



### ENFORCEABLE UNDERTAKING

This undertaking is **given** by The Smith Family (ABN 28 000 030 179) and **accepted** by the Fair Work Ombudsman pursuant to section 715 of the *Fair Work Act 2009* (Cth) in relation to the contraventions identified at clause 14.

## **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 The Smith Family (ABN 28 000 030 179) (**TSF**) of 2 Market Street, Sydney, NSW 2000.

## **COMMENCEMENT OF ENFORCEABLE UNDERTAKING**

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

## **BACKGROUND**

3. TSF is a registered charity with the Australian Charities and Not-for profits Commission and a public company. TSF provides support to children, young people and their families to help overcome educational inequality caused by poverty. TSF currently employs approximately 774 employees across Australia and reported total revenue of approximately \$185.5 million in the 2024/2025 financial year.
4. On 28 September 2023, TSF notified the FWO that its management had undertaken a review of industrial instrument coverage and identified that:
  - a. the *Social, Community, Home Care & Disability Services Industry Award 2010* (**Award**) applied to 456 of its current team members (**Award team members**), and TSF had engaged external advisors, including a third-party payroll expert, to assist it with undertaking a review of the pay-related entitlements of those Award team members and 400 former team members engaged in roles which the Award applied to, in the period since 1 February 2017 (**Award entitlements review**), and
  - b. *The Smith Family Community Programs Enterprise Agreement 2016* (**TSF EA**), applied to 59 of its current team members (**current EA team members**), in addition to the 452 current employees to whom the TSF EA had been applied to date, that TSF had contacted those current EA team members to notify them of their industrial instrument coverage, and that TSF was in the process of identifying any unpaid entitlements and would in due course be arranging relevant remediation payments for those employees who had not received

their full entitlements, and was undertaking a thorough review to identify any additional TSF team members who had in the past held roles covered by the TSF EA which were not previously identified as such. TSF sought assurance via an external assessment to verify that TSF EA team members had received their entitlements over time.

5. TSF subsequently notified the FWO that:
  - a. TSF would commence an identification assessment and, if applicable, remediation of any current and former employees who were in roles to whom the TSF EA applied from November 2016 but who were not treated as covered by the TSF EA at the relevant time during their employment with TSF (**EA team members**) for the period to 30 June 2023 (together with clause 4.b, the **EA entitlements review**), and
  - b. TSF had also identified a cohort of casual employees covered by the EA who were entitled to remediation because they had not received their full minimum engagement entitlements in the period from 1 October 2017 to 30 September 2023 (**EA casual employee review**).
6. Details of the underpayments identified and rectified by TSF are set out at clause 11 below.
7. TSF has requested that the FWO accept an enforceable undertaking in relation to its contraventions of civil remedy provisions of the FW Act.
8. The FWO acknowledges TSF's ongoing cooperation with and early and open disclosures made to the FWO.
9. The FWO also acknowledges the steps TSF has taken regarding the matters at clauses 4 and 5 since 2023, TSF's commitment to implement and maintain comprehensive systems and processes across the organisation as detailed in clause 13 to avoid any future similar contraventions occurring, and TSF's ongoing commitment to its compliance with the FW Act, Award and TSF EA.
10. In consideration of these matters, the FWO accepts this Undertaking, the terms of which are set out below.

## REVIEW AND RECTIFICATION OF UNDERPAYMENTS

11. Prior to the execution of this Undertaking, TSF notified the FWO that:
  - a. it has completed its Award entitlements review, EA entitlements review and EA casual employee review;
  - b. as a result of those activities, TSF had rectified underpayments by making back payments of \$5,894,155.67 (inclusive of superannuation and interest) to 744 current and former team members. Excluding interest, TSF asserts this equates to approximately 1.3% of total wages and superannuation over the remediation periods;
  - c. specifically:
    - i. as a result of its Award entitlements review (referenced in clause 4.a above), TSF had rectified identified underpayments by making remediation payments of \$ 5,366,066.41 (inclusive of superannuation and interest) to the relevant current and former Award team members;
    - ii. as a result of its EA entitlements review (referenced in clauses 4.b and 5.a above), TSF had rectified identified underpayments by making remediation payments of \$429,938.86 (inclusive of superannuation and interest) to the relevant EA team members;
    - iii. as a result of its EA casual employee review (referenced in clause 5.b above), TSF had rectified underpayments by making remediation payments of \$98,150.40 (inclusive of superannuation and interest) to the relevant EA casual team members;
  - d. in addition, there are 24 former employees to whom the Award applied and 16 former employees to whom the EA applied who TSF has identified, through its Award entitlements review, and its EA casual employee review respectively, who are owed a total of \$18,674.72 in wages who TSF was unable to locate, or for whom no bank details were provided to TSF, following a series of contact attempts by TSF. This amount has been paid to the Commonwealth of Australia in accordance with section 559 of the FW Act, following engagement with the FWO on this matter.
12. The employees identified by TSF as eligible for remediation payments and who TSF was

able to locate have been contacted directly with updates detailing the progress of the remediation, as well as by personalised communications setting out their repayment amounts, available resources and contact details for enquiries.

