



Australian Government

# Fair Work

## OMBUDSMAN

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### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Catalyst Child and Family Services Ltd [ABN 69 164 372 123]

## 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 CATALYST CHILD AND FAMILY SERVICES LTD, trading as Catalyst Child and Family Services, ABN 69 164 372 123 (**Company**), 19 Barang St, Kuranda, QLD 4881.

### CONTRAVENTIONS OF THE FW Act

2. The Company admits that it has not complied with Section 45 of the FW Act since around October 2013.
3. Upon the Company's admission and provision of documentation, the FWO has a reasonable belief that the Company contravened the following provisions of the *Social, Community, Home Care and Disability Services Industry Award 2010* (**Award**) since October 2013:
  - (a) Clause 20: Allowances , specifically;
    - i) Clause 20.9 On call allowance
  - (b) Clause 25: Ordinary hours of work and rostering , specifically;
    - i) Clause 25.5 Rosters
    - ii) Clause 25.7 Sleepovers
  - (c) Clause 28: Overtime and penalty rates, specifically,
    - i) Clause 28.1 Overtime rates
  - (d) Clause 29 Shiftwork, specifically;
    - i) 29.3: Shift allowances and penalty rates
  - (e) Clause 13 Classifications, specifically;
    - i) Schedule B - Social and Community Services Employees
    - ii) Schedule C - Crisis Accommodation Employees

### BACKGROUND

4. The Company was registered on 7 July 2013 and operates as Catalyst Child and Family Services at 19 Barang Street, Kuranda, QLD 4881.
5. The Company operates exclusively within Queensland and provides residential care services for children and young people in the care of the Queensland Government's Department of Child Safety, Youth and Women. The company currently employs approximately 80 full time equivalent employees in various classifications under the

Award.

6. In 2018, the Company self-identified it had been contravening the FW Act in respect of the shift allowances; on call, sleepover allowances and overtime rates paid to employees and had failed to progress employees to the appropriate classification for work performed under the Award since October 2013.
7. On or around 13 March 2019 the Company contacted FWO to advise that following a review of its payroll systems and the records of current and former employees during a period in 2018, it estimated that up to 200 employees had been underpaid a total amount potentially in the region of \$200 000.00. This estimation is for a period since the Company began operations in 2013.

### **COMMENCEMENT OF ENFORCEABLE UNDERTAKING**

8. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by the Company; and
  - (b) the FWO accepts the Undertaking so executed.

### **ENFORCEABLE UNDERTAKING**

#### **Rectifying all underpayments**

9. The Company will:
  - (a) rectify all and any outstanding underpayments and superannuation contributions in respect of current and former employees since October 2013.
  - (b) calculate and rectify the underpayments and contributions outlined in paragraph 9(a) above within a period of 12 months of signing this Undertaking, by calculating and back paying employees on a graduated basis, as per the below:
    - i) within 3 months from the date of signing, the Company will rectify the underpayments for the period July 2018 – June 2019;
    - ii) within 6 months from the date of signing, the Company will rectify the underpayments for the period July 2016 – June 2018;
    - iii) within 9 months from the date of signing, the Company will rectify the underpayments for the period July 2014 – June 2016;
    - iv) within 12 months from the date of signing, the Company will rectify the underpayments for the period October 2013 – June 2014.
  - (c) within seven days of back paying employees on each occasion outlined at paragraph 9(b) above, provide evidence to the FWO that the payments were

made.

10. If any of the employees cannot be located and paid any outstanding underpayments within 14 days of each of the graduated timeframes set out in 9(b) above, the Company will make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay the said monies into the Consolidated Revenue Fund. The Company will complete and return the required documents supplied by the FWO within 14 days of being provided the documentation by the FWO.

