



Fair Work  
OMBUDSMAN

## ENFORCEABLE UNDERTAKING

This undertaking is given by Southern Cross Care (Tasmania) Inc (ABN 18 773 507 851) and accepted by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 8 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 Southern Cross Care (Tasmania) Inc (**SCCTas**), of 85 Creek Road, New Town, Tasmania 7008.

### COMMENCEMENT

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

### BACKGROUND

3. SCCTas, founded as a not-for-profit in 1972 by the Catholic organisation the Knights of the Southern Cross, is Tasmania's largest residential aged care operator and also delivers community care services across the State. Approximately 1200 employees worked for SCCTas as at December 2022.
4. On 11 August 2021, SCCTas notified the FWO that:
  - (a) SCCTas had become aware it had failed to correctly apply the overtime provisions of four enterprise agreements;
  - (b) a range of employee roles and employment statuses had been affected, in particular part time shift workers in aged care;
  - (c) an assessment of amounts owed to current and former employees was being undertaken by KPMG, with underpayments expected to total approximately \$6 million; and
  - (d) its board recognised the potential for underpayments in late 2019 due to outdated payroll and rostering systems, and mergers between SCCTas and other providers.
5. On 28 February 2023, SCCTas confirmed that the value of underpayments relating to its failure to correctly apply overtime and related provisions of its enterprise agreements and the *Social, Community, Home Care and Disability Services Industry Award 2010*

consisted of \$5,773,731.20 to 1678 employees dating back to 2015 and that the value of unpaid meal breaks (a contravention occurring between November 2021 and June 2022) consisted of \$33,025.65 to 91 employees (together, the **Underpayments**).

6. As at the date of execution of this Undertaking, SCCTas has advised that all current employees and a majority of former employees have been back paid, including interest being paid on back payments, and that payments in relation to lost superannuation contributions have been made. Specifically, SCCTas has notified the FWO that as at 24 July 2023 it has:
  - (a) rectified the Underpayments to each of the employees referred to in columns B and C of Schedule A to this Undertaking (**Schedule A Employees**) in the amounts referred to in column G of Schedule A;
  - (b) rectified any associated superannuation contributions as required by law to each of the Schedule A Employees, by paying any such required superannuation contributions to the chosen superannuation fund of the employee; and
  - (c) paid interest to each of the Schedule A Employees on the amounts referred to in column G of Schedule A, in the sums referred to in column H of Schedule A, calculated using pre judgment interest rates as determined by the Federal Court Of Australia.
7. SCCTas is continuing to contact and back pay each of the former employees referred to in columns B and C of Schedule B to this Undertaking (**Schedule B Employees**) who have been underpaid.

#### **ADMISSIONS**

8. The FWO has a reasonable belief, and SCCTas admits, that SCCTas contravened:
  - (a) section 45 of the FW Act between 29 November 2015 and 25 September 2018 by failing to pay Schedule A and Schedule B Employees the amount or amounts to which that employee was entitled to be paid under the following clauses of the *Social, Community, Home Care and Disability Services Industry Award 2010* (the **Award**), as identified in Schedule A and Schedule B to this Undertaking in relation to that employee;

- (i) Clause 28.1(b)(i), overtime for work in excess of 38 hours per week; and
- (ii) Clause 28.1(b)(ii), overtime for work in excess of 10 hours a day.