13. Prior to the execution of this Undertaking, TSF also notified the FWO that in the period since 2024, as part of a broader program of work in connection with the activities described in clauses 4 and 5, it had taken or was taking the following measures to enhance data quality, system governance and compliance oversight:

- a. utilising the third-party payroll expert referred to in clause 4.a to conduct ongoing monitoring of the pay entitlements of all current Award employees between 1 July 2024 and 30 June 2026;
- b. establishing an overtime recording process for Award team members as an interim measure ahead of implementing an automated time and attendance system and related policies applicable to its Award team members to enable TSF to accurately assess time- and attendance-related Award entitlements on an ongoing basis, once implemented;
- c. TSF has completed an industrial instrument coverage review of all roles, updated position descriptions (where required), and has developed a process to monitor industrial instrument coverage going forward, including a Classification Reassessment, Benchmarking and Salary Review procedure approved in October 2025 and subject to ongoing assurance;
- d. TSF completed a classification assessment and corrected employees classifications that were incorrect. Those employees entered into new employment contracts that reflect their correct classification;
- e. TSF transitioned team members to whom the Award applies from a monthly to fortnightly payroll schedule in July 2024;
- f. TSF has designed and implemented a digital tool to support its payroll team with accurate monitoring and application of pay progression against Award entitlements, which will ultimately replace the third party monitoring referred to in clause 13.a;
- g. TSF is conducting monthly, pay cycle-based payroll monitoring both for EA and Award team members;

- h. TSF is integrating its human resources and payroll systems to improve data accuracy and minimise manual handling of data between the two systems;
- i. TSF has invested in the following new specialist roles to support management and compliance, including:
  - i. Payroll Compliance Coordinator;
  - ii. Workforce Coordination and People Systems Manager;
  - iii. Systems Analyst;
  - iv. People Services Data Analyst; and
  - v. People Services Coordinator;
- j. the TSF Board is continuing to oversee compliance through sub-Committee reports (at least on a quarterly basis) from the People & Culture Committee and the Finance, Audit and Risk Committee (**Committee**).

#### **ADMISSIONS**

14. The FWO has a reasonable belief, and TSF admits, that during the period to which its Award entitlements review, EA entitlements review, and EA casual employee review relate (**Relevant Period**), TSF contravened:
- a. section 44 of the FW Act in respect of:
    - i. section 90 (Payment for annual leave)
    - ii. section 99 (Payment for paid personal/carer's leave)
    - iii. section 106 (Payment for compassionate leave (other than for casual employees))
    - iv. section 116 (Payment for absence on public holiday)
  - b. section 45 of the FW Act by contravening the following terms of the Award:
    - i. clause 13.2 (Classifications)
    - ii. clause 13.3(a) (Classifications – Progression)
    - iii. clause 15 (Minimum weekly wages for social and community services employees and crisis accommodation employees)
    - iv. clause 20.11 (Allowances – On call allowance)
    - v. clause 24.1 (Payment of wages)
    - vi. clause 24.2 (Payment of wages – payment on termination of employment)

- vii. clause 27.1(b) (Breaks – Meal breaks)
  - viii. clause 28.1 (Overtime rates)
  - ix. clause 30.2 (Higher duties)
  - x. clause 31.4(a) (Annual leave – Annual leave loading)
- c. section 50 of the FW Act by contravening the following terms of the TSF EA:
- i. clause 3.2 (Full-time employment)
  - ii. clause 3.5 (Casual employment)
  - iii. clause 4.2 (Payment of salary)
  - iv. clause 7.2 (Hourly rates of pay for Community Program roles)
  - v. clause 7.3 (Job level descriptors – Community Program)
  - vi. clause 7.4 (Salary progression for Community Programs Level 1)
  - vii. clause 10.5 (Sick leave)
  - viii. clause 10.6 (Long service leave)
- d. section 535 of the FW Act by failing to make, and keep for 7 years, employee records of the kind prescribed by regulations 3.33 and 3.34 of the *Fair Work Regulations 2009* (Cth) (**FW Regulations**).
15. The contraventions referred to in clause 14 of this Undertaking do not include:
- a. any contraventions which relate to or arise as a consequence of TSF failing to correctly apply the Award to any employee who is not in scope of the Award entitlements review;
  - b. any contraventions which relate to or arise as a consequence of TSF failing to correctly apply the TSF EA to any employee who is not in scope of the EA entitlements review or the EA casual employee review;
  - c. any contraventions which have not yet occurred at the date that TSF offers this Undertaking; or
  - d. any contraventions of a particular clause of the Award or the TSF EA by TSF which occurred outside of the Relevant Period.

