


Commerce Commission

Kowhai Montessori Pre-School Limited

Rebecca Brindle

Deed of amendment to Undertakings

R.G.C.
B.R.B.
R.S.B.


THIS DEED Dated this 21 day of

July 2017

PARTIES

- A. **Commerce Commission** a body corporate established under s 8 of the Commerce Act 1986 having its offices at level 6, 44-52 The Terrace, Wellington
- B. **Kowhai Montessori Pre-School Limited** a duly incorporated company having its registered office at 11 Seaview Crescent, Hatfields Beach, Orewa
- C. **Rebecca Jayne Brindle** of Auckland, Consultant

Background

- 1 On 20 March 2017 Kowhai Montessori Pre-School Limited (**Kowhai**) and Rebecca Jayne Brindle (**Mrs Brindle**) gave undertakings to the Commerce Commission (the **Commission**) securing part of Kowhai's obligation to pay sums ordered against it in respect of its admitted breaches of the Fair Trading Act 1986 (the **Undertakings**).
- 2 On 9 August 2016 a parent whose child attended Kowhai (**JL**) obtained an order from the Disputes Tribunal for Kowhai to pay JL \$5,311.85 in fees and interest (the **Disputes Tribunal Order**). To date, the Disputes Tribunal Order has not been paid. The identity of JL is known to all parties.
- 3 On 8 June 2017 the District Court made orders of reparation (the **Orders**) in favour of four parents whose children attended Kowhai between 14 October 2013 and 13 October 2014, and who agreed to give evidence in the prosecution, one of whom was JL. The District Court Judge considered that the Court could not order reparation in respect of JL's total loss, given the existence of the Disputes Tribunal Order. The District Court Judge accordingly ordered that reparation of \$500 be paid to JL.
- 4 The Commission has determined not to appeal the Orders made by the District Court on 8 June 2017. Kowhai acknowledges that if it does file any appeal, it will continue to observe the terms of the Undertakings, including (for the avoidance of doubt) clause 2.6(l).
- 5 The parties have reached agreement to vary the remaining operative terms of the Undertakings and wish to record the terms of their agreement in this deed.

NOW IT IS AGREED as follows:

- 1 Paragraph 2.6(g) of the Undertakings is amended by substituting the following paragraph:

(g) From the funds held in the Trust Account, Kowhai will:

- (i) pay JL \$5,311.85 in satisfaction of the Disputes Tribunal Order;
- (ii) pay a sum equal to the Agreed Amount less the Disputes Tribunal Order (\$216,688.15, the **Balance**) from the Trust Account into Court in part-payment of the Fine;

within two (2) working days of the parties signing this deed.

- 2 Paragraph 2.6(h) of the Undertakings is amended by replacing "the Agreed Amount" with "the Balance".

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- 3 In respect of paragraphs 2.6(j), 3.1(a), 3.1(b), and 4.1(a) of the Undertakings, "pay" is to read as "fund".
- 4 In respect of paragraph 4.1(c) of the Undertakings, "make payment of" is to read as "fund".

SIGNED on behalf of Kowhai Montessori Pre-School Limited



Company Director

BRETT BRINDLE

Name

In the presence of:

Witness Name: Rosalind Grace Cottier

Witness Address: Snells Beach

Witness Occupation: Self-Employed

Date: 16/07/2017



SIGNED by Rebecca Brindle



Rebecca Brindle

In the presence of:

Witness Name: Rosalind Grace Cottier

Witness Address: Snells Beach

Witness Occupation: Self Employed

Date: 16/07/2017



SIGNED as accepted on behalf of the Commerce Commission by



Authorised signatory

MARK NEWMAN BERRY

Name

In the presence of:

Witness Name: Kirsten Mannix

Witness Address: Wellington

Witness Occupation: Lawyer

Date: 21/7/2017

