



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

New Field Education Group Pty. Limited

ABN: 76132488183 / ACN:132488183

and

Ms Jinghong Sha

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:
 - a) New Field Education Group Pty. Limited trading as New Field Education ABN: 76132488183 (the **Company**); and
 - b) Ms Jinghong Sha (**Ms Sha**), the Director of the Company.

Commencement of Undertaking:

2. This Undertaking comes into effect when:
 - a) The Undertaking is executed by Company and Ms Sha; and
 - b) The FWO accepts the Undertaking so executed.

Background:

3. The Company is a multinational education group founded in New Zealand in 2002.
4. The Company has established over 10 branches in five countries, which include Australia, New Zealand, Canada, US and China.
5. The Company commenced operations in Australia on 30 July 2008 and currently employs approximately 15 to 20 employees.
6. The Company's two Australian branches (Melbourne and Sydney) predominantly assist overseas students to settle into Australia, including assisting them with their visa processing and applications.
7. On 15 September 2017 and 5 February 2018, Employee A and Employee B (collectively, the **Employees**, listed in **Attachment A**) lodged requests for assistance with the FWO. The Employees, both Chinese Nationals, claimed they had been underpaid throughout their employment period with allegations of rates of pay of \$400 to \$500 per week.
8. The investigation determined that the employment of the employees was covered by the *Clerks – Private Sector Award 2010* [MA000002] (the **Clerks Award**) in respect to the duties they performed in accordance with the classifications set out in Schedule B of the Award.
9. The Company admitted to the FWO that they had incorrectly classified the Employees as interns when they first commenced employment, advising that they did not truly understand or conduct research into what makes a genuine internship in Australia and did not pay the appropriate pay rates.

10. Ms Sha admits and agrees that:

- a) She has been the Director of the Company since 30 July 2008;
- b) That as sole Director, she is ultimately responsible for the overall direction, management and supervision of the operations of the Company.
- c) By reason of the matters set out in paragraphs (a) and (b) was responsible in a practical sense for ensuring the Company complied with its legal obligations.

11. The FWO has determined, and Ms Sha admits, that the Company contravened:

- a) Section 45 of the FW Act, by failing to comply with the following terms of the Clerks Award:
 - i) Clause 12.2 – casual loading;
 - ii) Clause 15.1 - employee classification;
 - iii) Clause 16 – minimum rates of pay;
 - iv) Clause 27.1 – overtime;
 - v) Clause 27.2(a) – payment for work performed on a Saturday;
 - vi) Clause 27.2(b) – payment for work performed on a Sunday; and
 - vii) Clause 29.3 – annual leave loading;
- b) Subsection 90 (2) of the FW Act by failing to pay pro rata annual leave on termination;
- c) Subsection 116 of the FW Act by failing to make payment for absence on public holidays; and
- d) Subsection 536(1) of the FW Act by failing to issue pay slips to its employees.

12. The underpayments arising from the contraventions totalled \$35,780.24 (gross) to the Employees. The Company has rectified the total underpayments and provided evidence to the FWO on 22 November 2018.

Undertakings:

13. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company and Ms Sha undertake the following:

13.1 FWO My Account registration

- a) Within 14 days of the execution of this Undertaking:
 - i) Register with the FWO My Account portal at www.fairwork.gov.au/register and fully complete the My Account profile, including information about the business and award/agreement coverage, through this portal;
 - ii) Using the FWO Pay Calculator, calculate relevant minimum pay rates (and penalty rates where necessary) and save these calculations to your My Account;
 - iii) Provide to the FWO the 'My Account' Customer Registration Number (CRN);
- b) Within 28 days of the execution of this Undertaking, at a mutually agreed time and location, demonstrate to an officer of the FWO, knowledge of the use of My Account, including saving information within My Account from the website and relevant FWO

online tools. You must also demonstrate how your use of this saved information will contribute toward your compliance with workplace obligations including payment to employees of the correct minimum pay rates and public holiday penalty rates;

- c) Within 14 days of the execution of this Undertaking, subscribe to the FWO's subscription service and provide evidence to the FWO of the subscription:
 - i) Subscribe to the FWO's 'Subscribe to email updates' function available at <http://www.fairwork.gov.au/website-information/staying-up-to-date/subscribe-to-email-updates>. Choose the relevant State/s and industry, selecting information updates on pay rates and entitlements, new products and resources, about us and our work, updates in my industry and tailored information that is relevant to me.

