

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Only About Children Pty Ltd (ACN: 107 666 624) (hereafter "**OAC**") and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* (Cth) (FW Act) in relation to the contraventions described in clause 8 of this undertaking.

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the FW Act by OAC, Building A, Level 3, 207 Pacific Highway, St Leonards, New South Wales 2065.

COMMENCEMENT

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

BACKGROUND

3. OAC is an Australian company founded in 2004 that operates in excess of 70 childcare and early years learning centres throughout New South Wales, Victoria and Queensland. OAC employs approximately 1,918 employees, comprising of approximately 1,048 full time, 330 part time and 540 casual employees.
4. On 12 December 2019, OAC notified the FWO that:
 - (a) in July 2019, it had identified non-compliance with the *Children's Services Award 2010* (the **Children's Services Award**) and the *Educational Services (Teachers) Award 2010* (the **Teachers Award**) since 2013 due to misinterpretation of the Teachers Award and Children's Services Award with respect to the non-payment of overtime where part time or casual employees worked more than 8 hours in a day or shift;
 - (b) the issue arose as a result of OAC calculating and applying overtime on a weekly basis, as opposed to a daily basis as required by the Teachers Award and Children's Services Award; and
 - (c) it would rectify the underpayments in full.
5. On 7 February 2020, OAC notified the FWO that:
 - (a) it had contravened clauses 10.4(f) (overtime for part time employees working longer than eight hour shifts), 10.5(e) (overtime for casual employees working longer than eight hour shifts) and 23 (overtime and penalty rates) of the Children's Services Award;

- (b) it had contravened clause B.4.1 of Schedule B (overtime rates) of the Teachers Award;
 - (c) the contraventions ceased on and from 11 August 2019 for casual employees and on and from 26 August 2019 for part time employees;
 - (d) the total underpayments rectified to date were \$54,809.96 (including interest at a rate of 4.00% per annum above the cash rate last published by the Reserve Bank of Australia (RBA)), made to 411 employees;
 - (e) rectification of underpayments as a result of the contraventions dating on and from 1 July 2013 was ongoing;
 - (f) OAC had apologised to current employees that OAC had identified as affected by the contraventions for the same on 2 September 2019;
 - (g) OAC did not intend to recover or offset any of the superannuation payments made on overtime hours worked which it had incorrectly calculated as ordinary hours; and
 - (h) it had developed a methodology for calculating potential underpayments to current and former employees.
6. Prior to executing this EU, OAC notified the FWO that:
- (a) OAC continued to communicate and apologise to current and former employees that OAC had identified as affected by the contraventions through email and phone conversations; and
 - (b) OAC continued to remediate the underpayments, and that the total underpayments rectified to date were \$1,517,431 (including interest at a rate of 4.00% per annum above the cash rate last published by the RBA) made to a total of 1,790 employees; and
 - (c) subject to confirming the identity of former employees, OAC would continue to pay the remaining balance of underpayments until such time that the remaining unpaid monies are required to be paid to the Consolidated Revenue account of FWO.
7. Prior to the execution of this Undertaking, OAC notified the FWO that it:
- (a) had made rectification payments to each of the employees named in column A of Schedule A to this Undertaking (**Schedule A Employees**) by paying each of the Schedule A Employees the amounts referred to in column B of Schedule A;

- (b) had paid interest to each of the Schedule A Employees on the amount referred to in column B of Schedule A, in the sum referred to in column C of Schedule A, calculated using an interest rate that is 4.00% above the cash rate last published by the Reserve Bank of Australia (**RBA**) for each relevant financial year;
- (c) as part of its internal review, identified the further former employees listed in Schedule B to this Undertaking (**Schedule B Employees**) to whom the contraventions in paragraphs 8(a) and (b) are likely to apply but who have not yet been paid by OAC.

