

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Australian Red Cross Society (ABN: 50 169 561 394) 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 clause 13 and 14 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 the Australian Red Cross Society (**ARCS**) of 23-47 Villiers Street, North Melbourne, Victoria, 3051.

COMMENCEMENT

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

BACKGROUND

3. ARCS is an incorporated entity that is registered as a charity organisation with the Australian Charities and Not for Profits Commission. ARCS consist of two distinct divisions, performing two discrete undertakings that operate substantively independently of each other, being the Australian Red Cross Society – Humanitarian Services Division (**HSD**) and the Australian Red Cross Lifeblood (**Lifeblood**). The HSD has a workforce of approximately 1,970 employees and the Lifeblood has approximately 3,765 employees.
4. Amongst other matters, the HSD and Lifeblood:
 - (a) have separate governance with the ARCS Board delegating operational governance for Lifeblood to the Lifeblood Board;
 - (b) each has a CEO;
 - (c) each has substantively different activities and operations;
 - (d) each has separate revenue/funding sources;
 - (e) are not typically co-located;
 - (f) have different employees and different employment instruments; and
 - (g) have different and separate payroll systems, processes and human resource management arrangements.
5. ARCS is a National Society member of the International Federation of Red Cross and Red Crescent Societies (**IFRC**) and is therefore a member of the International Red Cross and Red Crescent Movement (the **Movement**), which is also comprised of the International Committee

of the Red Cross Red Crescent (ICRC) and 190 Red Cross Red Crescent National Societies. The Movement's mission is to prevent or reduce human suffering, wherever it is found. The Movement's Fundamental Principles guide this mission.

6. The purpose of the HSD is to support and empower people and communities in times of vulnerability and to reduce suffering across Australia and internationally through mobilising the power of humanity. As a National Society, HSD acts as an auxiliary to the public authorities in the humanitarian field providing a range of services including disaster response and relief, a broad range of social programs, and educating people about international humanitarian law or the laws of war. Additionally, the HSD:
 - (a) operates a network of retail stores;
 - (b) undertakes first aid and mental health training; and
 - (c) deploys international humanitarian workers (known as delegates) to work overseas with other members of the Movement in a range of industries and professions during times of natural disaster, conflict and other emergencies, or to assist with long-term development work of other National Societies.

Identification of Underpayments

7. On 23 May 2018, HSD, at its own instigation, notified the FWO, that:
 - (a) it had identified underpayments relating to current and past employees in the HSD (**Underpayments**). The Underpayments were identified following a national remuneration review by the HSD which commenced in 2017;
 - (b) the Underpayments substantially occurred due to the HSD:
 - (i) applying the incorrect modern award or enterprise agreement to employees, including by applying the *Clerks - Private Sector Award 2010 (Clerks Award)* to HSD employees when the *Social, Community, Home Care and Disability Services Industry Award 2010 (SCHADS Award)* applied to those employees; and
 - (ii) incorrectly classifying employees as award free where a modern award or other industrial instrument applied.
8. The FWO commenced an investigation into the issues disclosed by HSD on 15 June 2018 (**FWO Investigation**). Through the FWO Investigation, the FWO identified that underpayments arose due to the application of the incorrect award or enterprise agreement, non-compliance with provisions of awards and enterprise agreements and/or an equal remuneration order.

9. HSD has notified the FWO that it would rectify underpayments that occurred between 1 July 2012 and 31 March 2021 (**Relevant Period**).
10. The FWO identified that from 1 July 2012, the 14 awards and seven enterprise agreements set out in Schedule C had applied to one or more HSD employees.