(b) section 50 of the FW Act between 29 November 2015 and 20 June 2022 (**Relevant Period**) by failing to pay each of the Schedule A and Schedule B Employees the amount or amounts to which that employee was entitled to be paid under one or more of the following four enterprise agreements (together, the **Agreements**) and clauses referred to in clauses (i) to (iv) below, as identified in Schedule A and Schedule B to this Undertaking in relation to that employee;

(i) *Southern Cross Care (Tas) Inc and Mary's Grange Inc Staff Enterprise Agreement 2017:*

(A) Clause 14.2(d) – Regular pattern of work in writing for part time employees;

(B) Clause 24.2 and Undertaking 4 – Additional hours for part time workers and agreement to additional hours to be in writing;

(C) Clause 25 and Undertaking 6 – Shift Penalties;

(D) Clause 26.2(1) and Undertaking 7 – Overtime for day workers;

(E) Clause 26.2(2) and Undertaking 8 – Overtime for full time shift workers;

(F) Clause 26.8(1) – Call back;

(G) Clause 27.1(a) – Employees working in excess of 4 continuous hours per day shall take a meal break of 30 minutes;

(H) Clause 28.1 – Overtime for shift workers;

(I) Clause 28.2 and Undertaking 13 – Overtime for part time shift workers;

(J) Clause 28.4 and Undertaking 14 – Broken shift rates and agreement to be in writing; and

(K) Clause 28.10(d) and (f) – Sleepovers.

(ii) *Southern Cross Care (Tas) Inc. Staff Enterprise Agreement 2014:*

(A) Clauses 14.2(d) and 24.2 – Additional hours for part time workers and

agreement to additional hours to be in writing;

- (B) Clause 25 – Shift Penalties;
- (C) Clause 26.2(1) and Undertakings and 8 – Overtime for day workers;
- (D) Clause 26.2(2) and Undertaking 9 – Overtime for shift workers;
- (E) Clause 26.8.1 – Call back;
- (F) Clause 28.1 – Overtime for shift workers;
- (G) Clause 28.2 – Overtime for part time shift workers; and
- (H) Clause 28.4 – Broken shifts and agreement to be in writing.

(iii) *HACSU Mary's Grange Inc. Non-Nursing Staff Agreement 2014:*

- (A) Clause 11(A), (B) – Call back;
- (B) Clause 18(A), (B) and (C) – Hours of work;
- (C) Clause 23(c)(ii) and (iii) – Agreement to hours for part time workers and agreement for variations to be in writing;
- (D) Clause 24 – Overtime;
- (E) Clause 33 – Saturday and Sunday Work – Rostered Employee; and
- (F) Clause 35 – Shift Allowances – Rostered Employee.

(iv) *Mary's Grange Inc. Nurses Agreement 2013:*

- (A) Clause 13(2) – Guaranteed minimum hours and rostering arrangements which apply to those hours in writing for part time employees;
- (B) Clause 15 – Hours of work – shift workers;
- (C) Clause 16 – Hours of work – shift workers;
- (D) Clause 22 – Call back;
- (E) Clause 23(1) and (2) – Shiftworkers – Afternoon and Night Shift Allowances;
- (F) Clause 23(4) – Shiftworkers – Saturday Shifts;
- (G) Clause 23(5) to (8) – Shiftworkers – Sunday and Holiday Shifts;

(H) Clause 23(10) – Overtime for part time shift workers;

(I) Clause 23(20) – Overtime for shift workers.

(c) section 535 of the FW Act by failing to make and keep employee records as required by regulation 3.34 of the *Fair Work Regulations 2009 (FW Regulations)* in respect of employees engaged at SCCTas' Mary's Grange facility between 29 February 2016 to 25 September 2018.

9. For the avoidance of doubt, this Undertaking is not given in relation to:
- (a) any contraventions affecting any employee not listed in Schedule A or Schedule B to this Undertaking (**Non-schedule Employees**); or
  - (b) any contraventions which relate to or arise as a consequence of SCCTas failing to correctly apply any of the Agreements to any of the Schedule A or B Employees other than as identified in clause 8 to this Undertaking; or
  - (c) any contraventions which have not yet occurred at the end of the Relevant Period (whether or not those contraventions are identified in the Independent Audits described in clauses 19 to 42 below).