ADMISSIONS

8. The FWO has a reasonable belief, and OAC admits, that OAC contravened:

- (a) section 45 of the FW Act between 1 July 2013 and 26 August 2019 (**Relevant Period**) by failing to pay each of the Schedule A Employees and the Schedule B Employees to whom the Children's Services Award applied the amount or amounts for overtime in accordance with clause 23.2 of the Children's Services Award (as set out for the employee in column B of Schedules A and B) to which that employee was entitled under each provision of that Award which is identified in Schedule A in relation to that employee, noting that:
 - (i) clause 10.4(f) of the Children's Services Award requires an employer to pay overtime at the rates prescribed in clause 23 of the Children's Services Award to a part-time employee who works in excess of eight hours in any day. Clause 23.1(b) requires payment of overtime rates to a part-time employee in the circumstances specified in clause 10.4(f);
 - (ii) clause 10.5(e) of the Children's Services Award requires an employer to pay a casual employee in accordance with the penalties specified in clause 23 of the Children's Services Award for work in excess of eight hours on any one day or shift or 38 hours in any one week. Clause 23.1(c) requires payment of overtime rates to a casual employee in the circumstances specified in clause 10.5(e);
- (b) section 45 of the FW Act during the Relevant Period by failing to pay each of the Schedule A Employees and the Schedule B Employees to whom the Teachers Award applied the amount or amounts for overtime in accordance with clause B.4.1(a) of the Teachers Award (as set out for the employee in column B of Schedules A and B) to which that employee was entitled under each provision of

that Award which is identified in Schedule A in relation to that employee, noting that:

- (i) clause B1.3 of Schedule B of the Teachers Award requires ordinary hours of work to not exceed eight hours in duration (subject to the provisions of clause 7 - Individual flexibility arrangements, in accordance with clause B1.3);
 - (ii) clause B.4.1(b) of Schedule B of the Teachers Award provides that notwithstanding clause B.4.1(a), part-time employees who agree to work in excess of their normal hours will be paid at ordinary time for up to eight hours provided that the additional time worked is during the ordinary hours of operation.
- (c) section 45 of the FW Act during the Relevant Period by failing to pay each of the Schedule A and the Schedule B Employees to whom the Teacher's Award applied the amount or amounts for overtime to which that employee was entitled under clause B.4.1 of Schedule B to the Teachers Award, as set out in Schedules A and B to this Undertaking.
9. The contraventions identified in clause 8 of this Undertaking do not include:
- (a) any contraventions which relate to or arise as a consequence of OAC failing to correctly apply the Children's Services Award or Teachers Award to any employee not listed in Schedules A or B to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of OAC failing to correctly apply the Children's Services Award or Teachers Award and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or
 - (b) any contraventions which have not yet occurred at the date that this Undertaking is offered by OAC (whether or not those contraventions are identified in the Independent Assessment described at clause 15 below or the Independent Audits described at clause 23 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by OAC and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

UNDERTAKINGS

10. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, OAC will take the actions set out at clauses 11 to 61 below.

Review and rectification of underpayments

11. OAC will:

(a) by 15 March 2021 calculate the quantum of any underpayments to each of the Schedule A Employees and Schedule B Employees in respect of clauses 10.4(f), 10.5(e) and 23 under the Children's Services Award and in respect of clause B.4.1(a) of Schedule B under the Teachers Award during the Relevant Period;

(b) by 15 April 2021 pay each of the Schedule A Employees:

(i) ~~the underpayment amount(s) owing to them;~~

(ii) interest on the amount(s) referred to in (i), calculated using an interest rate that is 4.00% above the cash rate published by the RBA at the end of the last financial year; and

(c) by 15 April 2021 pay each of the Schedule B Employees that OAC can locate:

(i) the underpayment amount(s) owing to them;

(ii) interest on the amount(s) referred to in (i), calculated using an interest rate that is 4.00% above the cash rate published by the RBA at the end of the last financial year;

12. By 30 April 2021, OAC will provide the FWO evidence of all payments made to Schedule A Employees and Schedule B Employees to rectify the underpayments.

13. If any of the Schedule A Employees and Schedule B Employees to whom underpayments are owed cannot be located by 30 June 2021, OAC will pay the underpayment amounts owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. OAC will complete the required documents supplied by the FWO for this purpose.

14. In the event that the FWO is able to locate and contact any Schedule A Employees and Schedule B Employees to whom underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify OAC in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice OAC will pay the current or former employee interest on the amount already paid by OAC to the Commonwealth of Australia in respect of that

employee, using an interest rate that is 4.00% above the cash rate published by the RBA at the end of the last financial year.

