



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by World Vision Australia 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 10 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 World Vision Australia (ACN 004 778 081), 1 Vision Drive, Burwood East, Victoria, 3151 (**WVA**).

COMMENCEMENT

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

BACKGROUND

3. WVA is a registered charity and Australian public company that provides local and international aid, relief and advocacy services to disadvantaged communities. WVA currently employs around 472 employees, consisting of 390 permanent employees and 82 casual employees.
4. On 6 December 2019, WVA notified the FWO it had identified the *Social, Community, Home Care and Disability Services Industry Award 2010* (**SCHADS Award**) applied to a number of its current and former employees and it had potentially not complied with all aspects of that industrial instrument in respect of those persons, resulting in potential underpayments.
5. Between December 2019 and March 2022, WVA carried out an internal review to determine whether the SCHADS Award applied or had applied to any of its current or former employees and, if so, whether those employees had been underpaid (**Internal Review**). As part of the Internal Review, WVA engaged Ernst & Young (**EY**) to review its methodology in respect of:
 - (a) estimating the total amount of backpay owing to permanent employees referable to overtime that would have likely been worked before timesheet recording commenced for permanent employees; and

- (b) allocating this total amount to eligible annualised staff who worked during the backpay period, stratified by SCHADS classification.
6. As part of its ongoing governance processes, WVA further engaged EY to audit compliance with the SCHADS Award. This occurred between January 2023 and April 2023 (**First Audit**).
 7. On 24 May 2024, WVA notified the FWO that WVA's Internal Review identified wage underpayments under the SCHADS Award occurred between 1 January 2013 and 1 January 2020 (**Relevant Period**) totalling \$6,085,216.44 to 3,466 current and former employees (**Underpayments**) due to:
 - (a) it failing to apply the SCHADS Award to current and former employees covered by that instrument; and
 - (b) the terms and conditions on which it employed those employees not being sufficient to satisfy the provisions of the SCHADS Award, resulting in underpayments.
 8. The FWO acknowledges the cooperation and early and open disclosures made by WVA to the FWO over the course of the last four years.

REVIEW AND RECTIFICATION OF UNDERPAYMENTS

9. Prior to the execution of this Undertaking, WVA notified the FWO that it had:
 - (a) calculated the quantum of underpayments and made rectification payments to the casual 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 E of Schedule A;
 - (b) calculated the quantum of underpayments and made rectification payments to the annualised salary employees named in column A of Schedule B to this Undertaking (**Schedule B Employees**) by paying each of the Schedule B Employees the amounts referred to in column E of Schedule B;
 - (c) calculated and paid interest to each of the Schedule A Employees and Schedule B Employees (referred to in column C of Schedule A and column C of Schedule B);
 - (d) calculated and paid superannuation to each of the Schedule A Employees and

Schedule B Employees (referred to in column D of Schedule A and column D of Schedule B);

- (e) calculated the quantum of underpayments owed in relation to the employees named in column A of Schedule C to this Undertaking (**Schedule C Employees**);
- (f) made payment to the Commonwealth of Australia in accordance with section 559 of the FW Act in relation to the Schedule C Employees by paying the amounts referred to in column B of Schedule C.

ADMISSIONS

10. The FWO has a reasonable belief, and WVA admits, that during the Relevant Period WVA contravened:

- (a) section 45 of the FW Act by failing to pay each of the Schedule A Employees, Schedule B Employees and Schedule C Employees (collectively, **Employees**) the amount or amounts to which that employee was entitled under the SCHADS Award in respect of each clause which is identified in Schedule A, Schedule B or Schedule C to this Undertaking in relation to that employee:
 - (i) clause 10.4: Casual loading;
 - (ii) clause 15: Minimum weekly wages;
 - (iii) clause 20.3: Meal allowances;
 - (iv) clause 20.4: First aid allowance;
 - (v) clause 20.5: Travelling, transport and fares allowance;
 - (vi) clause 24.2: Payment on termination of employment;
 - (vii) clause 25.7(d): Sleepover allowance;
 - (viii) clause 26: Saturday and Sunday work;
 - (ix) clause 28.1: Overtime – Full-time employees and casual employee;
 - (x) clause 29.3: Shift allowances and penalty rates;
 - (xi) clause 30: Higher duties; and
 - (xii) clause 31: Annual leave loading;