#### **UNDERTAKINGS**

10. SCCTas will take the actions set out at clauses 11 to 57 below:

##### **Review and rectification of underpayments**

11. By 15 September 2023, SCCTas will:
- (a) subject to clause 13, pay each of the Schedule B Employees:
    - (i) the underpayment amount owing to them;
    - (ii) any superannuation contributions which may be required by law by making payment to their chosen superannuation fund; and
    - (iii) interest on the amount referred to in clause 11(a)(i) above, calculated using an interest rate equivalent to pre judgment interest rates as determined by the Federal Court Of Australia.
12. By 29 September 2023, SCCTas will provide the FWO with evidence of all payments

made to Schedule A and Schedule B Employees for the Relevant Period to rectify the Underpayments.

13. If any Schedule B Employees cannot be located by 30 October 2023, SCCTas will pay the underpayment amounts owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. SCCTas will complete the required documents supplied by the FWO for this purpose.
14. In the event that the FWO is subsequently able to locate and contact any former SCCTas employees to whom Underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify SCCTas in writing of the name and contact details of the former employee. Within 28 days of receiving any such notice, SCCTas will pay the former employee interest on the amount already paid by SCCTas to the Commonwealth of Australia in respect of that employee, calculated for each financial year from the date that the employee first became entitled to that amount up until the date on which SCCTas paid the underpayment amount owing to the employee to the Commonwealth of Australia pursuant to clause 13 above, using an interest rate calculated at the pre judgment interest rate as determined by the Federal Court Of Australia.

#### **Letter of Assurance**

15. By 31 October 2023, SCCTas will provide to the FWO a Letter of Assurance signed by the Chief Executive Officer in the terms set out at Attachment A to this Undertaking.
16. The FWO will accept the Letter of Assurance, and the provision of the 'Calculation of employee overtime entitlements and related payments' report prepared by KPMG, in lieu of requiring SCCTas to be subject to an Independent Assessment of SCCTas' quantification and rectification of the Underpayments and any superannuation contributions which may be required by law.

#### **Corporate Governance**

17. SCCTas will ensure that its Board of Directors (**Board**) is appropriately notified in relation to any potential breaches of workplace laws. In particular SCCTas will:

- (a) ensure the Letter of Assurance is tabled and approved by its Board prior to provision to the FWO;
  - (b) ensure the report on the Payroll Systems and Processes review, as described in clause 43 below, is tabled and approved by its Board prior to provision to FWO and if there are any issues the review identifies that need to be remedied, that the action taken to address those issues is reported to the Board in a timely manner;
  - (c) ensure that the Audit Reports prepared from the audits described in clauses 19 to 42 are tabled before its Board;
  - (d) by 16 October 2023, ensure its Board provides documentation to the FWO which demonstrates that the Board is undertaking regular monitoring, on at least a quarterly basis, of SSCTas' workplace relations obligations being compliance with the FW Act, FW Regulations and relevant industrial instruments including the Agreements (or replacement instruments) and the Award (together, the **Industrial Instruments**); and
  - (e) in the event of any identified compliance issues arising out of the obligations in clauses (b) to (d), ensure its Board informs the FWO of actions taken to address such issues, including any further systems and processes changes being made and provides evidence of these changes.
18. The FWO may, at any time while SSCTas has obligations under this Enforceable Undertaking, request copies of documents held by the SSCTas Board in respect of their monitoring of SSCTas' workplace relations compliance, including but not limited to reports prepared for the Board and Board minutes.

#### **Independent Audits**

19. SCCTas must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits (with a possible third audit as per clause 32) of SCCTas' compliance with the FW Act, the FW Regulations including the record keeping requirement in regulation 3.34, and the Industrial Instruments that apply (**Audits**).