Independent Assessment

15. By 15 May 2021, OAC must, at its cost, engage an appropriately qualified, experienced, external and independent expert, approved in writing by the FWO under clause 16, (**Independent Expert**), to conduct an independent assessment of the calculation of underpayments to Schedule A and Schedule B Employees described in paragraphs 11(a) above (**Independent Assessment**).
16. OAC must notify the FWO of its proposed Independent Expert and ensure that they are an:
 - (a) accounting professional (Certified Practising Accountant, Chartered Accountant);
 - (b) auditor (Registered Company Auditor within an Authorised Audit Company); or
 - (c) lawyer (admitted, practising lawyer and employment law specialist),by no later than 15 April 2021. The FWO may in its sole discretion approve the Independent Expert or otherwise require OAC to propose other Independent Experts until the FWO has approved in writing an Independent Expert. The FWO will not unreasonably refuse to approve the Independent Expert nominated by OAC. The Independent Expert must be approved by the FWO in writing prior to being engaged by OAC.
17. OAC must ensure the Independent Assessment commences by no later than 1 June 2021 and that the Independent Expert assesses whether:
 - (a) the Children's Services Award and Teachers Award applies, or previously applied, to each of the Schedule A and Schedule B Employees;
 - (b) the quantum of underpayments to Schedule A and Schedule B Employees were correctly calculated by OAC, as well as calculating any incorrect calculations, determining any issues with the methodology used and verifying the calculations do not include any unlawful set-offs, deductions or reconciling of overpayments; and
 - (c) OAC has now paid each of the Schedule A Employees and Schedule B Employees to whom the Children's Services Award or Teachers Award applies, or applied, any amounts payable to them under clause 11 above.

18. OAC must ensure that the Independent Expert provides a report (**Expert Report**) of its Independent Assessment directly to the FWO, and for the benefit of the FWO, setting out its findings, and the facts and circumstances supporting its findings by 1 September 2021 and provide a copy to OAC within 14 days of receipt.
19. OAC must ensure that the Expert Report contains the following declarations from the Independent Expert:
 - (a) the Independent Expert has no actual, potential or perceived conflict of interest in providing the Expert Report on OAC to the FWO;
 - (b) notwithstanding that the Independent Expert is retained by OAC, the Independent Expert undertakes that it has acted independently, impartially, objectively and without influence from OAC in preparing the Expert Report;
 - (c) the Expert Report is provided in accordance with applicable professional standards (which will be listed in the Expert Report); and
 - (d) the Expert Report is provided to the FWO for its benefit and the FWO can rely on the Expert Report.
20. If the Independent Assessment identifies that any Schedule A and Schedule B Employees are owed amounts additional to those calculated and paid by OAC, OAC will pay those additional amounts to the current and former employees, and provide evidence of such payment to the FWO, within six weeks of being notified by the FWO of the additional amounts agreed to be owing.
21. If any of the Schedule A and Schedule B Employees identified in the Expert Report as being owed amounts additional to the underpayments calculated by OAC cannot be located and paid by within six weeks of being notified by the FWO of the additional amounts agreed to be owing, OAC will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. OAC will complete the required documents supplied by the FWO for this purpose.
22. The FWO acknowledges that OAC does not contravene this Undertaking in the event that the Independent Expert makes a finding in relation to coverage or additional amounts to be rectified under the Children's Services Award or Teachers Award that is contrary to the determination made by OAC in its internal review for Schedule A and Schedule B Employees provided OAC pays any additional amounts owing to current and former employees in accordance with clause 20 above on or before the date in clause 20 above or to the Commonwealth of Australia in accordance with clause 21 above on or before the date in clause 21 above. For the avoidance of doubt OAC

acknowledges that this Undertaking does not relate to any contraventions that may be identified by the Independent Expert which are not identified in clause 8 and Schedule A and Schedule B or are not contraventions of the Children's Services Award or Teachers Award during the Relevant Period.