## UNDERTAKINGS

16. TSF will take the actions or otherwise comply with the matters set out at clauses 17 to 44 (inclusive) below. Where a due date falls on a weekend or public holiday, the due

date for the undertaking will be taken to be the following business day.

### **Independent Audit**

17. TSF must, at its own cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct an audit of TSF's compliance with its obligations regarding employee pay-related entitlements under the FW Act, the *Fair Work Regulations 2009* (Cth) (**FW Regulations**), Award and TSF EA (**Audit**) as described in clause 19 below.
18. TSF will notify the FWO of its proposed Independent Auditor by no later than four months after the Commencement Date. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require TSF to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be approved by the FWO in writing before being engaged by TSF.
19. TSF must ensure that the Audit conducted by the Independent Auditor includes:
  - a. an assessment of at least 5% of all current employees to whom the Award and TSF EA apply, across a range of classifications, locations and employment types (full time, part time and casual employment), during the Relevant Audit Period (**Sampled Employees**) in respect of their employment by TSF;
  - b. an assessment of whether TSF has correctly classified the Sampled Employees;
  - c. an assessment of whether the pay and conditions of the Sampled Employees during the Relevant Audit Period comply with the FW Act, Award and TSF EA;
  - 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 subclause 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 TSF retains the Independent Auditor, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from TSF 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 for its benefit and the FWO can rely on the report.

#### *The Audit*

- 20. TSF must ensure the Independent Auditor commences the Audit between six and 12 months after the Commencement Date.
- 21. By eight months after the Commencement Date, TSF will provide for the FWO's approval the details of the methodology the Independent Auditor proposes to use to conduct the Audit.
- 22. TSF will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Audit (**Draft Audit Report**) directly to the FWO by 15 months after the Commencement Date, setting out the draft Audit findings, and the facts and circumstances supporting the Audit findings. TSF will ensure the independent auditor does not provide the Draft Audit Report, or a copy of the same to TSF without the FWO's approval.
- 23. TSF will use its best endeavours to ensure the Independent Auditor finalises the Audit and provides a written report of the Audit (**Audit Report**) directly to the FWO within 28 days of the FWO providing any comments on the draft report to the Independent Auditor. TSF will ensure the Independent Auditor does not provide the Audit Report, or a copy of the same, to TSF without the FWO's approval.

#### *Outcome of Audit*

- 24. If the Audit identifies underpayments arising under the FW Act, Award or TSF EA to any Sampled Employees, TSF will:
  - a. rectify any underpayments identified in the Relevant Audit Period; and
  - b. conduct a reconciliation of the amounts paid and owed to those Sampled Employees in the 12-month period immediately before the Relevant Audit Period and rectify any underpayments that are identified.
- 25. TSF will provide to the FWO Reasonable Evidence of such rectification required pursuant to clause 24.a and 24.b within 60 days of any identified underpayments.
- 26. If any Sampled Employees identified in the Audit as having underpayments owing to

them cannot be located within 120 days of the conclusion of the Audit, TSF will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. TSF will complete the required documents supplied by the FWO for this purpose.

27. If the Audit identifies an underpayment of entitlements arising under the FW Act, Award or TSF EA to one or more Sampled Employees, and the FWO reasonably believes that employees not included in the Audit are also likely to have been underpaid, TSF will engage the same approved Independent Auditor, as set out at clause 17, to conduct a further audit of all its employees to whom the FW Act, Award and/or TSF EA apply, as directed by the FWO (**Additional Audit**). Any Additional Audit must be paid for by TSF. Any Additional Audit must adhere to the same requirements as the Audit, as set out at clauses 17 to 19, in respect of auditor approval above, including approval of the Independent Auditor's proposed methodology and reporting.
28. If requested by the FWO, TSF will provide the FWO with all records and documents used to conduct any or all the Audits (including any Additional Audit), within 28 days of such a request.
29. The FWO will notify TSF in writing that the Audit (and if required, the Additional Audit) has concluded upon TSF's compliance with clauses 17 to 28.

