



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Lifestyle Solutions (Aust) Ltd (ACN 097 999 347)

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:
 - a. Lifestyle Solutions (Aust) Ltd, ACN 097 999 347 of 33 Fern St, Islington NSW 2296 (**Lifestyle Solutions**).

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

2. This enforceable Undertaking comes into effect when:
 - a. The enforceable Undertaking is executed by Lifestyle Solutions; and
 - b. The FWO accepts the executed Undertaking (hereinafter referred to as the **Commencement Date**).
 - c. This Undertaking will expire 2 years from the commencement date.

BACKGROUND:

3. Lifestyle Solutions provides services to people living with a disability, young people and children in out of home care including their families and communities. This also includes the provision of live in carer services across metropolitan, remote and regional communities in Western Australia.
4. In 2011, Lifestyle Solutions entered into a contract (known as the Family Group Home program) with the WA Department of Communities Child Protection and Family Support (**DCP**) to provide live in carers for mostly indigenous children in remote communities in Western Australia. The arrangement is for the provision of carers with the properties owned and maintained by the Department.
5. On 23 July 2018 Lifestyle Solutions reported to the FWO that it had discovered a potentially significant underpayment issue of approximately \$6.4 million, arising from the Company's services under the Family Group Home contract in Western Australia.

6. In their self-disclosure, Lifestyle Solutions outlined that underpayments arose from issues relating to the rostering arrangements, under which some workers worked for periods of 24 hours 7 days per week, and wages paid which were less than the requirements of the Social, Community, Home Care and Disability Services Industry Award 2010 (**SCHADS Award**).
7. The SCHADS Award covered and applied to Lifestyle Solutions' employment of live in carers working in WA and respite carers provides for a range of penalty entitlements, including overtime.
8. Lifestyle Solutions committed to a remediation process and engaged Deloitte to undertake calculations for all affected former and current employees in WA engaged during the period July 2012 to 31 December 2018.
9. Deloitte and Lifestyle Solutions have completed the calculations and identified:
 - a. An underpayment of approximately \$6.36m for 124 former and current live in carers and respite carers who performed work under the DCP contract in WA (**Employees**) including payments for superannuation and interest (the amount is specified as an approximate given a potential variability in final amounts depending on carers confirming working patterns for those Lifestyle Solutions has not yet been able to contact: refer paragraph 14 below);
 - b. To date, \$6.317m has been paid to 93 of the Employees.

CONTRAVENTIONS

10. The FWO reasonably believes, and Lifestyle Solutions admits, that Lifestyle Solutions contravened:
 - a. Section 45 of the Fair Work Act 2009 by contravening the following terms of the SCHADS Award in respect of the Employees:
 - i. 25.1 - Hours of Work
 - ii. 26 - Saturday and Sunday work; and
 - iii. 28.1 - Overtime
 - b. The underpayments arising as a result of these contraventions total approximately \$6.36m.
11. Prior to the commencement date of this Undertaking, Lifestyle Solutions has taken a number of remedial actions including:

- a. Engagement of Deloitte to calculate the underpayment and implement the repayment process;
- b. Conducting individual meetings and interviews with all Employees;
- c. Apologising for the underpayment and commencing back payments with an offer of financial planning advice;
- d. Notifying the DCP of the underpayment issue and discussing future contract arrangements;
- e. The implementation of "Guaranteed Annual Earnings" contracts as an immediate interim solution with all current carers in accordance with Sections 328 to 333A of the Fair Work Act 2009 (Guaranteed Annual Earnings Contracts);
- f. Established an auditing framework to review current arrangements to ensure ongoing compliance.

ENFORCEABLE UNDERTAKING

12. Upon the Commencement Date of this Undertaking and for the purposes of section 715 of the FW Act, Lifestyle Solutions undertakes to take the following actions set out at paragraphs 13 to 38 below.

Rectify remaining underpayments

13. Within 90 days of the commencement date of this Undertaking, back pay the remaining 31 Employees and provide evidence to the FWO that the payments were made;
14. If any of the Employees cannot be located by the commencement date of this Undertaking, Lifestyle Solutions will, if contacted by any Employee during the operation of this Undertaking, take all reasonable steps to quantify and pay that Employee any underpayment owing, with the calculations to be undertaken in a manner consistent with the approach used for Employees who have already received an underpayment.

