websites as appropriate); and/or
 - 13.2. recall corrective actions involving Davie Clothing products, ranging from issuing an immediate, direct and prominent safety alert or warning to consumers, through to the efficient and effective withdrawal of the relevant product from the market, including notification to the Commonwealth Minister in accordance with obligations under section 128 of the ACL, as appropriate to the circumstances.

Injury Reporting System – Mandatory Reports

14. Davie Clothing will ensure that the Compliance Program includes a mandatory product safety reporting process to ensure compliance with section 131 of the ACL (Injury Reporting System), including but not limited to:
 - 14.1. recording continuous tracking of death or serious injury reports;
 - 14.2. appropriate call centre scripts and instructions; and
 - 14.3. appropriate online and in-app contact forms.
15. Davie Clothing will ensure that staff are made aware of the Injury Reporting System.
16. Where requested by the ACCC to provide an update to any mandatory report submitted by Davie Clothing and/or its legal advisors, Davie Clothing will:
 - 16.1. seek the affected consumer's consent for their name and contact details to be provided to the ACCC; and
 - 16.2. use its best endeavours to provide the following information within a reasonable timeframe:
 - 16.2.1. the name and the contact details of the affected consumer, provided that the affected consumer has consented to Davie Clothing and/or its legal advisors disclosing their name and contact details to the ACCC; and
 - 16.2.2. a description of the affected consumer's actions leading up to the incident.

Reports to Director(s)/ Davie Clothing's governing body

17. Davie Clothing will ensure that the Compliance Officer reports to Davie Clothing's director(s)/ Davie Clothing's governing body every 6 months on the continuing effectiveness of the Compliance Program.

Compliance Review

18. Davie Clothing will, at its own expense, cause an annual review of the Compliance Program (**Review**) to be carried out in accordance with each of the following requirements:
 - 18.1. **Scope of Review** – the Review should be broad and rigorous enough to provide Davie Clothing and the ACCC with:
 - 18.1.1. verification that Davie Clothing has in place a Compliance Program that complies with each of the requirements detailed in paragraphs 1 to 17 of this Annexure; and
 - 18.1.2. the Compliance Reports detailed at paragraph 19 of this Annexure.
 - 18.2. **Reviewer** – Davie Clothing will ensure that each Review is carried out by a suitably qualified compliance professional with expertise in competition and consumer law (**Reviewer**). The Reviewer can be the Compliance Officer, or an employee, representative or agent of Davie Clothing. Davie Clothing may engage an independent compliance professional if an internal suitably qualified compliance professional is not available.
 - 18.3. **Evidence** – Davie Clothing will use its best endeavours to ensure that each Review is conducted on the basis that the Reviewer has access to all relevant sources of information in Davie Clothing's possession or control, including without limitation:

- 18.3.1. the ability to make enquiries of any officers, employees, representatives, and agents of Davie Clothing;
 - 18.3.2. documents relating to Davie Clothing's Compliance Program, including documents relevant to Davie Clothing's Complaints Handling System, and Staff Training and Induction; and
 - 18.3.3. any reports made by the Compliance Officer to Davie Clothing's governing body regarding Davie Clothing's Compliance Program.
- 18.4. Davie Clothing will ensure that a Review is completed within one year of the Commencement Date, and that a subsequent Review is completed annually for 3 years.

Compliance Report

19. Davie Clothing will use its best endeavours to ensure that within 30 days of the completion of a Review, the Reviewer includes the following findings of the Review in a report to the Compliance Officer of Davie Clothing (**Compliance Report**):
- 19.1. whether the Compliance Program of Davie Clothing includes all the elements detailed in paragraphs 1 to 17 of this Annexure, and if not, what elements need to be included or further developed;
 - 19.2. whether the Staff Training and Induction is effective, and if not, what aspects need to be further developed;
 - 19.3. whether Davie Clothing's Complaints Handling System is effective, and if not, what aspects need to be further developed; and
 - 19.4. whether there are any material deficiencies in Davie Clothing's Compliance Program, or whether there are or have been instances of material non-compliance with the Compliance Program (**Material Failure**)¹, and if so, recommendations for rectifying the Material Failure.