Rectification of Underpayments

11. Prior to the execution of this Undertaking, HSD notified the FWO that in relation to the HSD employees it had:
 - (a) determined the award or enterprise agreement coverage and classification for all current employees;
 - (b) determined the award coverage of all international delegates from 1 July 2012, after having determined that the modern award framework applies to international delegates;
 - (c) calculated and made backpayments related to the base rate of pay and annual leave loading by paying each of the employees referred to in column A of Schedule A, Part 1 and Part 2 to this Undertaking (**Schedule A Employees**) the amounts referred to in column B of Schedule A, Part 1 and Part 2 totalling \$1,966,817 to 761 employees. The Schedule A Employees were included in the first phase of the HSD's remediation program. The Schedule A Employees listed in Part 1 of Schedule A (**Schedule A, Part 1 Employees**) were paid interest on the backpayment, totalling \$44,102. The Schedule A Employees listed in Part 2 of Schedule A received a partial backpayment, with interest and any further backpayment to be made in accordance with clause 13;
 - (d) rectified any superannuation underpayments associated with the payments referred to at clause 11(c) as required by law by paying each of the Schedule A Employees in Part 1 and Part 2 the amounts referred to in column D of Schedule A, totalling \$175,727, being such required superannuation contributions to the chosen superannuation fund of the employee; and
 - (e) paid interest to each of the Schedule A, Part 1 Employees on the amount referred to in column B of Schedule A, in the sum referred to in column C of Schedule A, calculated for each full financial year from the date that the employee first became entitled to that amount until the end of the financial year of the date on which that amount is paid, referring to changes to the Consumer Price Index (**CPI**) over the period of the underpayment.

12. HSD has advised the FWO that it continues to conduct its assessment and rectification program and remains committed to ensuring all impacted current and former employees are paid for any underpayments. HSD has engaged Pitcher Partners to assist with this. As a part of its ongoing rectification plan, HSD has identified the employees listed in Schedule B to this Undertaking (**Schedule B Employees**) to whom modern awards or enterprise agreements applied but who may not have been paid by HSD in accordance with those industrial instruments. Schedule B, Part 1 sets out the current employees as at 31 March 2021 and Schedule B, Part 2 sets out former employees. Schedule B also includes Schedule A Employees as further contraventions and underpayments in respect of Schedule A Employees may be identified through the assessment and rectification program. HSD has not yet quantified the underpayments that may apply to each of the Schedule B Employees.

ADMISSIONS

13. The FWO has a reasonable belief, and HSD admits, that in the Relevant Period it contravened:
- (a) sections 45 and 50 of the FW Act (and in respect of the industrial instrument at sub-clause (a)(vi) below, sub-item 2(2) of Schedule 16 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (FW (TPCA) Act)*), by failing to pay each of the Schedule A Employees the amount or amounts to which that employee was entitled under the relevant industrial instrument and clauses referred to in sub-clauses (a)(i) to (a)(vi) below, as identified in Schedule A to this Undertaking in relation to that employee, in respect of each provision of those industrial instrument which is identified in Schedule A to this Undertaking in relation to that employee, including:
 - (i) *Social, Community, Home Care and Disability Services Industry Award 2010*:
 - A. Clause 15 – Minimum weekly wages for social and community services employees and crisis accommodation employees;
 - B. Clause 31.3 – Annual leave loading;
 - (ii) *General Retail Industry Award 2020*:
 - A. Clause 17 – Minimum rates;
 - B. Clause 28.3 – Additional payment for annual leave;
 - (iii) *Restaurant Industry Award 2020*:
 - A. Clause 18 – Minimum rates;
 - B. Clause 25.3 – Payment for annual leave;

(iv) *Labour Market Assistance Industry Award 2020*:

- A. Clause 16 – Minimum rates;
- B. Clause 23.2 – Annual leave loading;

(v) *Storage Services and Wholesale Award 2010*:

- A. Clause 24.3 – Payment for annual leave;

(vi) *Katherine, Red Cross, Aged Care Residence, Enterprise Agreement 2000*:

- A. Clause 5 – Rates of pay (as modified by sub-item 13(2) of Schedule 9 to the FW (TPCA) Act;
- B. Clause 27 – Loading on annual leave; and

- (b) clause 14 of the *General Retail Industry Award 2020 (GRIA)* by failing to correctly classify those Schedule A Employees to whom the GRIA applies.