#### **Review of underpayment**

11. The Company must, at its cost, engage an appropriately qualified, experienced, external and independent expert, approved in writing by the FWO under clause 12, (**Independent Expert**), to conduct a review (**Review**) of the Company in accordance with clause 13 and provide a report (**Report**) to the FWO in accordance with clause 13.
12. The Company must notify the FWO of its proposed Independent Expert that must be an:
  - (a) accounting professional (Certified Practising Accountant, Chartered Accountant), or
  - (b) lawyer (admitted, practising lawyer and employment law specialist)By no later than 60 days of signing this Undertaking, the FWO may in its sole discretion approve the Independent Expert or otherwise require the Company to propose other Independent Experts until the FWO has approved in writing an Independent Expert.
13. The Company must ensure that the Independent Expert conducts a Review:
  - (a) of the Company's assessment of the extent, nature and quantum of non-compliance with the FW Act since October 2013;
  - (b) to be completed no later than 60 days of signing the Undertaking;
  - (c) to assess whether the Underpayments have been correctly calculated and paid, including assessing whether:
    - i) all employees were advised of the nature, instances and the full amount of all and any Underpayments owed to them;
    - ii) there were any current or former employees that were omitted from the Company's rectification and remedying of Underpayments;
    - iii) the amounts calculated include any unlawful 'set-offs' between Underpayments of entitlements;

- iv) the Company has engaged in any unlawful deductions; and
- v) the Company's payroll and record-keeping systems and processes are compliant with the FW Act.

The Company must ensure that the Independent Expert provides Reports directly to the FWO, within two months of the completion of each of the four stages of rectification outlined at clause 9.

- 14. If the Review identifies any current or former employees are owed amounts additional to the underpayments calculated by the Company, the Company will pay those additional amounts to the current and former employees, and provide evidence of such payment to the FWO, 12 months from the date of signing.
- 15. If any of the current or former employees identified in the Review as being owed amounts additional to the underpayments calculated by the Company cannot be located and paid within 12 months from the date of signing, the Company will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. The Company will complete the required documents supplied by the FWO within 14 days of being provided the documentation.

#### **Future Annual Audit Activity**

- 16. The Company must, at its cost, engage an appropriately qualified, experienced, external and independent expert, approved in writing by the FWO as per clause 12, (Independent Expert), to conduct three annual audits of the Company's compliance with all Commonwealth workplace laws and instruments that may apply from time to time, including but not limited to the Award (each an **Audit**);
- 17. Each Audit will:
  - (a) assess a sample of the pay and conditions of 25% of all employees;
  - (b) include a range of classifications and employment types (full-time, part-time and casual employees);
  - (c) assess the wages and conditions paid over two nominated pay periods and include direct phone or email contact with the sample employees referred to and (a) and (b) to ensure the accuracy of classification levels, hours worked and overall entitlements due under the Award.

#### **The First Audit**

- 18. The Independent Expert will commence the First Audit no later than 1 February

2020.

19. By 1 January 2020, the Company will provide for the FWO's approval, details of the methodology to be used to conduct the First Audit.
20. The First Audit will be conducted for two full pay periods falling in the period 1 August to 31 August 2019.
21. The First Audit is to be finalised and a written report on the outcome of the Audit is to be provided to the FWO by 29 February 2020. The Company must ensure that the Independent Expert provides the report directly to the FWO.

***The Second Audit***

22. The Independent Expert will commence the Second Audit no later than 1 October 2020.
23. By 1 September 2020, the Company will provide for the FWO's approval, details of the methodology to be used to conduct the Second Audit.
24. The Second Audit will be conducted for two full pay periods falling in the period from 1 August to 31 August 2020.
25. The Second Audit is to be finalised and a written report on the outcome of the Audit is to be provided to the FWO by 31 October 2020. The Company must ensure that the Independent Expert provides the report directly to the FWO.

***The Third Audit***

26. The Independent Expert will commence the Third Audit no later than 1 October 2021.
27. By 1 September 2021, the Company will provide for the FWO's approval, details of the methodology to be used to conduct the Third Audit.
28. The Third Audit will be conducted for two full pay periods falling in the period 1 August to 31 August 2021.
29. The Third Audit is to be finalised and a report on the outcome of the Audit is to be provided to the FWO by 31 October 2021. The Company must ensure that the Independent Expert provides the report directly to the FWO.

