

## ENFORCEABLE UNDERTAKING

This undertaking is **given** by A.C.U.G. (NSW) Pty Ltd (ABN 56 612 928 211) and A.C.U.G. (SA) Pty Ltd (ABN 44 614 830 474) and **accepted** by the Fair Work Ombudsman pursuant to s715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 13 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) A.C.U.G. (NSW) Pty Ltd (ABN 56 612 928 211), 16 Fisher Avenue, Pennant Hills NSW 2120 (**ACUG NSW**); and
  - (b) A.C.U.G. (SA) Pty Ltd (ABN 44 614 830 474), 16 Fisher Avenue, Pennant Hills NSW 2120 (**ACUG SA**) (ACUG NSW and ACUG SA are together referred to as **ACUG**).

### COMMENCEMENT

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

### BACKGROUND

3. ACUG NSW and ACUG SA provide container unloading services to customers in New South Wales and South Australia respectively.
4. In December 2020, the FWO received a Request for Assistance from an employee that worked for a different entity which operated in Victoria and which provided similar container unloading services under the ACUG brand in Melbourne. The employee alleged being underpaid due to being paid a 'piece' rate for unloading shipping containers that did not meet the minimum hourly rates due to the varied amount of time it would take to unpack a container. The employee also alleged they were not always paid for every container they unloaded.
5. In March 2021, the FWO conducted site visits. Subsequently, the FWO issued Notices to Produce (**NTPs**) to the Victorian entity and to ACUG NSW and ACUG SA.
6. Initially, the NTPs issued related to compliance with the *Miscellaneous Award 2010* and/or the *Miscellaneous Award 2020*. Subsequently, enquiries were made by the FWO based on the *Road Transport and Distribution Award 2010* (**2010 Award**) and the *Road Transport and Distribution Award 2020* (**2020 Award**).

7. ACUG NSW and ACUG SA cooperated with the FWO investigation. The issue of modern award coverage was disputed. The FWO determined that casual unloaders were covered by the 2010 Award and 2020 Award.
8. The FWO investigation determined that ACUG NSW and ACUG SA failed to keep time records as required by the FW Act in relation to casual unloaders and that casual unloaders were paid a piece rate for the number of containers unloaded that did not meet the minimum hourly rate of pay under the 2010 Award and 2020 Award, including minimum engagement and waiting times. The FWO determined as part of the investigation that the 2010 Award and 2020 Award applied to the casual unloaders and that the casual unloaders were neither award-free nor covered by a different modern award.
9. On 2 November 2022 the FWO issued Findings of Contravention letters to ACUG NSW and ACUG SA detailing that from 1 July 2017 to 9 March 2022 (**Relevant Period**) ACUG NSW and ACUG SA failed to comply with:
  - (a) Section 535(1) of the FW Act by failing to make or keep employee records for 7 years of the kind prescribed by the following *Fair Work Regulations 2009* (Cth) (**FW Regs**):
    - (i) FW Reg 3.33(2) – if an employee is a casual or irregular part-time employee who is guaranteed a rate of pay set by reference to a period of time worked, the record must set out the hours worked by the employee; and
    - (ii) FW Reg 3.33(3) – if an employee is entitled to be paid an incentive-based payment, or a bonus, or a loading, or a penalty rate or another monetary allowance or separately identifiable entitlement, the record must set out details of the payment, bonus, loading, rate, allowance or entitlement.
  - (b) Section 45 of the FW Act, clause 15.2 of the 2010 Award and clause 17.1 of the 2020 Award – contravening terms of a modern award by not paying the minimum rates for ordinary hours worked by an employee.
  - (c) Section 45 of the FW Act, clause 12.5(c) of the 2010 Award and clauses 11.2(a)(i)-(ii) of the 2020 Award – contravening terms of a modern award by not paying a casual employee for each ordinary hour worked at the ordinary hourly rate and a

loading of 25% of the ordinary hourly rate, for their classification; and

- (d) Section 45 of the FW Act, clause 12.5(c) of the 2010 Award and clause 11.3 of the 2020 Award – contravening terms of a modern award by not paying a casual employee a minimum payment of 4 hours per engagement.