14. The FWO also has a reasonable belief, and HSD admits that it contravened:

- (a) section 45 and 50 of the FW Act and sub-item 2(2) of Schedule 16 of the FW (TPCA) Act by failing to pay certain of the Schedule B Employees amounts to which such employees were entitled under one or more of the awards or enterprise agreements during the Relevant Period;
- (b) section 535(1) 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 certain Schedule B Employees during the Relevant Period;
- (c) section 536(2) of the FW Act by failing to include on pay slips all information required by regulation 3.46 of the FW Regulations in respect of certain Schedule B employees during the Relevant Period;
- (d) section 117 of the FW Act by failing to make payments in lieu of notice at the required rate in respect of certain Schedule B employees; and
- (e) section 305 of the FW Act by failing to apply an equal remuneration order.

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

- (a) any contraventions which relate to or arise because of HSD failing to correctly apply any industrial instrument (including an enterprise agreement) to any employee not listed in Schedules A or B to this Undertaking (**Non-schedule Employees**) or because of any failure by HSD to apply relevant industrial instruments to the Schedule Employees other

than those set out in clause 14 above. For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of HSD failing to correctly apply any industrial instrument (including an enterprise agreement) 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 have not occurred at 31 March 2021, whether or not those contraventions are identified in the Independent Assessment described in clauses 20 to 27 below, or the Audits described in clauses 28 to 42 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 HSD and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

UNDERTAKINGS

Review and rectification of underpayments

16. By 21 February 2022, HSD will:

- (a) calculate:
 - (i) the quantum of any underpayments, including any superannuation entitlements payable on those amounts, to each of the Schedule B Employees to whom the underpayments relate; and
 - (ii) the quantum of interest payable on the underpayments calculated pursuant to clause 16(a)(i) to each of the Schedule B Employees, calculated for each full financial year from the date that the employee first became entitled to that amount until the end of the financial year of the date on which that amount is paid, referring to changes to the Consumer Price Index (CPI) over the period of the underpayment;
- (b) pay each of the Schedule B Employees to whom any underpayments are owed:
 - (i) the underpayment amounts calculated pursuant to clause 16(a)(i);
 - (ii) the interest amounts calculated pursuant to clause 16(a)(ii);
 - (iii) the superannuation amounts calculated pursuant to clause 16(a)(i), by making payment to their chosen superannuation fund.

17. By 29 March 2022, the HSD will provide the FWO evidence of all payments made to each of the Schedule B Employees to whom any underpayments are owed, in accordance with the terms outlined in clause 16(b).
18. If any of the Schedule B Employees to whom any underpayments are owed cannot be located by 29 May 2022, the HSD will pay the underpayment amounts owing to those employees to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. HSD will complete the required documents supplied by the FWO for this purpose.
19. If the FWO can locate and contact any of the Schedule B Employees to whom any underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify the HSD in writing of the name and contact details of the employee. Within 28 days of receiving any such notice, the HSD will pay the current or former employee:
 - (a) interest on the amount already paid by the HSD 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 until the date on which that amount is paid, referring to changes to the CPI over the period of underpayment; and
 - (b) an additional payment equal to the superannuation payment which would have been required by law, had the HSD paid to the employee, as their ordinary salary, the amount it paid to the Commonwealth under clause 18.

Independent Assessment

20. HSD must, at its own cost, engage an appropriately qualified, experienced, external and independent expert, approved in writing by the FWO under clause 21 (**Independent Expert**), to conduct an independent assessment of the methodology of HSD's internal reviews described at clause 11 and Clause 16 (**Independent Assessment**). HSD must engage the Independent Expert within four weeks of the FWO giving its approval pursuant to clause 21.
21. By no later than 29 April 2022, HSD must notify the FWO of its proposed Independent Expert and ensure that they are:
 - (a) an accounting professional (Certified Practising Accountant, Chartered Accountant);
 - (b) an auditor (Registered Company Auditor within an Authorised Audit Company); or
 - (c) a lawyer (admitted, practising lawyer and employment law specialist).

The FWO may in its sole discretion approve the Independent Expert or otherwise require HSD to propose other Independent Experts until the FWO has approved in writing an Independent

Expert. The Independent Expert must be approved by the FWO in writing prior to being engaged by HSD.

