

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 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 the Australian Red Cross Society (**ARCS**) trading as Australian Red Cross Lifeblood of Level 3, 417 St Kilda Road, Melbourne, Victoria, 3004.

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. It consists 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 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. The key authority administering the blood sector on behalf of all Australian governments is the National Blood Authority (**NBA**) established under the *National Blood Authority Act 2003*.

The funding and administration arrangements for Lifeblood and Australia's national blood arrangements are specified in the National Blood Agreement, to which all Australian governments are signatories, together with associated documentation and agreements.

6. The Australian Red Cross Society Rules identify activities of Lifeblood as including:
 - (a) delivering the nation's need for blood and blood products and related services in partnership with a volunteer donor base;
 - (b) leading blood research and influencing policy;
 - (c) assuring patient, donor and employee safety; and
 - (d) partnering with healthcare professionals to share clinical practice expertise.
7. The NBA has contracted on behalf of all Australian governments through a Deed of Agreement (Deed) with ARCS for services to be performed by Lifeblood. The services Lifeblood performs are categorised as:
 - (a) Deed: services and activities that are outlined in the Deed and funded by governments; and
 - (b) non-Deed: services and activities not directly related to the collection, processing and manufacture of blood or blood products as outlined in the Deed and funded directly by the requesting Australian government (such as tissue typing to support organ transplants).
8. Lifeblood is a not-for-profit organisation, solely funded by Commonwealth, state and territory governments, with predominantly Commonwealth government funding. This funding from governments that is administered through the NBA provides for the delivery of blood and blood products under the Deed to meet the fair and reasonable costs of Lifeblood to enable Lifeblood to meet its obligations in accordance with the arrangements under the Deed and associated instruments. Lifeblood is required to return any surplus funds that are not required to perform services required under the Deed to governments through the NBA each year.

Identification of Underpayments

9. The FWO commenced an investigation into issues relating to a self-disclosed underpayment of HSD employees on 15 June 2018 (**FWO Investigation**). In or around May 2019, through the FWO Investigation, the FWO identified that there were historical underpayments associated with employees engaged by Lifeblood.

10. Lifeblood subsequently informed the FWO that it had identified underpayments totalling approximately \$3.1 million relating to approximately 335 current and former employees of Lifeblood (**Underpayments**). The Underpayments were identified following an internal human resources review commenced in or around 2016 due to concerns about long service leave accrual.
11. Prior to the Execution of this Undertaking, Lifeblood informed the FWO of the following background to the Underpayments:
 - (a) the vast majority of Lifeblood employees were covered by one of the relevant enterprise agreements set out in Schedule B (referred to as **relevant EAs**), which applied to different aspects of Lifeblood operations and in each state and territory. In late 2016, when Lifeblood was considering remuneration issues, including an issue relating to long service leave entitlements, Lifeblood identified that a number of employees who were employed pursuant to common law contracts and who were paid annualised salaries and provided with senior staff benefits, may have instead been covered by one of the relevant EAs;
 - (b) Lifeblood investigated this issue as a matter of urgency, by:
 - (i) notifying staff and unions in December 2016 and January 2017;
 - (ii) undertaking a review of EA coverage by specialist employee relations staff;
 - (iii) engaging Ernst and Young (**EY**) in April 2017 to validate Lifeblood's approach and methodology throughout the review described at clauses 10 to 12 of this Undertaking; and
 - (iv) communicating with staff and unions in May 2017.
 - (c) in and from January 2017, it was identified that further positions should also be included within the classification structures of the relevant EAs. Lifeblood determined that it would apply the relevant EA to employees in those positions, backdated to when the national classification structure was adopted in the relevant EA (after 2010), and address any potential underpayment issues.

12. Lifeblood informed the FWO that the Underpayments occurred due to the following:
- (a) the introduction of a new national classification framework in 2010 to 2011, later adopted in relevant EAs from 2011 to 2014, which was broader than previous classification structures and created uncertainty;
 - (b) ambiguity in, and lack of understanding about, the relevant EAs, which contained exclusion provisions that impacted on the coverage of these agreements (for example, a clause excluding 'positions which report through to an Executive Director' or 'senior positions as defined/determined by the Blood Service');
 - (c) Lifeblood identified employees as 'Contract of Employment (CoE) employees', being employees for whom the skills-based classification structure and whose position/position titles meant they were paid higher salaries and (incorrectly) considered to be outside the coverage of the relevant EAs; and
 - (d) as a result of the matters set out in clauses 12(a)-(c) above, employees were provided with less favourable conditions than they were entitled to under the relevant EAs in relation to their long service leave accrual rate, annual leave loading, redundancy entitlements and in some instances, lower rates of pay (which arose due to the pay increases provided for in the relevant EAs).
13. The review and determinations by Lifeblood, described at clauses 10 to 12 of this Undertaking, resulted in 355 current and former employees being recognised as covered by one of the relevant EAs and entitled to additional payments. Lifeblood attempted to back pay the Underpayments arising from this review process to then-current employees by July 2017 and to former employees by July 2018. This primarily involved addressing underpayments in respect of:
- (a) salary, in cases where the annual contractual salary had fallen below the relevant EA salary;
 - (b) increased long service leave payments and annual leave loading;
 - (c) redundancy payments (for those former employees who had been made redundant), based upon the higher redundancy scales in the relevant EAs; and
 - (d) on-call allowances.
14. In January 2020, Lifeblood informed the FWO that:

