



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Aruma Services Limited (ABN 31 001 813 403) and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 9 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 Aruma Services Limited (ABN 31 001 813 403) of Suite 4.01/20 Rodborough Road, Frenchs Forest, New South Wales 2086 (**Aruma**).

COMMENCEMENT

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

BACKGROUND

3. Aruma is a not-for-profit organisation that provides support to adults and children with disability across New South Wales, Queensland, Victoria and the Australian Capital Territory. Aruma was created from the merger of House with No Steps, The Tipping Foundation (**TTF**) and the Victorian Person-Centred Incorporated (**Vista**) in March 2018. The organisation rebranded as Aruma in July 2019. Services provided by Aruma include home and living support, supported employment, social and community participation, and therapeutic services. Aruma is a registered charity under the *Australian Charities and Not-for-Profits Commission Act 2012*. As at 17 July 2023, Aruma employs 6,041 employees.
4. On 30 June 2021, Aruma notified the FWO that it had:
 - a. conducted a review of its payroll and rostering functions (the **Review**) following the merger in 2018, including engaging KPMG in 2020 to assist with the Review; and
 - b. as a result of the Review, become aware that employees employed under the *TTF and Vista, Disability and Child, Youth, Family Services Enterprise Agreement 2017* (a transferable enterprise agreement under the merger arrangements) (the **Enterprise Agreement**) had not been paid their correct minimum rostered hours, minimum payment, and rostering entitlements for the period 28 July 2017 to 25 April 2021 (**Relevant Period**).
5. The Review identified that 1,004 current and former employees had been underpaid a total of:
 - a. \$6,119,422.30 (**Wages Underpayment**) plus interest of \$388,632.03 calculated at 6.35 per cent (**Interest Amount**); and
 - b. \$697,714.21 in relation to superannuation, inclusive of 10 per cent interest (**Superannuation Amount**).

6. The non-compliance identified by the Review was the result of:
 - a. incorrect configuration and interpretation of certain Enterprise Agreement clauses in the Aruma payroll system;
 - b. non-adherence to minimum rostered hours and minimum payment provisions of the Enterprise Agreement; and
 - c. inability of the Aruma payroll system at the time to apply overtime rates where an employee worked more than 6 consecutive periods of ordinary duty without a 24 hour break.
7. Following the Review, Aruma took steps to avoid future non-compliance with the Enterprise Agreement by:
 - a. centralising payroll and rostering functions; and
 - b. ensuring the provisions of the Enterprise Agreement are correctly implemented in its payroll system.
8. Prior to the execution of this Undertaking, Aruma has notified the FWO that it has:
 - a. calculated the amount of the Wages referred to in Column B of Schedule A of this Undertaking (**Schedule A**) to each of the employees referred to in Column A of Schedule A (**Affected Employees**);
 - b. calculated the Superannuation Amount referred to in Column C of Schedule A of this Undertaking by paying to each of the Affected Employees who could be located and had active superannuation accounts the amount listed in Column C of Schedule A to the chosen superannuation fund of the employee;
 - c. calculated the Interest Amount by paying to each of the Affected Employees who could be located the amount listed in Column D of Schedule A; and
 - d. made payments of the amounts referred to in Columns B, C and D to each of the Affected Employees (or their nominated superannuation fund) who are marked with a 'yes' in Column E of Schedule A.

ADMISSIONS

9. The FWO has a reasonable belief, and Aruma admits, that Aruma contravened section 50 of the *Fair Work Act 2009* (Cth) during the Relevant Period by failing to pay the Affected Employees in accordance with their relevant entitlements under the identified clauses of the Enterprise Agreement and the amount or amounts to which the employee was entitled. The FWO has a reasonable belief, and Aruma admits, contravening the following clauses of the Enterprise Agreement:
 - a. clause 13.2 – Minimum fortnightly hours for part-time employees, by failing to provide part-time employees with a minimum of 20 hours per fortnight;
 - b. clause 17.7(vii) – Minimum payment for 4 hour shifts before or after a sleepover, by failing

to roster and pay employees for at least 4 hours work immediately before and/or immediately after a sleepover; and

- c. clause 18(f) – Working in excess of 6 consecutive periods, by failing to pay employees ‘treble time’ where they are required to work more than 6 consecutive periods of ordinary duty without 24 hours off duty.