22. HSD must ensure the Independent Assessment commences by no later than six weeks after the FWO gives its approval of the Independent Expert pursuant to clause 21, and that the Independent Expert assesses whether:
 - (a) HSD has correctly identified the instrument which applies, or previously applied, to the Schedule A Employees and Schedule B Employees;
 - (b) the Schedule A Employees and Schedule B Employees were correctly classified by HSD under the correct instrument;
 - (c) the methodology used by HSD to calculate the Underpayments was correct, including by identifying any Schedule A Employees or Schedule B Employees to whom HSD incorrectly applied an instrument, any issues with HSD's interpretation of the relevant industrial instruments and verifying the calculations do not include any unlawful set-offs, deductions or reconciling of overpayments;
 - (d) HSD has now paid each of the Schedule A Employees and Schedule B Employees to whom an instrument applies, or applied, any amounts payable to them under clause 11 and 16(b) above. For the avoidance of doubt, if the Independent Expert identifies any issues with the methodology used to calculate the underpayments, HSD must calculate any additional amounts owing by reason of those errors; and
 - (e) HSD's payroll and record keeping systems and processes are compliant with the FW Act in respect of employees to whom an instrument applies and if not, setting out any non-compliance found.
23. HSD must ensure that the Independent Expert provides a report (**Expert Report**) of its Independent Assessment directly to the FWO, and for the benefit of the FWO, setting out its findings, and the facts and circumstances supporting its findings, within 120 days of the engagement of the Independent Expert pursuant to clause 21. HSD must ensure the Independent Expert does not provide the Expert Report, or a copy of the same, to HSD without the FWO's prior approval, which will not be unreasonably withheld.
24. HSD must ensure that the Expert Report contains the following statements from the Independent Expert:
 - (a) the Independent Expert is not aware of any actual or potential conflict of interest in providing the Expert Report on HSD to the FWO;

- (b) notwithstanding that the Independent Expert is retained by HSD, the Independent Expert undertakes that it has acted independently, impartially, objectively and without influence from HSD in preparing the Expert Report;
 - (c) the Expert Report is provided in accordance with professional standards applicable to their role (which will be listed in the Expert Report); and
 - (d) the Expert Report is provided to the FWO for its benefit and the FWO can rely on the Expert Report.
- 25. If the Independent Assessment identifies any issues with HSD's methodology, meaning that the Independent Expert finds that some Schedule A Employees and/or Schedule B Employees are owed amounts additional to those calculated and paid by HSD, following discussions between HSD and the FWO, HSD will pay those additional amounts to the current and former employees, and provide evidence of such payment to the FWO within 60 days of receiving the Expert Report from the FWO.
- 26. If any of the Schedule A Employees or Schedule B Employees identified in the Expert Report as being owed amounts additional to the underpayments calculated by HSD are former employees who cannot be located and paid within 90 days of receiving the Expert Report from the FWO, HSD will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. HSD will complete required documents supplied by the FWO for this purpose.
- 27. The FWO acknowledges that HSD does not contravene this Undertaking in the event that:
 - (a) the Independent Expert makes a finding in relation to coverage, classification and/or additional amounts to be rectified under the relevant instrument that is contrary to the determination made by HSD in their internal review under clause 11 and 16 above, provided HSD pays any additional amounts owing to current and former employees in accordance with clause 25 above on or before 30 November 2022 or to the Commonwealth of Australia in accordance with clause 26 above; or
 - (b) the FWO accepts the outcome of HSD's original review conducted pursuant to clause 11 and 16 above.

Audit Activity

- 28. HSD must, at its own cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**)

to conduct three audits of HSD's compliance with the FW Act in relation to the industrial instruments referred to in Schedule C (and any replacement instruments) (**Audits**).

29. HSD will notify the FWO of its proposed Independent Auditor by no later than 15 September 2022. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require HSD to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor.
30. HSD must ensure that each of the Audits conducted by the Independent Auditor includes:
 - (a) an assessment of which industrial instrument applies to a sample of 15% of employees (**Sampled Employees**);
 - (b) an assessment of whether HSD has correctly classified the Sampled Employees;
 - (c) an assessment of whether the pay and conditions of the Sampled Employees comply with the FW Act and the relevant industrial Instrument;
 - (d) 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
 - (e) that each of the written reports referred to in clause 30(d) 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 HSD, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from HSD 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 First Audit

31. HSD must ensure the Independent Auditor commences the first of the Audits by no later than 15 December 2022 (**First Audit**).
32. The relevant audit period for the First Audit must be at least two full consecutive pay periods falling within the period 15 November 2021 – 14 November 2022.

