

## ENFORCEABLE UNDERTAKING

This undertaking is **given** by:

- Australian Unity Home Care Services Pty Ltd;
- Australian Unity Better Living Services Pty Ltd;
- Better Home Care Pty Ltd;
- Australian Unity Care Services Pty Ltd;
- Australian Unity Retirement Living Management Pty Ltd;
- KNS Essential Care Pty Ltd;

and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clauses 14 to 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 following entities:
  - (a) Australian Unity Home Care Service Pty Ltd (ABN 73 609 694 475), of Level 15, 271 Spring Street Melbourne VIC 3000 (**AU Home Care**);
  - (b) Australian Unity Better Living Services Pty Ltd (ABN 62 131 346 382), of Level 15, 271 Spring Street Melbourne VIC 3000 (**AU Better Living**);
  - (c) Better Home Care Pty Ltd (ABN 32 113 090 467), of Level 15, 271 Spring Street Melbourne VIC 3000 (**Better Home Care**);
  - (d) Australian Unity Care Services Pty Ltd (ABN 44 065 558 134), of Level 15, 271 Spring Street Melbourne VIC 3000 (**AU Care Services**);
  - (e) Australian Unity Retirement Living Management Pty Ltd (ABN 97 003 434 115), of Level 15, 271 Spring Street Melbourne VIC 3000 (**AU Retirement Living**); and
  - (f) KNS Essential Care Pty Ltd (ABN 32 105 027 290), of Level 15, 271 Spring Street Melbourne VIC 3000 (**KNS**),  
  
(collectively, the **Companies**).

### COMMENCEMENT

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

### BACKGROUND

3. Australian Unity Limited (**AUL**) is a member owned mutual organisation. The Companies are related bodies corporate of AUL, and form part of the Australian Unity Group (**AU Group**). The AU Group provides products and services including health insurance, financial services, retirement accommodation and aged care. The Companies each employ employees who work in AU Group's aged care, retirement living, home care services and Aboriginal home health businesses (formally called the Independent and Assisted Living (**IAL**) business during the review periods referred to in clause 10 below). These businesses operate retirement communities and

provide aged care, allied health, and disability services across Victoria, New South Wales and (since July 2021) Queensland.

4. Australian Unity Group Services Pty Ltd (**AU Group Services**) is a further member of the AU Group. AU Group Services is the current employer of some of the employees that the Companies have admitted underpaying as set out in this Undertaking and rectified some of the underpayments on behalf of the Companies.
5. The AU Group, which includes the Companies and AU Group Services, employed approximately 6,960 employees as at September 2021. Individually, as at 31 July 2022, each of the Companies and AU Group Services, currently employ:
  - (a) AU Home Care — 3,418 employees;
  - (b) AU Better Living — 834 employees;
  - (c) Better Home Care — 188 employees;
  - (d) AU Care Services — 298 employees;
  - (e) AU Retirement Living — 80 employees; and
  - (f) AU Group Services — 2,075 employees.
6. KNS no longer has any employees but did have employees during the period 31 October 2014 (being the date KNS became a wholly owned subsidiary of the AU Group) and 30 April 2019.

#### RELEVANT INSTRUMENTS

7. The following enterprise agreements and awards (collectively, the **Instruments**) applied to the Companies and their employees who worked in the IAL business during the following periods:
  - (a) For AU Care Services, AU Retirement Living and Better Home Care, in respect of their employees covered by the *Social, Community, Home Care and Disability Services Industry Award 2010* (**SCHADS Award**) or the *Nurses Award 2010* (**Nurses Award**) who were employed to carry out Home Care Duties (as that term is used in the instruments below):
    - (i) the *Australian Unity Home Care Enterprise Agreement 2014* (**AU Home Care EA 2014**), from 21 November 2014 to 16 May 2018, except in relation to employees employed as Allocations Coordinators in NSW, to whom the AU Home Care EA 2014 continued to apply after 16 May 2018; and

- (ii) except in relation to employees employed as Allocation Coordinators in NSW, the *Australian Unity Home Care Enterprise Agreement 2017 (AU Home Care EA 2017)*, from 17 May 2018 until 22 October 2021.
- (b) For AU Care Services and AU Retirement Living, in respect of their employees covered by the Nurses Award or the *Aged Care Award 2010 (Aged Care Award)* (other than those employed to carry out Home Care Duties) in Victoria:
  - (i) the *Australian Unity Retirement Living Victorian Traditional Model Enterprise Agreement 2013 (AU VIC Traditional EA 2013)*, from 16 January 2014 to 10 July 2019; and
  - (ii) the *Australian Unity Independent & Assisted Living Victorian Traditional Model Enterprise Agreement 2018 (AU VIC Traditional EA 2018)*, from 11 July 2019 until 22 October 2021.
- (c) For AU Care Services and AU Retirement Living, in respect of their employees covered by the Nurses Award or the Aged Care Award (other than those employed to carry out Home Care Duties) in New South Wales (NSW):
  - (i) the *Australian Unity Retirement Living NSW Traditional Model Enterprise Agreement 2013 (AU NSW Traditional EA 2013)*, from 14 February 2014 to 13 March 2019; and
  - (ii) the *Australian Unity Independent & Assisted Living NSW Traditional Model Enterprise Agreement 2018 (AU NSW Traditional EA 2018)*, from 14 March 2019 until 22 October 2021.
- (d) For AU Better Living, in respect of its employees covered by the Nurses Award and Aged Care Award:
  - (i) the *Australian Unity Retirement Living Consumer Directed Care Model Enterprise Agreement 2013 (AU CDC EA 2013)*, from 26 February 2014 to 7 April 2019; and
  - (ii) the *Independent & Assisted Living Consumer Directed Care Model Enterprise Agreement 2018 (AU CDC EA 2018)*, from 8 April 2019 until 22 October 2021.
- (e) For AU Home Care:
  - (i) in respect of its employees employed as Care Workers, Home Aides or Live in Housekeepers (as those terms are used in the following instruments):
    - (A) the *Care Worker Employees – Department of Family and Community Services – Ageing Disability and Home Care (State) Award 2015 (HDS Care*

