



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by TOWNSEND HOUSE INC (ABN 29378746905) and **accepted** by the Fair Work Ombudsman pursuant to section 715 of the *Fair Work Act 2009*.

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 Townsend House Inc (ABN 29378746905), of 193-195 Port Road Hindmarsh SA 5007 (**Townsend House**).

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

2. This Undertaking comes into effect when:
 - a. the Undertaking is executed by Townsend House; and
 - b. the FWO accepts the Undertaking so executed (**Commencement Date**).

BACKGROUND

3. Townsend House operates within the allied health services industry in South Australia, providing support services and programs for children with hearing, vision impairments or development delays.
4. Townsend House is a registered charity operating since 1873 and is a part of the Can:Do Group. Townsend House currently employs 74 employees. Employee terms and conditions were informed by the *Townsend House & Royal South Australian Deaf Society Enterprise Bargaining Agreement 2014* until 15 October 2018, and subsequently the *Townsend House Inc & Royal South Australian Deaf Society Inc Enterprise Agreement 2017* (collectively, the **Townsend House EAs**) from 16 October 2018 until it was terminated by the Fair Work Commission (**Commission**) on 7 March 2023. From 8 March 2023, employee terms and conditions have been informed by the *Social, Community, Home Care and Disability Services Industry Award 2010* and the *Health Professionals and Support Services Award 2020* (collectively, **the Awards**).
5. In April 2023, Townsend House wrote to the FWO to self-report non-compliance with the FW Act and the Townsend House EAs in relation to 80 full-time and part-time employees (**Affected Employees**) engaged between 1 September 2017 to 23 October 2022 (**Contravention Period**).
6. The FWO acknowledges Townsend House's renewed commitment to establishing and implementing systems and processes across the business to avoid future non-compliance with its workplace relations obligations, including but not limited to, the contraventions listed at clause 8. Townsend House has implemented the following to prevent future non-

compliance:

- a. introduced a new payroll system;
 - b. outsourced payroll to a specialised provider;
 - c. established a new governance structure and updated its constitution;
 - d. engaged an external auditor to undertake a payroll audit; and
 - e. established a forum called 'Your Voice', where employees can discuss workplace relations issues together and with Townsend House management.
7. In consideration of these matters, the FWO accepts this Undertaking, the terms of which are set out below.

ADMISSIONS

8. The FWO has a reasonable belief, and Townsend House admits that during the Contravention Period, Townsend House contravened:
- a. section 50 of the FW Act by contravening the following terms of the Townsend House EAs:
 - i. clause 4.5.1.2 (Overtime for award-based employees);
 - ii. clause 4.5.1.3 (Overtime worked by non-award employees);
 - iii. clause 6.3.1 (Wage increases); and
 - iv. Annexure A of the *Townsend House Inc & Royal South Australian Deaf Society Inc Enterprise Agreement 2017* (an undertaking pursuant to s. 190 of the FW Act in relation to overtime rates payable for part-time employees).
9. The contraventions referred to in clause 8 do not include:
- a. any contraventions which relate to or arise as a consequence of Townsend House failing to correctly apply the Townsend House EAs to any employee who is not one of the Affected Employees;
 - b. any contraventions which relate to, or arise as a consequence of Townsend House failing to correctly apply the Awards to any Affected Employee;
 - c. any contraventions which have not yet occurred at the date that this Undertaking is offered by Townsend House; or
 - d. any contraventions of the Townsend House EAs by Townsend House which occurred outside of the Contravention Period defined above.

RECTIFICATION

10. Townsend House confirms that the following amount has been paid to the 80 Affected

Employees (and or their superannuation fund where relevant) in rectification of the contraventions in clause 8:

a. **\$76,803.52** inclusive of:

- i. \$64,259.90 wages
- ii. \$10,996.93 interest
- iii. \$1,546.69 superannuation

11. Townsend House declares that these amounts satisfy all entitlements owing to the Affected Employees in relation to the contraventions identified in clause 8 during the Contravention Period.