33. By 15 November 2022, HSD will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
34. HSD will ensure the Independent Auditor provides a written report of the First Audit directly to the FWO by 15 March 2023, setting out the First Audit findings, and the facts and circumstances supporting the First Audit findings.

The Second Audit

35. HSD must ensure the Independent Auditor commences the second of the Audits by no later than 15 December 2023 (**Second Audit**).
36. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 15 November 2022 – 14 November 2023.
37. By 15 November 2023, HSD will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
38. HSD will ensure the Independent Auditor provides a written report of the Second Audit directly to the FWO by 15 March 2024, setting out the Second Audit findings, and the facts and circumstances supporting the Second Audit findings.

The Third Audit

39. HSD must ensure the Independent Auditor commences the third of the Audits by no later than 15 December 2024 (**Third Audit**).
40. The relevant audit period for the Third Audit must be at least two full pay periods falling within the period 15 November 2023 – 14 November 2024.
41. By 15 November 2024, HSD will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Third Audit.
42. HSD will ensure the Independent Auditor provides a written report of the Third Audit directly to the FWO by 15 March 2025, setting out the Third Audit findings, and the facts and circumstances supporting the Third Audit findings.

Outcome of Audits

43. If any of the Audits identify underpayments to any current or former employees, the FWO will notify HSD and provide a copy of the relevant written report. HSD will conduct a reconciliation of the amounts paid to those employees during the relevant audit period and rectify any underpayments that are identified. The reconciliation period for each identified employee will

be from the Commencement Date, or the employee's starting date (whichever is later), to the date the written audit report is provided to the FWO.

44. HSD will provide to the FWO evidence of such rectification within 60 days of being informed by the FWO of the requirement to undertake the reconciliation pursuant to clause 43.
45. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of each of the three Audits, HSD will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. HSD will complete the required documents supplied by the FWO for this purpose.
46. If any of the Audits identify an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, HSD will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the relevant industrial instrument applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by HSD and HSD must ensure it includes the matters set out in clause 30(a)-(e). Any Additional Audit must be completed within 60 days of the FWO notifying HSD of the requirement to undertake it (or such longer period as agreed in writing by the FWO). If an Additional Audit identifies underpayments to any current or former employees, HSD must comply with clauses 43 to 45 above in respect of the Additional Audit.
47. If requested by the FWO, HSD will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within seven days of such a request.

Employee Hotline & Letter

48. Within seven business days of the Commencement Date, at its own expense, HSD will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the industrial instruments in Schedule C apply, or had applied, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.
49. After considering HSD's proposal that Core Integrity operate the Employee Hotline, the FWO has approved Core Integrity to operate the Employee Hotline.

50. HSD will:

- (a) ensure the Employee Hotline remains operational for a period of 36 months from the Commencement Date of the EU;
- (b) ensure that the telephone number and email address are included on any communication to employees to whom the industrial instruments in Schedule C apply and the intranet notice (see clause 53);
- (c) communicate the existence and purpose of the Employee Hotline by way of email to the last known email address of all current and former employees (or by letter to the last known address for former employees where the HSD does not have their email) to whom the industrial instruments in Schedule C apply, or had applied, known as at the Commencement Date, or identified during the Audits, and dating back to 1 July 2012.

HSD will:

- (i) ensure the letter is in the form of Attachment A to this Undertaking; and
- (ii) provide evidence to the FWO that the letter has been emailed (or mailed in accordance with this clause) to all required current and former employees within 28 days;
- (d) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days of receiving the enquiry and notify the FWO of any issues that are not resolved within 60 days of receiving the enquiry; and
- (e) provide a de-identified list of enquiries received by the Employee Hotline to the FWO every three months from the establishment of the Employee Hotline.

