



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by:

- St Vincent's Private Hospitals Ltd (ABN 61 083 645 505);
- St Vincent's Hospital Sydney Limited (ABN 77 054 038 872);
- St Vincent's Care Services Ltd (ABN 50 055 210 378); and
- St Vincent's Private Hospital Sydney (ABN 99 269 630 262)

and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clauses 16–19 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:
 - (a) St Vincent's Private Hospitals Ltd (ABN 61 083 645 505) (ACN 083 645 505) of Level 22, 100 William Street, Woolloomooloo NSW 2011 (SVPH);
 - (b) St Vincent's Hospital Sydney Limited (ABN 77 054 038 872) (ACN 054 038 872) of Level 22, 100 William Street, Woolloomooloo NSW 2011 (SVHS);
 - (c) St Vincent's Care Services Ltd (ABN 50 055 210 378) (ACN 055 210 378) of Level 22, 100 William Street, Woolloomooloo NSW 2011 (SVCS); and
 - (d) St Vincent's Private Hospital Sydney as conducted by the Congregation of Religious Sisters of Charity of Australia (ABN 99 269 630 262) (SVPHS) of 406 Victoria Street, Darlinghurst NSW 2010

(collectively, the Companies).

COMMENCEMENT

2. This Undertaking comes into effect when:
 - (a) the Undertaking is executed by the Companies; and
 - (b) the FWO provides written confirmation of its acceptance of the Undertaking so executed (Commencement Date)

and continues in operation until all obligations of the Companies have been completed.

BACKGROUND

3. The Companies are employing entities either owned or managed by St Vincent's Health Australia Ltd (ABN 75 073 503 536) (SVHA). SVHA employs the Group Executive that provides leadership and senior executive roles across SVHA's various operating business units. There are shared group services within SVHA for payroll, HRIS support and financial accounting for group entities including the Companies. At the relevant time, SVHA had within it three relevant Divisional Business Units, a Private Hospital Division, a Public Hospital Division and Care Services Division. SVPH and SVPHS were the employing entities for employees working within the Private Hospital Division, SVCS was the employing entity for employees working within the Care Services Division and SVHS was the employing entity for the affected employees working within

the Public Hospital Division.

4. SVPH, SVHS and SVCS are wholly owned subsidiaries of SVHA. SVPHS is an unincorporated association. SVPHS is conducted by the Congregation of Religious Sisters of Charity of Australia via a management agreement with SVHA.
5. SVHA is an Australian Catholic not-for-profit health service and aged care provider. It operates public and private hospitals and aged care facilities across New South Wales, Victoria and Queensland. As at the date of its 2022 Annual Report, SVHA employs (through its subsidiaries and related entities) approximately 22,500 staff.
6. On 5 July 2021, SVHA notified the FWO that the Companies had mis-applied service allowance, leave loading and annual leave entitlements contained in current and former enterprise agreements across its Private Hospital and Care Services Divisions, and that approximately 2,400 employees had not received pay or annual leave entitlements totalling approximately \$3.3 million, excluding superannuation and interest. In particular:
 - (a) SVHA had identified two issues within its Private Hospital Division resulting from the mis-application by SVPH and SVPHS of eligibility requirements for service allowance entitlement under the *St Vincent's Heath Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2018 (SVHA Support Services Agreement)* and leave loading calculation for shift workers in its NSW Private Hospitals under the *SVHA Support Services Agreement*, *St Vincent's Private Hospital Nurses' Enterprise Agreement 2019 (SVPH Nurses Agreement)*, and *Mater North Sydney and St Vincent's Private Community Hospital Griffith Nurses' and Midwives' Enterprise Agreement 2019 (Mater Nurses and Midwives Agreement)*, in the period from 1 January 2014 to 2020. SVHA identified that these misapplications resulted in:
 - (i) non-payment of service allowances for employees within the Private Hospital Division, totalling approximately \$462,000 owed to 793 current and former employees; and
 - (ii) non-payment of additional annual leave loading for additional periods of annual leave paid to shift workers with the Private Hospital Division in NSW, totalling approximately \$2,461,000 owed to 1,455 current and former employees.
 - (b) during implementation of a new enterprise agreement (commencing 5 May 2020) covering Care Services Division employees of SVCS in Queensland, SVHA identified that that SVCS had been mis-applying the eligibility criteria for additional annual leave under

the previous *St Vincent's Care Services Queensland Enterprise Agreement 2014 (SVHA Queensland Care Services Agreement)*. This had resulted in non-crediting of additional periods of annual leave for shift workers within the Care Services Division in Queensland for the period 1 January 2014 to 31 December 2019, resulting in approximately \$379,000 being owed to 275 former employees.