10. In response to the Findings of Contravention letters, ACUG NSW and ACUG SA informed the FWO that they had already commissioned a third-party specialist provider to develop an information technology system to include time recording functions and management of entitlements (including automatic updates for award increases).

### **Remediation Calculations**

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11. On 24 February 2023, ACUG SA provided the FWO with remediation calculations, confirming 226 employees were underpaid a total of \$77,723.70 (gross).

12. On 1 June 2023, ACUG NSW provided the FWO with remediation calculations, confirming 697 employees were underpaid a total of \$71,548.56 (gross).

### **ADMISSIONS**

13. The FWO has a reasonable belief and ACUG NSW and ACUG SA admit that they contravened:

- (a) Section 45 of the FW Act during the Relevant Period by failing to pay each of the employees named in Schedule A to this EU (**Schedule A Employees**) the amount or amounts to which that employee was entitled under the Award, resulting in the underpayments identified in Schedule A, in particular:

- (i) Clause 15.2 of the 2010 Award and Clause 17.1 of the 2020 Award – Failure to pay the minimum rates for ordinary hours worked by an employee;
- (ii) Clause 12.5(c) of the 2010 Award and Clause 11.2(a)(i) -(ii) of the 2020 Award – Failure to pay a casual employee for each ordinary hour worked at the ordinary hourly rate and a loading of 25% of the ordinary hourly rate, for their classification; and
- (iii) Clause 12.5(c) of the 2010 Award and Clause 11.3 of the 2020 Award – Failure to pay a casual employee a minimum payment of 4 hours per engagement.

- (b) Section 535(1) of the FW Act during the Relevant Period by failing to make or keep employee records for 7 years of the kind prescribed by the FW Regs for the Schedule A Employees in relation to:
  - (i) FW Reg – 3.33(2) – if an employee is a casual or irregular part-time employee who is guaranteed a rate of pay set by reference to a period of time worked, the record must set out the hours worked by the employee; and
  - (ii) FW Reg – 3.33(3) – if an employee is entitled to be paid an incentive-based payment, or a bonus, or a loading, or a penalty rate or another monetary allowance or separately identifiable entitlement, the record must set out details of the payment, bonus, loading, rate, allowance or entitlement.

14. The contraventions identified in clause 13 of this Undertaking do not include:

- (a) any contraventions which relate to or arise as a consequence of ACUG NSW and ACUG SA failing to correctly apply the 2010 Award and 2020 Award to any employee not listed in Schedule A 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 ACUG NSW and ACUG SA failing to correctly apply the 2010 Award and the 2020 Award 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 ACUG NSW and ACUG SA failing to correctly apply any provisions of the 2010 Award and the 2020 Award to any of the Schedule A Employees other than as identified in clause 13(a) of this Undertaking; or
- (c) any contraventions which have not yet occurred at the date that this Undertaking is offered by ACUG NSW and ACUG SA (whether or not those contraventions are identified in the Independent Audits described at clause 29 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 ACUG NSW and ACUG SA and the FWO's acceptance of this Undertaking is not based on any reasonable

belief about the existence of any such contravention.

## **UNDERTAKINGS**

15. ACUG NSW and ACUG SA will take the actions set out at clauses 16 to 54 below.

### **Rectification of underpayments**

16. ACUG SA have rectified the identified underpayments of each Schedule A employee in three tranches, with such rectification having been completed by the following dates:

(a) The First Tranche for the period from 1 November 2020 to 9 March 2022 (amount owing \$29,072.04 with a total amount paid to located Schedule A employees of \$22,511.95) and completed by 20 July 2023;

(b) The Second Tranche for the period from 1 July 2019 to 31 October 2020 (amount owing \$34,616.40 with a total amount paid to located Schedule A employees of \$29,871.14) and completed by 24 August 2023; and

(c) The Third Tranche for the period from 1 June 2018 to 30 June 2019 (amount owing \$14,035.26 with a total amount paid to located Schedule A employees of \$10,640.20) and completed by 9 November 2023.