Short message service to former employees

51. Within 14 days of the Commencement Date, HSD will send a short message service (SMS) message to all former employees listed in Schedule B, Part 2 for which HSD has a mobile phone number. The terms of this SMS message will be in the form of Attachment B to this Undertaking.

Notices

Media Release

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

Intranet Notice

53. Within 28 days of the Commencement Date, HSD will cause to be displayed on the home page of the HSD intranet a notice with respect to this Undertaking (**Intranet Notice**).

The Intranet Notice must:

- (a) be in the form of the notice set out at Attachment A;
- (b) be displayed in a prominent position, in at least size 10 font;
- (c) remain on the intranet for a period of three months; and
- (d) within seven days of placing the Intranet Notice on its intranet, HSD will provide to the FWO evidence of its placement.

Staff training – HSD

54. As at the date of this Undertaking, legal and industrial relations specialists have provided workplace relations training between August 2020 and October 2020 for teams with responsibility for human resources, recruitment and payroll functions including training in respect of the coverage of common industrial instruments relevant to HSD and the application of instrument provisions.
55. In addition to the training referred to at clause 54, HSD must, within nine months of the Commencement Date and at its own expense, ensure that employees of HSD who have responsibility for recruitment, rostering and/or payroll functions undertake workplace training that:
- (a) has been developed with the advice of, and reviewed by, an external employee relations specialist; and
 - (b) relates to compliance with applicable Commonwealth workplace laws and instruments, including but not limited to, the rights and responsibilities of employers under the FW Act and relevant instruments, with respect to the industrial instruments in Schedule C.
56. HSD must provide the FWO with the training materials to be used in the training no later than 14 days before the training is to be conducted.
57. Within 14 days of completion of the training, HSD must provide to the FWO:
- (a) details of the external employee relations specialist, the individuals delivering the training, and content of the training course;
 - (b) the names and positions of each employee who undertook the training; and

- (c) the names and positions of each employee in the positions referenced at clause 55 above who did not complete the training in the required timeframe, the reason this did not occur (for example, long term leave), and a plan for rectifying this, as applicable.

No inconsistent statements

- 58. HSD must not, and must use its 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.

Cooperation on future Request for Assistance

- 59. Where the FWO receives a request for assistance from a HSD employee or former HSD employee regarding potential non-compliance with the Schedule C industrial instruments (or any replacement instruments), the FWO may, at its discretion, notify HSD and its officers and provide relevant details.
- 60. Where a matter is notified to HSD, it undertakes to fully co-operate with the FWO to ensure compliance. This includes:
 - (a) determining an appropriate outcome for the matter within 45 days of notification; and
 - (b) advising the FWO of the determination and actions in relation to the matter including:
 - (i) the reasons for the determination and any compliance issues identified;
 - (ii) the details of any underpayments and amounts rectified;
 - (iii) steps taken to address compliance issues identified, including for any similarly affected employees; and
 - (iv) if any matter remains unresolved, the steps taken by HSD to facilitate the resolution of any such matter.
- 61. For avoidance of doubt, this Undertaking is not given or accepted in relation to any contravention notified in accordance with clause 59 and 60, unless that contravention is identified in clause 13 and 14 and is not excluded by clause 15.

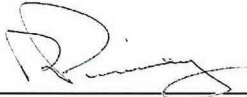
ACKNOWLEDGEMENTS

- 62. HSD acknowledges that:
 - (a) the FWO may:

- (i) make this Undertaking (including any of the attachments) available for public inspection, including by posting it on the FWO internet site at www.fairwork.gov.au;
 - (ii) release a copy of this Undertaking (including any of the attachments) 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) and its terms; and
 - (v) rely upon the admissions made by HSD set out in clause 13 and 14 above in respect of decisions taken regarding enforcement action in the event that HSD is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by HSD 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 in this Undertaking;
- (c) consistent with section 715(3) of the FW Act, HSD may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if HSD 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 HSD in clause 13 and 14 above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by the ARCS – Humanitarian Services Division in accordance with rule 20.4 of the Rules of the Australian Red Cross Society:



(Signature of President)

Ross Pinney

(Name of President)

27 October 2021

(Date)

in the presence of:



(Signature of witness)