7. On 5 July 2021, SVHA also informed the FWO that:
 - (a) a dedicated 1800 number had been set up for Private Hospital employees to call with any questions, as well as a dedicated email inbox; and
 - (b) SVHA was communicating with representatives from all relevant unions.
8. On 13 September 2021, SVHA informed the FWO that:
 - (a) it had first become aware of issues in 2020, and rectification commenced in 2021;
 - (b) it was in the process of conducting reviews of its payroll processes with the assistance of PricewaterhouseCoopers (PwC), who were also assisting with interpretation and application of enterprise agreement terms, with some sampling of payroll processes; and
 - (c) the misapplication of entitlements reported on 5 July 2021 extended to a number of predecessor agreements to the SVHA Support Services Agreement, SVPH Nurses Agreement, and Mater Nurses and Midwives Agreement, covering the period of 2014 to 2020.
9. On 27 June 2022, SVHA notified the FWO that a review carried out by PwC had identified misapplication of provisions relating to casual overtime provisions that affected public and private hospital nurses under the *Named NSW (Non-Declared) Affiliated Health Organisations' Nurses Agreement 2017 (NSW Public Hospital Nurses Agreement)* and the SVPH Nurses Agreement, respectively. This had resulted in non-payment of casual overtime entitlements totalling approximately \$830,000 owed to 484 employees.
10. Prior to the execution of this Undertaking, SVHA notified the FWO that it had rectified the underpayments referred to in clauses 6 and 9 by remediating a total of \$4,369,687.75 to current and former employees, subject to clause 14 below.
11. Prior to the execution of this Undertaking, SVHA through its employing entities SVPH and SVPHS had, subject to clause 14 below:
 - (a) rectified the underpayments referred to in clauses 6(a) and 9 relating to the SVPH Nurses Agreement, by:

- (i) SVPH paying each of the employees referred to in column A of Schedule A to this undertaking (**Schedule A Employees**) the amounts referred to in column B of Schedule A; and
 - (ii) SVPHS paying each of the employees referred to in column A of Schedule B to this undertaking (**Schedule B Employees**) the amounts referred to in column B of Schedule B;
 - (b) processed any associated superannuation payments required by law to be paid in respect of each of the Schedule A and B Employees, by paying the required superannuation contributions, as set out in column C of Schedules A and B, to the chosen superannuation fund of the employee; and
 - (c) paid interest to each of the Schedule A and B Employees on the amount referred to in column B of Schedules A and B, in the sum referred to in column D of Schedule A and B, calculated using an interest rate of 4.1%.
12. Prior to the execution of this Undertaking, SVHA also notified the FWO that SVCS had, subject to clause 14 below:
- (a) rectified the errors referred to in clause 6(b) for each employee listed in column A of Schedule C to this undertaking (**Schedule C Employees**) by either:
 - (i) for current employees — crediting to the employees the amount of annual leave referred to in column B of Schedule C; or
 - (ii) for former employees — paying to the employees the amount referred to in column C of Schedule C;
 - (b) processed any associated superannuation payments required by law to be paid in respect of each of the Schedule C Employees, by paying any such required superannuation contributions, as set out in column D of Schedule C, to the chosen superannuation fund of the employee; and
 - (c) paid interest to each of the Schedule C Employees on the amount referred to in column C of Schedule C, in the sum referred to in column E of Schedule C, calculated using an interest rate of 4.1%.
13. SVHA notified the FWO that SVHS had rectified the underpayments referred to in clause 9 relating to the NSW Public Hospital Nurses Agreement by paying each of the employees listed in Column A of Schedule D to this undertaking (**Schedule D Employees**), the amounts referred to in column B of Schedule D.