FWO My account registration and email subscription

15. Within 21 days of the commencement date of this undertaking ensure that all persons engaged by Lifestyle Solutions in a management, payroll or human resources function:
 - a. register with the FWO My account portal at www.fairwork.gov.au and fully complete the My account profile, including information about the business and award/agreement coverage, through this portal;

- b. provide to the FWO the 'My account' Customer Registration Number (CRN).
16. Within 21 days of the commencement date of the Undertaking ensure that all persons engaged by Lifestyle Solutions in a management, payroll or human resources function, subscribe to the FWO's subscription service and the Fair Work Commission subscription service and provide evidence to the FWO of the subscription:
- a. Subscribe to the FWO's 'Subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>;
 - b. Subscribe to the Fair Work Commission's subscription service at www.fwc.gov.au ensuring in particular a subscription to updates regarding the "high income threshold" which is adjusted annually on 1 July.

Workplace relations systems and processes

17. Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (FW Regulations) and the SCHADS Award (together, **Commonwealth workplace laws**);
18. Provide the FWO, within 60 days of the commencement date of this Undertaking, details of systems and processes already in place or to be implemented that demonstrate Lifestyle Solutions is complying with paragraph 17 above. Without limitation, such systems and processes relating to:
- a. Ensuring appropriate systems are in place for the ongoing monitoring and adjustment of salary arrangements for those on "Guarantee of Annual Earnings" Contracts;
 - b. Ensuring appropriate systems and processes are in place to ensure ongoing compliance regarding employees with award entitlements covered by the SCHADS Award.

Workplace relations training and educational activities

19. Within 90 days of the commencement date of this Undertaking, Lifestyle Solutions will, at its own expense, engage a person or organisation with expertise in workplace relations, and approved by the FWO, to provide workplace relations compliance training (**training**) on the following terms:

- a. the training will relate to compliance with Commonwealth workplace laws including Lifestyle Solutions' obligations in respect of weekend penalty rates, overtime and guarantee of annual earnings provisions;
- b. the training will be undertaken by all persons employed or engaged by Lifestyle Solutions whose duties relate to the management of employees, the administration of payroll or the administration of or compliance with Australian workplace laws;
- c. within 14 days of completing the training, Lifestyle Solutions will provide to the FWO, in writing, the date on which the training was completed, the details of the delivery and content of the training and the names and positions of all individuals who participated in the Training.
- d. where workplace training meeting the requirements outlined in paragraph 19 has been undertaken within the last 12 months and a certificate of completion or attainment is provided, this will be recognised as having satisfied the conditions in paragraph 19.

20. Within 90 days of the commencement date of this Undertaking:

- a. Ensure that all persons engaged by Lifestyle Solutions responsible for management or human resources functions complete the educational activities on the FWO's website (**Educational Activities**), as set out in Attachment B;
- b. Ensure that on completion of the Educational Activities, each person enter all of the required information in Attachment B and provide copies of the completed attachment(s) to the FWO;
- c. For a period of 2 years from the commencement date of this Undertaking;
 - i. ensure that the Educational Activities are completed by any employees or contractors engaged by Lifestyle Solutions who after the commencement of this Undertaking acquire managerial, payroll or human resources functions or responsibilities; and
- d. For any persons referred to in sub section i above, complete Attachment B and submit to the FWO within 28 days of taking responsibility for these functions.

Audit Activity

21. Cause to have performed at Lifestyle Solutions' expense, audits of Lifestyle Solutions' compliance with Commonwealth workplace laws with respect to its arrangements with its

employees engaged as live-in carers and pursuant to Guarantee Annual Earnings Contracts (Audits). The Audits will:

- a. be performed by an accounting professional or employment law specialist approved by the FWO;
- b. be conducted annually and within one month of the FWC's yearly adjustment of the high income threshold amount;
- c. assess all Guaranteed Annual Earnings Contracts that Lifestyle Solutions has in place with its employees to ensure that all contracts are adjusted to reflect at least the new high income threshold;
- d. assess whether the offer and execution of these new contracts is in accordance with sections 328 to 333A of the FW Act and genuinely agreed to by employees.

22. Twenty one days prior to the Audit commencement date Lifestyle Solutions will provide for the FWO's approval, details of the methodology to be used to conduct the Audit.

23. The Audits will be conducted as follows:

- a. Audit 1 is to be finalised and a report on the outcome of the audit is to be provided to the FWO by 30 November 2019;
- b. Audit 2 is to be finalised and a report on the outcome of the audit is to be provided to the FWO by 30 November 2020.