20. SCCTas will notify the FWO of their proposed Independent Auditor by no later than 22 September 2023. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require SCCTas 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 SCCTas.
21. SCCTas must ensure that each of the Audits conducted by the Independent Auditor includes:
  - (a) an assessment of whether the Industrial Instruments apply to a sample of employees of SCCTas, that sample being at least 10% of employees employed during the relevant audit period to whom the Industrial Instruments apply, including a range of classifications and employment types (full time, part time and casual employees) and employees from a range of sites (**Sampled Employees**);
  - (b) an assessment of whether the Sampled Employees have been correctly classified by SCCTas;
  - (c) an assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period is in compliance with the FW Act and the applicable Industrial Instruments;
  - (d) reviewing payments made to the Sampled Employees across two full consecutive pay periods;
  - (e) unless the Independent Auditor and the FWO agree otherwise, direct contact with the Sampled Employees by way of site visits to at least five different sites, to ensure accuracy of hours worked (or some other form of communication agreed to by the FWO, if site visit cannot be conducted due to public health directives and/or workplace health and safety reasons);
  - (f) an assessment of whether SCCTas' payroll and record keeping systems and processes are compliant with the FW Act and the FW Regulations in respect of employees to whom the Industrial Instruments apply and, if not, setting out any issues to be remedied;
  - (g) the production of written reports on each of the Audits setting out the

Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and

- (h) written reports, as referred to in clause (g) above, that each contain the following statements 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 SCCTas, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from SCCTas in preparing the report;
  - (iii) the report is provided in accordance with professional standards applicable to their role (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 First Audit

22. SCCTas must ensure the Independent Auditor commences the first of the Audits by 1 November 2023 (**First Audit**).
23. The relevant audit period for the First Audit must be at least two full pay periods falling within the two months preceding the commencement of the First Audit.
24. By 1 October 2023, SCCTas will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
25. SCCTas will instruct and use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO within five months of the commencement of the First Audit, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. SCCTas will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to SCCTas without the FWO's approval.
26. SCCTas will instruct and use its best endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit (**First Audit**

**Report**) directly to the FWO within one month of the FWO providing any comments on the draft report to the Independent Auditor. SCCTas will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to SCCTas without the FWO's approval.

#### The Second Audit

27. SCCTas must ensure the Independent Auditor commences the second of the Audits by 1 November 2024 (**Second Audit**).
28. The relevant audit period for the Second Audit must be at least two full pay periods falling within the two months preceding the commencement of the Second Audit.
29. By 1 October 2024, SCCTas will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
30. SCCTas will instruct and use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO within five months of the commencement of the Second Audit, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. SCCTas will instruct and ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to SCCTas without the FWO's approval.
31. SCCTas will instruct and 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 the FWO providing any comments on the draft report to the Independent Auditor. SCCTas will ensure the Independent Auditor does not provide the Second Audit Report, or a copy of the same, to SCCTas without the FWO's approval.

#### The Third Audit

32. The FWO may in its absolute discretion require SCCTas to engage the Independent Auditor to conduct an additional third audit (**Third Audit**). Where the FWO determines this is the case, the FWO will advise SCCTas in writing within two months after the Second Audit Report is provided to the FWO. Where the FWO so determines (but not otherwise), clauses 33 to 37 below apply. The Third Audit must be paid for by SCCTas.

33. SCCTas must ensure the Independent Auditor commences the Third Audit by no later than 1 November 2025.
34. The relevant audit period for the Third Audit must be at least two full pay periods falling within the two months preceding the commencement of the Third Audit.
35. By 1 October 2025, SCCTas will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Third Audit.
36. SCCTas will instruct and use its best endeavours to ensure the Independent Auditor provides a draft written report of the Third Audit directly to the FWO within five months of the commencement of the Third Audit, setting out the draft Third Audit findings, and the facts and circumstances supporting the Third Audit findings. SCCTas will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to SCCTas without the FWO's approval.
37. SCCTas will instruct and use its best endeavours to ensure the Independent Auditor finalises the Third Audit and provides a written report of the Third Audit (**Third Audit Report**) directly to the FWO within one month of the FWO providing any comments on the draft report to the Independent Auditor. SCCTas will ensure the Independent Auditor does not provide the Third Audit Report, or a copy of the same, to SCCTas without the FWO's approval.