UNDERTAKINGS

12. Townsend House will take the actions set out at clauses 13 to 38 (inclusive) below.

Workplace relations systems, processes and training

Mandatory training

13. Within 180 days of the Commencement Date, Townsend House will ensure that all current employees in the following positions have completed training which satisfies clause 14 below:
- a. Group Chief Executive;
 - b. General Manager Finance and Facilities;
 - c. Business Operations Manager;
 - d. Client Services Manager;
 - e. Brand and Engagement Manager;
 - f. Compliance and Scheduling Manager;
 - g. HR Manager; and
 - h. Team Managers (of which there are five).
14. The mandatory training must:
- a. be provided by an external workplace relations, human resources or employment law expert;
 - b. cover, at a minimum:
 - i. how to apply entitlements under each of the Awards including, without limitation:
 - 1. how entitlements differ under each of the Awards;

2. understanding and implementing ordinary hours under each of the Awards; and
 3. understanding overtime entitlements in each of the Awards.
 - ii. other FW Act entitlements and obligations, including the National Employment Standards and record keeping obligations.
15. Within six months of the Commencement Date, Townsend House will provide to the FWO evidence of its compliance with clauses 13 and 14 including:
 - a. a copy of the training materials used; and
 - b. a list of the employees who received the training and the date on which they attended.

Independent Audit

16. Townsend House must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct an audit of Townsend House's compliance with the FW Act and *Fair Work Regulations 2009* (Cth) (**FW Regulations**) and the applicable Awards (or replacement industrial instrument) (**Audit**).
17. Townsend House will notify the FWO of its proposed Independent Auditor by no later than 45 days after the Commencement Date. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Townsend House to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. In this event, the FWO will provide reasons in writing to Townsend House as to why the Independent Auditor nominated by Townsend House is not considered appropriate and Townsend House will be given a reasonable opportunity to address those reasons in writing before the FWO determines whether to decline approval or not. The Independent Auditor must be approved by the FWO in writing before being engaged by Townsend House.
18. Townsend House must ensure that the Audit conducted by the Independent Auditor includes:
 - a. an assessment of (the greater of) 15 employees or 15% of all employees to whom each of the Awards (or any replacement industrial instrument) apply, across a range of classifications and employment types (including full-time, part-time and casual if applicable), during the relevant audit period (**Sampled Employees**) in respect of their employment by Townsend House;

- b. an assessment of whether the Sampled Employees have been correctly classified under the Awards by Townsend House;
- c. an assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period comply with the FW Act and FW Regulations and the Awards (or replacement industrial instruments);
- d. the production of a written report on the Audit setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
- e. that the written report referred to in d. above contains the following declarations from the Independent Auditor:
 - i. the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - ii. notwithstanding that the Independent Auditor is retained by Townsend House the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Townsend House in preparing the report;
 - iii. the report is provided in accordance with applicable professional standards (which will be listed in the report); and
 - iv. the report is provided to the FWO and Townsend House for its benefit and the FWO can rely on the report.

The Audit

- 19. Townsend House must ensure the Independent Auditor commences the Audit by no later than six months after the Commencement Date.
- 20. The relevant audit period for the Audit must be at least two full pay periods (both of which include a public holiday) falling within the period of 1 January 2025 and 30 April 2025 to be nominated by the FWO.
- 21. Within four months of the Commencement Date, Townsend House will provide for the FWO's approval details of the methodology that it intends to instruct the Independent Auditor to use to conduct the Audit. Any proposed changes to the methodology by the FWO must be discussed with Townsend House.
- 22. Townsend House will use its best endeavours to ensure the Independent Auditor provides simultaneously on the same date a draft written report of the Audit to the FWO and Townsend House no later than nine months after the Commencement Date setting out the draft Audit findings, and the facts and circumstances supporting the draft Audit

findings.