**Worker Award 2015)** from the acquisition described in clause 8, below, until 22 March 2018; and

(B) the *Australian Unity Home Care Service NSW Enterprise Agreement 2017 (HDS Care Worker EA 2017)*, from 23 March 2018 to 26 November 2019; and

(ii) in respect of its employees employed as Domestic Care Assistants, Personal Care Workers or Care Worker Coaches (as those terms are used in the following instrument) — the *Australian Unity Home & Disability Services NSW Care Workers Enterprise Agreement 2019 (HDS Care Worker EA 2019)*, from 27 November 2019 until 22 October 2021.

(f) For AU Home Care, in respect of its employees other than those referred to in clause 7(e), above:

(i) for employees whose employment transferred as described in clause 8, below:

(A) the *Crown Employees (Home Care NSW – Administration Staff) Award 2012 (Crown Award 2012)* from the acquisition described in clause 8, below, until 21 February 2021; and

(B) the SCHADS Award from 22 February 2021 until 22 October 2021;

(ii) for other employees — the SCHADS Award.

(g) For KNS — the SCHADS Award.

8. The AU Group acquired the NSW Government's former Home Care New South Wales business on 19 February 2016. This resulted in the transfer of employees (the **HDS Employees**) from the NSW Government to AU Home Care. As a result of this acquisition and the transfer of the HDS Employees, the *HDS Care Workers Award 2015* and the *Crown Award 2012* applied to AU Home Care and the HDS employees as copied state awards within the meaning of s 768AI of the FW Act. As part of the acquisition, AU Group took over payroll services for these employees, under a transition services agreement with the NSW Government, progressively between 1 June 2016 and 17 February 2017.

#### DISCLOSURES TO THE FWO

9. On 9 November 2020, AU Group notified the FWO that:

(a) In late 2019 it had undertaken a proactive review of its payroll systems and processes for employees in its IAL business to whom an enterprise agreement or award applied. This

review had identified unintentional payroll errors resulting in underpayments to employees. However, the full amounts owed to current and former employees were subject to ongoing review, data validation and quality assurance processes;

- (b) The underpayments resulted from payroll errors that included the following:
  - (i) meal breaks not correctly recorded, resulting in penalty rates not being paid;
  - (ii) minimum engagement periods not applied correctly;
  - (iii) incorrect calculation of overtime payments;
  - (iv) penalty rates not correctly applied to shifts;
  - (v) travel time and kilometres not recorded correctly;
  - (vi) inconsistencies between the work completed and the pay rate applied;
  - (vii) incorrect accrual of the additional week of annual leave for some eligible employees; and
  - (viii) pay types incorrectly identified as not ordinary time earnings for the purpose of superannuation.
- (c) AU Group intended to commence rectifying the underpayments in November 2020. This would include payment of any superannuation contributions required in respect of the underpayments, and interest of 5.5% per annum (calculated on the underpayment and superannuation contribution).

10. On 9 November 2020 and in subsequent correspondence, AU Group notified the FWO that:

- (a) AU Group's proactive payroll review had consisted of:
  - (i) a preliminary review conducted in late 2019 by Ernst & Young, involving a sample of employees for the period 1 July 2017 to 30 June 2018 (**EY Review**). The EY Review identified potential payroll errors.
  - (ii) an in-house review conducted by AU Group commencing in February 2020 (**Internal Review**). The Internal Review covered the following periods:
    - (A) for employees referred to in clause 7(a) — 21 November 2014 to:
      - (I) 18 December 2020 for wage entitlements; and
      - (II) 22 October 2021 for annual and personal leave entitlements;
    - (B) for employees referred to in clauses 7(b), 7(c) and 7(d) — 1 July 2014 to:

- (I) 18 December 2020 for wage entitlements; and
      - (II) 22 October 2021 for annual and personal leave entitlements;
    - (C) for employees referred to in clauses 7(e) and 7(f)(i) — 1 June 2016 or the date AU Group took over payroll services for the individual (whichever was the later) to:
      - (I) 18 December 2020 for wage entitlements; and
      - (II) 22 October 2021 for annual and personal leave entitlements;
    - (D) for employees referred to in clause 7(f)(ii) — 1 June 2016 to:
      - (I) 21 February 2021 for wage entitlements; and
      - (II) 22 October 2021 for annual leave and personal leave entitlements; and
    - (E) for the KNS employee referred to in clause 7(g) — 4 October 2015 to 30 April 2019 for wage entitlements, annual leave and personal leave entitlements.
  - (b) AU Group had notified its current employees and their unions in November 2020 and had published a media release regarding the underpayments. Further correspondence was issued to former employees regarding the underpayments in March 2021.
11. In a letter on 18 November 2021, AU Group notified the FWO that:
- (a) It had identified errors in the accrual of annual leave and/or personal carer's leave entitlements (**leave related issues**) for wages employees in its IAL business to whom an enterprise agreement or copied state award applied during the review periods referred to in clause 10.
  - (b) It had identified the following reasons for the leave related issues arising:
    - (i) incorrect accrual of annual leave on certain shift types for shift workers under certain industrial instruments;
    - (ii) deductions from annual leave accruals when public holidays occurred during periods of annual leave;
    - (iii) personal leave accruing on contracted hours, rather than ordinary hours;
    - (iv) personal leave not accruing during paid parental leave; and