24. The Audits are to be finalised and a report on the outcomes of each Audit are to be provided to the FWO by the finalisation dates outlined above. The reports must include details of Lifestyle Solutions compliance or non-compliance with the guarantee of annual earnings contracts and other aspects of the Fair Work Act;

25. In the event one or more of the Audits discloses contraventions of any applicable Commonwealth workplace law or Guaranteed Annual Earnings Contract, Lifestyle Solutions will rectify all such contraventions within 14 days of each of the audit finalisation dates specified above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO within 14 days of payment;

26. If requested, provide the FWO with all records and documents used to conduct the audit, including any working documents, within 7 days of such a request;

27. If any employee(s) identified in the Audits as having underpayments owing to them cannot be located, Lifestyle Solutions will, after being contacted by such an employee, take all reasonable steps to quantify and pay that employee any underpayment, with the calculations to be determined in a manner consistent with the approach used for employees who have already received an underpayment.

Matters notified to the FWO

28. Where the FWO receives a request for assistance from an employee or former employee of Lifestyle Solutions regarding entitlements under Commonwealth workplace laws (including a Guaranteed Annual Earnings Contract) the FWO will, at its discretion, notify Lifestyle Solutions of the request for assistance and provide relevant details;

29. Where a matter is notified to Lifestyle Solutions it will:

- a. determine an appropriate outcome for the matter within 45 days of notification; and
- b. advise the FWO of its determination and actions in relation to the matter including:
 - i. the reasons for the determination and any compliance issues identified;
 - ii. the details of any underpayments and amounts rectified;
 - iii. steps taken to address compliance issues identified, including for any similarly affected employees; and
 - iv. if any matter remains unresolved, the steps taken by Lifestyle Solutions to facilitate the resolution of any such matter.

30. The FWO reserves the right to investigate any allegations.

31. The FWO may advise Lifestyle Solutions of any investigations the FWO is undertaking. If this is the case Lifestyle Solutions undertakes to:

- a. Provide all requested employment records and other documentation to the FWO relevant to the investigation;
- b. Participate fully in any subsequent requests for information relevant to the investigation, including facilitating participation in any formal records of interview by employees or representatives of Lifestyle Solutions; and
- c. Fully co-operate in FWO's investigative processes.

Public Notice

32. Place a public notice (**Public Notice**) in the Saturday edition of The Weekend West within 28 days of, but not prior to, the FWO publishing a media release on its website (**FWO Media Release**) in respect of this Undertaking. The Public Notice must:

- a. Bear the name of Lifestyle Solutions;
- b. Contain the logo of Lifestyle Solutions;
- c. Appear within the first 5 pages of newspaper;
- d. Be at least 10 cm x 8 cm;
- e. Contain wording in the form of Attachment A;
- f. Provide a copy of the Public Notice to the FWO within seven days of its publication.

Online Notice

33. Place a notice in the announcements section of its public website and its intranet (**Online Notices**) within 28 days of, but not prior to, the publishing of the FWO Media Release which will:

- a. be in the form of Attachment A;
- b. be displayed in at least size 10 font; and
- c. remain on the website and intranet for a period of at least 3 months.

34. Lifestyle Solutions will provide evidence of the placement of the Online Notices to the FWO on the date they are published.

Dedicated Helpline

35. For a period of 12 months after the commencement of this Undertaking, Lifestyle Solutions will make available a dedicated point of contact for enquiries from all its current and former employees regarding their wages and entitlements (**Helpline**). Lifestyle Solutions will:

- a. Nominate a telephone number and create a designated email address to which enquiries are to be directed;
- b. Include details of the telephone number and email address referred to above in Attachment A;
- c. Maintain adequate resources to receive and promptly address telephone and email enquiries received via the Helpline;

- d. Provide a report to the FWO regarding enquiries received via the Helpline both:
 - i. after 6 months of its operation; and
 - ii. after 12 months of its operation.

Reporting

36. Notify the FWO of any changes of circumstances that may impact on Lifestyle Solutions' ability to comply with this Undertaking, as soon as it becomes aware of such circumstances occurring or being contemplated. Such circumstances may include but are not be limited to:

- a. Sale or potential sale of the business, or part of the business, including loss of contract or substantial alteration of contract;
- b. Change of or change in details of company directors, or other officeholder positions;
- c. Change in engagement of workers;
- d. Ceasing or an expectation of ceasing to trade;
- e. Company going in to administration or liquidation;
- f. Intention to commence a bargaining period in relation to an enterprise agreement;

37. If any events or circumstances described immediately above, and required to be reported to the FWO occur, Lifestyle Solutions will provide any documentation or other evidence reasonably requested by the FWO to confirm the event or circumstance has occurred or is contemplated.

