



ENFORCEABLE UNDERTAKING

This undertaking is **given** by The Paraplegic & Quadriplegic Society of NSW and **accepted** by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 6 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 *Fair Work Act 2009* (Cth) (**FW Act**) by The Paraplegic & Quadriplegic Association of NSW (ABN 42 000 355 948), 6 Holker Street Newington NSW 2127 (**ParaQuad**).

COMMENCEMENT

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by ParaQuad; and
 - (b) the FWO accepts the Undertaking so executed, by providing to ParaQuad a copy of the Undertaking executed by the FWO (**Commencement Date**).

BACKGROUND

3. ParaQuad is an Australian public company that is also registered as a large charity with the Australian Charities and Not-for-profits Commission. It was formed in 1961 and currently employs approximately 334 staff in the disability services sector, providing specialist clinical services, personal care, telehealth, supported accommodation, and medical product supply to people impacted by paralysis and associated health conditions in NSW, QLD and NT.
4. On 17 November 2020 ParaQuad notified the FWO that:
 - (a) in or about March 2019 warehouse workers employed in a warehouse operated by ParaQuad queried the payment of a forklift allowance under *The Paraplegic and Quadriplegic Association of NSW Collective Agreement 2009-2012* (**Collective Agreement**);
 - (b) ParaQuad identified underpayments and as a result, conducted a preliminary review of its compliance, with the assistance of Dentons Lawyers and CINCH Finance and Operations, with the Collective Agreement to determine whether there were further underpayments;
 - (c) on 18 September 2019, ParaQuad commenced a comprehensive review of its compliance with, and application of the Collective Agreement and relevant awards (being the *Storage Services and Wholesale Award 2010*, *Clerks-Private Sector Award 2010*, *Nurses Award 2010*, *Health Professionals and Support Services Award 2010* and the *Social Community, Home Care and Disability Award 2010*);

- (d) in this review, which covered ParaQuad's then current and former employees, the entitlements of 1,137 persons were verified, and a gross underpayment of \$533,717 was identified in relation to a number of then current and former employees;
 - (e) ParaQuad had rectified underpayments to then current employees owed as at 30 June 2020;
 - (f) ParaQuad would rectify the remainder of the underpayments to then current employees between 1 July 2020 and 6 November 2020 by the end of December 2020 (as it had introduced a new payroll system on 7 November 2020);
 - (g) ParaQuad had rectified underpayments to 96 former employees and was waiting on bank details or attempting to locate the remaining former employees to rectify the remaining underpayments; and
 - (h) ParaQuad would pay interest on the underpayment amounts on the basis of pre-judgement Federal Court rates, totalling \$106,282, with the payment to be made by ParaQuad totalling \$639,999 (inclusive of superannuation and interest).
5. Prior to the execution of this Undertaking, ParaQuad notified the FWO that it:
- (a) had underpaid 130 current employees and 206 former employees a total of \$587,477.89 (exclusive of any superannuation or interest payable);
 - (b) had introduced an updated payroll system on 7 November 2020 meaning that the circumstances that gave rise to the underpayment would no longer occur;
 - (c) had issued a written apology to all affected current and former employees (where the former employees could be contacted);
 - (d) had made payments totalling \$705,470.91 to 130 current and 137 former employees consisting of \$545,589.44 in base salary, \$110,952.33 in interest and \$48,929.14 in superannuation; and
 - (e) was yet to make payments totalling \$57,211.18 to 69 former employees consisting of \$41,888.45 base salary, \$11,397.59 interest and \$3,925.14 superannuation, and was waiting for 56 former employees to provide banking details and had been unable to contact 13 other former employees.