Independent Audits

23. OAC must, at its own cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits of OAC's compliance with the FW Act in relation to the Children's Services Award and Teachers Award, and any future agreements that replace the Children's Services Award and/or Teachers Award (Audits).
24. OAC will notify the FWO of its proposed Independent Auditor by no later than 1 June 2021. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require OAC to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The FWO will not unreasonably refuse to approve the Independent Auditor nominated by OAC. The Independent Auditor must be approved by the FWO in writing prior to being engaged by OAC.
25. OAC must ensure that each of the Audits conducted by the Independent Auditor includes:
 - (a) an assessment of whether the Children's Services Award or Teachers Award (or replacement instruments) applies to a sample of 150 employees of OAC, that sample consisting of employees who either commenced employment, or whose role and function changed, during the relevant pre-audit period (**Sampled Employees**);
 - (b) an assessment of whether the Sampled Employees to whom the Children's Services Award or Teachers Award (or replacement instruments) applies have been correctly classified by OAC;
 - (c) an assessment of whether the pay and conditions of the Sampled Employees to whom the Children's Services Award or Teachers Award (or replacement instruments) applies during the relevant audit period is in compliance with the FW Act and the Children's Services Award or Teachers Award (or replacement instruments);
 - (d) direct contact with Sampled Employees to whom the Children's Services Award or Teachers Award (or replacement instruments) applies by way of site visits or

some other method agreed by the FWO to at least five different sites, to ensure accuracy of hours worked. In order to undertake this direct contact, the Independent Auditor will contact the relevant OAC Senior Operations Manager who will facilitate the site visit;

- (e) verification that OAC's payroll and record keeping systems and processes are compliant with the FW Act in respect of employees to whom the Children's Services Award and Teachers Award applies and if not recording details of any non-compliance found in the report for paragraph (f), below;
- (f) the production of a written report on each of the Audits setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
- (g) ~~that each of the written reports referred to in (e) 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 OAC, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from OAC 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 First Audit

- 26. OAC must ensure the Independent Auditor commences the first of the Audits by no later than 1 September 2021 (**First Audit**).
- 27. The relevant audit period for the First Audit must be at least two full pay periods falling within the period 1 July 2021 – 31 August 2021.
- 28. By 1 August 2021, OAC will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 29. OAC will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 15 October 2021, setting out the

draft First Audit findings, and the facts and circumstances supporting the First Audit findings, and provide a copy to OAC no earlier than 14 days of receipt.

30. OAC will use its best endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit (**First Audit Report**) directly to the FWO within 14 days of FWO providing any comments on the draft report to the Independent Auditor. The Independent Auditor will provide a copy to OAC within 14 days of receipt by the FWO.

The Second Audit

31. OAC must ensure the Independent Auditor commences the second of the Audits by no later than 1 September 2022 (**Second Audit**).
32. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 1 July 2022 – 31 August 2022.
33. By 1 August 2022, OAC will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
34. OAC will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 15 October 2022, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings and provide a copy to OAC within 14 days of receipt.
35. OAC will use its best endeavours to ensure the Independent Auditor finalises the Second Audit and provides a written report of the Second Audit (**Second Audit Report**) directly to the FWO within 14 days of FWO providing any comments on the draft report to the Independent Auditor. The Independent Auditor will provide a copy to OAC within 14 days of receipt by the FWO.

Outcome of Audits

36. If any of the Audits identify underpayments to any current or former employees, OAC will conduct a reconciliation of the amounts paid to those employees during the reconciliation period and rectify any underpayments that are identified. The reconciliation period for each identified employee will be from the Commencement Date, or the employee's starting date (whichever is later), to the date the final written report is provided to the FWO.
37. OAC 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.

38. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of the Second Audit, OAC will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. OAC will complete the required documents supplied by the FWO for this purpose.
39. If any of the Audits identify an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, OAC will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the Children's Services Award or Teachers Award (or replacement instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by OAC.
40. If requested by the FWO, OAC will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 7 days of such a request.

Employee Hotline

41. By 31 March 2021, at its own expense, OAC will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the Children's Services Award or Teachers Award applies, or had applied, to make enquiries in relation to their entitlements and / or underpayments concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.

The independent organisation must be approved by the FWO prior to being engaged by OAC to operate the Employee Hotline.

42. OAC will:
- (a) ensure the Employee Hotline remains operational for a period of 6 months;
 - (b) ensure that the telephone number and email address are included on a communication to employees to whom the Children's Services Award or Teachers Award applies, and the public notice (see clauses 46 to 48) and the social media notice (see clauses 56 to 58);
 - (c) communicate the existence and purpose of the Employee Hotline by way of letter to the last known postal or email address of all current and former employees to whom the Children's Services Award or Teachers Award applies, or had applied,

known as at the Commencement Date, or identified during the Independent Assessment, and dating back to 1 July 2013. OAC will:

- (i) ensure the letter is in the form of Attachment A to this Undertaking; and
- (ii) provide evidence to the FWO that the letter has been sent to all required current and former employees by 30 April 2021;
- (d) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
- (e) provide a de-identified list of enquiries received by the Employee Hotline to the FWO every three months from the establishment of the Employee Hotline.