14. At the Commencement Date:
- (a) SVPH is yet to pay to each of the Schedule A Employees marked with a "Yes" in Column E of Schedule A:
 - (i) the amount referred to in column B of Schedule A (SVPH Outstanding Underpayments);
 - (ii) the amount referred to in column C of Schedule A (SVPH Outstanding Superannuation); and
 - (iii) the amounts referred to in column D of Schedule A (SVPH Outstanding Interest);
 - (b) SVPHS is yet to pay to each of the Schedule B Employees marked with a "Yes" in Column E of Schedule B:
 - (i) the amount referred to in column B of Schedule B (SVPHS Outstanding Underpayments);
 - (ii) the amount referred to in column C of Schedule B (SVPHS Outstanding Superannuation); and
 - (iii) the amounts referred to in column D of Schedule B (SVPHS Outstanding Interest);
 - (c) SVCS is yet to pay to each of the Schedule C Employees marked with a "Yes" in Column F of Schedule C:
 - (i) the amount referred to in column C of Schedule C (SVCS Outstanding Underpayments);
 - (ii) the amount referred to in column D of Schedule C (SVCS Outstanding Superannuation); and
 - (iii) the amounts referred to in column E of Schedule C (SVCS Outstanding Interest).
15. In this Undertaking:
- (a) the SVPH Outstanding Underpayments, SVPHS Outstanding Underpayments and SVCS Outstanding Underpayments are, collectively, the **Outstanding Underpayments**;
 - (b) the SVPH Outstanding Superannuation, SVPHS Outstanding Superannuation and SVCS Outstanding Superannuation are, collectively, the **Outstanding Superannuation**; and
 - (c) the SVPH Outstanding Interest, SVPHS Outstanding Interest and SVCS Outstanding Interest are, collectively, the **Outstanding Interest**.

ADMISSIONS

St Vincent's Private Hospitals Ltd

16. The FWO has a reasonable belief, and SVPH admits, that SVPH contravened:

- (a) section 50 of the FW Act in the periods specified below by failing to pay each of the Schedule A Employees the amount or amounts to which that employee was entitled under the following clauses of the following instruments (the SVPH instruments):

Entitlements to service allowance – from 1 January 2014 to 6 April 2020 for Schedule A Employees employed at the St Vincent's Private Hospital site in Sydney and 1 January 2014 to 14 April 2020 for Schedule A Employees employed at The Mater and Griffiths sites.

- (i) Clause 17.3 of the *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2018*;
- (ii) Clause 19.3 of the *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2016*; and
- (iii) Clause 22.3 of the *Mater Hospital Sydney Support Staff Enterprise Agreement 2012*
Entitlements to leave loading – from 1 January 2014 to 1 March 2020 for Schedule A Employees employed at the St Vincent's Private Hospital site in Sydney and 1 January 2014 to 8 March 2020 for Schedule A Employees employed at The Mater and Griffiths sites.
- (iv) Clause 20.2 of the *St Vincent's Health Australia (NSW Private Hospitals) Support Service Enterprise Agreement 2018*;
- (v) Clause 22.2 of the *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2016*;
- (vi) Clause 25.2 of the *Mater Hospital Sydney Support Staff Enterprise Agreement 2012*;
- (vii) Clauses 11.3 and 29 of the *Mater North Sydney and St Vincent's Private Community Hospital Griffith Nurses' and Midwives' Enterprise Agreement 2019*;
- (viii) Clauses 11.3 and 29 of the *Mater North Sydney and St Vincent's Private Community Hospital Griffith Nurses' and Midwives' Enterprise Agreement 2017*; and
- (ix) Clauses 12.3 and 30 of the *Mater Hospital North Sydney Nurses' and Midwives'*

Enterprise Agreement 2014.

St Vincent's Private Hospital Sydney

17. The FWO has a reasonable belief, and SVPHS admits, that SVPHS contravened:

- (a) section 50 of the FW Act in the periods specified below by failing to pay each of the Schedule B Employees the amount or amounts to which that employee was entitled under the following clauses of the following instruments:

Entitlements to service allowance – from 1 January 2014 to 6 April 2020 for Schedule A Employees employed at the St Vincent's Private Hospital site in Sydney and 1 January 2014 to 14 April 2020 for Schedule A Employees employed at The Mater and Griffiths sites.

- (i) Clause 17.3 of the *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2018*;
- (ii) Clause 19.3 of the *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2016* and
- (iii) Clause 21.3 of the *St Vincent's Private Hospital Sydney Enterprise Agreement 2012*

Entitlements to leave loading – from 1 January 2014 to 1 March 2020 for Schedule A Employees employed at the St Vincent's Private Hospital site in Sydney and 1 January 2014 to 8 March 2020 for Schedule A Employees employed at The Mater and Griffiths sites.

- (iv) Clauses 12.1(iii), 30 and 31 of the *St Vincent's Private Hospital Nurses' Enterprise Agreement 2019*;
- (v) Clauses 12.1(iii) and 31 of the *St Vincent's Private Hospital Nurses' Enterprise Agreement 2017*;
- (vi) Clauses 14.1(iii) and 33 of the *St Vincent's Private Hospital Nurses' Enterprise Agreement 2014*;
- (vii) Clause 20.2 of the *St Vincent's Health Australia (NSW Private Hospitals) Support Service Enterprise Agreement 2018*;
- (viii) Clause 22.2 of the *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2016*;
- (ix) Clause 24.3 of the *St Vincent's Private Hospital Sydney Enterprise Agreement 2012*;

and

- (b) section 50 of the FW Act in the period from 2 September 2019 to 26 June 2022 by failing to pay each of the relevant Schedule D Employees the amount or amounts to which that employee was entitled under clause 29 of the SVPH Nurses Agreement

together these instruments are the SVPHS instruments.