### **Outcome of Audits**

30. If any of the Audits find any underpayment of wages and the FWO reasonably believes that employees not included in the sample are also likely to have been underpaid, the Company must, at its cost, engage an appropriately qualified, experienced, external and independent expert, approved in writing by the FWO as per clause 12, (Independent Expert), to conduct an audit of all its employees (or a group of employees), as determined by the FWO.
31. In the event that any of the Audits disclose contraventions of any applicable Commonwealth workplace law and/or instruments, the Company will conduct a reconciliation of the wages paid to any employees, and rectify any underpayments that are identified. The reconciliation period for each identified employee's entitlements will be from the commencement of that employee's employment, or the date of execution of this Undertaking, whichever is the later date and will end, at the earliest at the Audit finalisation dates specified in paragraphs 21, 25 and 29.
32. The Company will provide to the FWO evidence of such rectification within 28 days of being informed by the FWO of the requirement to undertake the reconciliation.
33. If requested, the Company will provide the FWO with all records and documents used to conduct any or all of the Audits, including any working documents, within 7 days of such a request.
34. As a result of any of the Audits, if any employee(s) identified as having underpayments owing to them cannot be located, the Company will make application to the Commonwealth of Australia through the FWO in accordance with section 559 of the FW Act to pay the money into the Consolidated Revenue Fund. The Company will complete and return the required documents supplied by the FWO within 14 days of being provided the documentation by the FWO.

### **Employee Assistance**

35. With respect to former or current employees who are identified as being owed monies in excess of \$20,000 in unpaid wages, entitlements and superannuation, the Company undertakes to:
  - (a) provide these employees with reimbursements of up to \$500 (inclusive of GST) for accessing independent financial advice with a registered financial advisor of their own choosing;
  - (b) provide these employees with access to this reimbursement for 12 months

- from the date of execution of this Undertaking, or from when the Underpayment is back paid to the relevant employee, whichever is later;
- (c) take reasonable steps to inform eligible employees of their entitlement to this reimbursement, including advising those employees of the reimbursement in the Apology Letter referred to in paragraph 44 of this Undertaking; and
  - (d) after 12 months from the date of execution of this Undertaking, report to the FWO in writing on the number of employees who have been reimbursed after receiving financial advice in accordance with this paragraph.

## **SYSTEMS AND PROCESSES**

36. By 31 January 2020, The Company will develop and provide to the FWO details of new rostering systems and processes in place to ensure future and ongoing compliance with the FW Act and Award. These details will include an example fortnight of rosters for all employees of the Company and written explanation of the changes made to the system to avoid future underpayments occurring.
37. Without limitation, such systems and processes should be developed, giving particular consideration to the following clauses of the Award:
- (a) Clause 20: Allowances
  - (b) Clause 25: Ordinary hours of work and rostering
  - (c) Clause 28: Overtime and penalty rates
  - (d) Clause 29.3: Shift allowances and penalty rates
38. By 31 January 2020, The Company will develop and provide to FWO details and explanation of a new time management system to record and track sleepover shifts worked by employees in order to ensure future and ongoing compliance with the Award.

## **FWO My account registration**

39. Within 21 days of the execution of this Undertaking, the Company will:
- (a) register with the FWO My account portal at [www.fairwork.gov.au/register](http://www.fairwork.gov.au/register) and fully complete the My account profile, including information about the business and award/agreement coverage, through this portal;
  - (b) using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My account;
  - (c) provide to the FWO the 'My account' Customer Registration Number (CRN).



40. Within 28 days of the execution of this Undertaking, at a mutually agreed time and location, demonstrate to an officer of the FWO, knowledge of the use of My account, including saving information within My account from the website and relevant FWO online tools. You must also demonstrate how your use of this saved information will contribute toward your compliance with workplace obligations including payment to employees of the correct minimum pay rates and public holiday penalty rates.
41. Within 21 days of the execution of this Undertaking, subscribe to the FWO's 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) Choose the relevant State/s and industry, selecting information updates on the following options:
    - i) pay rates and entitlements;
    - ii) new products and resources;
    - iii) about us and our work;
    - iv) updates in my industry; and
    - v) tailored information that's relevant to me.

#### **FWO Online Training**

42. Within 30 days of the execution of this Undertaking, the Company, will ensure that all persons responsible for management, payroll and human resources complete all education courses designed for employers available on the FWO online learning centre via <http://www.fairwork.gov.au/how-we-will-help/online-training> (**Education Activities**) and provide certificates of completion to the FWO.
43. For a period of 2 years from the execution of this Undertaking, the Company, will ensure that:
- (a) the Educational Activities are completed by any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial, payroll and human resources functions responsibilities, within 28 days of their taking responsibility for these functions; and
  - (b) for each person required to complete the Education Activities, all of the required information in Attachment D is entered and a copy of the completed attachment is provided to the FWO within 28 days of each person completing the Education Activities.