Notices – Internal and External

Apology to Employees

- 43. OAC will send a letter of apology by email or post (**Apology Letter**) to all affected employees found by the Independent Assessment to have been underpaid by OAC, by 1 February 2022. The Apology Letter will be in the form of Attachment B to this Undertaking.
- 44. OAC will provide evidence to the FWO that the Apology Letter has been sent to all affected employees by 14 February 2022.

Media Release

- 45. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking.

Public Notice

- 46. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, OAC will place a notice in *The Australian* (**Public Notice**).
- 47. The Public Notice must:
 - (a) bear the name and logo of OAC;
 - (b) appear within the first 10 pages of *The Australian*;
 - (c) be at least 10 cm x 8 cm; and
 - (d) contain wording in the form of Attachment C.

48. OAC will inform the FWO when the Public Notice will be published and provide a copy to the FWO within seven days of its publication.

Workplace Notice

49. By 7 April 2021, OAC will cause to be displayed within each of its worksites where the current Schedule A Employees work a notice in the form of Attachment C to this Undertaking (**Workplace Notice**).
50. OAC must ensure the Workplace Notice is:
- (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); and
 - (c) displayed for a period of 28 days.
-

51. Within 7 days of first displaying the Workplace Notice, OAC will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of its worksites.
52. At the end of the 28 day period referred to in paragraph 50 above, OAC will provide confirmation to the FWO that the Workplace Notice has been continuously displayed at each location for the required period.

Website Notice

53. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, OAC will place a notice on its website, accessible through a hyperlink on the front page of <https://www.oac.edu.au/> (**Website Notice**).
54. The Website Notice must:
- (a) be in the form of the Website Notice set out at Attachment C;
 - (b) be displayed in at least size 10 font; and
 - (c) remain on the website for a period of 28 days.
55. Within 7 days of placing the Website Notice on its website, OAC will provide to the FWO evidence of its placement.

Social Media Notice

56. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, OAC will place a post on its Facebook page (**Social Media Notice**).

57. The Social Media Notice must:

- (a) be posted to OAC's timeline, pinned to the top of the Facebook page in public view;
- (b) remain on the Facebook page for a continuous period of at least 28 days; and
- (c) be in the form of the Social Media Notice set out at Attachment C.

58. Within 7 days of posting the Social Media Notice to its Facebook page, OAC will provide to the FWO evidence of the post.

Contrition Payment

59. By 15 April 2021, OAC will make a payment of \$45,000 to the Consolidated Revenue Fund.

60. OAC will provide evidence to the FWO of any contrition payment made within 14 days of making payment to the Consolidated Revenue Fund.

No Inconsistent Statements

61. OAC 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.

ACKNOWLEDGEMENTS

62. OAC acknowledges that:

- (a) the FWO may;
 - (i) make this Undertaking (including any of the Attachments) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking (including any of the Attachments) 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 (including any of the Attachments hereto) and its terms; and
 - (v) rely upon the admissions made by OAC set out in paragraph 8 above in respect of decisions taken regarding enforcement action in the event that

OAC is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by OAC 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, OAC may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
 - (d) if OAC 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 OAC in clause 8 above, and also in respect of the question of costs.
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Executed as an undertaking


EXECUTED by OAC in accordance with section 127(1) of the *Corporations Act 2001*:


(Signature of director)


DAVID MAHONY
(Name of director)

22 / 3 / 2021
(Date)

in the presence of:


(Signature of witness)


SONIA LEE
(Name of witness)


(Signature of director)

KATHRYN HUTCHINS
(Name of director)


22 / 3 / 2021
(Date)

in the presence of:


(Signature of witness)


SONIA LEE
(Name of witness)

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


Mark Scully, Deputy Fair Work
Ombudsman – Compliance and
Enforcement

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:


(Signature of witness)

25 MARCH 2021
(Date)

ANTHONY FOGARTY
(Name of Witness)

SCHEDULE A – Back Paid Employees and Contraventions

Column A					Column B		Column C	Column D		
No	Employee	Children's Services Award 2010			Educational Services (Teachers) Award 2010			Total underpayment	Interest	Total underpayment and interest
		Period	Clauses contravened	Underpayment	Period	Clauses contravened	Underpayment			
1.										
2.										
3.										
4.										
5.										