Davie Clothing's Response to Compliance Report

20. Davie Clothing will ensure that the Compliance Officer, within 14 days of receiving the Compliance Report:
- 20.1. provides the Compliance Report to Davie Clothing's governing body; and
 - 20.2. where a Material Failure has been identified by the Reviewer in the Compliance Report, provides a report to Davie Clothing's governing body identifying how Davie Clothing can implement any recommendations made by the Reviewer in the Compliance Report to rectify the Material Failure.
21. Davie Clothing will promptly and fully implement any recommendations made by the Reviewer in the Compliance Report to address a Material Failure.

¹ Material Failures are intended to include non-trivial failures that are ongoing or continue for a significant period of time to:

- incorporate a requirement of the Undertaking in the design of the Compliance Program, (e.g., if the Complaints Handling System did not provide a mechanism for responding to complaints); or
- comply with a fundamental obligation in the implementation of the Compliance Program (e.g., if no Staff Training has been conducted within the Annual Review period).

Reporting Material Failures to the ACCC

22. Where a Material Failure has been identified by the Reviewer in the Compliance Report, Davie Clothing will:
- 22.1. provide a copy of the Compliance Report to the ACCC within 7 days of Davie Clothing's governing body receiving the Compliance Report; and
 - 22.2. inform the ACCC of any steps that have been taken to implement the recommendations made by the Reviewer in the Compliance Report; or
 - 22.3. otherwise outline the steps that Davie Clothing proposes to take to implement the recommendations and inform the ACCC once those steps have been implemented.

Provision of Compliance Program Documents to the ACCC

23. Davie Clothing will maintain copies of all documents relating to and constituting the Compliance Program for a period not less than 5 years.
24. If requested by the ACCC during the period of 5 years following the Commencement Date, Davie Clothing will, at its own expense, cause to be produced and provided to the ACCC copies of all documents constituting the Compliance Program, including:
- 24.1. the Compliance Policy;
 - 24.2. Staff Training and Induction materials;
 - 24.3. an outline of the Complaints Handling System;
 - 24.4. an outline of the Product Safety Procedures;
 - 24.5. the Compliance Report that has been completed at the time of the request; and
 - 24.6. copies of the reports to Davie Clothing's governing body referred to in paragraphs 17 and 20 of this Annexure.

ACCC Recommendations

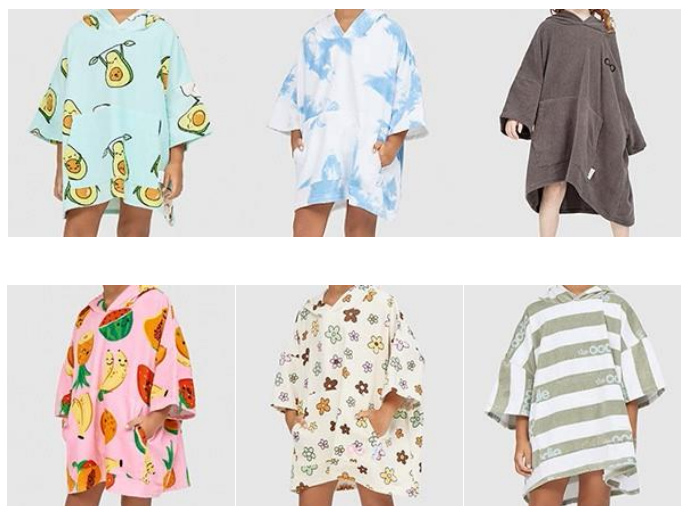
25. Davie Clothing will promptly and fully implement any recommendations that the ACCC considers reasonably necessary to ensure that maintains and continues to implement the Compliance Program in accordance with the requirements of this Undertaking.

Annexure B

Corrective Notice

Davie Clothing Pty Ltd

Between 29 September 2022 and 14 July 2023, Davie Clothing sold to consumers several styles (Avocado, Blue Tie Dye, Charcoal, Fruit Faces, Happy Flowers, and Stripe) of wearable hooded towels for children called Kids Beach Oodie (Products)



To comply with mandatory safety standards, the Products should have had this label attached as there is a risk of serious burn injuries if exposed to a heat or flame source:



Following concerns raised by the Australian Competition and Consumer Commission (ACCC), we have undertaken a mandatory recall of the Products. For more information about the recall, see: <https://www.productsafety.gov.au/recalls/the-oodie-kids-beach-oodie>.

Davie Clothing has committed to ensure future compliance with mandatory safety standards. These commitments are outlined in a recent court enforceable undertaking that Davie Clothing made to the ACCC, available [insert link to s7B Undertaking per the ACCC's public register].

Should you have any queries regarding the above, please contact Davie Clothing.