- (v) personal leave accrual rules not being updated following the introduction of a new industrial instrument.
  - (c) It had remediated leave related issues for all current employees by adjusting their leave balances to reflect any under or over accrual of annual and personal leave.
  - (d) It had commenced making remediation payments to former employees, or employees who had since converted to casual employment, who were impacted by under accruals of annual leave.
  - (e) It had not applied adjustments to the leave balances of current employees that would result in employees having a negative balance and did not intend to recover any overpayments resulting from additional annual leave or personal leave accruals for current or former employees.
  - (f) It had invited employees to identify any periods of unpaid leave taken due to an under accrual issue.
  - (g) Payments to former employees, or employees who had subsequently converted to casual employment, would be made at the pay rate that applied at the end of their employment (or immediately before conversion to casual employment), and would include interest at a rate of 5.5% per annum calculated:
    - (i) for former employees, from the year the under accrual occurred; and
    - (ii) for employees who had converted to casual employment, from the year they converted.
  - (h) It had notified current and former employees who had been impacted by under accruals of annual leave or personal/carer's leave and updated the unions regarding its review of annual leave and personal/carer's leave entitlements.
12. By 22 March 2022, the Internal Review had identified that 8,909 employees (comprising 2,975 current employees and 5,934 former employees) had been impacted by the payroll errors and leave accrual issues referred to in clauses 9 and 11 respectively and were owed remediation payments. The total remediation payments owed by AU Group to impacted employees is \$7,367,819. This total comprises \$5,544,184 in respect of payroll errors, \$838,704 in respect of leave accrual issues (not including leave accrual issues for current employees addressed by adjustments to leave balances), \$267,482 in superannuation contributions and \$717,449 in interest payments. The Companies or AU Group Services have made considerable progress in rectifying the underpayments. An amount of \$516,428 remains outstanding to former



employees who are yet to make contact with, or provide updated account details to, the Companies or AU Group Services, across the categories specified.

13. Prior to the execution of this Undertaking, AU Group notified the FWO that:

(a) AU Group had calculated:

- (i) the value of the underpayment to each affected current or former employee of the Companies (including, for former employees, underpayments due to the under accrual of annual leave) listed in Column A of Schedule A to this Undertaking to be the amount listed in Column B of Schedule A to this Undertaking (the **Underpayments**); and
- (ii) the annual leave and personal/carer's leave balance adjustments to be made for each current employee of the Companies listed in Column A of Schedule A to this Undertaking to be the amounts listed in Columns I and J of Schedule A to this Undertaking,

(affected employees referred to in (i) and (ii) together being the **Affected Employees**);

- (b) AU Group had calculated the value of the interest on the Underpayment to each Affected Employee, calculated at 5.5% per annum, to be the amount listed in Column C of Schedule A to this Undertaking;
- (c) AU Group had calculated the value of the superannuation contribution required in respect of the Underpayment to each Affected Employee, including interest calculated at 5.5% per annum, to be the amount listed in Column D of Schedule A to this Undertaking;
- (d) For each Affected Employee, one of the Companies, or AU Group Services, had:

(i) paid:

- (A) to that employee the amount in Column E of Schedule A to this Undertaking (except where no payment had been made, in which case the amount of \$0 is listed);
- (B) to that employee's nominated superannuation fund the amount listed in Column F of Schedule A to this Undertaking (except where no payment had been made, in which case the amount of \$0 is listed);

- (ii) adjusted the employee's annual leave and/or personal/carer's leave balance by the amounts listed in Columns I and J of Schedule A to this Undertaking;

(e) For each Affected Employee:

- (i) any outstanding underpayment (including the interest amount in Column C) owed to that employee was the amount listed in Column G of Schedule A to this Undertaking (except where all underpayments had been rectified, in which case the amount of \$0 is listed);
  - (ii) any outstanding superannuation (including interest) owed to that employee was the amount listed in Column H of Schedule A to this Undertaking (except where all superannuation and interest had been paid to the employee's nominated superannuation fund, in which case the amount of \$0 is listed);
- (f) AU Home Care had:
  - (i) underpaid the 6,112 current and former employees listed in Column A of Schedule B to this Undertaking a total of \$4,239,344;
  - (ii) incorrectly calculated the annual leave and / or personal/carer's leave entitlements of 2,727 current and former employees listed in Column A of Schedule B to this Undertaking,

((i) and (ii) together being the **AU Home Care Employees**);
- (g) AU Better Living had:
  - (i) underpaid the 1,106 current and former employees listed in Column A of Schedule C to this Undertaking a total of \$537,199;
  - (ii) incorrectly calculated the annual leave and / or personal/carer's leave entitlements of 246 current and former employees listed in Column A of Schedule C to this Undertaking,

((i) and (ii) together being the **AU Better Living Employees**);
- (h) Better Home Care had:
  - (i) underpaid the 858 current and former employees listed in Column A of Schedule D to this Undertaking a total of \$649,409;
  - (ii) incorrectly calculated the annual leave and / or personal/carer's leave entitlements of 59 current and former employees listed in Column A of Schedule D to this Undertaking,

((i) and (ii) together being the **(Better Home Care Employees)**);
- (i) AU Care Services had:

- (i) underpaid the 847 current and former employees listed in Column A of Schedule E to this Undertaking a total of \$849,517;
- (ii) incorrectly calculated the annual leave and / or personal/carer's leave entitlements of 159 current and former employees listed in Column A of Schedule E to this Undertaking,
- ((i) and (ii) together being the **AU Care Services Employees**);
- (j) AU Retirement Living had:
  - (i) underpaid the 146 current and former employees listed in Column A of Schedule F to this Undertaking a total of \$91,479;
  - (ii) incorrectly calculated the annual leave and / or personal/carer's leave entitlements of 13 current and former employees listed in Column A of Schedule F to this Undertaking,
  - ((i) and (ii) together being the **AU Retirement Living Employees**);
- (k) KNS had underpaid the 1 former employee listed in Column A of Schedule G to this Undertaking (**KNS Employee**) a total of \$5,631.