17. ACUG NSW have rectified the identified underpayments of each Schedule A employee in two tranches, with such rectification having been completed by the following dates:

(a) The First Tranche for the periods from 1 November 2020 to 30 June 2021 and 1 July 2021 to 9 March 2022 (amount owing \$31,225.20 with a total amount paid to located Schedule A employees of \$20,646.15) and completed by 4 January 2024; and

(b) The Second Tranche for the periods from 1 July 2017 to 30 June 2018, 1 July 2018 to 30 June 2019 and 1 July 2019 to 31 October 2020 (amount owing \$40,323.36 with a total amount paid to located Schedule A employees of \$19,055.85) and completed by 04 June 2024.

18. Within 90 days of the commencement date of the Undertaking, ACUG NSW and ACUG SA will provide the FWO evidence of all underpayments being rectified to each Schedule A Employee including any superannuation payments which may be required by law, by making a payment to the Schedule A Employees chosen superannuation fund.

19. If ACUG NSW and ACUG SA cannot locate any Schedule A Employee to make the required underpayment amount set out in Schedule A by 28 June 2024, ACUG NSW (amount owing \$31,846.56 and ACUG SA (amount owing \$14,700.41) will make any Outstanding Payment to the Commonwealth of Australia in accordance with section 559 of the FW Act. ACUG NSW and ACUG SA will complete the required documents supplied by the FWO for this purpose.
20. In the event that the FWO is able to locate and contact any former ACUG NSW or ACUG SA employees to whom Outstanding Payments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify ACUG in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice ACUG NSW or ACUG SA will:
- (a) pay to the former employee's nominated superannuation fund an amount equal to the amount that would have been required by law, had ACUG NSW or ACUG SA paid the amount under clauses 18 or 19 directly to the former employee.

### **Provision of Information**

#### Information about new systems and processes

21. Within 120 days of the commencement date of the Undertaking, ACUG NSW and ACUG SA will provide the FWO in writing the details of the new systems and processes that they have put in place to ensure compliance with their obligations under the FW Act and the 2020 Award. In particular, ACUG NSW and ACUG SA will provide a written report (**Systems and Processes Report**) which will include:
- (a) details about the updating of the ACUG NSW and ACUG SA payroll system and the implementation of the "FRONTLINE OPERATIONS APP" and how it links to the payroll system to make both systems more accessible and conducive for conducting audits.
  - (b) details of any proactive measures or sampling of ACUG NSW and ACUG SA payroll by employees with responsibility for management of employees, human resources, recruitment and payroll; and
  - (c) details of any other systems and processes that have been or are being implemented to ensure compliance with the FW Act and FW Reg record-keeping

obligations.

22. The FWO may, within 28 days of receiving the information under clause 21, seek further information regarding the new systems and processes from ACUG NSW and ACUG SA by issuing a written notice to ACUG NSW and ACUG SA specifying the additional information required. Subject to the request being reasonable, ACUG NSW and ACUG SA must provide the information specified in such a notice within 28 days of receipt.

No limitation on use of information

23. When providing the information under clauses 21 – 22, ACUG NSW and ACUG SA will state in writing that they do 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. ACUG NSW and ACUG SA 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.

**Workplace Relations Training**

24. Within 6 months of the commencement date of the Undertaking, ACUG NSW and ACUG SA will ensure that all current employees with responsibility for management of employees, human resources, recruitment and payroll, have completed training which satisfies clause 25 below.