#### **Outcome of Audits**

38. If any of the Audits identify underpayments to the Sampled Employees, SCCTas will:
  - (a) rectify any underpayments identified in the relevant audit period; and
  - (b) conduct a reconciliation of the amounts paid and owed to the Sampled Employees in the 12 month period immediately prior to the relevant audit period and rectify any underpayments that are identified.
39. SCCTas will provide to the FWO evidence of such reconciliation and/or rectification within 14 days of having rectified any identified underpayments as required under clause 38.
40. If any Sampled Employees identified in the Audits as having underpayments owing to them cannot be located within three months of the conclusion of each Audit, SCCTas

will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. SCCTas will complete the required documents supplied by the FWO for this purpose.

41. If any of the Audits identify an underpayment of minimum entitlements to one or more Sampled Employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, SCCTas will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all their employees to whom the Industrial Instruments apply (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by SCCTas. If any Additional Audit identifies underpayments, SCCTas will rectify any such underpayments within 28 days of being advised by the FWO of the requirement for reconciliation.
42. If requested by the FWO, SCCTas 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, subject to SCCTas having access to those records and documents.

#### **Payroll Systems and Processes Review**

43. By 1 March 2024, SCCTas will provide a final unredacted report to the FWO to outline all new systems and processes that it has put in place to ensure compliance with its obligations under the FW Act, the FW Regulations and the Industrial Instruments, and details of systems and processes reviewed and implemented following the First Audit, addressing in particular any contraventions or weaknesses identified in the First Audit Report.
44. The FWO may, within 28 days of receiving the information under clause 43, seek reasonable further information and evidence regarding systems and processes from SCCTas in writing, specifying the additional information and evidence required. SCCTas must provide the information and evidence specified in such a notice within 14 days of receipt.

#### **No limitation on use of information**

45. When providing the information under clauses 43 and 44, SCCTas will state in writing that it does so without qualification and without seeking to place any limitation on how

the FWO may use the information in the lawful performance of its statutory functions and powers. SCCTas will not assert, or seek to assert, any limitation on how the FWO may use or rely on the information in the lawful performance of its statutory functions and powers.

#### **Notices – Internal and External**

##### Employee Notification Letter

46. By 22 September 2023, SCCTas will send a letter to all Schedule A Employees and any Schedule B Employees that can be located by that date, notifying them of the execution of the EU (**Notification Letter**). The Notification Letter will be in the form of Attachment B to this Undertaking.
47. SCCTas will provide evidence to the FWO that the Notification Letter has been sent to all relevant employees by 6 October 2023.

##### Media Release

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

##### Workplace Notice

49. Within 28 days of the Commencement Date, SCCTas will cause to be displayed within each of its workplaces a notice in the form of Attachment C to this Undertaking (**Workplace Notice**).
50. SCCTas must ensure the Workplace Notice is:
  - (a) at least A3 size;
  - (b) clearly displayed in locations to which all employees have access (for example, by placement on staff noticeboards); and
  - (c) displayed for a period of 28 days.
51. Within seven days of first displaying the Workplace Notice, SCCTas will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of its worksites.
52. At the end of the 28 day period referred to in clause 50 above, SCCTas will provide

confirmation to the FWO that the Workplace Notice has been continuously displayed at each location for the required period.