Townsend House will be given an opportunity to seek clarification and provide comments on any matters raised in the draft Audit report, including by reviewing the draft calculations. Any such communications between Townsend House and the Independent Auditor must be made available to the FWO on request.

23. Townsend House will use its best endeavours to ensure the Independent Auditor finalises the Audit and provides simultaneously on the same date a written report of the Audit (**Audit Report**) to the FWO and Townsend House within six weeks of FWO and Townsend House providing any comments on the draft report to the Independent Auditor.

Outcome of Audit

24. If the Audit identifies underpayments to any Sampled Employees, Townsend House will:
 - a. within 30 days of receipt of the Audit Report, (and subject to clauses 27 and 28 below) rectify any underpayments identified in the relevant audit period; and
 - b. within 120 days of receipt of the Audit Report, and unless otherwise advised by the FWO, conduct a reconciliation of the amounts paid and owed to the Sampled Employees from 8 March 2023 to 31 December 2024, and rectify any underpayments that are identified.
25. Townsend House will provide to the FWO Reasonable Evidence of such rectification within 30 days of reconciliation payments being made.
26. If any employees identified in the Audit as having underpayments owing to them cannot be located within 60 days of the conclusion of the Audit, Townsend House will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Townsend House will complete the required documents supplied by the FWO for this purpose.
27. If Townsend House determines that in any respect there is inaccuracy or error in respect of any underpayments identified by the Independent Audit, it will have the right within 30 days of the receipt of the Audit Report to make written submissions to the FWO and the Independent Auditor seeking a reconsideration of the affected underpayments.
28. The FWO and the Independent Auditor will give consideration to any issues raised and will provide a response to those matters before requiring Townsend House to proceed with rectification as set out at clause 25 and following above.
29. If the Audit identifies an underpayment of minimum entitlements to one or more of the Sampled Employees, and the FWO reasonably believes that employees not included in the Audit are also likely to have been underpaid, the FWO (subject to clause 31 and

following below) may direct Townsend House to engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit which may require an audit of all its employees to whom the Awards (or any replacement industrial instruments) apply (**Additional Audit**). Any Additional Audit must be paid for by Townsend House.

30. Prior to the FWO giving any direction at clause 29 above, Townsend House will be given an opportunity to seek clarification and provide written submissions to the FWO as to whether the Additional Audit is warranted and the scope and reference terms of any Additional Audit.
31. The FWO will consider any submissions made and must provide Townsend House with reasoning as to why it maintains that an Additional Audit is required and as to the scope and reference terms of any Additional Audit.
32. If requested by the FWO, Townsend House will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 21 days of such a request subject to any legal professional privilege attaching to such records.

Worker Voice

33. Townsend House will continue to support and maintain its “Your Voice” forum.
34. The members of the “Your Voice” Forum (other than CEO and the HR Manager or other executive representatives) will invite a representative from the Health Services Union to attend a forum each quarter.
35. The Forum’s terms of reference will provide for:
 - a. 6-weekly meetings; and
 - b. matters arising from the Your Voice forum to be reported to the next occurring Board meeting.

Corporate Governance

36. Townsend House will ensure the Group Chief Executive reviews and, where necessary, amends their internal processes for reporting to the Board regarding compliance with workplace relations obligations to ensure that the Board is appropriately notified of Townsend House’s compliance with its workplace relations obligations and any potential breaches of their FW Act. In particular, the Group Chief Executive will:
 - a. ensure that the Audit Report prepared in accordance with clause 18 is tabled before the Board within 60 days of its finalisation;