10. The contraventions identified in clause 9 of this Undertaking do not include:

- a. any contraventions which relate to, or arise, as a consequence of Aruma failing to correctly apply the Enterprise Agreement to any employee not listed in Schedule A to this Undertaking (**Non-Schedule A Employees**); or
- b. any contraventions which relate to, or arise, as a consequence of Aruma failing to correctly apply the Enterprise Agreement to any of the Affected Employees other than as identified in clause 9 of this Undertaking.

UNDERTAKINGS

11. Aruma will take the actions set out at clauses 12 to 28 below.

Review and rectification of underpayments

- 12. Within 120 days of the Commencement Date, Aruma will provide the FWO with evidence that the Wages Underpayment, Superannuation Amount and Interest Amount have been rectified for all Schedule A Employees in accordance with clause 8 above.
- 13. If any of the Affected Employees to whom the Wages Underpayment is owed cannot be located within 120 days of the Commencement date, then Aruma will pay the Wages Underpayment owing to those Affected Employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. Aruma 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 an Affected Employee to whom Wages Underpayment is owed, the FWO will (in addition to its obligations under s559 of the FW Act) notify Aruma in writing of the name and contact details of the Affected Employee. Within 30 days of receiving any such notice Aruma will:
 - a. pay to the Affected Employee’s nominated superannuation fund the relevant Superannuation Underpayment; and
 - b. pay to the Affected Employee the relevant Interest Amount.

Letter of assurance

- 15. Within 150 days of the Commencement Date, Aruma will provide the FWO with a signed letter of assurance from its Chief Financial Officer in the terms as set out at **Attachment A**.

Employee hotline

- 16. Within 30 days of the Commencement Date, Aruma will, at its own expense, operate a dedicated

telephone number and email address on behalf of Aruma for all current and former employees to whom the Enterprise Agreement applies, or had applied, to make enquires in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.

17. Aruma will:

- a. ensure that the Employee Hotline remains operational for a period of 3 months;
- b. communicate the existence and purpose of the Employee Hotline to all current and former employees to whom the Enterprise Agreement applies or had applied;
- c. take steps to respond to each telephone and email enquiry, seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
- d. within 30 days of the conclusion of the Employee Hotline, provide a de-identified list of enquiries received by the Employee Hotline, including the outcome of these enquiries. If any enquiries remain outstanding at the end of this period, Aruma will continue to report to the FWO on those enquiries until each enquiry is concluded.

Independent audit

18. Aruma must, at its own expense, engage an appropriately qualified, experienced, external and independent accounting professional or employment law specialist (**Independent Auditor**) to conduct an audit of Aruma's compliance with the FW Act and FW Regulations, in relation to the applicable industrial instruments (**Audit**).

19. Aruma will:

- a. obtain the FWO's approval in writing before engaging the Independent Auditor, and the FWO may request that Aruma use a different Independent Auditor than the one nominated by Aruma;
- b. ensure that the Independent Auditor commences the Audit no later than 12 months after the Commencement Date; and
- c. 21 days prior to commencement of the Audit, provide for the FWO's approval details of the methodology to be used to conduct the Audit.

20. The Audit will:

- a. examine two separate, full consecutive pay cycles falling within the two months immediately preceding the commencement of the Audit (**Audit Period**);
- b. assess 5% of employees, across a range of classifications, locations and employment types (full-time, part-time and casual employment) during the Audit Period (**Sampled Employees**) in respect of their employment with Aruma; and
- c. assess whether the pay and conditions of the Sampled Employees are compliant with the FW Act and Enterprise Agreement, and that pay slip and record-keeping requirements are compliant with the FW Act and FW Regulations.