## ADMISSIONS

### AU Home Care

14. The FWO has a reasonable belief, and AU Home Care admits, that AU Home Care contravened:
- (a) Section 768AG of the FW Act between 1 June 2016 and 22 March 2018 in relation to each AU Home Care Employee for whom there is a clause of the *HDS Care Worker Award 2015* listed in Column B of Schedule B to this Undertaking by failing:
    - (i) to pay that employee the amount or amounts; or
    - (ii) to pay and/or correctly accrue to that employee the leave entitlements,
 to which that employee was entitled under the *HDS Care Worker Award 2015* in respect of each provision of the *HDS Care Worker Award 2015* which is identified in Column B of Schedule B to this Undertaking in relation to that employee;
  - (b) Section 768AG of the FW Act between 1 June 2016 and 21 February 2021 in relation to each AU Home Care Employee for whom there is a clause of the *Crown Award 2012* listed in Column B of Schedule B to this Undertaking by failing to pay the amount or amounts to which that employee was entitled under the *Crown Award 2012* in respect of each

provision of the *Crown Award 2012* which is identified in Column B of Schedule B to this Undertaking in relation to that employee;

- (c) Section 45 of the FW Act between 1 June 2016 and 22 October 2021 in relation to each of the AU Home Care Employees for whom there is a clause of the SCHADS Award listed in Column B of Schedule B to this Undertaking by failing:

- (i) to pay the amount or amounts; or
- (ii) to pay and/or correctly accrue to that employee the leave entitlements,

to which that employee was entitled under the SCHADS Award in respect of each provision of the SCHADS Award which is identified in Column B of Schedule B to this Undertaking in relation to that employee;

- (d) Section 50 of the FW Act between 23 March 2018 and 26 November 2019 in relation to each AU Home Care Employee for whom there is a clause of the HDS Care Worker EA 2017 listed in Column B of Schedule B to this Undertaking by failing:

- (i) to pay that employee the amount or amounts; or
- (ii) to pay and/or correctly accrue to that employee the leave entitlements,

to which that employee was entitled under the HDS Care Worker EA 2017 in respect of each provision of HDS Care Worker EA 2017 which is identified in Column B of Schedule B to this Undertaking in relation to that employee;

- (e) Section 50 of the FW Act between 27 November 2019 and 22 October 2021 in relation to each AU Home Care Employee for whom there is a clause of the HDS Care Worker EA 2019 listed in Column B of Schedule B to this Undertaking by failing:

- (i) to pay that employee the amount or amounts; or
- (ii) to pay and/or correctly accrue to that employee the leave entitlements,

to which that employee was entitled under the HDS Care Worker EA 2019 in respect of each provision of the HDS Care Worker EA 2019 which is identified in Column B of Schedule B to this Undertaking in relation to that employee;

- (f) Section 50 of the FW Act between 29 January 2019 and 22 October 2021 in relation to each AU Home Care Employee for whom there is a clause of the AU Home Care EA 2017 listed in Column B of Schedule B to this Undertaking by failing:

- (i) to pay that employee the amount or amounts; or

- (ii) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the AU Home Care EA 2017 in respect of each provision of the AU Home Care EA 2017 which is identified in Column B of Schedule B to this Undertaking in relation to that employee. The AU Home Care EA 2017 applies to these employees by virtue of the operation of section 313 of the FW Act; and
- (g) Section 44 of the FW Act in respect of the entitlements under sections 87(1)(b), 87(2), 89(1) and 96(2) of the FW Act between 1 June 2016 and 22 October 2021 in relation to each AU Home Care Employee for whom there is a section of the FW Act listed in Column B of Schedule B to this Undertaking, by failing to pay and/or correctly accrue to that employee the annual leave or personal leave entitlements to which that employee was entitled under the FW Act in respect of each section of the FW Act which is identified in Column B of Schedule B to this Undertaking in relation to that employee.

#### **AU Better Living**

15. The FWO has a reasonable belief, and AU Better Living admits, that AU Better Living contravened:
  - (a) Section 50 of the FW Act:
    - (i) between 1 July 2014 and 7 April 2019 in relation to each AU Better Living Employee for whom there is a clause of the AU CDC EA 2013 listed in Column B of Schedule C to this Undertaking by failing:
      - (A) to pay that employee the amount or amounts; or
      - (B) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the AU CDC EA 2013 in respect of each provision of the AU CDC EA 2013 which is identified in Column B of Schedule C to this Undertaking in relation to that employee;
    - (ii) between 8 April 2019 and 22 October 2021 in relation to each AU Better Living Employee for whom there is a clause of the AU CDC EA 2018 listed in Column B of Schedule C to this Undertaking by failing:
      - (A) to pay that employee the amount or amounts; or
      - (B) to pay and/or correctly accrue to that employee the leave entitlements,

to which that employee was entitled under the AU CDC EA 2018 in respect of each provision of the AU CDC EA 2018 which is identified in Column B of Schedule C to this Undertaking in relation to that employee;

- (b) Section 44 of the FW Act in respect of the entitlements under sections 87(1)(b), 87(2) and 89(1) of the FW Act between 20 July 2014 and 22 October 2021 in relation to each AU Better Living Employee for whom there is a section of the FW Act listed in Column B of Schedule C to this Undertaking, by failing to pay and/or correctly accrue to that employee the annual leave entitlements to which that employee was entitled under the FW Act in respect of each section of the FW Act which is identified in Column B of Schedule C to this Undertaking in relation to that employee; and
- (c) Section 50 of the FW Act in respect of the requirement under section 206 of the FW Act (that the base rate of pay under an enterprise agreement not be less than the base rate of pay that would be payable to the employee under the modern award if it applied to the employee) between 1 November 2015 and 4 December 2020 in relation to each AU Better Living Employee for whom this section is listed in Column B of Schedule C to this Undertaking, by paying to that employee a base rate of pay under the AU CDC EA 2013 and AU CDC EA 2018 that was less than the base rate of pay that would be payable to that employee if the relevant modern award applied to that employee.