Schedule B – Employees yet to be paid

[illegible]

Attachment A – Letter to employees

Dear <insert name >

As you may be aware, Only About Children Pty Ltd (**OAC**) has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by failing to pay some of its part-time and casual employees overtime in accordance with the relevant provisions of the *Children's Services Award 2010* and the *Educational Services (Teachers) Award 2010* during the period 1 July 2013 to 26 August 2019.

OAC understands that you may have questions and concerns relating to this and other employment issues. To address these concerns a hotline has been established for any employees to access. The hotline is being operated by <insert entity name>, an independent party that can assist you with your enquiries. <Insert name> can be contacted on <insert contact number> or at <insert email address> and, if required, on a confidential basis.

Should you wish to discuss your concerns directly with OAC you can contact our dedicated enquiry line on remediation@oac.edu.au or via phone [insert P&C support number]. We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.

OAC expresses its sincere regret and apologises to you for failing to comply with our lawful obligations and is committed to ensuring that compliance with the law is upheld.

Yours sincerely

Only About Children Pty Ltd

Attachment B – Letter of Apology

FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

Further to our previous communications with you, we are writing to apologise on behalf of Only About Children Pty Ltd (OAC) for non-compliance with Commonwealth workplace relations laws.

OAC has formally admitted to the Fair Work Ombudsman (FWO) that it contravened the *Fair Work Act 2009* (Cth) by failing to pay some of its part-time and casual employees overtime in accordance with the relevant provisions of the *Children's Services Award 2010* and the *Educational Services (Teachers) Award 2010*.

OAC has entered into an Enforceable Undertaking with the FWO, a copy of which will be available at 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 is met.

Regrettably, it has been determined that you were affected by these contraventions. You may be aware that we have been actively working to ensure that you have been provided with the required information relating to your specific circumstances.

OAC's objective has been to ensure any underpayments have been rectified for the period in question and is taking steps to remedy the contraventions. OAC has completed its review of any amounts that were owed to you as result of this error. I refer to our earlier communications outlining the amount(s) owing to you in respect of each financial year. You will/have receive/d this payment - and will be/were provided with a payment advice regarding the payment.

Should you have any questions or concerns about this matter there are two options available to you to assist you with the matter:

- (a) a hotline has been established and is being operated by <insert entity name>, an independent party that can assist you with your enquiries, on a confidential basis if required. <insert entity name> can be contacted on <insert contact number> or at <insert email address>; or
- (b) OAC will maintain a non-confidential enquiry line that you can contact at any time with any enquiries you have. We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry. You can contact this enquiry line via <insert email address and/or telephone number>.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.

Yours sincerely

Only About Children Pty Ltd

Attachment C– Form of Public, Website, Social Media and Workplace Notice

Only About Children (OAC) recently undertook a review of its payroll systems and processes and determined that it contravened the *Fair Work Act 2009* (Cth) by failing to pay some of its part-time and casual employees overtime in accordance with the relevant provisions of the *Children's Services Award 2010* and the *Educational Services (Teachers) Award 2010*.

On 12 December 2019, OAC formally admitted to the Fair Work Ombudsman (FWO) that contraventions of these Awards had occurred and consequently a number of employees had been underpaid. OAC has actively taken steps to remedy these contraventions and has been communicating with those employees affected.

OAC expresses its sincerest regrets and apologises for these contraventions.

OAC has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

OAC has undertaken to perform a number of activities to ensure its ongoing compliance such as conducting two independent audits and formally apologising to individual employees.

If you worked for OAC during the period of 1 July 2013 to 26 August 2019 and have queries or questions relating to your employment, please contact either:

- the hotline being operated by independent third party <insert entity name> on <contact number>. This hotline can be contacted on a confidential basis or at <insert email address>; or
- OAC directly through its non-confidential enquiry line on <insert contact number or email address>.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.