- (b) section 45 of the FW Act during the Relevant Period by failing to provide employees employed at any stage during the Relevant Period access to the SCHADS Award as required by clause 5 of the SCHADS Award;
- (c) section 45 of the FW Act during the Relevant Period by failing to provide the Schedule A Employees a copy of the provisions relating to the right to request casual conversion within the first 12 months of the employee's first engagement which was a requirement at 10.5(p) of the SCHADS Award;
- (d) section 45 of the FW Act during the Relevant Period by not complying with the time off instead of payment for overtime requirements in clause 28.2 of the SCHADS Award in relation to the Schedule B Employees;
- (e) section 535 of the FW Act by failing to make and keep records as required by regulation 3.34 of the *Fair Work Regulations 2009* (Cth) in respect of each of the applicable Employees for the Relevant Period.

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

- (a) any contraventions which relate to or arise as a consequence of WVA failing to correctly apply the SCHADS Award to any employee, or pay any amounts, not listed in Schedule A, Schedule B or Schedule C to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees 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;
- (b) any contraventions which relate to or arise as a consequence of WVA failing to correctly apply the SCHADS Award to the Employees in any way but as set out in clause 10 above. For the avoidance of doubt this Undertaking is not given in respect of any Employees who were underpaid as a result of WVA failing to correctly apply the SCHADS Award other than as specified in clause 10 above 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
- (c) any contraventions which have not yet occurred at the date that this Undertaking is offered by WVA. 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 WVA and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

UNDERTAKINGS

12. WVA will take the actions set out at clauses 13 to 47 below.

Rectification of interest and superannuation payments to Schedule C Employees

13. In the event that the FWO is able to locate and contact any of the Schedule C Employees to whom Underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify WVA in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice WVA will make any superannuation payments which are required by law and pay the interest amounts referred to in column C of Schedule C to any such Schedule C Employees.

First Audit

14. WVA will produce to FWO a copy of the written report completed by EY in respect of the First Audit (**First Audit Report**).
15. WVA will use its best endeavours to procure EY to be available to the FWO in the event it has any questions regarding the First Audit Report.
16. WVA will take all necessary steps to adopt recommendations 1.1 to 4.1 of the First Audit Report (**Recommendations**) within 60 days of the Commencement Date (**Completion Date**).
17. WVA will provide written confirmation to the FWO of the steps it has taken to adopt each of the Recommendations within one month of the Completion Date (**First Audit Update**).
18. WVA will make itself available to the FWO in the event it has any questions regarding the First Audit Update and respond to any questions within 21 days of receiving the FWO's request.

Independent Audit

19. For the purposes of clause 20, WVA must, at its own cost, engage another appropriately qualified, experienced, external and independent accounting professional, auditor or

employment law specialist (**Independent Auditor**).

20. The Independent Auditor is to conduct a further audit of WVA's compliance with the FW Act and FW Regulations, in relation to the SCHADS Award, and any future instruments that replace the SCHADS Award (**Second Audit**).
21. WVA will notify the FWO of its proposed Independent Auditor by no later than 3 weeks from the Commencement Date. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require WVA 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 WVA.
22. WVA must ensure that the Second Audit conducted by the Independent Auditor includes:
 - (a) an assessment of 20% of all the WVA employees employed during the relevant pre-audit period as to whether the SCHADS Award covers them in respect of their employment by WVA (**Sampled Employees**). Following this assessment, WVA employees who are covered by any industrial instrument other than the SCHADS Award are excluded from the Sampled Employees;
 - (b) an assessment of whether the Sampled Employees covered by the SCHADS Award (or replacement instruments) have been correctly classified by WVA; and
 - (c) an assessment of whether the pay and conditions of the Sampled Employees to whom the SCHADS Award (or replacement instrument) applies during the relevant audit period is in compliance with the FW Act and the SCHADS Award;
 - (d) the production of a written report on the Second Audit setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
 - (e) that the written report referred to in (d) above contains the following declarations from the Independent Auditor:
 - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - (ii) notwithstanding that the Independent Auditor is retained by WVA, the

Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from WVA 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 Second Audit

- 23. WVA must ensure the Independent Auditor commences the Second Audit by no later than 30 November 2024.
- 24. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 1 December 2023 to 30 November 2024.
- 25. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 1 October 2024 to 30 November 2024.
- 26. By 30 September 2024, WVA will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
- 27. WVA will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 29 March 2025 setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. WVA will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to WVA without the FWO's approval.
- 28. WVA 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 FWO providing any comments on the draft report to the Independent Auditor. WVA will ensure the Independent Auditor does not provide the written report, or a copy of the same, to WVA without the FWO's approval.

Outcome of Second Audit

- 29. If the Second Audit identifies underpayments to any current or former employees, the FWO will notify WVA. WVA will conduct a reconciliation of the amounts paid to those

employees during the relevant pre-audit period and rectify any further 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.

30. WVA will provide to the FWO evidence of such rectification within 60 days of being informed by the FWO of the requirement to undertake the reconciliation.
31. If any employees identified in the Second Audit as having underpayments owing to them cannot be located within 60 days of the conclusion of the Second Audit, WVA will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. WVA will complete the required documents supplied by the FWO for this purpose.

Additional Audit

32. If the FWO is not satisfied from the First Audit Update that the Recommendations have been adopted and/or the Second Audit identifies any significant issue(s) (including an underpayment of minimum entitlements to one or more employees and the FWO reasonably believes that employees not included in the Second Audit are also likely to have been underpaid), WVA will engage an appropriately qualified, experienced, external and independent accounting professional, auditor or employment law specialist, approved by the FWO, to conduct a further audit of all its employees who are covered by the SCHADS Award (or a particular cohort of employees within this group), as determined by the FWO to address the identified issue(s) (**Additional Audit**). Any Additional Audit must be paid for by WVA.
33. If any Additional Audit identifies underpayment of any entitlement, WVA will rectify any such underpayments within 28 days, and will provide to the FWO evidence of such rectification within a further 28 days of payment. If any employees identified as being underpaid cannot be located within 60 days, WVA will pay those amounts to the Commonwealth of Australia in the manner outlined in clause 31 above.

Audits generally

34. If requested by the FWO, WVA 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.

35. The FWO may at its discretion discharge WVA from any audit requirement contained in this Undertaking, if the FWO is satisfied that it is appropriate to do so.
36. Any exercise of the FWO's discretion in clause 35 will be provided in writing and will reference clause 32 for the avoidance of doubt.

Information on system improvements

37. Within 90 days of the Commencement Date, WVA will provide the FWO with a report of the upgrades, improvements or changes it has made to its payroll and corporate governance related systems and processes to ensure compliance with the FW Act and the SCHADS Award.
38. WVA will respond in a timely manner to any reasonable requests from the FWO for further information or clarification of the report referred to in clause 34.

Employee Hotline

39. WVA will operate a dedicated telephone number and email address for a further period of 3 months from the Commencement Date for all current and former employees to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.
40. WVA will:
- (a) take steps to respond to each telephone or 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
 - (b) provide a de-identified list of enquiries received by the Employee Hotline and the outcome of each enquiry to the FWO within 30 days of the end of the Hotline's 3-month operation.
41. In addition to the matters set out at clauses 39 and 40, WVA will inform all employees who contact it that they can lodge requests for assistance with the FWO if they are unsatisfied with the outcome when closing their enquiry.