## NOTICES – INTERNAL AND EXTERNAL

### Apology to Employees

44. The Company will send a letter of apology (**Apology Letter**) to any current or former employee found in the reviews outlined in paragraphs 10(b) (i) to (iv) to have been underpaid (**Affected Employees**). The Apology Letter will be in the form of Attachment B to this Undertaking.
45. The Company will provide evidence to the FWO that the Apology Letter has been sent to affected employees within 14 days of each quarterly review as outlined in paragraphs 9(b)(i) to (iv).

### Public Notice

46. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of this Undertaking, the Company undertakes to place a notice (**Public Notice**) in the Cairns Post.
47. The Public Notice must:
  - (a) Bear the name of the Company;
  - (b) Contain the logo (if any) of the Company;
  - (c) Appear within the first 5 pages of the newspaper;
  - (d) Be at least 10 cm x 8 cm;
  - (e) Contain wording in the form of Attachment A;
48. The Company undertakes to confirm with the FWO when the Public Notice will be published and to provide a copy of the Public Notice to the FWO within 7 days of its publication.

### Workplace Notice

49. Within 30 days of execution of this Undertaking, the Company undertakes to display (or cause to be displayed) within head office, a notice in the form of Attachment A to this Undertaking (**Workplace Notice**). The Workplace Notice must be:
  - (a) at least A3 size;
  - (b) clearly displayed in a location to which all employees have access (for example, by placement on a staff noticeboard);
  - (c) displayed for a period of 28 continuous days.
50. Within 7 days of displaying the Workplace Notice, the Company will provide confirmation, including photographic evidence of its display and its location, to the FWO that the Workplace Notice has been displayed.

## **Website Notice**

51. The Company undertakes to place a notice (**Website Notice**) on the homepage of the Catalyst Child and Family Services website within 28 days of, but not prior to the FWO publishing a media release on its website.
52. The Website Notice must:
  - (a) be displayed in at least size 10 font in prominent position on the website;
  - (b) be in the form of Attachment A to this Undertaking (**Website Notice**) and;
  - (c) remain on the website for a period of 6 months.

## **Mail – out to Employees**

53. The Company will make contact with all current and former employees by way of mail-out or email-out of the Workplace Notice to the last known home or email address of all employees within 90 days of the execution of this Undertaking.
54. The Workplace Notice will be in the form of the notice in Attachment A to this Undertaking and will request they make contact with an independent third party entity (created at the cost of Catalyst and upon the agreement by the FWO) if they have queries or concerns about their entitlements
55. The Company will provide evidence to the FWO that the mail-out has been sent to all employees within 14 days of the letters being sent.

## **Reporting of changes to current arrangements**

56. For a period of 3 years following the execution of this Undertaking, the Company will notify the FWO of any changes of circumstances that could potentially impact on the Company's ability to comply with the individual undertakings contained in this Undertaking, as soon as it becomes aware of such circumstances. Such circumstances shall include but not be limited to:
  - (a) sale or loss of government contracts to provide services any part of the business;
  - (b) change in engagement of workers, for example engaging contractors in lieu of employees;
  - (c) ceasing or an expectation of ceasing to trade; and
  - (d) the Company going in to administration or liquidation.
57. In the event that there are any events or circumstances described in paragraph above which are required to be reported to the FWO, the Company will provide any

documentation or other evidence requested by the FWO to confirm the event/s that have transpired.

### **No Inconsistent Statements**

58. The Company:

- (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**

59. The Company acknowledges that the FWO may:

- (a) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
- (b) 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);
- (c) issue a media release in relation to this Undertaking;
- (d) from time to time, publicly refer to this Undertaking (and any of the Attachments hereto) and its terms; and
- (e) rely upon the admissions made by the Company set out in paragraph 3 above in respect of decision making concerning any future non-compliance with the Company's workplace relations obligations.

60. 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;

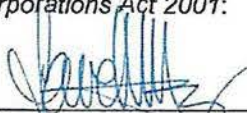
61. Consistent with section 715(3) of the FW Act, the Company, may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and


62. If the Company 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 the Company in paragraph 3 above, and also in respect of the question of costs.