St Vincent's Care Services Ltd

- 18. The FWO has a reasonable belief, and SVCS admits, that SVCS contravened section 50 of the FW Act in the period from 1 January 2014 to 31 December 2019 by failing to provide to each of the Schedule C Employees the entitlements (either by way of annual leave accrual or payment of unused annual leave on cessation of employment) to which that employee was entitled under clause 41.1 to 41.4 of the SVHA Queensland Care Services Agreement.

St Vincent's Hospital Sydney Limited

- 19. The FWO has a reasonable belief, and SVHS admits, that SVHS contravened section 50 of the FW Act in the period from 21 May 2018 to 3 July 2022 by failing to pay each of the Schedule D Employees the amount or amounts to which that employee was entitled under clause 25 of the NSW Public Hospital Nurses Agreement.

Limitations

- 20. The contraventions identified in clauses 16–0 of this Undertaking do not include:
 - (a) any contraventions which relate to or arise as a consequence of the Companies failing to correctly apply any of the SVPH instruments, SVPHS instruments, SVHA Queensland Care Services Agreement or the NSW Public Hospital Nurses Agreement to any employee not listed in Schedules A to D to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of the Companies failing to correctly apply any of the abovementioned instruments, and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or
 - (b) any contraventions which relate to or arise as a consequence of the Companies failing to correctly apply any provisions of the abovementioned instruments to any of the Schedule A Employees, Schedule B Employees, Schedule C Employees or Schedule D Employees, other than as identified in clauses 16 to 19 of this Undertaking. For the avoidance of doubt this Undertaking is not given in respect of any of the Schedule A Employees, Schedule B

Employees, Schedule C Employees or Schedule D Employees who were underpaid as a result of the Companies failing to correctly apply any of the abovementioned instruments, other than as identified in clauses 16 to 19 of this Undertaking, and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment.

- (c) any contraventions which have not yet occurred at the date that this Undertaking is offered by the Companies (whether or not those contraventions are identified in the Independent Review described at clause 27 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by the Companies, and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

UNDERTAKINGS

- 21. The Companies will take the actions set out at clauses 23 to 48 below.
- 22. Where a clause refers to the Companies, each of the Companies separately undertake to comply with that clause. A single Company, or SVHA, may complete an undertaking on behalf of the Companies where they have the express or implied authority of the other Companies to do so. However, each Company remains responsible for each undertaking it provides.

Review and rectification of underpayments

- 23. Subject to clause 24 below, within 180 days of the Commencement Date:
 - (a) SVPH will:
 - (i) pay the Outstanding SVPH Underpayments and Outstanding SVPH Interest to the relevant Schedule A Employees; and
 - (ii) pay the Outstanding SVPH Superannuation to the chosen superannuation fund of the relevant Schedule A Employees;
 - (b) SVPHS will:
 - (i) pay the Outstanding SVPHS Underpayments and Outstanding SVPHS Interest to the relevant Schedule B Employees; and
 - (ii) pay the Outstanding SVPHS Superannuation to the chosen superannuation fund of the relevant Schedule B Employees;
 - (c) SVCS will:

- (i) pay the Outstanding SVCS Underpayments and Outstanding SVCS Interest to the relevant Schedule C Employees; and
 - (ii) pay the Outstanding SVCS Superannuation to the chosen superannuation fund of the relevant Schedule C Employees; and
 - (b) the Companies will provide to the FWO evidence that payments set out in Schedules A to D to this Undertaking, and required by clauses 23(a)-(c) above have been made.
24. If any of the former employees to whom Outstanding Underpayments are owed cannot be located within 240 days of the Commencement Date, the Companies will pay the Outstanding Underpayments (gross) owing to those employees to the Commonwealth of Australia (through the FWO) in accordance with s559 of the FW Act. The Companies will complete the required documents supplied by the FWO for this purpose.
25. In the event that the FWO is able to locate and contact any former employees of any of the Companies to whom Outstanding Underpayments (gross) are owed, the FWO will (in addition to its obligations under s559 of the FW Act) notify the relevant Company in writing of the name and contact details of the former employee. Within 28 days of receiving any such notice the relevant Company will:
- (a) pay to the former employee the relevant Outstanding Interest; and
 - (b) pay to the former employee's nominated superannuation fund the relevant Outstanding Superannuation where applicable.