ADMISSIONS

6. The FWO has a reasonable belief, and ParaQuad admits, that between 1 July 2014 and 6 November 2020 ParaQuad contravened:

- section 45 of the FW Act by failing to pay the employees listed in the attached Schedule (**Schedule Employees**) (where relevant) in accordance with their relevant entitlements under the identified clause(s) of the following instrument(s) (including as amended from time to time) and the amount or amounts to which each employee was entitled:
 - *Nurses Award 2010*:
 - 16.5(a) – Travelling, transport and fares (travel allowance);
 - 31.1(a) – Quantum of Annual Leave;
 - 31.4(a) and (b) (renumbered as 31.5 on 29 July 2016 and as 31.7 on 20 December 2016) – Annual Leave Loading; and
 - 31.5 (renumbered as 31.6 on 29 July 2016 and as 31.8 on 20 December 2016) – Payment of Annual Leave on Termination;
 - *Health Professionals and Support Services Award 2010*:
 - 31.2(a) and (b) (renumbered as 26.3 on 16 June 2020) – Annual Leave Loading);
 - 18.13(a), (b) and (c) (renumbered as 22.3(h) on 16 June 2020) – Travelling, Transport and Fares;
 - 28.1(a), (b) and (c) (renumbered as 24.2 (a), (b) and (c) on 16 June 2020) – Overtime Rates; and
 - 28.1(d) (renumbered as 24.2(d) on 16 June 2020) – Overtime Rates (Part-time Employees);
 - *Social, Community, Home Care and Disability Services Industry Award 2010*:
 - 20.5(a) – Travelling, Transport and Fares; and
 - 31.3(a) and (b) – Annual Leave Loading;
 - *Clerks – Private Sector Award 2010*:
 - 19.3(a) (renumbered as 19.5(a), (b) and (c) on 5 May 2020) – Meal Allowance; and
 - 29.3(a) and (b) (renumbered as 32.3(a) and (b) on 5 May 2020) – Annual Leave Loading;
- section 50 of the FW Act by failing to pay the Schedule Employees (where

relevant) in accordance with their relevant entitlements under the identified clause(s) of the Collective Agreement and the amount or amounts to which that employee was entitled:

- F8 – Overtime;
 - F11(b) – Shift and Weekend Work;
 - G7(a) – First Aid Allowance;
 - H1(b) and (c) – Remuneration; and
 - I4(a) and (b) – Annual Leave Loading; and
- section 535 of the FW Act by failing to make and keep employee records as required by regulations 3.33(c), 3.33(d) and 3.34 of the *Fair Work Regulations 2009 (FW Regs)* for the Schedule Employees (where identified),

(the industrial instruments (including the Collective Agreement) listed in this section are collectively referred to as the **relevant industrial instruments**).

7. The contraventions identified in clause 6 of this Undertaking do not include:
- (a) any contraventions which relate to or arise as a consequence of ParaQuad failing to correctly apply the relevant industrial instruments to any person not listed in the Schedule to this Undertaking (**Non-schedule Employees**) or because of any failure by ParaQuad to correctly apply the relevant industrial instruments to the Schedule Employees other than those set out in clause 6 above. For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of ParaQuad failing to correctly apply the relevant industrial instruments 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 or been identified at the date that this Undertaking is offered by ParaQuad (whether or not those contraventions are identified in the Audits described at clause 13 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 ParaQuad and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

UNDERTAKINGS

8. ParaQuad will take the actions set out at clauses 9 to 42 below.

Rectification of Underpayments

9. By 17 December 2021, ParaQuad will pay each of the Schedule Employees that have been located by that date:
 - (a) any outstanding underpayment amount owing to them;
 - (b) any superannuation payments which may be required by law, by making payment to their chosen superannuation fund; and
 - (c) interest on the underpayment amount owing to them at the interest rates described in Attachment A for the applicable periods.
10. By 18 February 2022, ParaQuad will provide the FWO evidence of all payments made to the Schedule Employees to rectify the Underpayment.

Rectification of Underpayments to employees who cannot be located

11. If any of the Schedule Employees to whom underpayments are owed cannot be located by 17 December 2021, ParaQuad will pay the underpayment amounts owing to those employees (excluding superannuation and interest) to the Commonwealth of Australia within 30 days of being provided with the necessary details for payment by the FWO in accordance with section 559 of the FW Act. ParaQuad will complete the required documents supplied by the FWO for this purpose.
12. In the event that the FWO is able to locate and contact any current or former employees of ParaQuad to whom underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify ParaQuad in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice ParaQuad will:
 - (a) pay the current or former employee interest on the amount already paid by ParaQuad to the Commonwealth of Australia in respect of that employee, calculated for each financial year from the date that the employee first became entitled to that amount until the date on which that amount is paid, using the Federal Court pre-judgement interest rate for the period in which the underpayment occurred; and
 - (b) pay to the employee's nominated superannuation fund any additional superannuation payments which may be required by law in respect of the amount already paid by ParaQuad to the Commonwealth of Australia in respect of that employee.