#### **Better Home Care**

16. The FWO has a reasonable belief, and Better Home Care admits, that Better Home Care contravened:

- (a) Section 50 of the FW Act:
    - (i) between 21 November 2014 and 22 October 2021 in relation to each Better Home Care Employee for whom there is a clause of the AU Home Care EA 2014 listed in Column B of Schedule D to this Undertaking by failing:
      - (A) to pay that employee the amount or amounts; or
      - (B) to pay and/or correctly accrue to that employee the leave entitlements
- to which that employee was entitled under the AU Home Care EA 2014 in respect of each provision of the AU Home Care EA 2014 which is identified in Column B of Schedule D to this Undertaking in relation to that employee; and



- (ii) between 17 May 2018 and 22 October 2021 in relation to each Better Home Care Employee for whom there is a clause of the AU Home Care EA 2017 listed in Column B of Schedule D to this Undertaking by failing:
  - (A) to pay that employee the amount or amounts; or
  - (B) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the AU Home Care EA 2017 in respect of each provision of the AU Home Care EA 2017 which is identified in Column B of Schedule D to this Undertaking in relation to that employee;
- (iii) between 1 February 2019 and 11 December 2019 in relation to each Better Home Care Employee for whom there is a clause of the HDS Care Worker EA 2017 listed in Column B of Schedule D to this Undertaking by failing:
  - (A) to pay that employee the amount or amounts; or
  - (B) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the HDS Care Worker EA 2017 in respect of each provision of the HDS Care Worker EA 2017 which is identified in Column B of Schedule D to this Undertaking in relation to that employee. The HDS Care Worker EA 2017 applies to these employees by virtue of the operation of section 313 of the FW Act;
- (b) Section 44 of the FW Act that relate to the entitlements under sections 87(1)(b), 87(2), 89(1) and 96(2) of the FW Act between 23 November 2014 and 22 October 2021 in relation to each Better Home Care Employee for whom there is a section of the FW Act listed in Column B of Schedule D to this Undertaking, by failing to pay and/or correctly accrue to that employee the annual leave or personal leave entitlements to which that employee was entitled under the FW Act in respect of each section of the FW Act which is identified in Column B of Schedule D to this Undertaking in relation to that employee; and
- (c) Section 50 of the FW Act in respect of the requirement under section 206 of the FW Act (that the base rate of pay under an enterprise agreement not be less than the base rate of pay that would be payable to the employee under the modern award if it applied to the employee) between 1 November 2015 and 4 December 2020 in relation to each Better Home Care Employee for whom this section is listed in Column B of Schedule D to this Undertaking, by paying to that employee a base rate of pay under the AU Home Care EA

2014 or AU Home Care EA 2017 that was less than the base rate of pay that would be payable to that employee if the relevant modern award applied to that employee.

#### **AU Care Services**

17. The FWO has a reasonable belief, and AU Care Services admits, that AU Care Services contravened:

(a) Section 50 of the FW Act:

(i) between 1 July 2014 and 10 July 2019 in relation to each AU Care Services Employee for whom there is a clause of the AU VIC Traditional EA 2013 listed in Column B of Schedule E to this Undertaking by failing:

(A) to pay that employee the amount or amounts; or

(B) to pay and/or correctly accrue to that employee the leave entitlements,

to which that employee was entitled under the AU VIC Traditional EA 2013 in respect of each provision of the AU VIC Traditional EA 2013 which is identified in Column B of Schedule E to this Undertaking in relation to that employee;

(ii) between 11 July 2019 and 22 October 2021 in relation to each AU Care Services Employee for whom there is a clause of the AU VIC Traditional EA 2018 listed in Column B of Schedule E to this Undertaking by failing:

(A) to pay that employee the amount or amounts; or

(B) to pay and/or correctly accrue to that employee the leave entitlements,

to which that employee was entitled under the AU VIC Traditional EA 2018 in respect of each provision of the AU VIC Traditional EA 2018 which is identified in Column B of Schedule E to this Undertaking in relation to that employee;

(iii) between 1 July 2014 and 13 March 2019 in relation to each AU Care Services Employees for whom there is a clause of the AU NSW Traditional EA 2013 listed in Column B of Schedule E to this Undertaking by failing:

(A) to pay that employee the amount or amounts; or

(B) to pay and/or correctly accrue to that employee the leave entitlements,

to which that employee was entitled under the AU NSW Traditional EA 2013 in respect of each provision of the AU NSW Traditional EA 2013 which is identified in Column B of Schedule E to this Undertaking in relation to that employee;

- (iv) between 14 March 2019 and 22 October 2021 in relation to each AU Care Services Employee for whom there is a clause of the AU NSW Traditional EA 2018 listed in Column B of Schedule E to this Undertaking by failing:
  - (A) to pay that employee the amount or amounts; or
  - (B) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the AU NSW Traditional EA 2018 in respect of each provision of the AU NSW Traditional EA 2018 which is identified in Column B of Schedule E to this Undertaking in relation to that employee;
- (b) Section 44 of the FW Act that relate to the entitlements under sections 87(1)(b), 87(2), 89(1) and 96(2) of the FW Act between 10 July 2014 and 22 October 2021 in relation to each AU Care Services Employee for whom there is a section of the FW Act listed in Column B of Schedule E to this Undertaking, by failing to pay and/or correctly accrue to that employee the annual leave or personal leave entitlements to which that employee was entitled under the FW Act in respect of each section of the FW Act which is identified in Column B of Schedule E to this Undertaking in relation to that employee; and
- (c) Section 50 of the FW Act in respect of the requirement under section 206 of the FW Act (that the base rate of pay under an enterprise agreement not be less than the base rate of pay that would be payable to the employee under the modern award if it applied to the employee) between 22 July 2016 and 5 March 2019 in relation to each AU Care Services Employee for whom this section is listed in Column B of Schedule E to this Undertaking, by paying to that employee a base rate of pay under the AU VIC Traditional EA 2013, AU VIC Traditional EA 2018 or AU NSW Traditional EA 2013 that was less than the base rate of pay that would be payable to that employee if the relevant modern award applied to that employee.