Letter of Confirmation

26. Within 180 days of the Commencement Date, the Companies will provide the FWO with a signed letter of confirmation from St Vincent's Health Australia Ltd Group Chief Financial Officer. The terms of this letter are set out at **Attachment A**.

Independent Review

27. The Companies must, at their cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Reviewer**) to conduct one audit of the Companies' compliance with the FW Act and FW Regulations, in relation to the currently applicable SVPH instruments, SVPHS instruments, SVHA Queensland Care Services Agreement and the NSW Public Hospital Nurses Agreement, and any future agreements that replace the currently applicable SVPH instruments, SVPHS instruments, SVHA Queensland Care Services Agreement or the NSW Public Hospital Nurses Agreement

(Review).

28. The Companies will notify the FWO of their proposed Independent Reviewer within 45 days of the Commencement Date. The FWO may in its sole discretion approve the Independent Reviewer in writing or otherwise require the Companies to propose other Independent Reviewers until the FWO has approved in writing an Independent Reviewer. The Independent Reviewer must be approved by the FWO in writing prior to being engaged by the Companies.
29. The Companies must ensure that the Review conducted by the Independent Reviewer includes:
 - (a) an assessment of 200 current employees to whom the currently applicable SVPH instruments, SVPHS instruments and SVHA Queensland Care Services Agreement and NSW Public Hospital Nurses Agreements apply, across a range of classifications, locations and employment types (full time, part time and casual employment), during the relevant audit period (Sampled Employees) in respect of their employment by the Companies;
 - (b) an assessment of whether the Sampled Employees have been correctly classified by the Companies;
 - (c) an assessment of whether the pay and conditions (including leave) of the Sampled Employees during the relevant audit period is in compliance with the FW Act and the currently applicable SVPH instruments, SVPHS instruments, SVHA Queensland Care Services Agreement and the NSW Public Hospital Nurses Agreement (or replacement instruments);
 - (d) direct contact with 10% of the Sampled Employees by way of site visits to at least five totally different sites across all the Companies, to ensure accuracy of hours worked;
 - (e) the production of a written report on the Review setting out the Independent Reviewer's findings, and the facts and circumstances surrounding them, to the FWO; and
 - (f) that the written report referred to in (e) above contains the following declarations from the Independent Reviewer:
 - (i) the Independent Reviewer has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - (ii) notwithstanding that the Independent Reviewer is retained by the Companies, the Independent Reviewer undertakes that it has acted independently, impartially, objectively and without influence from the Companies in preparing the report;
 - (iii) the report is provided in accordance with applicable professional standards (which

will be listed in the report); and

- (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

The Review

- 30. The Companies must ensure the Independent Reviewer commences the Review by 30 June 2024.
- 31. The relevant review period must be at least two full consecutive pay periods falling within the period 6 months prior to the commencement of the Review.
- 32. By 31 May 2024, the Companies will provide for the FWO's approval, details of the methodology to be used by the Independent Reviewer to conduct the Review.
- 33. The Companies will use their best endeavours to ensure the Independent Reviewer provides a draft written report of the Review directly to the FWO by 31 October 2024, setting out the draft Audit findings, and the facts and circumstances supporting the Review findings. The Companies will ensure the Independent Reviewer does not provide the draft written report, or a copy of the same, to the Companies or to SVHA without the FWO's approval.
- 34. The Companies will use their best endeavours to ensure the Independent Reviewer finalises the Review and provides a written report of the Audit (**Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Reviewer. The Companies will ensure the Independent Reviewer does not provide the Audit Review, or a copy of the same, to the Companies or to SVHA without the FWO's approval.

Outcome of Review

- 35. If the Review identifies underpayments to any current or former employees, the Companies will:
 - (a) rectify any underpayments due to their respective employees as identified in the audit period; and
 - (b) conduct a reconciliation of the amounts paid and owed to those employees in the 12 month period immediately prior to the relevant audit period, and rectify any underpayments that are identified.
- 36. The Companies will provide to the FWO evidence of such rectification within 28 days of being informed by the FWO of the requirement to undertake the reconciliation.
- 37. If any employees identified in the Review as having underpayments owing to them cannot be

located within 90 days of the conclusion of the Review, the Companies will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. The Companies will complete the required documents supplied by the FWO for this purpose.