13.2 Workplace relations systems and processes

- a) Ensure that it complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Clerks Award;
- b) Provide the FWO, within 60 days of the date of execution of this Undertaking, details of systems and processes already in place or to be implemented to comply with paragraph 13.3 a) above. Without limitation, such systems and processes relating to:
 - i) Ensuring workers are correctly classified as employees (as opposed to contractors or interns);
 - ii) Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - iii) Ensuring employee status is correctly determined (ie: full time, part time, or casual);
 - iv) Ensuring employees receive the correct leave entitlements;
 - v) Issuing payslips to employees within one (1) working day of payment; and
 - vi) Keeping accurate and complete records to ensure employees receive their correct wages and entitlements.

13.3 Workplace relations training

- a) Within 90 days of the execution of this Undertaking, organise and ensure training is provided to all persons who have responsibility for human resource, recruitment or payroll functions (**Training**);
- b) Ensure the Training relates to compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Clerks Award. Specifically this Training is to include at least the following provisions from the Clerks Award:
 - i) Clause 4 - coverage
 - ii) Clause 10, 11, 12 - status of employment clauses
 - iii) Clauses 15 & 16 - classification and minimum rates
 - iv) Clause 27 - overtime and penalties
 - v) Clause 29 - annual leave
 - vi) Clause 30 - personal leave
- c) Ensure the Training is conducted by a workplace trainer, such person or organisation to be approved by the FWO and paid for by the Company;
- d) Provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted;
- e) Provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the

date on which the training was attended).

13.4 FWO Online Training

- a) Within 90 days of execution of this Undertaking ensure that all persons responsible for management, payroll and human resources complete all education courses designed for employers available on the FWO online learning centre via <http://www.fairwork.gov.au/how-we-will-help/online-training> and provide certificates of completion to the FWO;
- b) If the person responsible for the human resources administrative functions including but not limited to employee rosters, timesheets, wage processing and payment and the issuing of pay slips is different to Ms Sha during the period of this Undertaking, the Company is required to notify the FWO of the name of this person. The person is required to complete a My Account registration and training in accordance with clause (a) above, within 28 days of appointment;
- c) For each person required to complete the Training, enter all of the required information in **Attachment B** and provide copies of the completed attachment to the FWO **within 90 days** of the execution of this Undertaking; and
- d) For any persons taking on any of the functions or responsibilities in paragraph 13.5 b), complete **Attachment B** and submit to the FWO within **28 days** of taking responsibility for these functions.

13.5 Apology

- a) Send a letter of apology to the Employees listed in **Attachment A** in the form of **Attachment C** to this Undertaking and provide copies to the FWO within 14 days of the execution of this Undertaking.

13.6 Audit Activity

- a) At its own expense, the Company undertakes to engage an external accounting professional (for example a Certified Practising Accountant) or an employment law specialist, to perform audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), including the Clerks Award and FW Act;
- b) The Audits will include the pay and conditions of all employees; and
- c) Will ensure that the following requirements are met:
 - i) 21 days prior to the Audit due date/s, as specified below will provide for the FWO's approval, details of the methodology to be used to conduct the Audit;
 - ii) the Audit will be conducted for all full pay periods where any part of the period falls within the following dates:
 - 1 January 2019 to 31 January 2019 – audit report to be finalised and provided to the FWO by 28 March 2019;
 - 1 July 2019 to 31 July 2019 – audit report to be finalised and provided to the FWO by 28 September 2019;
 - 1 January 2020 to 31 January 2020 – audit report to be finalised and provided to the FWO by 28 March 2020;
 - iii) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instrument, rectify all such contraventions within 14 days of each of the finalisation dates specified in subclause (b) above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;
 - iv) If requested, provide the FWO with all records and documents used to conduct

the audit, including any working documents, within 7 days of such a request;

- v) If any Employee(s) identified as having underpayments owing to them cannot be located, within 60 days of each of the finalisation dates specified in subclause (b) above, make application to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act to pay money into the Commonwealth Revenue Fund. The Company will complete the required documents supplied by the FWO.