- (a) it had identified additional underpayments totalling approximately \$206,000 in relation to eight current and 22 former employees in respect of the period from 1 July 2013 to 31 January 2020 (**Additional Underpayments**); and
 - (b) the Additional Underpayments occurred due to the affected employees being incorrectly classified as outside of the coverage of the relevant EAs.
- 15. Prior to the execution of this Undertaking, Lifeblood notified the FWO that it had identified further underpayments totalling approximately \$161,000 in relation to up to 1040 current and former employees through:
 - (a) a review of payment system rules for the period between 10 July 2017 and 13 December 2020 (**Payments System Underpayments**);
 - (b) in conjunction with the New South Wales Nurses and Midwives' Association, identified further underpayments relating to public holidays for the period between March 2014 and 5 October 2020 (**Public Holidays Underpayments**);
 - (c) identified underpayments relating to shift work loadings for the period between 5 September 2019 to 28 February 2021 (**Shift Work Underpayments**)

Rectification Steps

- 16. Prior to the execution of this Undertaking, Lifeblood notified the FWO that in relation to the affected Lifeblood employees it had:
 - (a) calculated the Underpayments arising from the circumstances described in clause 13 to each of the 354 persons referred to in column B & C of Part 1 of Schedule A to this Undertaking (**Schedule A, Part 1 Employees**) in the amounts specified in column K totalling \$3,097,445.02, which includes any associated superannuation underpayments in column L, totalling \$225,328.29, as required by law in relation to those payments. Lifeblood has paid the amounts in column K to the Schedule A, Part 1 Employees where they have been able to be located and/or provided banking details;
 - (b) calculated the Additional Underpayments arising from the circumstances described in clause 14 to each of the 30 persons referred to in Column B & C of Part 2 of Schedule A to this Undertaking (**Schedule A, Part 2 Employees**) the amounts specified in column K totalling \$206,377.65, including any associated superannuation underpayments in column L totalling \$4,367.47, as required by law in relation to those payments. Lifeblood has paid the amounts in column K to the Schedule A, Part 2 Employees where they have been able to be located and/or provided banking details;

- (c) calculated the Payments System Underpayments arising from the circumstances described in clause 15(a) to each of the 248 persons referred to in Column B & C of Part 3 of Schedule A to this Undertaking (**Schedule A, Part 3 Employees**) the amounts specified in column K totalling \$45,494.43, including any associated superannuation underpayments in column L totalling \$1,570.52, as required by law in relation to those payments. Lifeblood has paid the amounts in column K to the Schedule A, Part 3 Employees where they have been able to be located and/or provided banking details;
- (d) calculated the Public Holidays Underpayments arising from the circumstances described in clause 15(b) to each of the 611 persons referred to in Column B & C of Part 4 of Schedule A (**Schedule A, Part 4 Employees**) the amounts specified in column K totalling \$90,960.25, including any associated superannuation underpayments in column L totalling \$8,546.01, as required by law in relation to those payments. Lifeblood has paid the amounts in column K to the Schedule A, Part 4 Employees where they have been able to be located and/or provided banking details;
- (e) calculated the Shift Work Underpayments arising from the circumstances described in clause 15(c) to each of the 181 persons referred to in Column B & C of Part 5 of Schedule A (**Schedule A, Part 5 Employees**) the amounts specified in column K totalling \$24,800.37 including any associated superannuation underpayments in column L totalling \$2,480.08, as required by law in relation to those payments. Lifeblood has paid the amounts in column K to the Schedule A, Part 5 Employees where they have been able to be located and/or provided banking details.

(the persons listed in Schedule A are collectively referred to as **Schedule A Employees**).

