



Australian Government

Fair Work

OMBUDSMAN

ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

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

and

Global Interactive Operations Pty Ltd (ABN 89 602 289 494)

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) Global Interactive Operations Pty Ltd (the **Company**) operating from 20 Queensland Avenue, Broadbeach QLD, 4218.

BACKGROUND:

2. In October 2016, the FWO initiated an Inquiry into the Charity Collection industry (the **Inquiry**).
3. Global Interactive Group Pty Ltd (ABN: 70 099 460 812) (**The Supplier**) was directly engaged by the Cerebral Palsy Alliance in Surfers Paradise, Queensland.
4. The Supplier carry on a business offering sales and marketing services and in particular, offering partnership arrangements for businesses to outsource the marketing of their products or services. This includes door to door sales and call centre operations.
5. Global Interactive Operations Pty Ltd (**The Company**) performs call centre work for The Supplier.
6. The FWO's investigation determined that the *Contract Call Centres Award 2010* [MA000023] (**Contract Call Centres Award**) applied to the Company's employees (**Employees**). The Employees worked as outward-bound call centre workers performing duties commensurate with the Contract Call Centres Award classification Customer Contact Officer Level 1.
7. The Company has rectified underpayments totalling \$77,286.82 gross to 43 employees (**Affected Employees**) for underpayments that occurred from July 2016 to February 2019.
8. The Company admits, and the FWO reasonably believes, that the Company contravened:
 - a) Section 45 of the FW Act, by failing to comply with the following terms of the Contract Call Centres Award:
 - i. Clause 13.1 by failing to pay the applicable casual loading to casual workers;
 - ii. Clause 13.3 by failing to pay the minimum of three hours of work per shift for casual employees;
 - iii. Clause 24.7(a) by failing to pay penalty rates for time worked outside the spread of ordinary hours Monday to Friday and on weekends;
 - iv. Clause 26.1(a)(i) by failing to pay penalty rates for overtime on Monday to Saturday; and
 - v. Clause 30.4(a) by failing to pay penalty rates for work on a public holiday.

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

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

ENFORCEABLE UNDERTAKING

10. Upon the execution of this Undertaking and for the purposes of section 715 of the FW Act, the Company undertakes the following:

Audit Activity

- a) Cause to have performed by an accounting professional (for example a Certified Practising Accountant) or an employment law specialist, at the Company's expense, audits of the Company's compliance with all Commonwealth workplace laws and instruments (**Audits**), including but not limited to the following clauses of the Contract Call Centre Award:
 - i. Clause 13.1 - casual loading;
 - ii. Clause 13.3 - minimum engagement period for casuals;
 - iii. Clause 24.7(a) - penalty rates for work outside of ordinary hours;
 - iv. Clause 26.1(a)(i) - overtime penalties; and
 - v. Clause 30.4(a) - public holiday penalties.
- b) The Audits will include the pay and conditions of all employees of the Company engaged under the Contract Call Centre Award; and
- c) Will ensure that the following requirements are met:
 - i. Audit 1 is to be finalised and a report on the outcome of the audit is to be provided to the FWO within 60 days of execution of the undertaking. The report must include:
 - An audit of all employees employed under the Contract Call Centre Award from 1 June 2016 to 25 May 2018 (excluding the Assessment Period)
 - The audit report must include details of compliance or non-compliance with the clauses listed at paragraph 10(a) and the Company's compliance or non-compliance with Commonwealth workplace laws
 - II. Audit 2 is to be finalised and a report on the outcome of the audit is to be provided to the FWO by ten (10) months after the execution of the Undertaking. The report must include:
 - An audit of six (6) full pay periods between 1 January 2020 and 28 February 2020. The audit period must include at least one (1) public holiday.
 - The audit report must include details compliance or non-compliance with the clauses listed at paragraph 10(a) and the Company's compliance or non-compliance with Commonwealth workplace laws.
 - III. Audit 3 is to be finalised and a report on the outcome of the audit is to be provided

to the FWO within 22 months of execution of the undertaking. The report must include:

- An audit of six (6) full pay periods between 1 January 2021 and 28 February 2021. The audit period must include at least one (1) public holiday.
 - The audit report must include details compliance or non-compliance with the clauses listed at paragraph 10(a) and the Company's compliance or non-compliance with Commonwealth workplace laws.
- d) 21 days prior to each Audit due date, as specified above, the Company will provide for the FWO's approval, details of the methodology to be used to conduct the Audit;
- e) In the event an Audit discloses contraventions of any applicable Commonwealth workplace law and/or instruments, the Company will rectify all such contraventions within 30 days of each of the finalisation dates specified in paragraph 10(c)(i) – (III) above, including rectification of any and all underpayments to employees and provide evidence of rectification to the FWO;
- f) If requested, provide the FWO with all records and documents used to conduct the audit, including any working documents, within seven (7) days of such a request.
- g) 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 paragraph 10(c)(i) – (III), 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.