**Executed as an Undertaking**

EXECUTED by Catalyst Child and Family Services Ltd in accordance with section 127(1) of the Corporations Act 2001:

  
\_\_\_\_\_  
(Signature of director)

  
\_\_\_\_\_  
(Signature of director/company secretary)

LAUREL DOWNEY  
\_\_\_\_\_  
(Name of director)


WARREN MCEWAN  
\_\_\_\_\_  
(Name of director/company secretary)


4.10.2019  
\_\_\_\_\_  
(Date)

04-10-19  
\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

  
\_\_\_\_\_  
(Signature of witness)

STEVEN SHAW  
\_\_\_\_\_  
(Name of witness)


STEVEN SHAW  
\_\_\_\_\_  
(Name of witness)

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

  
DEPUTY FAIR WORK OMBUDSMAN

9/10/2019  
\_\_\_\_\_  
(Date)

in the presence of:

  
\_\_\_\_\_  
(Signature of witness)

LOUISE CATO  
\_\_\_\_\_  
(Name of Witness)

## Attachment A – Form of Public, Website and Workplace Notice

### Contravention of Fair Work Act by Catalyst Child and Family Services Ltd

We refer to the review conducted by the Office of the Fair Work Ombudsman (**FWO**) as a result of a self-disclosure by Catalyst Child and Family Services Ltd of errors in their payroll administration that has resulted in contraventions of the *Fair Work Act 2009 (FW Act)* and *Social, Community, Home Care and Disability Services Industry Award 2010 (Award)* as follows:

- Failing to roster and offer hours as per the rostering provisions of the Award
- Failing to pay correct overtime rates for hours worked;
- Failing to pay the correct on call allowances;
- Failing to pay the correct shift and penalty rates;
- Failing to apply the correct wage progression for the relevant classification

Catalyst Child and Family Services Ltd has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fairwork.gov.au](http://www.fairwork.gov.au)) committing to a number of measures to remedy the contraventions, rectify workplace practices and ensure future compliance. Some of the undertakings include:

- Rectifying the underpayments to the employees affected by the contraventions. Where Catalyst Child and Family Services Ltd has been unable to pay an employee directly, it has undertaken to make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund.
- Undertaking an audit of Catalyst Child and Family Services Ltd compliance with all Commonwealth workplace laws and applicable industrial instruments, such as the *Social, Community, Home Care and Disability Services Industry Award 2010* on signing, after 12 months of the execution of the EU and again at 24 months of the execution of the EU.
- Ensuring that the workplace systems and processes they have implemented or propose to implement complies with their obligations under the FW Act.

Catalyst Child and Family Services Ltd expresses its sincere regret and apologises for the unintended errors, which resulted in the contraventions. Furthermore, Catalyst Child and Family Services Ltd confirms it has implemented measures that will prevent the possibility of any reoccurrence thereby ensuring compliance with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Catalyst Child and Family Services Ltd and have queries or questions relating to your employment, please contact **Human Resources** at [xx.xx@catalystcfs.org.au](mailto:xx.xx@catalystcfs.org.au)

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

## Attachment B– Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of CATALYST CHILD AND FAMILY SERVICES LTD (Catalyst) for self -disclosed non-compliance with Commonwealth Workplace relations laws. We recently conducted a review that has been confirmed by the Office of the Fair Work Ombudsman (FWO) that determined we had contravened the *Fair Work Act 2009* and the *Social, Community, Home Care and Disability Services Industry Award 2010* by:

- Failing to roster and offer hours as per the rostering provisions of the Award
- Failing to pay correct overtime rates for hours worked;
- Failing to pay the correct on call allowances;
- Failing to pay the correct shift and penalty rates;
- Failing to apply the correct wage progression for the relevant classification

Regrettably, the review determined that you were affected by the above contraventions.

Catalyst is taking steps to remedy the contraventions, including by rectifying the amount that you have been underpaid, the total amount **\$[insert amount]**. You will receive this payment on **[insert date]** and will be provided with a payment advice regarding the payment.

Catalyst has formally acknowledged to the FWO that Catalyst did not comply with its obligations under Commonwealth workplace relations laws and have voluntarily entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au). As part of the Enforceable Undertaking we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Catalyst expresses its sincere regret and apologises to you for not having provided more accurate compliance with our lawful obligations.

Should you have any questions, please contact **[name of relevant contact person]** on **[insert phone number]**.

Yours sincerely

Laurel Downey  
Director  
Catalyst Child and Family Services Ltd