17. In total, across the 5 parts described in clause 16, up to 1160 current and former Schedule A employees were calculated to be owed a total of \$3,465,077.72 in underpayments, with a further \$242,292.37 in superannuation, for an overall total of \$3,707,370.09. Lifeblood has paid these amounts where employees have been able to be located and/or provided banking details.

Additional steps taken by Lifeblood since 2017

18. Lifeblood informed the FWO that, in addition to the steps taken to address the relevant EA coverage issues described at clauses 10 to 12 of this Undertaking, and once administrative shortcomings were identified, Lifeblood took additional steps to bolster governance, capability and policy guidance and reduce the risks of further employment compliance issues arising, including:

- (a) specialist capability at senior levels;
- (b) engaging EY and PricewaterhouseCoopers to undertake further audits, provide recommendations regarding systems, processes and controls to better support compliance and provide payroll consultancy services;
- (c) improved interactions between human resources and payroll teams, and regular annual audits of the interface between the two in relation to compliance with applicable industrial instruments;
- (d) adopting a responsibility and governance matrix and updating and introducing new standard operating procedures to address EA matters, such as how positions are classified under EAs and how changes to EAs are implemented;
- (e) the inclusion of non-compliance with industrial instruments as an operational risk in Lifeblood's formal organisational risk register; and
- (f) providing regular development training to the national People and Culture team (including payroll) on various employment law topics.

ADMISSIONS

19. The FWO has a reasonable belief, and Lifeblood admits, that it contravened:

- (a) section 50 of the FW Act from 1 July 2010 to 28 February 2021 (**Relevant Period**) by failing to pay each of the Schedule A Employees the amount or amounts to which that employee was entitled under the relevant EAs and clauses referred to in sub-clauses (a)(i) to (a)(xlili) below, as identified in Schedule B to this Undertaking in relation to that employee, including:
 - (i) *Australian Red Cross Blood Service & Health Services Union Workplace Agreement New South Wales 2006*
 - A. Clause 32 and Appendix 1 – Salaries
 - B. Clause 22 – Annual Leave and Leave Loading
 - (ii) *Australian Red Cross Blood Service New South Wales Enterprise Agreement 2010*
 - A. Clause 34 and Appendices 1 and 1A – Salaries
 - B. Clause 22 – Annual Leave and Leave Loading
 - C. Clause 15 and Appendix 2 – On Call
 - D. Clause 41 - Redundancy

(iii) *Australian Red Cross Blood Service Enterprise Agreement New South Wales and Australian Capital Territory 2013*

- A. Clause 26 – Long Service Leave
- B. Clause 40 – Redundancy
- C. Clause 15 and Appendix 2 – On Call
- D. Clause 22 – Annual Leave and Leave Loading
- E. Clause 34 and Appendices 1, 1A and 1B – Salaries

(iv) *Australian Red Cross Blood Service NSW Nurses Enterprise Agreement 2011*

- A. Clause 21 – Public Holidays

(v) *Australian Red Cross Blood Service Nursing Enterprise Agreement New South Wales and Australian Capital Territory 2014*

- A. Clause 30 and Appendix 1– Salaries
- B. Clause 21 – Annual Leave and Leave Loading
- C. Clause 10 – Hours of Work
- D. Clause 19 – Public Holidays

(vi) *Australian Red Cross Blood Service Enterprise Agreement New South Wales and Australian Capital Territory 2017*

- A. Clause 22 – Annual Leave and Leave Loading
- B. Clause 26 – Long Service Leave
- C. Clause 34 and Appendices 1, 1A and 1B – Salaries

(vii) *Australian Red Cross Blood Service Nurses Enterprise Agreement New South Wales and Australian Capital Territory 2018*

- A. Clause 9 – Hours of Work
- B. Clause 17 – Public Holidays
- C. Clause 14 – Shift work

(viii) *Australian Red Cross Blood Service Collective Enterprise Agreement Queensland 2010*

- A. Clause 20 – Annual Leave and Leave Loading

B. Clause 34 and Appendix 1 – Salaries

(ix) *Australian Red Cross Blood Service Collective Enterprise Agreement Queensland 2011*

A. Clause 20 – Annual Leave and Leave Loading

B. Clause 34 and Appendix 1 and Appendix 1A – Salaries

C. Clause 14 and Appendix 2 - On Call Allowance

(x) *Australian Red Cross Blood Service Enterprise Agreement Queensland 2014*

A. Clause 13 – Shift work

B. Clause 14 and Appendix 2 – On Call

C. Clause 16 – Overtime

D. Clause 20 – Annual Leave and Leave Loading

E. Clause 22 – Long Service Leave

F. Clause 24 – Public Holidays

G. Clause 36 and Appendix 1 – Salaries

(xi) *Australian Red Cross Blood Service Enterprise Agreement Queensland 2017*

A. Clause 35 and Appendix 1 – Salaries

B. Clause 24 – Public Holidays

C. Clause 16 – Overtime

D. Clause 13 – Shift work

(xii) *Australian Red Cross Blood Service Queensland Nurses Collective Agreement 2010*