Apology

- h) Send a letter of apology (**Apology Letter**) to all Affected Employees, in the form of Attachment B to this Undertaking, within 14 days of the execution of this Undertaking.

Public Notice

- i) Place a public notice (**Public Notice**), in the form of Attachment A to this Undertaking, in the Courier Mail within 28 days of, but not prior to the FWO publishing a Media Release on its website in respect of this Undertaking. The Public Notice must:
- (i) Bear the name of the Company;
 - (ii) Bear the logo of the Company;
 - (iii) Appear within the first five (5) pages of the Courier Mail;
 - (iv) Must be at least 10 cm x 8 cm;
 - (v) Contain wording in the form of Attachment A;
- j) Provide a copy of the Public Notice to the FWO within 7 days of the publication of the Public Notice.

Workplace Notice

- k) Within 30 days of the execution of this undertaking, cause to be displayed within all/the workplace/s controlled by the Company; a notice in the form of Attachment A to this Undertaking (**Workplace Notice**) and provide photographic evidence of its display and the location of the notice in the workplace:
 - (i) Ensure that the Workplace Notice is printed in at least A3 size and is clearly displayed:
 - i. In a location to which all employees who work at the Company have access;
 - ii. In a manner which is reasonably capable of drawing attention of all employees to the Workplace Notice (for example, by placement on a staff noticeboard;
 - iii. For a period of 28 continuous days.
 - (ii) At the end of the period of 28 days provide confirmation to the FWO that the Workplace Notice has been continuously displayed for the required period;

FWO My account registration and subscription

- l) Within 21 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 the Company My account, and provide to the FWO the 'My account' Customer Registration Number (CRN);
- m) Within 28 days of the execution of the 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. The Company must also demonstrate how its use of this saved information will contribute toward its compliance with workplace obligations including payment to employees of the correct minimum pay rates and public holiday penalty rates;
- n) Within 21 days of the execution of the 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>
 - (ii) Choose the relevant State/s and industry, selecting information updates on the following options:
 - i. pay rates and entitlements;

- ii. new products and resources;
- iii. about us and our work;
- iv. updates in my industry; and
- v. tailored information that's relevant to me.

Workplace relations systems and processes

- o) Ensure that the Company complies at all times and in all respects with the FW Act, the *Fair Work Regulations 2009* (Cth) and the Contract Call Centres Award.
- p) 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 10(o) above. Without limitation, such systems and processes relating to:
 - (i) Ensuring employees receive the correct minimum rates of pay and entitlements, such as penalty rates and overtime rates;
 - (ii) Keeping accurate and complete time and related records to ensure employees receive their correct wages and entitlements;
 - (iii) Demonstrating that the Company is meeting its ATO Single Touch Payroll obligations.

FWO Online Training

- q) Within six (6) months of the 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 <https://www.fairwork.gov.au/how-we-will-help/online-training> and provide certificates of completion to the FWO.
- r) Ensure that all persons responsible for management, payroll and human resources functions complete the educational activities on the FWO website, as set out in Attachment C;
- s) For each person required to complete the education activities, enter all of the required information in Attachment C and provide copies of the completed attachment to the FWO within 3 months of the execution of this Undertaking;
- t) For a period of two (2) years from the execution of this Undertaking, ensure that the educational activities are completed by any new or existing employees or contractors who, after the commencement of this Undertaking, acquire managerial, payroll and human resources functions responsibilities; and
- u) For any persons taking on any of these functions, complete Attachment C and submit to the FWO within 28 days of taking responsibility for these functions.

Matters notified to the FWO

- v) Where the FWO receives a request for assistance regarding non-compliance with a

modern award or registered agreement, the Company and its officers (including those relating to entities to which the Company contracts work) undertake to fully co-operate with the FWO to ensure compliance. This includes:

- i. Providing all requested employment records and other documentation to the FWO relevant to the request for assistance;
- ii. Participating fully in any subsequent requests for information relevant to the request for assistance, including participation in any formal records of interview; and
- iii. Co-operation in FWO's processes employed to resolve the request for assistance.

Record Keeping

- w) Within one (1) month provide to the FWO a copy of time and wage records and payslips for one (1) employee for the first full pay period following the execution of this Undertaking. Such records are to comply with Commonwealth workplace laws.

Contribution Payment

- x) A contribution payment of \$5000 to be made to Consolidated Revenue within 28 days of the execution date of this Undertaking.