Independent Audits

13. ParaQuad 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 ParaQuad's compliance with the FW Act, FW Regs and the relevant industrial instruments (and any future instruments that replace the relevant industrial instruments) with regard to employee entitlements and record keeping (collectively referred to as the **Audits**).
14. ParaQuad will notify the FWO of its proposed Independent Auditor by no later than 17 December 2021. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require ParaQuad 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 prior to being engaged by ParaQuad.
15. ParaQuad must ensure that the Audits include:
 - (a) an assessment of whether ParaQuad has correctly calculated employee entitlements in accordance with the FW Act and the relevant industrial instruments (and any instruments that replace the relevant industrial instruments) with regard to a sample of employees of ParaQuad, that sample being at least 10% of ParaQuad's employees (or a minimum of 30 employees if 10% of the workforce is less than 30 employees) across a range of classifications and employment types (**Sampled Employees**);
 - (b) the production of a written report setting out the Independent Auditor's methodology, findings, and the facts and circumstances surrounding them, to the FWO; and
 - (c) the following declarations in the report referred to in (b) above 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 ParaQuad, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from ParaQuad 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

- 16. ParaQuad must ensure the Independent Auditor commences the First Audit by no later than 28 February 2022.
- 17. For the First Audit, the relevant audit period to assess Sampled Employees is four weeks.
- 18. The relevant audit period for the First Audit must be at least two full pay periods falling within the period 1 November 2021 to 12 December 2021.
- 19. By 14 February 2022, ParaQuad will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 20. ParaQuad will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 11 April 2022, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. ParaQuad will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to ParaQuad before the draft written report is provided to the FWO.
- 21. ParaQuad 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 one month of the FWO providing any comments on the draft report to the Independent Auditor. ParaQuad will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to ParaQuad before the First Audit Report is provided to the FWO.

The Second Audit

- 22. ParaQuad must ensure the Independent Auditor commences the Second Audit by no later than 31 October 2022.
- 23. For the Second Audit, the relevant audit period to assess Sampled Employees is four weeks.
- 24. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 15 August 2022 to 26 September 2022.
- 25. By 18 July 2022, ParaQuad will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
- 26. ParaQuad will use its best endeavours to ensure the Independent Auditor provides a

draft written report of the Second Audit directly to the FWO by 19 September 2022, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. ParaQuad will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to ParaQuad before the draft written report is provided to the FWO.

27. ParaQuad 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 one month of the FWO providing any comments on the draft report to the Independent Auditor. ParaQuad will ensure the Independent Auditor does not provide the Second Audit Report, or a copy of the same, to ParaQuad before the Second Audit Report is provided to the FWO.

Outcome of Audits

28. If any of the Audits identify underpayments to any current or former employees, ParaQuad will conduct a reconciliation of the amounts paid to those employees during the pre-audit period and rectify any underpayments that are identified. The reconciliation period for each identified employee will be from the start of the relevant pre-audit period to the end of the relevant audit period.
29. ParaQuad will provide to the FWO evidence of such rectification within three months of being informed by the FWO of the requirement to undertake the reconciliation.
30. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of the relevant Audit, ParaQuad will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. ParaQuad will complete the required documents supplied by the FWO for this purpose.
31. 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, ParaQuad will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees (or any cohort of employees), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by ParaQuad.
32. If requested by the FWO, ParaQuad will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 14 days of such a request.

Workplace relations training

33. Within 10 weeks of the commencement of this Undertaking, ParaQuad will:
- (a) provide the FWO with evidence of all workplace relations training undertaken since 18 September 2019 and the relevant qualifications of all persons with responsibility for human resources/recruitment, payroll functions, rostering and management of staff (Relevant Personnel); and
 - (b) provide evidence of ParaQuad's membership with any entities that provide advice and assistance to the Relevant Personnel.
34. The FWO will review the materials produced in response to clause 33 above to determine whether any further workplace relations training is appropriate with respect to the Relevant Personnel. Where the FWO identifies that further workplace relations training is required for the Relevant Personnel, ParaQuad will organise and deliver further industrial relations training within 16 weeks of notification by the FWO.
35. In relation to the workplace relations training referred to at clause 34 above, ParaQuad will ensure that this training relates to, or will assist with the application of, the entitlements in the relevant industrial instruments (or any future instruments that replace the relevant industrial instruments) and the FW Act, and compliance with such entitlements.
36. ParaQuad will, within two weeks of any training being delivered pursuant to clause 34 above, provide the FWO with records and documents associated with the workplace relations training, including copies of the training materials/notes and attendance records.