A. Clause 26 – Annual Leave and Leave Loading

B. Clause 34 and Appendix 1 – Salaries

(xiii) *Australian Red Cross Blood Service Queensland Nursing Enterprise Agreement 2014*

A. Clause 24 – Annual Leave and Leave Loading

B. Clause 26 – Long Service Leave

C. Clause 32 and Appendix 1 – Salaries

D. Clause 14 – Shift work

(xiv) *Australian Red Cross Blood Service Queensland Nursing Enterprise Agreement 2017*

A. Clause 14 – Shift work

(xv) *Australian Red Cross Lifeblood Enterprise Agreement Queensland 2020*

A. Clause 20 - Overtime

(xvi) *Australian Red Cross Blood Service, South Australia, Employee Collective Agreement 2007*

A. Clause 19 – Annual Leave and Leave Loading

B. Clause 29 and Appendix 1 – Salaries

(xvii) *Australian Red Cross Blood Service South Australia Employee Enterprise Agreement 2011*

A. Clause 20 – Annual Leave and Leave Loading

B. Clause 31 and Appendices 1 and 2 – Salaries

C. Clause 37 – Redundancy

(xviii) *Australian Red Cross Blood Service Enterprise Agreement South Australia 2014*

A. Clause 33 and Appendix 1 - Salaries

B. Clause 20 – Annual Leave and Leave Loading

C. Clause 13 – Shift Work

D. Clause 24 – Public Holidays

(xix) *Australian Red Cross Blood Service Enterprise Agreement South Australia 2017*

A. Clause 23 – Long Service Leave

B. Clause 16 – Overtime

C. Clause 13 – Shift work

(xx) *Australian Red Cross Blood Service Nursing Enterprise Agreement South Australia 2013*

A. Clause 22 – Annual Leave and Leave Loading

B. Clause 32 and Appendix 1 – Salaries

(xxi) *Australian Red Cross Blood Service Nursing Enterprise Agreement South Australia 2016*

A. Clause 21 – Annual Leave and Leave Loading

B. Clause 32 and Appendix 1 – Salaries

(xxii) *Health Services Union and Australian Red Cross Blood Service - Health and Allied Services, Administrative Officers and Health Professionals Collective Agreement 2006 – 2010*

A. Clause 23 – Annual Leave and Leave Loading

B. Clause 43 and Appendix 1 – Salaries

C. Clause 16 and Appendix 1– Re Call/On Call

D. Clause 25 – Long Service Leave

(xxiii) *Australian Red Cross Blood Service Health Services Union Victoria Enterprise Agreement 2010*

A. Clause 21 – Annual Leave and Leave Loading

B. Clause 33 and Appendices 1 and 1A – Salaries

C. Clause 23 – Long Service Leave

D. Clause 15 and Appendix 2– On Call

(xxiv) *Australian Red Cross Blood Service Enterprise Agreement Victoria 2014*

A. Clause 15 and Appendix 2 – On-Call

B. Clause 21 – Annual Leave and Leave Loading

C. Clause 23 – Long Service Leave

D. Clause 40 – Redundancy

E. Clause 34 and Appendix 1 – Salaries

(xxv) *Australian Red Cross Blood Service Victorian Medical Officers and Specialists Enterprise Agreement 2015*

A. Clause 22 – Long Service Leave

(xxvi) *Australian Red Cross Blood Service Scientists Enterprise Agreement Victoria 2013*

A. Clause 40 and Appendix 1 – Salaries

B. Clause 24 – Annual Leave and Leave Loading

(xxvii) *Australian Red Cross Blood Service Scientists Enterprise Agreement Victoria 2016*

- A. Clause 40 and Appendix 1 – Salaries

(xxviii) *Australian Red Cross Blood Service Victorian Nurses Workplace Agreement 2007*

- A. Clause 43 and Appendix 1 – Salaries
- B. Clause 24 – Annual Leave and Leave Loading

(xxix) *Australian Red Cross Blood Service Nurses Enterprise Agreement Victoria 2012*

- A. Clause 19 – Annual Leave and Leave Loading
- B. Clause 38 and Appendix 1 – Salaries

(xxx) *Australian Red Cross Blood Service Nursing Enterprise Agreement Victoria 2015*