38. If the Review identifies an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Review are also likely to have been underpaid, the Companies 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 any of the applicable instruments (or replacement instruments) apply (or a particular cohort of employees within this group), as determined by the FWO (Additional Review). Any Additional Review must be paid for by the Companies.
39. If requested by the FWO, the Companies will provide the FWO with all records and documents used to conduct any or all of the Reviews (including any Additional Review), within 28 days of such a request.

Employee Hotline

40. The Companies will continue to engage KPMG to operate a dedicated telephone number and email address on behalf of the Companies, broadening its original remit to include all Schedule A, B, C and D Employees to whom the applicable instruments apply, or had applied, to make enquiries in relation to their entitlements, underpayments or related employment concerns, as they relate to the admissions outlined in clauses 16 to 19 regarding Service Allowance, leave loading, casual overtime or accruals of additional annual leave (Employee Hotline). Employees will have the option of making enquiries on a confidential basis.
41. The Companies will:
 - (a) ensure the Employee Hotline remains operational for a period of 3 months from the Commencement Date;
 - (b) ensure that the telephone number and email address are included in the notification letter (see clauses 43–44) and the public notice (see clauses 45-47);
 - (c) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
 - (d) provide a de-identified list of enquiries received by the Employee Hotline from any Schedule A, B, C and D Employees to the FWO within 30 days of the 3-month period for clause 41(a) above expiring.

Notices – Internal and External

Media Release

42. Upon providing written confirmation of its acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking.

Notification Letter to Employees

43. Within 45 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, the Companies will send a letter of notification (**Notification Letter**) to all Schedule A, B, C and D Employees. The Notification Letter will be in the form of **Attachment B** to this Undertaking.
44. The Companies will provide evidence to the FWO that the Notification Letter has been sent to Schedule Employees within 60 days of the FWO publishing a media release on its website.

Public Notice

45. Within 45 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, the Companies will publish on the SVHA website homepage, a hyperlinked Public Notice under the 'News Highlights' banner, that links to the complete statement as set out in **Attachment C** to this Undertaking (**Public Notice**).
46. The Public Notice must (subject to confirmation of technical website limitations):
 - (a) be displayed in at least size 10 font; and
 - (b) remain live on the SVHA website homepage for a period of 28 days.
47. The Companies will inform the FWO when the Public Notice will be published and provide a copy to the FWO within seven days of its publication.

No Inconsistent Statements

48. The Companies must use their best endeavours to ensure that their officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

Extension on times for completion

49. Each of the Companies may request from the FWO an extension of time specified for completion of an obligation under this Undertaking where each of the Companies has a substantial or compelling reason for doing so. The FWO may agree to a request for an extension of time at its discretion, acting reasonably.

50. Where a time specified for undertaking an obligation under this Undertaking is contingent or follows on 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

51. The Companies each acknowledge that:

- (a) the FWO may:
 - (i) make this Undertaking (and any Attachments hereto) available for public inspection, including by posting 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 Companies set out in clauses 16-19 above in respect of decisions taken regarding enforcement action in the event that any or all of the Companies is or are found to have failed to comply with their workplace relations obligations in the future, including but not limited to any failure by the Companies 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, the Companies may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if any of the Companies contravene 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 admissions made by the Companies in clauses 16-19 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by St Vincent's Private Hospitals Ltd by its attorney (who has no notice of revocation of the power of attorney):



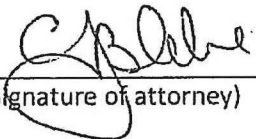
(Signature of witness)

Rebecca Roberts

(Name of witness)

19/12/23

(Date)



(Signature of attorney)

CHRISTOPHER JOHN DAKE

(Name of attorney)

19/12/23

(Date)

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)

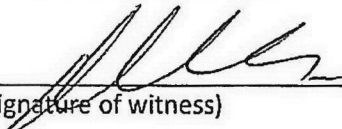
19 December 2023

(Date)

Michelle Connors

(Name of Witness)

And EXECUTED by St Vincent's Hospital Sydney Limited by its attorney (who has no notice of revocation of the power of attorney):



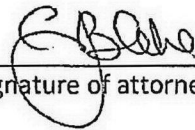
(Signature of witness)

Rebecca Roberts

(Name of witness)

19/12/23

(Date)



(Signature of attorney)

CHRISTOPHER JOHN BAKER

(Name of attorney)

19/12/23

(Date)

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

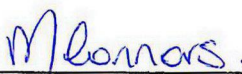


Mark Scully

Deputy Fair Work Ombudsman
Compliance and Enforcement

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:



(Signature of witness)


19 December 2023

(Date)