No Inconsistent Statements

38. Lifestyle Solutions:

- a. Must not; and
- b. Must ensure that each of its officers, employees or agents do not make any statement, orally or in writing or otherwise imply anything that is inconsistent with admission or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

39. Lifestyle Solutions acknowledges that:

- a. The FWO may;

- b. 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;
- c. 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);
- d. Issue a media release in relation to this Undertaking;
- e. From time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and rely upon the admissions made by Lifestyle Solutions set out in paragraphs 10 (a) and (b) above in respect of decision making concerning any future non-compliance with Lifestyle Solutions workplace relations obligations.

40. 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;

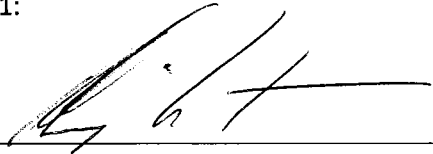
41. Consistent with section 715(3) of the FW Act, Lifestyle Solutions may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and

42. If Lifestyle Solutions contravenes any of the terms of this Enforceable Undertaking:

- a. 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
- b. This Enforceable Undertaking may be provided to the Court as evidence of the admissions made by Lifestyle Solutions in paragraphs 10(a) and (b) above, and also in respect of the question of costs.

Executed as an undertaking

Executed by Lifestyle Solutions (Aust) Ltd in accordance with section 127(1) of the Corporations Act 2001:



(Signature of director)

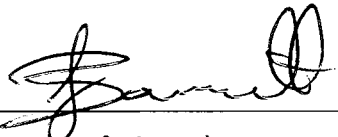
ANDREW KNIGHT

(Name of director)

21.10.19

(Date)

in the presence of:



(Signature of witness)

LAUREN BARNETT

(Name of witness)



(Signature of director/company secretary)

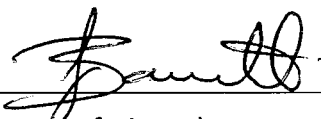
JULIE CONNOLLY

(Name of director/company secretary)

24.10.19

(Date)

in the presence of:



(Signature of witness)

LAUREN BARNETT

(Name of witness)

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




Michael Campbell

Deputy Fair Work Ombudsman

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

3/12/19

(Date)

LOUISE CATO

(Name of Witness)

Attachment A – Form of Public and Website Notices

Contravention of Fair Work Act by Lifestyle Solutions (Aust) Ltd.

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) into a self-disclosure that Lifestyle Solutions contravened the *Fair Work Act 2009 (FW Act)* and the Social, Community, Home Care and Disability Services Industry Award 2010 in respect of its Live-in Carers working in Western Australia.

Lifestyle Solutions has self-reported and formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including back paying staff and committing to regular audits and workplace training.

Lifestyle Solutions expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, Lifestyle Solutions gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Lifestyle Solutions as a live-in carer working in Western Australia and have queries or questions relating to your employment, please contact Jonathan Marin on [REDACTED] [REDACTED]. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

Attachment B - TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ (Enter name and position in the organisation)

have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date completed: _____
- Hiring employees date completed: _____
- Managing employees date completed: _____
- Managing performance date completed: _____
- Diversity and discrimination date completed: _____
- Workplace flexibility date completed: _____
- Record-keeping and pay slips date completed: _____

* Please provide printout of the Statement/Certificate of Attainment for each course completed

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Introduction to the Pay and Conditions Tool date completed: _____
- PACT – Award classifications date completed: _____
- PACT – Pay summary date completed: _____
- PACT – Penalty rates date completed: _____
- PACT – Allowances date completed: _____
- PACT – Award Coverage date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____
- Contractors and employees – what’s the difference? date completed: _____

Read information on the following:

Pay Overview

- Minimum wages Page Ref No. _____ date completed: _____
- Penalty rates & allowances Page Ref No. _____ date completed: _____

Leave Overview

- Annual leave Page Ref No. _____ date completed: _____
- Sick & carer’s leave Page Ref No. _____ date completed: _____

Ending Employment Overview

- Notice & final pay Page Ref No. _____ date completed: _____
- Unfair dismissal Page Ref No. _____ date completed: _____

Employee Entitlements Overview

- Types of employees Page Ref No. _____ date completed: _____
- National Employment Standards Page Ref No. _____ date completed: _____

Awards & Agreements Overview

- Awards Page Ref No. _____ date completed: _____

Date and signature: _____