21. Aruma will use its best endeavours to ensure that the Independent Auditor:

- a. within four months of the commencement of the Audit, produces a draft written report on the Audit, setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO. Aruma will direct the Independent Auditor to not provide the draft report, or a copy of the same, to Aruma without the FWO's approval;
- b. within one month of the FWO providing any comments on the draft report to the Independent Auditor, finalises the Audit and provides a written report of the Audit (**Audit Report**) directly to the FWO. Aruma will direct the Independent Auditor to not provide the Audit Report, or a copy of the same, to Aruma without the FWO's approval; and
- c. includes in the Audit Report the following declarations from the Independent Auditor:
 - i. the Independent Auditor has no actual, potential or perceived conflict of interest in providing the Audit Report to the FWO;
 - ii. notwithstanding that the Independent Auditor is retained by Aruma, the Independent Auditor has acted independently, impartially, objectively and without influence from Aruma in preparing the Audit Report;
 - iii. the Audit Report is provided in accordance with applicable professional standards (which will be listed in the Audit Report); and
 - iv. the Audit Report is provided to the FWO for its benefit and the FWO can rely on it.

Outcome of Audit

22. If the Audit identified underpayments to any current or former employees, Aruma will:

- a. rectify any underpayments identified in the Audit Period; and
- b. conduct a reconciliation of the amounts paid and owed to those employees in the 12-month period immediately prior to the commencement of the Audit, and rectify any underpayments that are identified.

23. Aruma will provide the FWO evidence of such reconciliation and rectification required by clauses 22.a and 22.b above within 60 days of Aruma being provided the Audit Report.

24. If any former employees identified as having underpayments owing to them cannot be located within 120 days of Aruma being provided the Audit Report, Aruma will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Aruma will complete the required documents supplied by the FWO for this purpose.

25. If requested by the FWO, Aruma will provide the FWO with all records and documents used to conduct the Audit within 14 days of such a request.

Communication of the Undertaking

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

of this Undertaking.

27. Within 14 days of, but not prior to the FWO publishing a media release in respect of this Undertaking, Aruma will:
- a. write to all Schedule A Employees notifying them of the execution of this Undertaking and of the existence of the Employee Hotline referred to in clause 16 above, in the form set out in Attachment B; and
 - b. place a notice on the front page of its website, www.aruma.com.au, which will:
 - i. be in the form of the notice set out at Attachment C;
 - ii. be displayed in at least size 10 font; and
 - iii. remain on the website for a period of 6 months, and
 - iv. Aruma will notify the FWO of the placement of the notice on the day it is published.

No Inconsistent Statements

28. Aruma 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


29. Aruma acknowledges that:
- a. the FWO may;
 - i. make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - ii. release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - iii. issue a media release in relation to this Undertaking;
 - iv. from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
 - v. rely upon the admissions made by Aruma set out in clause 9 above in respect of decision making concerning any future non-compliance with Aruma workplace relations obligations.
 - 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, Aruma may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
 - d. if Aruma 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 in paragraphs 9 above, and also in respect of the question of costs.

Executed as an undertaking

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

DocuSigned by:

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(Signature of director)

Candice Charles

(Name of director)

06 October 2023

(Date)

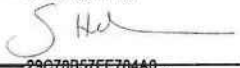
in the presence of:

DocuSigned by:
Mark Purvis
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(Signature of witness)

Mark Purvis

(Name of witness)

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(Signature of director/company secretary)

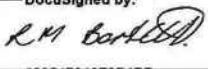
Sarah Houlihan

(Name of director/company secretary)

06 October 2023

(Date)

in the presence of:


DocuSigned by:

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(Signature of witness)

Kathy Bartlett

(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

10 October 2023

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

Ante Pleic

(Name of Witness)

Attachment A – Letter of Assurance

Anna Booth
The Fair Work Ombudsman
Fair Work Ombudsman
GPO Box 9987
SYDNEY NSW 2001

Dear Ms Booth

I am writing on behalf of Aruma Limited (**Aruma**) in my capacity as the Chief Financial Officer. This letter follows a process where Aruma self-reported to the Fair Work Ombudsman (**FWO**) that it had underpaid employees between 28 July 2017 to 25 April 2021 by failing to pay employee entitlements under the *TTF and Vista, Disability and Child, Youth, Family Enterprise Agreement 2017 (Enterprise Agreement)*.