Michelle Connors

(Name of Witness)

And EXECUTED by St Vincent's Private Hospital Sydney by its attorney (who has no notice of revocation of the power of attorney):



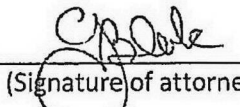
(Signature of witness)

Rebecca Roberts

(Name of witness)

19/12/23

(Date)



(Signature of attorney)

CHRISTOPHER JOHN BLAKE

(Name of attorney)

19/12/23

(Date)

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)

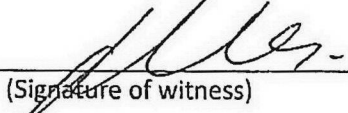
19 December 2023

(Date)

Michelle Connors

(Name of Witness)

And EXECUTED by St Vincent's Care Services Ltd by its attorney (who has no notice of revocation of the power of attorney):



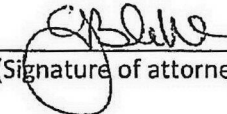
(Signature of witness)

Rebecca Roberts

(Name of witness)

19/12/23

(Date)



(Signature of attorney)

CHRISTOPHER JOHN BLAKE

(Name of attorney)

19/12/23.

(Date)

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)

19 December 2023

(Date)

Michelle Connors

(Name of Witness)

SCHEDULE A – St Vincent’s Private Hospitals Ltd

Refer to Schedule A in attached Schedules

SCHEDULE B – St Vincent’s Private Hospital Sydney

Refer to Schedule B in attached Schedules

SCHEDULE C – St Vincent’s Care Services Ltd

Refer to Schedule C in attached Schedules

SCHEDULE D – St Vincent’s Hospital Sydney Limited

Refer to Schedule C in attached Schedules

Attachment A – Letter of Confirmation

Anna Booth
The Fair Work Ombudsman
Fair Work Ombudsman
GPO Box 9887
SYDNEY NSW 2001

Dear Ms Booth

I am writing on behalf of St Vincent's Health Australia Ltd (SVHA) in my capacity as the Group Chief Financial Officer. This letter follows a process where SVHA, on behalf of a number of controlled employing entities (**Group**) made a voluntary disclosure to the Fair Work Ombudsman (FWO) that:

1. between [dates] St Vincent's Private Hospitals Ltd mis-applied:
 - 1.1. service allowance provisions of the *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2018* and its predecessor agreements, resulting in non-payment of service allowances to some of its employees in NSW; and
 - 1.2. leave loading provisions of the *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2018* and *Mater North Sydney and St Vincent's Private Community Hospital Griffith Nurses' and Midwives' Enterprise Agreement 2019* and their predecessor agreements, resulting in non-payment of annual leave loading to some of its employees.
2. Between [dates] St Vincent's Hospital Sydney had mis-applied casual overtime allowance provisions of the *Named NSW (Non-Declared) Affiliated Health Organisations' Nurses Agreement 2017* resulting in non-payment of casual overtime entitlements to some of its nursing employees.
3. Between [dates] St Vincent's Private Hospital Sydney had mis-applied:
 - 3.1. service allowance provisions of *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2018* and *St Vincent's Private Hospital Sydney Enterprise Agreement 2012*, resulting in non-payment of service allowances to some of its support services employees at St Vincent's Private Hospital Sydney
 - 3.2. leave loading provisions of the *St Vincent's Private Hospital Nurses' Enterprise Agreement 2019* and *St Vincent's Health Australia (NSW Private Hospitals) Support Services Enterprise Agreement 2018* and their predecessor agreements and *St Vincent's Private Hospital Sydney Enterprise Agreement 2012*, resulting in non-payment of annual leave loading to some of its employees at St Vincent's Private Hospital Sydney; and
 - 3.3. casual overtime entitlement provisions of *St Vincent's Private Hospital Nurses Enterprise Agreement 2019* resulting in non-payment of casual overtime entitlements to some of its nursing employees working at St Vincent's Private Hospital Sydney.
4. Between [dates] St Vincent's Care Services Ltd had mis-applied shift work and annual leave provisions relating to leave accruals, of *St Vincent's Care Services Queensland*

Enterprise Agreement 2014 resulting in incorrect accruals or non-payment of accrued annual leave to some of its Queensland care services employees.

A number of the abovementioned errors were identified as the result of changes to enterprise agreement terms and associated payroll system changes, following which SVHA conducted a broader review of payroll compliance with the assistance of PricewaterhouseCoopers. SVHA determined the remaining identified underpayments as a result of that review. Following discovery of these matters, SVHA voluntarily disclosed them to the FWO and took steps to pay employees their outstanding entitlements.