Reporting

- y) 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) Business going in to administration or liquidation.
- z) In the event that there are any events or circumstances described in (y) above, required to be reported to the FWO, the Company will provide any documentation or other evidence requested by the FWO to confirm the event/s that have transpired.

Employee Reporting

- aa) Within 90 days of the execution of this Undertaking, the Company will report to the FWO

on all employees that worked for the Company during the previous three (3) months. The Company will complete a signed declaration that the Company is remunerating its employees in accordance with its legal obligations including but not limited to the FW Act, the relevant Modern Awards and applicable superannuation legislation. A copy of the declaration is located at Attachment D and is to be provided to the FWO every three (3) months for a period of two (2) years.

No Inconsistent Statements

11. The Company:

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

ACKNOWLEDGEMENTS

12. The company 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 the Company set out in paragraph 8 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 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 Enforceable 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 Enforceable Undertaking may be provided to the Court as evidence of the admissions made by the Company in paragraph 8 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by [insert party] in accordance with section 127(1) of the *Corporations Act 2001*:

[Signature]
(Signature of director)

(Signature of director/company secretary)

Mark Gatten
(Name of director)

(Name of director/company secretary)

27.06.2019
(Date)

(Date)

in the presence of:

in the presence of:

[Signature]
(Signature of witness)

(Signature of witness)

PETER CUSACK
(Name of witness)

(Name of witness)

Linda McAulry Smith
[Insert name and role of Delegate]

(Date) *27/6/19*

*Create the Director, compliance
Delegate for the FAIR WORK
OMBUDSMAN*

enforce work *[Signature]*

in the presence of: *LMS*

[Signature]
(Signature of witness)

[Signature]
(Name of Witness) *DIRECTOR GENERAL PROTECTORS TEAM*

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

FAIR WORK OMBUDSMAN

(Date)

in the presence of:

(Signature of witness)

(Name of Witness)

Attachment A – Form of Public and Workplace Notice

Contravention of Fair Work Act by Global Interactive Operations Pty Ltd

We refer to the Charity Collection Inquiry conducted by the Office of the Fair Work Ombudsman (**FWO**) into allegations that Global Interactive Operations Pty Ltd contravened the *Fair Work Act 2009* and Contract Call Centres Award 2010 [MA000023] by:

- failing to pay the minimum casual rate
- failing to provide the correct penalties for weekends, overtime and public holidays
- failing to provide for the minimum of three hours 'work per shift to casual employees

Global Interactive Operations Pty Ltd 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 to the employees affected by the contraventions.

Global Interactive Operations Pty Ltd expresses its sincere regret and apologises for the conduct, which resulted in the contraventions. Furthermore, Global Interactive Operations Pty Ltd 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 Global Interactive Operations Pty Ltd 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 B – Letter of Apology

FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Global Interactive Operations Pty Ltd for non-compliance with Commonwealth Workplace relations laws. The Charity Collection Inquiry (**Inquiry**) conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Global Interactive Operations Pty Ltd had contravened the *Fair Work Act 2009* and Contract Call Centres Award 2010 [MA000023] by:

- failing to pay the minimum casual rate
- failing to provide the correct penalties for weekends, overtime and public holidays
- failing to provide the for the minimum of three hours 'work per shift to casual employees

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

Global Interactive Operations Pty Ltd is taking steps to remedy the contraventions, including by having already made back payment of <<\$XXXXXX>> to you and paying a contrition payment of \$5,000 to Consolidated Revenue. You received your back payment on <<INSERT DATE>> and have been provided with a payment advice regarding the payment.

Global Interactive Operations Pty Ltd have formally admitted to the FWO that it 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.

Global Interactive Operations Pty Ltd 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

[Chief Executive Officer]

Attachment C

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:

- Workplace flexibility date completed: _____
- Record-keeping and pay slips date completed: _____

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

The following online courses also available:

- Difficult conversations in the workplace – manager course
- Hiring employees
- Managing employees
- Managing performance
- Diversity and discrimination

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 D

Employee Reporting

During the period, ___/___/___ to ___/___/___ the following employees worked for Global Interactive Operations Pty Ltd:

Name of employee	Date commenced	Date ceased employment (if applicable)	Status of employment (Full time, Part time or Casual)	Award Classification

In providing this information, I confirm that the information is true and correct.

I am aware that providing false or misleading information is a contravention of section 718A of the *Fair Work Act 2009* and is a civil remedy with a maximum penalty of \$630,000 for a body corporate or \$126,000 for an individual.

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 12 months.

Name and position of person providing the information: _____

Signature of person providing information: _____

Date: _____