- A. Clause 19 – Annual Leave and Leave Loading
- B. Clause 21 – Long Service Leave
- C. Clause 38 and Appendix 1 – Salaries

(xxxi) *Australian Red Cross Blood Service - Employees Enterprise Agreement - Western Australia 2010*

- A. Clause 19 – Annual Leave and Leave Loading
- B. Clause 31 and Appendices 1 and 2 – Salaries
- C. Clause 12, Clause 25 and Appendix 4– On Call

(xxxii) *Australian Red Cross Blood Service Employees Enterprise Agreement Western Australia 2012*

- A. Clause 22 – Annual Leave and Leave Loading
- B. Clause 36 and Appendices 1 and 1A – Salaries

(xxxiii) *Australian Red Cross Blood Service Enterprise Agreement Western Australia 2015*

- A. Clause 23 – Long Service Leave
- B. Clause 21– Annual Leave and Leave Loading
- C. Clause 32and Appendix 1 – Salaries
- D. Clause 16 – Overtime
- E. Clause 19 – Public Holidays
- F. Clause 17 – Meal and Rest Breaks

(xxxiv) *Australian Red Cross Blood Service Nurses Enterprise Agreement Western Australia 2012*

- A. Clause 20 – Annual Leave and Leave Loading
- B. Clause 33 and Appendix 1 – Salaries

(xxxv) *Australian Red Cross Blood Service Nurses Enterprise Agreement Western Australia 2015*

- A. Clause 20 – Annual Leave and Leave Loading
- B. Clause 31 and Appendix 1 – Salaries
- C. Clause 13 – Overtime
- D. Clause 15 – Shift work

(xxxvi) *Australian Red Cross Blood Service Western Australian Manufacturing and Support Service Enterprise Agreement 2018*

- A. Clause 17 – Overtime
- B. Clause 22 – Public Holidays
- C. Clause 16 and Appendix 2 – On Call
- D. Clause 18 – Meal and Rest Breaks

(xxxvii) *Australian Red Cross Blood Service Northern Territory Enterprise Agreement 2012*

- A. Clause 23 – Annual Leave and Leave Loading

(xxxviii) *Australian Red Cross Blood Service Enterprise Agreement Northern Territory 2018*

- A. Clause 18 and Appendix 2 – Meal and Rest Breaks and Allowances
- B. Clause 16 and Appendix 2 – On Call

(xxxix) *Australian Red Cross Blood Service Enterprise Agreement Northern Territory 2015*

- A. Clause 17 and Appendix 2 – Meal and Rest Breaks and Allowances
- B. Clause 15 and Appendix 2 – On Call

(xl) *Australian Red Cross Blood Service Nursing Enterprise Agreement Tasmania 2015*

- A. Clause 19 – Annual Leave and Leave Loading
- B. Clause 32 and Appendix 1 – Salaries

C. Clause 14 - Overtime

(xli) *Australian Red Cross Blood Service- Health Services Union Tasmania Enterprise Agreement 2009*

A. Clause 26 and Appendix 1 –Salaries

(xlii) *Australian Red Cross Blood Service Tasmania Enterprise Agreement 2012*

A. Clause 19 – Annual Leave and Leave Loading

B. Clause 29 and Appendices 1 and 1A – Salaries

(xliii) *Australian Red Cross Blood Service Tasmania Enterprise Agreement 2014*

A. Clause 18 – Annual Leave and Leave Loading

B. Clause 29 and Appendix 1 – Salaries.

20. The contraventions identified in clause 19 of this Undertaking do not include:

- (a) any contraventions which relate to or arise because of Lifeblood failing to correctly apply any industrial instrument (including a relevant EA) to any employee not listed in Schedule A to this Undertaking (**Non-schedule Employees**) or because of any failure by Lifeblood to apply relevant industrial instruments to Schedule A employees other than those set out in clause 19 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 Lifeblood failing to correctly apply any industrial instrument (including the relevant EAs) 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 28 February 2021, whether or not those contraventions are identified in the Audits described in clauses 23 to 33 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 Lifeblood and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

UNDERTAKINGS

Rectification of underpayments

21. If any of the Schedule A Employees to whom underpayments are owed cannot be located by 90 days after the Commencement Date, Lifeblood 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. Lifeblood will complete the required documents supplied by the FWO for this purpose.

22. If the FWO can locate and contact any of the Schedule A Employees to whom any underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify Lifeblood in writing of the name and contact details of the employee. Within 28 days of receiving any such notice, Lifeblood will pay the current or former employee:
 - (a) an additional payment equal to the superannuation payment which would have been required by law, had Lifeblood paid to the employee, as their ordinary salary, the amount it paid to the Commonwealth under clause 23.