### **Corporate Governance**

30. TSF will maintain regular workplace relations compliance monitoring as a priority for the Committee, and include compliance with the FW Act, the FW Regulations, Award and TSF EA as a standing agenda item at each Committee meeting.
31. TSF will share the minutes of each Committee meeting with the TSF's Board.
32. TSF will report to the FWO, every six months while it has obligations yet to be fulfilled under this Undertaking, on:
  - a. the progress of the monitoring by the Committee;
  - b. TSF's responses to the Audit Report referred to in clause 23, subject to the reports being made available to TSF following the FWO's approval; and
  - c. any complaints raised by employees regarding pay-related entitlements compliance with the Award, TSF EA or the National Employment Standards.
33. The FWO may, at any time while TSF has obligations yet to be fulfilled under this

Undertaking, request copies of documents (including, but not limited to, reports and meeting minutes) held by the Committee in relation to the monitoring of TSF's compliance with the FW Act, the FW Regulations, the Award or TSF EA and/or any other industrial instruments which apply.

### **Consultative Committee**

34. TSF will provide a forum for consultation on matters pertaining to employee pay and conditions in accordance with clauses 34 to 38 of this Undertaking below through its Consultative Committee. For the purposes of this undertaking:
  - a. All Consultative Committee meetings will include standing agenda items relating (but not limited to):
    - i. Any concerns and/or compliance with workplace relations obligations under the FW Act, FW Regulations, the Award and TSF EA; and
    - ii. Timing and content of the future Audit, its findings, and review any complaints received regarding the remediation program or any Additional Audit.
  - b. To the extent it relates to the matters set out at clause 34(a) above:
    - i. The proceedings of the Consultative Committee shall not be confidential;
    - ii. The Australian Services Union (**ASU**) delegate may report on the business of the Consultative Committee to each of its members. The Consultative Committee will contain a balanced mix of employee representatives (including an ASU delegate), TSF management and an ASU organiser.
35. The Consultative Committee will meet within 90 days of the Commencement Date and continue to meet at least quarterly.
36. The Consultative Committee minutes will be provided to the TSF's Board.
37. TSF will communicate to all current staff that workplace relations compliance will be a standing agenda item at meetings of the Consultative Committee and that they are welcome to raise concerns with TSF or their representatives.
38. TSF will make records of meetings available to the FWO upon request.

### **Systems and processes**

39. By 18 December 2026, TSF will provide evidence to the FWO of the implementation of

its new automated time and attendance system to cover all employees, providing details of how the new system will aid TSF to be compliant with its workplace relations obligation.

#### **Extensions of Time**

40. TSF 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.

#### **Reporting Changes in Circumstances**

42. TSF will notify the FWO of any changes of circumstances that impacts on TSF's ability to comply with the undertakings contained in this Undertaking, as soon as reasonably practicable after it becomes aware of such circumstances. Such circumstances include but are not limited to:
  - a. ceasing or an expectation of ceasing to trade; or
  - b. the organisation going into administration or liquidation.

#### **No Inconsistent Statements**

43. TSF must not and will 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.

#### **No waiver of privilege**

44. The parties agree that nothing in this Undertaking requires TSF to produce a document that is or may be subject to a claim of legal professional privilege. TSF agrees that it will not claim legal professional privilege over any documentation relating to methodology, assumptions or interpretations which is to be provided to the FWO pursuant to an

obligation in this Undertaking.

## **ACKNOWLEDGEMENTS**

45. TSF acknowledges that:

- a. the FWO may:
  - i. make this Undertaking available on the FWO internet site at [www.fairwork.gov.au](http://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 TSF set out in clause 14 above in respect of decisions taken regarding enforcement action in the event that TSF is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by TSF to comply with its obligations under this Undertaking.
- b. 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;
- c. consistent with section 715(3) of the FW Act, TSF may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d. if TSF 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 TSF in clause 14 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 terms are 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 TSF or by any of its servants or agents; and/or
  - b. the accuracy and correctness of any information provided by TSF, or by any of its servants or agents; and/or
  - c. compliance by TSF with any term of this Undertaking.
- **Relevant Audit Period** means the period of at least two full pay periods falling within the preceding six months of the start of the Audit for which the Independent Auditor will conduct an assessment of whether the pay and entitlements of the Sampled Employees are in compliance with the FW Act, the FW Regulations, Award and TSF EA.

**Executed as an undertaking**

EXECUTED by an authorised person of The Smith Family

Douglas Taylor, Chief Executive Officer  
(Name and position of authorised signatory)

*Douglas Taylor, Chief Executive Officer*  
Douglas Taylor, Chief Executive Officer (Jun 2, 2026 09:33:21 GMT+10)  
(Signature of authorised signatory)

in the presence of:

Alison Sheppard  
(Name of witness)

*Alison Sheppard*  
Alison Sheppard (Jun 2, 2026 09:35:41 GMT+10)  
(Signature of witness)

02/06/2026

(Date)

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

*Michael Campbell, Group Manager Operations* 10/6/2026  
Michael Campbell (Date)

Group Manager – Operations  
Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

*Louise Cato*  
(Signature of witness)

Louise Cato  
(Name of witness)