25. The training must:

- (a) be provided by an external workplace relations or employment law expert, be approved by the FWO prior to the training being provided; and
- (b) cover, at a minimum:
  - (i) record keeping requirements and obligations under the FW Act and FW Regs;
  - (ii) how to correctly determine 2020 Award (or any applicable industrial instrument) classification;
  - (iii) how to correctly apply award conditions including, without limitation: minimum pay entitlements, overtime and penalty rates, and minimum engagement periods under the 2020 Award (or any applicable industrial



instrument); and

- (iv) other key FW Act entitlements and obligations, including the National Employment Standards.

26. ACUG NSW and ACUG SA will provide training materials to the FWO, for its written approval, at least 30 days prior to ACUG NSW and ACUG SA conducting the required training.

27. Within 7 months of the commencement date of the Undertaking, ACUG NSW and ACUG SA will provide to the FWO evidence of their compliance with clauses 24 and 25, including:

- (a) a schedule or list of the employees who received the training and the date on which they attended.

28. The training requirement will be ongoing for new or existing employees who acquire responsibilities for any of the functions referred to in clause 24 above, for the term of this Undertaking. The Training must be undertaken, and evidence provided to the FWO, within three calendar months of any relevant employee having the new responsibility for the management of employees, human resources, recruitment and payroll.

#### **Independent Audits**

29. ACUG NSW and ACUG SA must, at their cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct one audit each of ACUG NSW and of ACUG SA to ensure compliance with the FW Act and FW Regs in relation to the 2020 Award, and or any applicable industrial instrument that may apply to ACUG NSW and ACUG SA (**Audits**).

30. ACUG NSW and ACUG SA will notify the FWO of their proposed Independent Auditor by no later than 60 days of the commencement date of the Undertaking. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require ACUG NSW and ACUG SA 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 ACUG NSW and ACUG SA.

31. ACUG NSW and ACUG SA must ensure that each of the Audits conducted by the

Independent Auditor includes:

- (a) an assessment of a random sample of at least 15% of casual container unloaders to whom the 2020 Award applied, during the relevant audit period (**Sampled Employees**) in respect of their employment by ACUG NSW or ACUG SA;
- (b) an assessment of whether the Sampled Employees have been correctly classified by ACUG NSW or ACUG SA based on the FWO's determination that the 2020 Award is the applicable modern award for container unloaders;
- (c) an assessment of whether the employment records (time and wage), pay and conditions of the Sampled Employees during the relevant audit period are in compliance with the FW Act, FW Regs and the 2020 Award (or any applicable industrial instrument);
- (d) direct contact with at least half of the Sample Employees by way of site visits (either in person or remotely) to ensure accuracy of hours worked, or if at least half of the Sample Employees are not able to be contacted using reasonable endeavours, then as many of the Sample Employees as are able to be contacted;
- (e) the production of a written report on each of the Audits setting out the; Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
- (f) that each of the written reports referred to in (e) above contains the following declarations 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 ACUG NSW and ACUG SA, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from ACUG NSW and ACUG SA 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 Audit

32. ACUG NSW and ACUG SA must ensure the Independent Auditor commences the Audits by no later than 31 October 2024.
33. The relevant period for the Audits must be at least two full consecutive pay periods falling within each of the two periods: 11 March 2024 to 8 April 2024 and 24 June 2024 to 29 July 2024.
34. By 30 August 2024, ACUG NSW and ACUG SA will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Audits.
35. ACUG NSW and ACUG SA will instruct and use their best endeavours to ensure the Independent Auditor provides draft written reports of the Audits directly to the FWO by 31 January 2025, setting out the draft Audit findings, and the facts and circumstances supporting the Audit findings. ACUG NSW and ACUG SA will instruct and use their best endeavours to ensure the Independent Auditor does not provide the draft written reports, or a copy of the same, to ACUG NSW and ACUG SA without the FWO's approval.
36. ACUG NSW and ACUG SA will instruct and use their best endeavours to ensure the Independent Auditor finalises the Audits and provides written reports of the Audits (**Final Audit Reports**) directly to the FWO within one month of FWO providing any comments on the draft reports to the Independent Auditor. ACUG NSW and ACUG SA will instruct and use their best endeavours to ensure the Independent Auditor does not provide the Final Audit Reports, or a copy of the same, to ACUG NSW and ACUG SA without the FWO's approval.
37. Following the Audits, the FWO will meet with (or authorise the Independent Auditor to meet with) ACUG NSW and ACUG SA within 30 days of receipt of the Final Audit Reports to discuss any findings of the Independent Auditor to enable ACUG NSW and ACUG SA to act on any findings in a timely manner.