Jennifer Currie

(Name of witness)



(Signature of Deputy President)

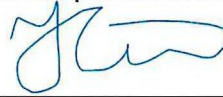
Charles Burkitt

(Name of Deputy President)

27 October 2021

(Date)

in the presence of:



(Signature of witness)

Jennifer Currie

(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 & Enforcement

Delegate for the FAIR WORK
OMBUDSMAN

in the presence of:



(Signature of witness)

4 November 2021

(Date)

4 November 2021

(Name of Witness)

SCHEDULE A – Part 1 and Part 2 - Underpayments of HSD Employees identified at clause 11(c) – (See Attached)

SCHEDULE B – Part 1 and Part 2 - Employees still being assessed (clause 12) – (See attached)

SCHEDULE C – List of applicable industrial instruments

Humanitarian Services Division

Modern Awards	ID
Social, Community, Home Care and Disability Services Industry Award 2010	MA000100
Aged Care Award 2010	MA000018
General Retail Industry Award 2010	MA000004
Restaurant Industry Award 2010	MA000119
Labour Market Assistance Industry Award 2010	MA000099
Storage Services and Wholesale Award 2010	MA000084
Educational Services (Post-Secondary Education) Award 2020	MA000075
Road Transport and Distribution Award 2020	MA000038
Nurses Award 2010	MA000034
Health Professionals and Support Services Award 2020	MA000027
Professional Employees Award 2020	MA000065
Medical Practitioners Award 2020	MA000031
Supported Employment Services Award 2020	MA000103
Waste Management Award 2020	MA000043

Agreements	ID
KATHERINE, RED CROSS, AGED CARE RESIDENCE, ENTERPRISE AGREEMENT 2000	AG786965
AUSTRALIAN RED CROSS – SOUTH AUSTRALIA ENTERPRISE AGREEMENT 2002	N/A
AUSTRALIAN RED CROSS SOCIETY (WA DIVISION) INC. CERTIFIED AGREEMENT 2006	CAEN072126995
LADY LAWLEY COTTAGE ENROLLED NURSES AND RESIDENTIAL SUPPORT WORKER CERTIFIED AGREEMENT 2011	AE407669
LADY LAWLEY COTTAGE (AUSTRALIAN NURSING FEDERATION) REGISTERED NURSES WORKPLACE AGREEMENT 2011	AE897545
LADY LAWLEY COTTAGE ENROLLED NURSES AND RESIDENTIAL CARE WORKERS CERTIFIED AGREEMENT 2007	CAEN084786093
LADY LAWLEY COTTAGE (AUSTRALIAN NURSING FEDERATION) REGISTERED NURSES WORKPLACE AGREEMENT 2007	CAUN073999008

Attachment A – Letter to employees and intranet notice

Dear <insert name >

As you may be aware, the Australian Red Cross Society has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by failing to correctly apply various industrial instruments in relation to the pay and other entitlements of some current and former Humanitarian Services Division (**HSD**) employees. Through an investigation, the FWO identified that underpayments have been made to some current and former HSD employees.

The HSD is deeply sorry for these errors. They were unintentional and go against our values as a humanitarian organisation. We value all of our staff and the contribution you make. The process has been more complex than initially expected. We are committed to ensuring that all impacted employees are backpaid their correct pay and/or entitlements and we have engaged external experts to support the process over the coming months.

We understand that you may have questions and concerns relating to this and other employment issues. Should you wish to discuss your concerns directly with the HSD you can contact our enquiry line on <insert telephone number / email address>. We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry.

If you would like to raise your concerns outside of the HSD, a hotline is being operated by <insert entity name>, an independent party that can assist you with your enquiries. <Insert name > can be contacted on <insert contact number> or at <insert email address> and, if required, on a confidential basis.

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

The HSD express its sincere regret and apologises to you for failing to comply with our lawful obligations.

Yours sincerely

<Employer name>

Attachment B – SMS message to former employees

Dear <Employee Name>. The Australian Red Cross Society - Humanitarian Services Division (HSD) has identified that some former employees with the HSD may have been underpaid. The HSD is currently assessing former employees and will be in contact by 31 January 2022.