13.7 Matters notified to the FWO

- a) Where the FWO receives a request for assistance regarding alleged non-compliance with the FW Act, a modern award or registered agreement, the Company and its officers undertake to fully co-operate with the FWO to ensure compliance. This includes:
 - Providing all requested employment records and other documentation to the FWO relevant to the request for assistance;
 - Participating fully in any subsequent requests for information relevant to the request for assistance; and
 - Co-operating in FWO's processes employed to resolve the request for assistance.

13.8 Workplace Notice

- a) Within 30 days of the execution of this Undertaking, the Company will display a notice (Workplace Notice) in each of the Company's workplaces, in the form of **Attachment D** and provide photographic evidence of its display and the location of the notice in each workplace:
 - i) Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
 - In locations to which all employees who work at the Company have access;
 - In a manner which is reasonably capable of drawing the attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard);
 - ii) For a period of 30 continuous days;
 - i) At the end of the period of 30 days provide confirmation to the FWO that the Workplace Notice has been continuously displayed for the required period;

13.9 Website Notice

- a) The Company will place a notice (**Website Notice**) on the front page of its website within 30 days of, but not prior to the FWO publishing a Media Release on its website which will:
 - iii) Be in the form of the Public Notice set out at **Attachment D**;
 - iv) Be displayed in at least size 10 font; and
 - v) Remain on the website for a period of 6 months;
- b) The Company will provide evidence of the placement of the Website Notice to the FWO on the date it is published.

13.10 Record Keeping

- a) Within 30 days of the execution of this Undertaking, provide to the FWO a copy of time and wage records and the corresponding payslip for one employee for the first

full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth workplace laws

13.11 Broader Community workplace relations education

- a) Within 120 days of the execution of this Undertaking, make a donation of \$5000 to CASS Care Ltd, ABN: 74099853755 and 44-50 Sixth Avenue Campsie NSW 2194 with the objective of assisting the promotion of compliance with Commonwealth workplace laws in the community, and provide evidence of the donation to FWO.

13.12 Internship Self-Audit

- a) Within 30 days of the execution of this Undertaking:
 - ii) Complete an assessment of each person currently engaged by the Company as an intern to determine if they were and continue to be lawfully engaged under a genuine internship;
 - iii) If the Company engage someone on an internship, the Company must notify the FWO within 3 days, including providing the details of the basis on which the purported intern has been engaged.
 - iv) Where a person has been misclassified as an intern and it is determined that they should have been/ are an employee, determine whether they have been paid in accordance with the relevant modern award and have received their minimum entitlements under the FW Act, including but not limited to entitlements to minimum pay, penalty rates and leave entitlements; and
 - v) Rectify any contraventions of Commonwealth workplace laws that have been identified including any underpayments and provide evidence to the FWO.

13.13 Reporting

- a) The Company will notify the FWO of any changes of circumstances that could potentially impact on the Company's ability to comply with the undertakings contained in this Undertaking, as soon as it becomes aware of such circumstances. Such circumstances shall include but not be limited to:
 - i) Sale or potential sale of the business, or part of the business;
 - ii) Change of or change in details of company directors, or other officeholder positions;
 - iii) Change in engagement of workers, for example engaging contractors, labour hire or family members in lieu of employees;
 - iv) The Company or its Directors opening any new establishments or businesses, or acquiring any existing businesses establishments, whether alone or in partnership with another entity;
 - v) Ceasing or an expectation of ceasing to trade; and
 - vi) Going in to administration or liquidation.
- b) In the event that there are any events or circumstances described in a) above, required to be reported to the FWO, the Company and Ms Sha will provide any documentation or other evidence requested by the FWO to confirm the event/s that have transpired.

13.14 Guide to starting a new job

- a) The FWO has developed a 'Guide to starting a new job' (**Guide**), Available in 30 different languages, on the FWO website at www.fairwork.gov.au/find-help-for/young-workers-and-students;
- b) The Company is to provide each of their new customers with a copy of the Guide, in their relevant language, within 14 days of them becoming a customer of the Company. Each customer is to sign a declaration acknowledging they have received the Guide;

- c) A copy of the declaration is located at **Attachment E**. Copies of declarations are to be provided to the FWO every three months for a period of two years following the execution of this Undertaking.