Public Notice and Workplace Notice

42. Within 28 days of, but not prior to, the FWO publishing a media release on its website

in respect of the Undertaking, WVA will place a notice on its website (**Public Notice**) and in its following Australian worksites (**Workplace Notice**):

- (a) WVA Melbourne located at 1 Vision Drive, Burwood East VIC 3151; and
 - (b) WVA Sydney located at Level 3, 134 William Street, Potts Point NSW 2011; and
43. The Public Notice and Workplace Notice must contain wording in the form of Attachment A to this Undertaking.
44. WVA 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 continuous days.
45. Within 7 days of first displaying the Workplace Notice, WVA will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of its worksites listed at clause 42 above.
46. At the end of the 28 day period referred to in clause 41 above, WVA will provide confirmation to the FWO that the Public Notice and Workplace Notice have been continuously displayed at each location for the required period.

No inconsistent statements

47. WVA 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.

Extension on times for completion

48. WVA 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 to a request for an extension of time.
49. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

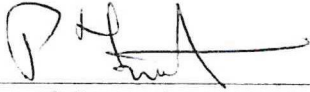
ACKNOWLEDGEMENTS

50. WVA acknowledges that:

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- (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 WVA set out in clause 10 above in respect of decisions taken regarding enforcement action in the event that WVA is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by WVA 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, WVA may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
 - (d) if WVA 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 WVA in clause 10, and also in respect of the question of costs.

Executed as an undertaking

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



(Signature of director)

(Signature of director/company secretary)

Peter Trent

(Name of director)

(Name of director/company secretary)

7th June 2024

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

Daniella Harper

(Name of witness)

(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 - COMPLAINTS 19 June 2024

[Insert name and role of Delegate] ^{† ENFORCEMENT} (Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

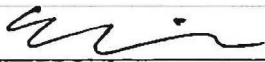
(Signature of witness)

Daina Hopkins-Farrow

(Name of Witness)

Executed as an undertaking

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

(Signature of director) 

(Signature of ~~director~~/company secretary)

(Name of director) ELIZABETH KLEIN

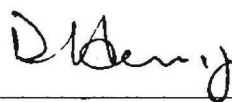
(Name of ~~director~~/company secretary)

(Date) 10 JUNE 2024

(Date)

in the presence of:

in the presence of:

(Signature of witness) 

(Signature of witness)

(Name of witness) DAVID JOHN HENRY

(Name of witness)

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

MARK SWILLY
DEPUTY FAIR WORK OMBUDSMAN - COMPLIANCE & ENFORCEMENT

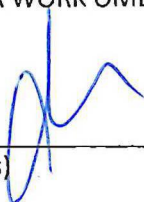
[Insert name and role of Delegate]

19 JUNE 2024

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

(Signature of witness) 

(Name of Witness) Daina Hopkins-Farrow

SCHEDULE A – BACK PAYMENTS PAID AND IDENTIFIED FOR CASUAL EMPLOYEES

SCHEDULE B – BACK PAYMENTS PAID AND IDENTIFIED FOR ANNUALISED SALARY EMPLOYEES

SCHEDULE C – BACK PAYMENTS PAID AND IDENTIFIED FOR UNLOCATABLE EMPLOYEES IN ACCORDANCE WITH CLAUSE 12 AND SECTION 559

FAIR WORK ACT 2009

Attachment A – Form of Public Notice and Workplace Notice

On 6 December 2019, World Vision Australia (**World Vision**) notified the Fair Work Ombudsman (**FWO**) of its belief that the *Social, Community, Home Care and Disability Services Industry Award 2010 (Award)* applied to a number of its current and part employees, and that it had potentially not complied with all aspects of the Award in respect of those persons.

World Vision undertook a review of its payroll systems and processes and determined that it contravened the *Fair Work Act 2009 (Cth) (Act)* by failing to identify that the Award applied to some of its employees, and thereby underpaid those employees by failing to comply with its obligations under the Award.

World Vision has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with the Award and Act.

World Vision will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance, including an additional independent audit.

World Vision expresses its sincerest regret and apologises for these contraventions.

If you worked for World Vision during the period 1 January 2013 and 1 January 2020 and have queries or questions relating to your employment, please contact World Vision directly through their 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