- b. implement a program of quarterly reporting to the Board in relation to:
 - i. all complaints received from employees where entitlements arising from the FW Act and/ or applicable industrial instruments have not been met (including but not limited to the details of the entitlement, including Award clause/s and the outcome including any action taken and the quantum of any monetary remediation);
 - ii. a tabling of the minutes from the six-weekly "Your Voice" forums, including the nature, type and discussion of any issues raised and the associated management response; and
 - iii. a report on the effectiveness of current workplace systems and processes (including the payroll systems, and the payroll partner) in ensuring compliance with the FW Act and the Awards;
 - c. ensure that all reports presented to the Board for the purposes of clauses 37a. and b. directly above are tabled and approved by the Board and that where issues are identified, those issues are rectified in a timely manner, with the action taken to address those issues being subsequently reported to the Board; and
 - d. by no later than nine months after the Commencement Date, ensure the Board provides documentation to the FWO which demonstrates that the Board is regularly updated, on at least a quarterly basis, on the Townsend House's compliance with their FW Act obligations and this Undertaking.
37. The FWO may, at any time while Townsend House has obligations under this Undertaking, request copies of documents held by the Townsend House Board in respect of their monitoring of Townsend House's workplace relations compliance, including but not limited to reports prepared for the Board and Board minutes, subject to any legal professional privilege attaching to those records.

Reporting Changes in Circumstances

38. Townsend House will notify the FWO of any changes of circumstances that impacts on Townsend House's ability to comply with the undertakings contained in this Undertaking, as soon as reasonably practicable after they become aware of such circumstances. Such circumstances include but are not limited to:
- a. a sale or potential sale or transfer of the organisation, or part of the organisation;
 - b. ceasing or an expectation of ceasing to trade/operate; or
 - c. the organisation going into administration or liquidation.

No Inconsistent Statements

39. Townsend House must not and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

Extensions of Time

40. Townsend House may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. The FWO will not unreasonably withhold agreement on a request for an extension of time.
41. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

ACKNOWLEDGEMENTS

42. Townsend House acknowledges that:
- a. the FWO may:
 - i. make this Undertaking available on the FWO internet site at www.fairwork.gov.au;
 - ii. release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - iii. issue a media release in relation to this Undertaking;
 - iv. from time to time, publicly refer to the Undertaking and its terms; and
 - v. rely upon the admissions made by Townsend House set out in clause 8 above in respect of decisions taken regarding enforcement action in the event that Townsend House is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Townsend House to comply with its obligations under this Undertaking.

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;

- b. consistent with section 715(3) of the FW Act, Townsend House may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- c. if Townsend House contravenes any of the terms of this Undertaking:
 - i. 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
 - ii. this Undertaking may be provided to the Court as evidence of the admissions made by Townsend House in clause 8 above, and also in respect of the question of costs.

DICTIONARY

Unless the contrary intention appears, words in the singular include the plural, and other than terms defined, have their ordinary natural meaning.

The following defined term is adopted in this Undertaking:

- **Reasonable Evidence** means such evidence as the FWO may reasonably require, and which could reasonably be expected to satisfy a court of:
 - a. the truth of any fact asserted by Townsend House or by any of its servants or agents; and/or
 - b. the accuracy and correctness of any information provided by Townsend House, or by any of its servants or agents; and/or
 - c. compliance by Townsend House with any term of this Undertaking.

Executed as an undertaking

EXECUTED by an authorised person of Townsend House Inc

CHIEF EXECUTIVE &
PUBLIC OFFICER

(Name and position of authorised signatory)

NESTER WYNE-JONES



(Signature of authorised signatory)

in the presence of:

Abbey-Claire Carter

(Name of witness)



(Signature of witness)

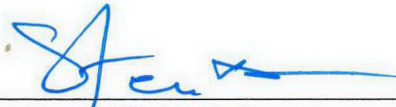
7 April 2025

(Date)

ACCEPTED by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* on:

STEVE RONSON

Steve Ronson (Executive Director,
Operations)



(Signature of Delegate)

9 April 2025

(Date)

Delegate for the Fair Work Ombudsman

in the presence of:



(Signature of witness)

Pia Morgan

(Name of Witness)