#### **AU Retirement Living**

18. The FWO has a reasonable belief, and AU Retirement Living admits, that AU Retirement Living contravened:
- (a) Section 50 of the FW Act:
    - (i) between 1 July 2014 and 10 July 2019 in relation to each AU Retirement Living Employee for whom there is a clause of the AU VIC Traditional EA 2013 listed in Column B of Schedule F to this Undertaking by failing:
      - (A) to pay that employee the amount or amounts; or

- (B) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the AU VIC Traditional EA 2013 in respect of each provision of the AU VIC Traditional EA 2013 which is identified in Column B of Schedule F to this Undertaking in relation to that employee;
- (ii) between 11 July 2019 and 22 October 2021 in relation to each AU Retirement Living Employee for whom there is a clause of the AU VIC Traditional EA 2018 listed in Column B of Schedule F to this Undertaking by failing:
  - (A) to pay that employee the amount or amounts; or
  - (B) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the AU VIC Traditional EA 2018 in respect of each provision of the AU VIC Traditional EA 2018 which is identified in Column B of Schedule F to this Undertaking in relation to that employee;
- (iii) between 1 July 2014 and 13 March 2019 in relation to each AU Retirement Living Employee for whom there is a clause of the AU NSW Traditional EA 2013 listed in Column B of Schedule F to this Undertaking by failing:
  - (A) to pay that employee the amount or amounts; or
  - (B) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the AU NSW Traditional EA 2013 in respect of each provision of the AU NSW Traditional EA 2013 which is identified in Column B of Schedule F to this Undertaking in relation to that employee;
- (iv) between 14 March 2019 and 22 October 2021 in relation to each AU Retirement Living Employee for whom there is a clause of the AU NSW Traditional EA 2018 listed in Column B of Schedule F to this Undertaking by failing:
  - (A) to pay that employee the amount or amounts; or
  - (B) to pay and/or correctly accrue to that employee the leave entitlements, to which that employee was entitled under the AU NSW Traditional EA 2018 in respect of each provision of the AU NSW Traditional EA 2018 which is identified in Column B of Schedule F to this Undertaking in relation to that employee;
- (b) Section 44 of the FW Act that relate to the entitlements under sections 87(1)(b), 87(2), 89(1) and 96(2) of the FW Act between 13 July 2014 and 22 October 2021 in relation

to each AU Retirement Living Employee for whom there is a section of the FW Act listed in Column B of Schedule F to this Undertaking, by failing to pay and/or correctly accrue to that employee the annual leave or personal leave entitlements to which that employee was entitled under the FW Act in respect of each section of the FW Act which is identified in Column B of Schedule F to this Undertaking in relation to that employee; and

- (c) Section 50 of the FW Act in respect of the requirement under section 206 of the FW Act (that the base rate of pay under an enterprise agreement not be less than the base rate of pay that would be payable to the employee under the modern award if it applied to the employee) between 21 July 2017 and 15 March 2019 in relation to each AU Retirement Living Employee for whom this section is listed in Column B of Schedule F to this Undertaking, by paying to that employee a base rate of pay under the AU VIC Traditional EA 2013, AU VIC Traditional EA 2018 or AU NSW Traditional EA that was less than the base rate of pay that would be payable to that employee if the relevant modern award applied to that employee.

#### **KNS**

- 19. The FWO has a reasonable belief, and KNS admits, that KNS contravened section 45 of the FW Act between 15 December 2014 and 16 May 2018 by failing to pay the KNS Employee the amount or amounts to which the KNS Employee was entitled under the clauses of the SCHADS Award listed in Column B of Schedule G to this Undertaking.

#### **LIMITATIONS**

- 20. The contraventions identified in clauses 14 to 19 of this Undertaking do not include:
  - (a) Any contraventions which relate to or arise as a consequence of the Companies failing to correctly apply any of the Instruments to any employee not listed in Schedules A to G to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of the Companies failing to correctly apply any of the Instruments and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment;
  - (b) Any contraventions which relate to or arise as a consequence of the Companies failing to correctly apply any of the Instruments to any of the Affected Employees other than

as identified in clauses 14 to 19 and Schedules B to G to this Undertaking. For the avoidance of doubt this Undertaking is not given in respect of any such contravention, and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention; or

- (c) Any contraventions which have not yet occurred at the date that this Undertaking is offered by the Companies (whether or not those contraventions are identified in the Independent Audits described at clause 29 to 44 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by the Companies and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## **UNDERTAKINGS**

- 21. The Companies will take the actions set out at clauses 23 to 62 below.
- 22. Where a clause refers to the Companies, each of the Companies separately undertake to comply with that clause. A single Company, AUL or other member of AU Group may complete an undertaking on behalf of the Companies where they have the express or implied authority of the other Companies to do so. However, each Company remains responsible for each undertaking it provides.