Audit Activity

23. Lifeblood must, at its own cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits (**Audits**) of Lifeblood's compliance with the FW Act in relation to the relevant EAs or any replacement instrument (**Relevant Industrial Instrument**).
24. Lifeblood will notify the FWO of its proposed Independent Auditor by no later than 1 December 2021. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Lifeblood to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor.
25. Lifeblood 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 10% of employees of Lifeblood (**Sampled Employees**);
 - (b) an assessment of whether Lifeblood have correctly classified the Sampled Employees;
 - (c) an assessment of whether the pay and conditions of the Sampled Employees is in compliance 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 25(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 Lifeblood, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Lifeblood 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

- 26. Lifeblood must ensure the Independent Auditor commences the first of the Audits by no later than 15 February 2022 (**First Audit**).
- 27. The relevant audit period for the First Audit must be at least two full consecutive pay periods falling within the period 1 January 2021 – 31 December 2021.
- 28. By 1 February 2022, Lifeblood will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 29. Lifeblood will ensure the Independent Auditor provides a written report of the First Audit directly to the FWO by 1 May 2022, setting out the First Audit findings, and the facts and circumstances supporting the First Audit findings.

The Second Audit

- 30. Lifeblood must ensure the Independent Auditor commences the second of the Audits by no later than 15 February 2023 (**Second Audit**).
- 31. The relevant audit period for the Second Audit must be at least two full consecutive pay periods falling within the period 1 January 2022 – 31 December 2022.
- 32. By 1 February 2023, Lifeblood will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
- 33. Lifeblood will ensure the Independent Auditor provides a written report of the Second Audit directly to the FWO by 1 May 2023, setting out the Second Audit findings, and the facts and circumstances supporting the Second Audit findings.

Outcome of Audits

34. If any of the Audits identify underpayments to any current or former employees, the FWO will notify Lifeblood and provide a copy of the relevant written report. Lifeblood 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.
35. Lifeblood 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 34.
36. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of each Audit, Lifeblood will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Lifeblood will complete the required documents supplied by the FWO for this purpose.
37. 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, Lifeblood 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 Lifeblood and Lifeblood must ensure it includes the matters set out in clause 25(a)-(e). Any Additional Audit must be completed within 60 days of the FWO notifying Lifeblood 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, Lifeblood must comply with clauses 34 to 36 above in respect of the Additional Audit.
38. If requested by the FWO, Lifeblood 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

39. By the Commencement Date, at its own expense, Lifeblood will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the relevant EAs 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.

40. After considering Lifeblood's proposal that Stopline operate the Employee Hotline, the FWO has approved Stopline to operate the Employee Hotline.
41. Lifeblood will:
- (a) ensure the Employee Hotline remains operational for a period of 24 months from the Commencement Date;
 - (b) ensure that the telephone number and email address are included on any communication to employees to whom the relevant EA apply and the intranet notice (see clause 43);
 - (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 Lifeblood does not have their email) to whom the relevant EAs apply, or had applied, known as at the Commencement Date, or identified during the Audits, and dating back to 1 July 2010. Lifeblood 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 of the Commencement Date;
 - (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.

Notices

Media Release

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

Intranet Notice

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

44. 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, Lifeblood will provide to the FWO evidence of its placement.

Workplace relations systems and processes

- 45. Lifeblood has provided assurances and identified the steps taken as set out above in paragraphs 11 to 18, regarding systems and processes, prior to the execution of this Undertaking and the FWO acknowledges the assurances and steps taken.
- 46. In conjunction with those assurances, within 60 days of the date of execution of this Undertaking, Lifeblood will provide the FWO with written confirmation of any further steps and systems it has or will implement to ensure continued future compliance with paragraph 47 below.
- 47. Within 90 days of the execution of this Undertaking, Lifeblood will (and noting that Lifeblood has already taken significant steps as set out above in paragraphs 11 to 18) ensure that it has in place systems and processes to monitor and continue to ensure compliance at all times and in all respects with Commonwealth workplace laws, modern awards, enterprise agreements and common law contracts, including how contracts interact with industrial instruments at Lifeblood, including steps to ensure that the coverage provisions in each applicable enterprise agreement are being correctly applied.

Implementation of new Enterprise Agreements

- 48. Within one month of any new enterprise agreement commencing in 2021 (after the Commencement Date) or 2022 which applies to Lifeblood, Lifeblood will:
 - (a) conduct a review (by suitably experienced and qualified employee relations specialists) to ensure that the coverage provisions of the new enterprise agreements are being correctly applied; and
 - (b) report to FWO within 14 days of the completion of the review, identifying who conducted the review, the methodology used and the outcome.