### **Outcome of Audit**

38. If either of the Audits referred to at clause 29 identify underpayments of the Sampled Employees, ACUG NSW and ACUG SA will:

- (a) within 60 days of receipt of the relevant Final Audit Report, rectify any underpayments identified in the relevant audit period; and
- (b) within 90 days of receipt of the Final Audit Report, and unless otherwise advised by the FWO following discussions between ACUG NSW and ACUG SA and the FWO, 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. ACUG NSW and ACUG SA will provide to the FWO evidence of such reconciliation and/or rectifications required under clause 38 above within 60 days of being informed by the FWO of the requirement to undertake the reconciliation.

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40. If any Sampled Employees identified in the Audits as having underpayments owing to them cannot be located within three calendar months of the conclusion of the Audits, ACUG NSW and ACUG SA will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. ACUG will complete the required documents supplied by the FWO for this purpose.

41. If the Audits identify an underpayment of the minimum entitlements of one or more Sampled Employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, ACUG NSW and ACUG SA will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all their employees (or a particular cohort of employees within this group) to whom the 2020 Award (or any applicable industrial instrument) applies, as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by ACUG NSW and ACUG SA.

42. If requested by the FWO, ACUG NSW and ACUG SA will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 7 days of such a request.

43. If the Additional Audit identifies compliance issues, whether monetary or non-monetary in nature, with the requirements of the 2020 Award (or any applicable industrial instrument) or the FW Act, within three calendar months of completion of the audit, ACUG NSW and ACUG SA will provide a Letter of Assurance to the FWO outlining further

system and process changes being made to address the issue(s) and the timeframe for the completion of such changes.

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

#### Written Notice of Enforceable Undertaking

44. As part of ACUG NSW and ACUG SA's internal review and rectification process, they had previously emailed letters to all employees found to be underpaid by ACUG NSW and ACUG SA.
45. ACUG NSW and ACUG SA will take reasonably practicable steps to email an updated letter (**Notice Letter**) to all affected employees advising them that ACUG NSW and ACUG SA have entered into an Enforceable Undertaking by 28 June 2024. The Notice Letter will be in the form of Attachment A to this Undertaking.
46. ACUG NSW and ACUG SA will provide evidence to the FWO that the Notice Letter has been sent to all affected employees by 12 July 2024.

#### Media Release

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

### **Contribution Payment**

48. ACUG SA will make the following contribution payment to the Consolidated Revenue Fund:
- (a) A payment of \$40,500.00 on or before 28 June 2024.
49. ACUG SA will provide evidence to the FWO of any contribution payment within 14 days of making payment to the Consolidated Revenue Fund.
50. ACUG NSW will make the following contribution payment to the Consolidated Revenue Fund:
- (a) A payment of \$40,500.00 on or before 29 July 2024.
51. ACUG NSW will provide evidence to the FWO of any contribution payment within 14 days of making payment to the Consolidated Revenue Fund.