### **Rectification of underpayments**

- 23. Subject to clauses 26 and 27, within 120 days of the Commencement Date:
  - (a) AU Home Care will:
    - (i) pay any outstanding Underpayment owed to the AU Home Care Employees still employed by AU Home Care on the Commencement Date, including interest calculated at 5.5% per annum;
    - (ii) pay to the nominated superannuation fund of each AU Home Care Employee still employed by AU Home Care on the Commencement Date any outstanding superannuation contributions, including in relation to the Underpayments, including interest calculated at 5.5% per annum; and
    - (iii) rectify any outstanding under accrual of annual leave or personal/carer's leave to AU Home Care Employees still employed by AU Home Care.
  - (b) AU Better Living will:



- (i) pay any outstanding Underpayment owed to the AU Better Living Employees still employed by AU Better Living on the Commencement Date, including interest calculated at 5.5% per annum;
  - (ii) pay to the nominated superannuation fund of each AU Better Living Employee still employed by AU Better Living on the Commencement Date any outstanding superannuation contributions, including in relation to the Underpayments, including interest calculated at 5.5% per annum; and
  - (iii) rectify any outstanding under accrual of annual leave or personal/carer's leave to AU Better Living Employees still employed by AU Better Living.
- (c) Better Home Care will:
  - (i) pay any outstanding Underpayment owed to the Better Home Care Employees still employed by Better Home Care on the Commencement Date, including interest calculated at 5.5% per annum;
  - (ii) pay to the nominated superannuation fund of each Better Home Care Employee still employed by Better Home Care on the Commencement Date any outstanding superannuation contributions, including in relation to the Underpayments, including interest calculated at 5.5% per annum; and
  - (iii) rectify any outstanding under accrual of annual leave or personal/carer's leave to Better Home Care Employees still employed by Better Home Care.
- (d) AU Care Services will:
  - (i) pay any outstanding Underpayment owed to the AU Care Services Employees still employed by AU Care Services on the Commencement Date, including interest calculated at 5.5% per annum;
  - (ii) pay to the nominated superannuation fund of each AU Care Services Employee still employed by AU Care Services on the Commencement Date any outstanding superannuation contributions, including in relation to the Underpayments, including interest calculated at 5.5% per annum; and
  - (iii) rectify any outstanding under accrual of annual leave or personal/carer's leave to AU Care Services Employees still employed by AU Care Services.
- (e) AU Retirement Living will:

- (i) pay any outstanding Underpayment owed to the AU Retirement Living Employees still employed by AU Retirement Living on the Commencement Date, including interest calculated at 5.5% per annum;
- (ii) pay to the nominated superannuation fund of each AU Retirement Living Employee still employed by AU Retirement Living on the Commencement Date any outstanding superannuation contributions, including in relation to the Underpayments, including interest calculated at 5.5% per annum; and
- (iii) rectify any outstanding under accrual of annual leave or personal/carer's leave to AU Retirement Living Employees still employed by AU Retirement Living.

24. Subject to clauses 26 and 27, within 120 days of the Commencement Date:

(a) AU Home Care will:

- (i) pay any outstanding Underpayment owed to the AU Home Care Employees no longer employed by AU Home Care on the Commencement Date, including interest calculated at 5.5% per annum; and
- (ii) pay to the nominated superannuation fund of each AU Home Care Employee no longer employed by AU Home Care on the Commencement Date any outstanding superannuation contributions in relation to the Underpayments, including interest calculated at 5.5% per annum;

(b) AU Better Living will:

- (i) pay any outstanding Underpayment owed to the AU Better Living Employees no longer employed by AU Better Living on the Commencement Date, including interest calculated at 5.5% per annum; and
- (ii) pay to the nominated superannuation fund of each AU Better Living Employee no longer employed by AU Better Living on the Commencement Date any outstanding superannuation contributions in relation to the Underpayments, including interest calculated at 5.5% per annum;

(c) Better Home Care will:

- (i) pay any outstanding Underpayment owed to the Better Home Care Employees no longer employed by Better Home Care on the Commencement Date, including interest calculated at 5.5% per annum; and

- (ii) pay to the nominated superannuation fund of each Better Home Care Employee no longer employed by Better Home Care on the Commencement Date any outstanding superannuation contributions in relation to the Underpayments, including interest calculated at 5.5% per annum;
  - (d) AU Care Services will:
    - (i) pay any outstanding Underpayment owed to the AU Care Services Employees no longer employed by AU Care Services on the Commencement Date, including interest calculated at 5.5% per annum; and
    - (ii) pay to the nominated superannuation fund of each AU Care Services Employees no longer employed by AU Care Services on the Commencement Date any outstanding superannuation contributions in relation to the Underpayments, including interest calculated at 5.5% per annum;
  - (e) AU Retirement Living will:
    - (i) pay any outstanding Underpayment owed to the AU Retirement Living Employees no longer employed by AU Retirement Living on the Commencement Date, including interest calculated at 5.5% per annum; and
    - (ii) pay to the nominated superannuation fund of each AU Retirement Living Employees no longer employed by AU Retirement Living on the Commencement Date any outstanding superannuation contributions in relation to the Underpayments, including interest calculated at 5.5% per annum;
  - (f) KNS will:
    - (i) pay any outstanding Underpayment owed to the KNS Employee, including interest calculated at 5.5% per annum; and
    - (ii) pay to the nominated superannuation fund of the KNS Employee any outstanding superannuation contributions in relation to the Underpayment, including interest calculated at 5.5% per annum.
25. Within 7 days of the end of the following periods, the Companies will provide the FWO with an update on their progress in complying with clauses 23 and 24, including the quantum of underpayment rectifications within the period, number of Affected Employees paid and identifying any issues that have arisen in complying with clauses 23 and 24. The periods are:
- (a) Commencement Date to 45 days after Commencement Date;