I write to confirm to the FWO that, to the best of my knowledge and belief:

- a. the process by which SVHA calculated the underpayments or annual leave credits owing to their current and former employees accurately reflected the relevant Group employer's obligation under the relevant industrial instrument; and
- b. as at the rectification dates, the relevant Group employers were compliant with the pay related terms of the above instruments, and the *Fair Work Act 2009* as it relates to compliance with the pay related terms of the above instruments; and
- c. as of [date], all former and current employees impacted by the underpayments or miscalculation of annual leave entitlements, apart from those who have not been able to be located by St Vincent's Health Australia, have now been paid:
 - (i) amounts owing as a result of the misapplication of terms as described above; and
 - (ii) to the extent assessed as payable, interest on the amounts owing in connection with the above-mentioned breaches;

and minimum superannuation contributions where required to be made under an applicable industrial instrument, or otherwise to avoid a superannuation guarantee charge for the purposes of the *Superannuation Guarantee Administration Act 1992* (Cth) have otherwise been made for the benefit of affected employees in respect of amounts referred to above.

St Vincent's Health Australia has remediated these issues as a matter of priority and is committed to minimising the risk of future non-compliance.

Sincerely

<Group CFO name>

Attachment B – Notification Letter to Schedule Employees

Dear <insert name >

We have previously communicated with you about St Vincent's Health Australia's error in correctly applying certain clauses of a number of enterprise agreements resulting in underpayments for some employees.

In those communications, we apologised for the error and the steps we were taking to rectify the issue. For example, the payments or leave credits that would be processed to you.

Specifically, these errors related to:

- For some employees within our private hospitals: the misapplication of Service Allowance and Leave Loading entitlements;
- For some casual nurses within our public and private hospitals: the non-payment of overtime; and
- For some aged care shift workers: not properly crediting additional annual leave entitlements.

St Vincent's Health Australia has acknowledged to the Fair Work Ombudsman (FWO) that St Vincent's Private Hospitals Ltd, St Vincent's Hospital Sydney Limited, St Vincent's Private Hospital Sydney and St Vincent's Care Services Ltd contravened the *Fair Work Act 2009* (Cth) by failing to correctly apply these clauses. While we set up a staff enquiry line to address any concerns from you at the time, we understand you may have additional questions relating to this matter. To address these, our whistleblower hotline is being made available for all impacted employees to access. The hotline is operated by KPMG, an independent party that can assist you with your enquiries. KPMG can be contacted on <insert contact number> or at <insert email address> and, if required, on a confidential basis.

Should you wish to discuss your concerns directly with St Vincent's Health Australia you can contact our enquiry line on <insert telephone number/ email address>. We will make every attempt to resolve your enquiry within 30 days and commit to maintaining open communication with you about the progress of your enquiry.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.

Once again, St Vincent's Health Australia expresses its sincere regret for its error in complying with its lawful obligations.

Yours sincerely

<Employer name>

Attachment C – Form of Public Notice

St Vincent's Health Australia undertook a review of its payroll systems and processes in [month/year] and determined that St Vincent's Private Hospitals Ltd, St Vincent's Hospital Sydney Limited, St Vincent's Private Hospital Sydney and St Vincent's Care Services Ltd contravened the *Fair Work Act 2009* (Cth) by failing to correctly apply some terms of its current and past enterprise agreements to some of its employees.

Specifically, these errors related to:

- For some employees within our private hospitals: the misapplication of Service Allowance and Leave Loading entitlements;
- For some casual nursing employees within our public and private hospitals: the non-payment of overtime; and
- For some shift workers in St Vincent's Care Services: not properly crediting additional annual leave entitlements.

On 5 July 2021, St Vincent's Health Australia formally acknowledged to the Fair Work Ombudsman (FWO) that contraventions of Agreements had occurred and consequently a number of employees had been underpaid. In addition, it took the necessary steps to contact impacted employees, where possible, and rectify the errors identified.

St Vincent's Health Australia has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

As a result of this undertaking, St Vincent's Health Australia will commit to a number of activities to ensure its ongoing compliance such as, conducting an independent audit and rectifying any issues identified as part of the audit.

If you worked for St Vincent's Health Australia during the period 1 July 2014 to 30 June 2020 and were impacted by these issues, and have related queries or questions, please contact either:

- the hotline being operated by KPMG on <contact number>. This hotline can be contacted on a confidential basis or at <insert email address>; or
- St Vincent's Health Australia directly through their existing enquiry line on <insert contact number or email address>.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or on 13 13 94.