### **No Inconsistent Statements**

52. ACUG NSW and ACUG SA must not and 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.

#### **Request for Extension of Time**

53. ACUG NSW and ACUG SA may request of the FWO an extension on a time specified for completion of an obligation set out in this Undertaking. The request must be provided to the FWO in writing at least 14 days before the date of the obligation and must set out the reason(s) why the extension is being sought. The FWO will notify ACUG NSW and ACUG SA of its decision within 14 days of receiving the written request. The FWO will not unreasonably withhold agreement on a request for an extension of time. 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.
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#### **ACKNOWLEDGEMENTS**

54. ACUG NSW and ACUG SA acknowledge that:

- (a) the FWO may:
  - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](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 ACUG NSW and ACUG SA set out in clause 13 above in respect of decisions taken regarding enforcement action

in the event that ACUG NSW and ACUG SA are found to have failed to comply with their workplace relations obligations in the future, including but not limited to any failure by ACUG NSW and ACUG SA to comply with their 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, ACUG NSW and ACUG SA may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if ACUG NSW or ACUG SA 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 the admissions made by ACUG NSW and ACUG SA in clause 13 above, and also in respect of the question of costs.

**Executed as an undertaking**

EXECUTED by A.C.U.G. (NSW) Pty Ltd (ABN 56 612 928 211) in accordance with section 127(1) of the *Corporations Act 2001*:



\_\_\_\_\_  
(Signature of director)

\_\_\_\_\_  
(Signature of director/company secretary)

Ryan Grindrod-Burge

\_\_\_\_\_  
(Name of director)

\_\_\_\_\_  
(Name of director/company secretary)

19/06/2024

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:



\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of witness)

Michael Wishart

\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(Name of witness)

EXECUTED by A.C.U.G. (SA) Pty Ltd (ABN 44 614 830 474) in accordance with section 127(1) of the *Corporations Act 2001*:



\_\_\_\_\_  
(Signature of director)

\_\_\_\_\_  
Signature of director/company secretary)

Ryan Grindrod-Burge

\_\_\_\_\_  
(Name of director)

\_\_\_\_\_  
(Name of director/company secretary)

19/06/2024

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

in the presence of:

in the presence of:



\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of witness)



Michael Wishart

\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(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

20 June 2024  
\_\_\_\_\_  
(Date)

Delegate for the FAIR WORK  
OMBUDSMAN

in the presence of:



\_\_\_\_\_  
(Signature of witness)



\_\_\_\_\_  
(Name of Witness)

**SCHEDULE A**

## Attachment A – Notification Letter to Employees regarding Enforceable Undertaking

Dear <insert name >

As advised in our email to you of [insert date], [A.C.U.G. (NSW) Pty Ltd or A.C.U.G. (SA) Pty Ltd] (ACUG NSW or ACUG SA) found that you were entitled to additional amounts for a period that you worked for ACUG (ACUG NSW or ACUG SA). If you confirmed your correct bank details with us, you will have already been paid those additional amounts.

ACUG [ACUG NSW or ACUG SA] has been cooperating with the Fair Work Ombudsman (FWO) about the underpayments that have been identified.

ACUG (NSW or SA) has now entered into a formal Enforceable Undertaking with the FWO regarding the contraventions identified below, and to ensure its ongoing compliance with the *Fair Work Act 2009* (Cth)(FW Act).

As part of that process, ACUG (NSW or SA) has admitted that it contravened the *FW Act* by:

- underpaying casual container unloading employees covered by the *Road Transport and Distribution Award 2010* and *Road Transport and Distribution Award 2020* in relation to their minimum wages, casual loading and minimum engagement; and
- failing to make and or keep certain employment records of the kind prescribed by the *FW Act* and the *Fair Work Regulations 2009* (Cth) (FW Regs).

As a result of the Enforceable Undertaking, ACUG (NSW or SA) has committed to undertaking a number of activities to ensure its ongoing compliance such as, conducting an independent audit and preparing a report on its systems and processes. This email to you is also part of that process. As we have noted, ACUG (NSW or SA) has already processed all of the relevant additional payments and there are no further amounts outstanding.

ACUG (NSW or SA) understands that you may have questions and concerns relating to this and other employment issues. If you have a general enquiry about this or other employment issues, you can contact ACUG (NSW or SA) on [insert details].

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

ACUG (NSW or SA) expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Yours sincerely

<Employer name>