No Inconsistent Statements

14. The Company and Ms Sha:

- a) Must not; and
- b) Must ensure that each of their officers, employees or agents, do not, make any statement, orally or in writing or otherwise imply anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

Acknowledgments

15. The Company and Ms Sha acknowledge that:

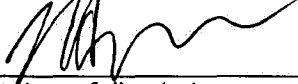
- a) The FWO may:
 - i) Make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - ii) Release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under 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 this Undertaking (and any of the Attachments hereto) and its terms; and
 - v) Rely upon the admissions made by the Company set out in paragraphs 9, 10 and 11 above in respect of decision making concerning any future non-compliance with the Company's 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, the Company and Ms Sha may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d) If the Company contravenes any of the terms of this Undertaking:
 - vi) 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
 - vii) This Undertaking may be provided to the Court as evidence of the admissions made by the Company in paragraphs 9, 10 and 11 above, and also in respect of the question of costs.
- e) The *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* makes the following changes to the FW Act:
 - i) Increased penalties for 'serious contraventions' of workplace laws
 - ii) Makes it clear that employers can't ask for 'cashback' from employees or prospective employees
 - iii) Increases penalties for breaches of record-keeping and pay slip obligations
 - iv) Employers who don't meet record-keeping or pay slip obligations and can't give a reasonable excuse will need to disprove wage claims made in a court (this is also referred to as a reverse onus of proof)
 - v) Strengthen our powers to collect evidence in investigations
 - vi) Introduce new penalties for giving us false or misleading information, or hindering

or obstructing our investigations

- vii) The above mentioned changes to the FW Act also mean that certain franchisors and holding companies can be held responsible if their franchisees or subsidiaries don't follow workplace laws (if they knew or should have known and could have prevented it).
- viii) Providing false or misleading information is a contravention of section 718A of the FW Act and is a civil remedy with a maximum penalty of \$630,000 for a body corporate or \$126,000 for an individual.
- ix) Providing false or misleading information is also a criminal offense under section 137.1 and 137.2 of the *Criminal Code Act 1995*, which could result in imprisonment for up to 12 months.

Executed as an undertaking

EXECUTED by New Field Education Group Pty. Limited in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

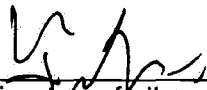
Ms Jinghong Sha

(Name of director)

05-12-2018

(Date)

in the presence of:



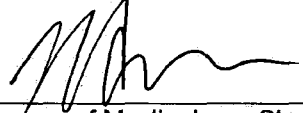
(Signature of witness)

in the presence of:

BIXIAOCHEN

(Name of witness)

EXECUTED by Ms Jinghong Sha

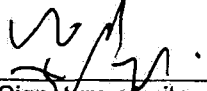


Signature of Ms Jinghong Sha

05-12-2018

(Date)

in the presence of:




(Signature of witness)

BIXIAOCHEN

(Name of witness)

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



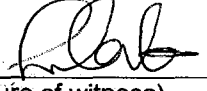
Executive Director – Compliance & Enforcement

13/12/18

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

LOUISE CATO

(Name of Witness)

Attachment A – Underpaid Employees

Underpaid Employees	
██████████ (Employee A)	\$19,720.64 gross
██████████ (Employee B)	\$16,059.60 gross

Attachment B

TRAINING RESOURCES UTILISED FROM THE FAIR WORK OMBUDSMAN WEBSITE

I, _____ (Enter name and position in the organisation)

have undertaken the following tools:

Completed online courses* including:

- Difficult conversations in the workplace – manager course date _____ completed: _____
- Hiring employees date completed: _____
- Managing employees date completed: _____
- Managing performance date completed: _____
- Diversity and discrimination date completed: _____
- Workplace flexibility date completed: _____
- Record-keeping and pay slips date completed: _____

** Please provide printout of the Statement/Certificate of Attainment for each course completed*

Viewed Videos including:

- Welcome to fairwork.gov.au date completed: _____
- Finding information for your industry date completed: _____
- My account date completed: _____
- Introduction to the Pay and Conditions Tool date completed: _____
- PACT – Award classifications date completed: _____
- PACT – Pay summary date completed: _____
- PACT – Penalty rates date completed: _____
- PACT – Allowances date completed: _____
- PACT – Award Coverage date completed: _____

Read Factsheets including:

- Role of the Fair Work Ombudsman date completed: _____

- Contractors and employees – what's the difference? date completed: _____

Read Information on the following:

- ***Pay Overview***

- Minimum wages Page Ref No. _____ date completed:

- Penalty rates & allowances Page Ref No. _____ date completed:

- ***Leave Overview***

- Annual leave Page Ref No. _____ date completed:

- Sick & carer's leave Page Ref No. _____ date completed:

- ***Ending Employment Overview***

- Notice & final pay Page Ref No. _____ date completed:

- Unfair dismissal Page Ref No. _____ date completed:

- ***Employee Entitlements Overview***

- Types of employees Page Ref No. _____ date completed:

- National Employment Standards Page Ref No. _____ date completed:

- ***Awards & Agreements Overview***

- Awards Page Ref No. _____ date completed:

- Date and signature: _____

Attachment C – Letter of Apology

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Ms Sha and New Field Education Group Pty. Limited for non-compliance with Commonwealth Workplace relations laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that New Field Education Group Pty. Limited had contravened the *Fair Work Act 2009* and *Clerks – Private Sector Award 2010* by:

- Failing to provide the casual loading to casual employees;
- Failing to inform employees in writing of their classification;
- Failing to pay the correct rate of pay;
- Failing to pay overtime rates;
- Failing to pay Saturday and Sunday rates;
- Failing to pay leave loading;
- Failing to pay pro rata annual leave on termination;
- Failing to make payment for absence on public holidays; and
- Failing to issue pay slips to its employees.

Regrettably, the investigation determined that you were affected by the above contraventions.

New Field Education Group Pty. Limited is taking steps to remedy the contraventions, including by rectifying the amount that you have been underpaid, paying compensation of \$[insert amount] to you. You will/have receive/d this payment on [insert date] and will be provided with a payment advice regarding the payment.

New Field Education Group Pty. Limited have formally admitted to the FWO that New Field Education Group Pty. Limited did not comply with its obligations under Commonwealth workplace relations laws and have entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website 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.

New Field Education Group Pty. Limited expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Should you have any questions, please contact [party to include contact details].

Yours sincerely

Jinghong Sha

Attachment D – Form of Public and Workplace Notice

Contravention of Fair Work Act by New Field Education Group Pty. Limited.

We refer to the investigation conducted by the Office of the Fair Work Ombudsman (FWO) into allegations that New Field Education Group Pty. Limited contravened the *Fair Work Act 2009* and Clerks – Private Sector Award 2010 by:

- Failing to provide the casual loading to casual employees;
- Failing to inform employees in writing of their classification;
- Failing to pay the correct rate of pay;
- Failing to pay overtime rates;
- Failing to pay Saturday and Sunday rates;
- Failing to pay leave loading;
- Failing to pay pro rata annual leave on termination;
- Failing to make payment for absence on public holidays; and
- Failing to issue pay slips to its employees.

New Field Education Group Pty. Limited has formally admitted to FWO that these contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at www.fairwork.gov.au) committing to a number of measures to remedy the contraventions, including by rectifying the underpayments.

New Field Education Group Pty. Limited expresses its sincere regret and apologises for the conduct which resulted in the contraventions. Furthermore, New Field Education Group Pty. Limited gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

Use the following passage in Public Notices

If you worked for New Field Education Group Pty. Limited and have queries or questions relating to your employment, please contact **<insert details of internal contact>**. Alternatively, anyone can contact the FWO via the website at www.fairwork.gov.au or the Infoline on 13 13 94.

**Attachment E – Acknowledgement of Receipt of the FWO's
'Guide to Starting a New Job'**

Acknowledgement of Receipt – FWO's 'Guide to Starting a New Job'

I, (insert name)

of (insert address)

.....

agree that New Field Education Group Pty. Limited has provided me with a copy of the
Fair Work Ombudsman's **'Guide to Starting a New Job'**

Signed:

.....

Date:/...../.....