Apology Letter

37. ParaQuad will issue a written apology to any former employees identified and contacted after entering into this Undertaking, in the same form and content as that which was issued to other affected current and former employees and provide confirmation to the FWO that the written apology has been sent to the identified former employee within 14 days of issuing the written apology.

Notices

Media Release

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

Website notice

39. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, ParaQuad will place a notice on its website, accessible through a hyperlink on the front page of <https://paraquad.org.au> (**Website Notice**).
40. The Website Notice must:
 - (a) be in the form of the Website Notice set out at Attachment B;
 - (b) be displayed in at least size 10 font; and
 - (c) remain on the website for a period of six weeks.
41. Within 7 days of placing the Website Notice on its website, ParaQuad will provide to the FWO evidence of its placement.

No Inconsistent Statements

42. ParaQuad 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

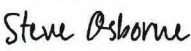
43. ParaQuad acknowledges that:
 - (a) the FWO may;
 - (i) make this Undertaking (including any of the Attachments) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking (including any of the Attachments) pursuant 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 ParaQuad set out in clause 6 above and the Schedule in respect of decisions taken regarding enforcement action in the event that ParaQuad is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by

ParaQuad 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, ParaQuad may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if ParaQuad 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 ParaQuad in clause 6 above, and also in respect of the question of costs.

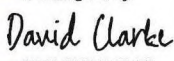
Executed as an undertaking

EXECUTED by The Paraplegic & Quadriplegic Association of NSW (ABN 42 000 355 948) in accordance with section 127(1) of the *Corporations Act 2001*:


DocuSigned by:

C4CA230A081D417
(Signature of director)
Steve Osborne

(Name of director)
08-12-2021 | 15:49 AEDT

(Date)

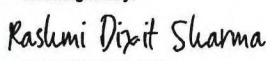
in the presence of: 
2FE14338BD6E475...
(Signature of witness)
David Clarke

(Name of witness)

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3AEBBEF7F016473...
(Signature of director/company secretary)
Melissa Decker

(Name of director/company secretary)
09-12-2021 | 07:31 AEDT

(Date)

in the presence of: 
B8CC6CE08EB14E2...
(Signature of witness)
Rashmi Dixit Sharma

(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)

13/12/21
(Date)

Claire Louise Toner
(Name of Witness)

SCHEDULE – underpayments between 1 July 2014 and 6 November 2020

No	Employee	Commencement of contravention	Cessation of contravention	Instrument contravened	Underpayment	Interest	Superannuation	Total payment made to employee
1.								
2.								
3.								
4.								

Attachment A – Interest

The applicable interest rates for underpayments that have arisen in the below financial years

Financial Year	19/20	18/29	17/18	16/17	15/16	14/15
Interest Rate	5.25%	5.5%	5.5%	5.75%	6.0%	6.5%

Attachment B – Website Notice

The Paraplegic and Quadriplegic Association of NSW (**ParaQuad**) has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by incorrectly applying a number of clauses of *The Paraplegic and Quadriplegic Association of NSW Collective Agreement 2009-2012* and various awards to its employees. This resulted in underpayments to some employees between 1 July 2014 and 6 November 2020.

Upon the identification of underpayments, ParaQuad engaged external advisors to conduct a review of its compliance with the relevant industrial instruments. This included calculating and rectifying any underpayments to current and former employees including interest and superannuation. ParaQuad has also since reviewed and changed its payroll and human resources systems to ensure future compliance.

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

ParaQuad will, as a result of the Enforceable Undertaking, undertake a number of activities to ensure its ongoing compliance including committing to two Independent Audits of its compliance with relevant industrial instruments and workplace laws.

ParaQuad expresses its sincerest regrets and apologises for these contraventions.

[signature]