Staff training

49. As at the Commencement Date, Senior Employee Relations Counsel of Lifeblood has provided workplace relations training between July 2018 and September 2020 for teams with responsibility for human resources, recruitment and payroll functions including training in respect of Commonwealth workplace laws, awards, Relevant Industrial Instruments and common law contracts, including how contracts interact with industrial instruments at Lifeblood.
50. In addition to the training described at clause 49 above, Lifeblood will ensure that, during a period of two years starting from the Commencement Date:
- (a) annual refresher workplace relations training is provided to all existing employees with responsibility for human resources and payroll functions and senior managers of Lifeblood. The training will include compliance with applicable Commonwealth workplace laws and instruments, including but not limited to, the rights and responsibilities of employers under the FW Act and the industrial instruments;
 - (b) any new or existing employees who acquire or assume human resources and payroll responsibilities are provided with workplace relations training (including on the matters set out in (a) above), within three months of assuming those responsibilities; and
 - (c) that training has been developed with the advice of, and reviewed by, an external employee relations specialist at Lifeblood's own expense.
51. At the end of each six month period during the two years starting from the Commencement Date, Lifeblood will provide to the FWO details and verification of the training provided, including:
- (a) copies of the training materials used; and
 - (b) names, position titles and attendance dates for each of the employees who were provided with training.

No inconsistent statements

52. Lifeblood 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 complaints

53. Where the FWO receives a request for assistance from a Lifeblood employee or former employee regarding potential non-compliance with industrial instruments, the FWO may, at its discretion, notify Lifeblood and its officers and provide relevant details.
54. Where a matter is notified to Lifeblood, it will undertake 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 Lifeblood to facilitate the resolution of any such matter.
55. For avoidance of doubt, this Undertaking is not given or accepted in relation to any contravention notified in accordance with clause 53 and 54, unless that contravention is identified in clause 19 and is not excluded by clause 20.

ACKNOWLEDGEMENTS

56. Lifeblood 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 Lifeblood set out in clause 19 above in respect

of decisions taken regarding enforcement action in the event that Lifeblood is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Lifeblood 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, Lifeblood may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if Lifeblood 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 Lifeblood in clause 19 and above, and also in respect of the question of costs.

Executed as an undertaking

EXECUTED by Australian Red Cross Society (trading as Lifeblood) in accordance with rule 20.4 of the Rules of the Australian Red Cross Society:



(Signature of Chief Executive)

Shelly Park

(Name of Chief Executive)

27/10/2021

(Date)

in the presence of:



(Signature of witness)

CATHERINE GILLARD

(Name of witness)



(Signature of director/company secretary)

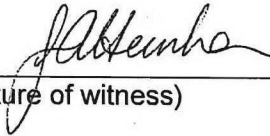
James Birch

(Name of director/company secretary)

26/10/2021

(Date)

in the presence of:



(Signature of witness)

Gabrielle Hewitson

(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 One to Part Five Employees (please see attached)

SCHEDULE B – List of applicable industrial instruments

	Agreement Name	ID
1.	Australian Red Cross Blood Service & Health Services Union Workplace Agreement New South Wales 2006	N/A
2.	Australian Red Cross Blood Service New South Wales Enterprise Agreement 2010	AE883667
3.	Australian Red Cross Blood Service Enterprise Agreement New South Wales and Australian Capital Territory 2013	AE406996
4.	Australian Red Cross Blood Service NSW Nurses Enterprise Agreement 2011	AE894101
5.	Australian Red Cross Blood Service Nursing Enterprise Agreement New South Wales and Australian Capital Territory 2014	AE409702
6.	Australian Red Cross Blood Service Enterprise Agreement New South Wales and Australian Capital Territory 2017	AE429500
7.	Australian Red Cross Blood Service Nurses Enterprise Agreement New South Wales and Australian Capital Territory 2018	AE505071
8.	Australian Red Cross Blood Service Collective Enterprise Agreement Queensland 2010	AE878877
9.	Australian Red Cross Blood Service Collective Enterprise Agreement Queensland 2011	AE878877-2
10.	Australian Red Cross Blood Service Enterprise Agreement Queensland 2014	AE410674
11.	Australian Red Cross Blood Service Enterprise Agreement Queensland 2017	AE500631
12.	Australian Red Cross Blood Service Queensland Nurses Collective Agreement 2010	AE883513
13.	Australian Red Cross Blood Service Queensland Nursing Enterprise Agreement 2014	AE407623
14.	Australian Red Cross Blood Service Queensland Nursing Enterprise Agreement 2017	AE427704
15.	Australian Red Cross Lifeblood Enterprise Agreement Queensland 2020	AE509246
16.	Australian Red Cross Blood Service, South Australia, Employee Collective Agreement 2007	N/A
17.	Australian Red Cross Blood Service South Australia Employee Enterprise Agreement 2011	AE888769
18.	Australian Red Cross Blood Service Enterprise Agreement South Australia 2014	AE409984
19.	Australian Red Cross Blood Service Enterprise Agreement South Australia 2017	AE426238
20.	Australian Red Cross Blood Service Nursing Enterprise Agreement South Australia 2013	AE403340