Please note that having made all reasonable enquiries and based on those enquiries I provide the FWO with my assurance that I am satisfied:

- a. the process by which Aruma, as assisted by KMPG, calculated the underpayments to its current and former employees was correctly undertaken;
- b. that Aruma is compliant with the *Fair Work Act 2009* as it relates to the Enterprise Agreement; and
- c. as of 14 July 2023 all former and current employees impacted by the underpayments, apart from those who have not been able to be located or paid by Aruma, have been paid their entitlements under the Enterprise Agreement, including superannuation and interest.

Aruma has remediated all issues as a matter of priority and is committed to minimising the risk of future non-compliance.

Sincerely

Darren Silber
CFO

Attachment B – Letter to impacted Employees

Dear <insert name >

As you may know, when we transitioned from CareLink to RITEQ payroll systems, we identified that some of our employees had been underpaid, due to the CareLink system not being configured to interpret specific clauses in the *TTF and Vista, Disability and Child, Youth, Family Enterprise Agreement 2017* (the Agreement). Once we became aware of this, we undertook a thorough review and identified you as a person affected.

We're very sorry about our mistake, failing to comply with our lawful obligations. It was certainly not our intention.

Underpayments arose because the payroll system did not always correctly apply the entitlements in the Agreement in all instances when a staff member may have:

- Worked in excess of 6 consecutive days without a 24 hour break;
- Worked a sleepover shift; or
- worked less than the minimum 20 hour fortnightly part time shift.

Aruma notified the Fair Work Ombudsman (FWO) of our mistake. Aruma has now officially entered into an Enforceable Undertaking with the FWO, which is a written agreement in which Aruma:

- admits that it contravened the law;
- agrees to rectify underpayments, including by paying interest and superannuation; and
- commits to taking certain actions to ensure the contraventions do not happen again.

A copy of the Enforceable Undertaking is available on the FWO's website, www.fairwork.gov.au.

Employee hotline

We understand that you may have questions and concerns relating to the contraventions and other employment issues. To address these concerns Aruma has established a hotline for all current and former employees to access. The hotline can be contacted on 02 8825 2301 or at foundationbackpay@aruma.com.au and, if required, on a confidential basis.

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.

Yours sincerely

Aruma Services Limited

Attachment C – Form of Public Notice

Headline: Underpayment of wages to some of our Victorian colleagues

In 2018, Aruma commenced a review of its compliance with *The Tipping Foundation and Vista, Disability and Child, Youth, Family Enterprise Agreement 2017* (the Agreement). As a result of this review, we determined that, 1,004 disability support staff in Victoria who worked for The Tipping Foundation before it became part of Aruma were underpaid a total of \$7.2 million from 2017 until 2021.

Underpayments arose because the payroll system did not always correctly apply entitlements in the Agreement in all instances when a staff member may have:

- worked in excess of 6 consecutive days without a 24 hour break;
- worked a sleepover shift; or
- worked less than the minimum 20 hour fortnightly part time hours

Inadequate technology and manual process allowed these contraventions to occur from July 2017 to April 2021.

Additionally, as part of the review process, in June 2021, Aruma voluntarily disclosed these contraventions to the Fair Work Ombudsman (FWO).

Payment of money owed, including super and interest, to impacted staff was made throughout November 2022. There are around 80 former employees we have not been able to connect with about this, and we are continuing to work with the Fair Work Ombudsman to resolve this matter.

These contraventions should never have happened. Aruma is sorry.

Aruma has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws. As a result of the Enforceable Undertaking, we commit to undertaking a number of activities to ensure our ongoing compliance

If you worked for Aruma and have queries or questions relating to your employment, please contact:

- [REDACTED] on 02 8825 2301 or foundationbackpay@aruma.com.au This hotline can be contacted on a confidential basis; or
- Aruma directly, through our non-confidential enquiry line on foundationbackpay@aruma.com.au

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