#### **Workplace Relations Training**

53. By 1 February 2024, SCCTas will ensure that all persons within SCCTas who have responsibility for human resources, recruitment and payroll functions, or responsibility for on-site management, have completed suitable and up-to-date training on compliance with applicable workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act, the FW Regulations and the Industrial Instruments (**Training**).
54. The Training must be conducted by a workplace trainer, and such person or organisation must be approved by the FWO and paid for by SCCTas.
55. SCCTas must:
  - (a) 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; and
  - (b) provide evidence of attendance at the Training to the FWO within seven days of the Training being provided (including the name and position of all attendees and the date on which the training was attended).
56. During a period of two years starting from the Commencement Date, SCCTas must ensure that the Training is conducted in the manner prescribed in clauses 53 to 55 above in relation to any new or existing employees or contractors within SCCTas who acquire responsibilities for any of the functions referred to in clause 53 above. The Training must be undertaken, and evidence provided to the FWO, within 90 days of the relevant employee or contractor taking on responsibility for the functions.

#### **No Inconsistent Statements**

57. SCCTas must not, and must use their 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.

### Extensions on times for completion

58. SCCTas 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 on a request for an extension of time.
59. 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

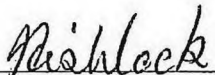
60. SCCTas acknowledges that:
- (a) the FWO may:
    - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
    - (ii) release a copy of this Undertaking (and 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 SCCTas set out in clause 8 above in respect of decisions taken regarding enforcement action against SCCTas in the event that SCCTas is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by SCCTas 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, SCCTas may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO;
- (d) if SCCTas 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 SCCTas in clause 8 above, and also in respect of the question of costs.

**Executed as an undertaking**

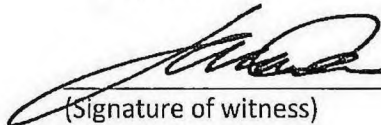
EXECUTED by Southern Cross Care (Tasmania) Inc in accordance with clause 22.4 of the Rules – Southern Cross Care (Tasmania) Inc.

  
(Signature of Board Member)

Judith Fishlock  
(Name of Board Member)

5 September 2023  
(Date)

in the presence of:

  
(Signature of witness)

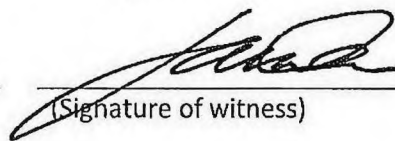
Jara Dean  
(Name of witness)

  
(Signature of Board Member/  
Public Officer)

Alayne Baker  
(Name of Board Member/ Public Officer)


5 September 2023  
(Date)

in the presence of:

  
(Signature of witness)


Jara Dean  
(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

Delegate for the FAIR WORK  
OMBUDSMAN

in the presence of:

  
(Signature of witness)

6 September 2023  
(Date)

FRANCESCO Baldo  
(Name of Witness)

**SCHEDULE A – EMPLOYEES BACK PAID ON COMMENCEMENT OF EU**

See attached.

**SCHEDULE B – EMPLOYEES YET TO BE PAID ON COMMENCEMENT OF EU**

See attached.

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## Attachment A – Letter of Assurance

Ms Anna Booth  
The Fair Work Ombudsman  
Fair Work Ombudsman  
GPO Box 9987  
Sydney NSW 2001

Dear Ms Booth

I am writing on behalf of Southern Cross Care (Tas.) Inc (SCCTas). SCCTas self-reported that it had identified instances of underpayments in respect of overtime and meal break contraventions, as well as record keeping failures. These instances resulted in:

- non-compliance with section 45 *Fair Work Act 2009 (FW Act)* through non-compliance with the *Social, Community, Home Care and Disability Services Industry Award 2010 (the Award)*;
- non-compliance with section 50 of the FW Act through non-compliance with the *Southern Cross Care (Tas) Inc and Mary's Grange Inc Staff Enterprise Agreement 2017*, the *Southern Cross Care (Tas) Inc. Staff Enterprise Agreement 2014*, the *HACSU Mary's Grange Inc. Non-Nursing Staff Agreement 2014* and the *Mary's Grange Inc. Nurses Agreement 2013 (the Agreements)*;
- non-compliance with section 535 of the FW Act by the failure to make and keep employee records as required by regulation 3.34 of the *Fair Work Regulations 2009 (FW Regulations)*; and
- underpayments of over \$6.8 million in wages, including superannuation and interest, to current and former employees of SCCTas.