21.	Australian Red Cross Blood Service Nursing Enterprise Agreement South Australia 2016	AE420551
22.	Health Services Union and Australian Red Cross Blood Service - Health and Allied Services, Administrative Officers and Health Professionals Collective Agreement 2006 – 2010	N/A
23.	Australian Red Cross Blood Service Health Services Union Victoria Enterprise Agreement 2010	AE889417
24.	Australian Red Cross Blood Service Enterprise Agreement Victoria 2014	AE413108
25.	Australian Red Cross Blood Service Victorian Medical Officers and Specialists Enterprise Agreement 2015	AE418384
26.	Australian Red Cross Blood Service Scientists Enterprise Agreement Victoria 2013	AE404278
27.	Australian Red Cross Blood Service Scientists Enterprise Agreement Victoria 2016	AE423356
28.	Australian Red Cross Blood Service Victorian Nurses Workplace Agreement 2007	N/A
29.	Australian Red Cross Blood Service Nurses Enterprise Agreement Victoria 2012	AE899066
30.	Australian Red Cross Blood Service Nursing Enterprise Agreement Victoria 2015	AE416677
31.	Australian Red Cross Blood Service - Employees Enterprise Agreement - Western Australia 2010	AE879036
32.	Australian Red Cross Blood Service Employees Enterprise Agreement Western Australia 2012	AE897218
33.	Australian Red Cross Blood Service Enterprise Agreement Western Australia 2015	AE414555
34.	Australian Red Cross Blood Service Nurses Enterprise Agreement Western Australia 2012	AE898220
35.	Australian Red Cross Blood Service Nurses Enterprise Agreement Western Australia 2015	AE412901
36.	Australian Red Cross Blood Service Western Australian Manufacturing and Support Service Enterprise Agreement 2018	AE504897
37.	Australian Red Cross Blood Service Northern Territory Enterprise Agreement 2012	AE895021
38.	Australian Red Cross Blood Service Enterprise Agreement Northern Territory 2018	AE504536
39.	Australian Red Cross Blood Service Enterprise Agreement Northern Territory 2015	AE412636
40.	Australian Red Cross Blood Service Nursing Enterprise Agreement Tasmania 2015	AE417547
41.	Australian Red Cross Blood Service Health Service Union Tasmania Enterprise Agreement 2009	AE875068
42.	Australian Red Cross Blood Service Tasmania Enterprise Agreement 2012	AE894832
43.	Australian Red Cross Blood Service Tasmania Enterprise Agreement 2014	AE410586

Attachment A – Letter to employees and intranet notice

Dear <insert name >

As you may be aware, Lifeblood 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 employees of Australian Red Cross Lifeblood (Lifeblood). Through an investigation, the FWO identified that underpayments have been made by Lifeblood to some current and former Lifeblood employees.

Any current or former employees impacted by these errors have already been contacted by Lifeblood at their last recorded email or postal address.

Lifeblood understands that you may have questions and concerns relating to this and other employment issues. To address these concerns a hotline has been established for all employees to access. The hotline is being operated by Stopline, an independent party that can assist you with your enquiries. Stopline can be contacted on **1300 30 45 50** or at redcrosslifeblood@stopline.com.au and, if required, on a confidential basis. The Stopline service holds a list of the names of the small number of former employees who are still owed entitlements and who Lifeblood has been unable to contact through their last known address.

It is a term of the undertakings entered into by Lifeblood with the Fair Work Ombudsman that Lifeblood write to every current and former employee dating back to 1 July 2010 who may have been impacted by these errors and inform them of the existence of this hotline.

Should you wish to discuss your concerns directly with Lifeblood you can contact our enquiry line on service by email at PeopleCentralSupport@redcrossblood.org.au. 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.

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

Lifeblood expresses its sincere regret and apologises to you for failing to comply with our lawful obligations.

Yours sincerely

Australian Red Cross Lifeblood