I write to provide the Fair Work Ombudsman with my assurance that I am satisfied that:

- a. the process by which SCCTas calculated the underpayments of wages and superannuation to its current and former employees was correctly undertaken;
- b. SCCTas has implemented all necessary measures to ensure that it is creating and maintaining employee records as required by the FW Act;
- c. SCCTas is compliant with the FW Act as it relates to the Award and the Agreements; and
- d. as of [date] all former and current employees impacted by the underpayments, apart from those who have not been able to be located by SCCTas, have been paid their entitlements (plus interest and superannuation) under the Enterprise Agreements.

SCCTas has remediated all issues as a matter of priority and is committed to minimising the risk of future non-compliance with the FW Act and FW Regulations.

Sincerely,

[insert signature block]

CEO

## Attachment B – Employee Notification Letter

### FORM OF NOTIFICATION LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to notify you that Southern Cross Care (Tasmania) Inc (SCCTas) has recently entered into an Enforceable Undertaking with the Fair Work Ombudsman (FWO).

As previously advised, a review of Southern Cross Care (Tasmania) Inc's (SCCTas) employment terms found that some employees were being underpaid overtime and other entitlements.

SCCTas notified the Fair Work Ombudsman (FWO) that it did not comply with its obligations under Commonwealth workplace relations laws and that it contravened the *Fair Work Act 2009* (Cth) by failing to fully comply with:

- *Southern Cross Care (Tas) Inc and Mary's Grange Inc Staff Enterprise Agreement 2017;*
- *Southern Cross Care (Tas) Inc. Staff Enterprise Agreement 2014;*
- *HACSU Mary's Grange Inc. Non-Nursing Staff Agreement 2014;*
- *Mary's Grange Inc. Nurses Agreement 2013; and*
- *Social, Community, Home Care and Disability Services Industry Award 2010.*

As part of its Enforceable Undertaking with the FWO, SCCTas has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws. A copy will be available at [www.fairwork.gov.au](http://www.fairwork.gov.au).

Should you have any questions about this please contact <insert details>.

Alternatively, employees can contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.

Yours sincerely

<Employer name>

## Attachment C – Form of Workplace Notice

Southern Cross Care (Tasmania) Inc (SCCTas) has recently entered into an Enforceable Undertaking with the Fair Work Ombudsman (FWO).

As previously advised, Southern Cross Care (Tas.) Inc (SCCTas) undertook a review of its employment conditions and determined that it contravened the *Fair Work Act 2009* (Cth) by failing to fully comply with the following workplace instruments in relation to overtime other provisions:

- *Southern Cross Care (Tas) Inc and Mary's Grange Inc Staff Enterprise Agreement 2017;*
- *Southern Cross Care (Tas) Inc. Staff Enterprise Agreement 2014;*
- *HACSU Mary's Grange Inc. Non-Nursing Staff Agreement 2014;*
- *Mary's Grange Inc. Nurses Agreement 2013; and*
- *Social, Community, Home Care and Disability Services Industry Award 2010.*

This resulted in underpayments to some employees of over \$6.8 million in wages, including superannuation and interest.

SCCTas also failed to make and keep all employee records as required by regulation 3.34 of the *Fair Work Regulations 2009* which resulted in non-compliance with section 535 of the *Fair Work Act 2009* (Cth).

In August 2021, SCCTas notified the FWO about these contraventions and consequently that some current and former employees had been underpaid. SCCTas has rectified underpayments to current employees with interest and superannuation and is rectifying underpayments to former employees that it can locate.

As part of its Enforceable Undertaking with the FWO, SCCTas has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

If you worked for SCCTas during the period November 2015 and June 2022 and have queries or questions relating to your employment, please contact <insert details>.

Alternatively, contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.