- (b) 30 days after Commencement date to 60 days after Commencement Date;
  - (c) 60 days after Commencement date to 90 days after Commencement Date; and
  - (d) 90 days after Commencement date to 120 days after Commencement Date.
26. If any Affected Employee no longer employed by the Companies (**former Affected Employees**) to whom an Underpayment is owed cannot be located within 180 days after the Commencement Date, the Company identified in Column K of Schedule A to this Undertaking (the **relevant Company**) will pay the underpayment amount listed in Column G of Schedule A to this Undertaking that is owing to that former Affected Employee to the Commonwealth of Australia in accordance with section 559 of the FW Act. The relevant Company will complete the required documents supplied by the FWO for this purpose.
27. In the event that the FWO is able to locate and contact any former Affected Employees to whom Underpayments are owed, the FWO will (in addition to its obligations under s 559 of the FW Act) notify the relevant Company in writing of the name and contact details of the former Affected Employee. Within 28 days of receiving any such notice the relevant Company will pay:
- (a) To the former Affected Employee interest on the amount paid by the relevant Company to the Commonwealth of Australia under clause 26 in respect of that Affected 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, using an interest rate of 5.5% per annum; and
  - (b) To the former Affected Employee's nominated superannuation fund, the amount listed in Column H of Schedule A to this Undertaking, plus interest calculated at a rate of 5.5% per annum.

#### **Letter of Assurance**

28. Within 150 days of the Commencement Date, the Companies will provide to the FWO:
- (a) A Letter of Assurance signed by the Chief Finance Officers of each Company, or the Chief Financial Officer of the AU Group, in the terms as set out at Attachment A; and
  - (b) Information about the AU Group's new systems and processes, including upgrades to payroll systems implemented following the Internal Review.

#### **Independent Audits**

29. The obligations set out in clauses 30 to 49 below apply to the Companies, with the exception of KNS, given it no longer engages any employees.

30. The Companies must, at their cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits of the Companies' compliance with the FW Act and FW Regulations, in relation to the Instruments, and any future agreements that replace the Instruments (**Audits**).
31. The Companies will notify the FWO of their proposed Independent Auditor by no later than 1 February 2023. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require the Companies 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 the Companies.
32. The Companies must ensure that each of the Audits conducted by the Independent Auditor includes:
- (a) An assessment of the lesser of 200 employees or 5% of the total number of employees of the Companies to whom the Instruments apply, across a range of classifications, locations and employment types (full time, part time and casual employment), and proportionately spread between the Companies during the relevant pre-audit period (**Sampled Employees**) in respect of their employment by the Companies;
  - (b) An assessment of whether the Sampled Employees have been correctly classified by the Companies in the relevant audit period;
  - (c) An assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period is in compliance with the FW Act and the Instruments (or replacement instruments);
  - (d) Direct contact with Sampled Employees by way of site visits (or remote alternatives agreed by the FWO, if site visits cannot be conducted due to public health directives and or workplace health and safety reasons) to at least five different sites, to ensure accuracy of hours worked;
  - (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 the Companies, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from the Companies, AUL, or any other member of the AU Group 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

- 33. The Companies must ensure the Independent Auditor commences the first of the Audits by no later than 31 March 2023 (**First Audit**).
- 34. For the First Audit, the relevant pre-audit period to assess Sampled Employees is 1 March 2022 to 31 January 2023.
- 35. The relevant audit period for the First Audit must be at least two full pay periods falling within the period 1 February 2023 and 31 March 2023.
- 36. By 1 March 2023, the Companies will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 37. The Companies will use their best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 31 August 2023, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. The Companies will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to any of the Companies, AUL or any other member of the AU Group without the FWO's approval.
- 38. The FWO may, at its complete discretion, accept the draft First Audit findings as the written report of the First Audit (in which case, this will be the **First Audit Report**), by providing written notice of this decision to the Companies. Alternatively, the FWO may provide comments on the draft First Audit findings to the Independent Auditor. If the FWO provides such comments, the Companies will use their best endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit (**First Audit Report**) directly to the FWO within one month of the FWO providing any comments on the draft report to the Independent Auditor. The Companies will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to any of the Companies, AUL or any other member of the AU



Group without the FWO's approval.

#### The Second Audit

39. The Companies must ensure the Independent Auditor commences the second of the Audits by no later than 31 March 2024 (**Second Audit**).
40. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 1 March 2023 to 31 January 2024.
41. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 1 February 2024 and 31 March 2024.
42. By 1 March 2024, the Companies will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
43. The Companies will use their best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 31 August 2024, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. The Companies will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to any of the Companies, AUL or any other member of the AU Group without the FWO's approval.
44. The FWO may, at its complete discretion, accept the draft Second Audit findings as the written report of the Second Audit (in which case, this will be the **Second Audit Report**), by providing written notice of this decision to the Companies. Alternatively, the FWO may provide comments on the draft Second Audit findings to the Independent Auditor. If the FWO provides such comments, the Companies will use their best endeavours to ensure the Independent Auditor finalises the Second Audit and provides a written report of the Second Audit (**Second Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. The Companies will ensure the Independent Auditor does not provide the written report, or a copy of the same, to any of the Companies, AUL or any other member of the AU Group without the FWO's approval.

#### **Outcome of Audits**

45. If any of the Audits identify underpayments to any current or former employees, the FWO will notify the Companies and provide a copy of the relevant Audit report. Except where otherwise advised by the FWO following discussions between the Companies and the FWO following the provision of the Audit report, the Companies will conduct a reconciliation of the amounts paid to those employees during the relevant pre-audit period and rectify any underpayments that

are identified. The reconciliation period for each identified employee will be from the start of the relevant pre-audit period to the end of the relevant audit period.

46. The Companies will provide to the FWO evidence of such rectification within two months of being informed by the FWO of the requirement to undertake the reconciliation.
47. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of the Second Audit, the Company that formerly employed those employees will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. The Company will complete the required documents supplied by the FWO for this purpose.
48. 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, the Companies will conduct a further audit of all its employees to whom the relevant Instrument (or replacement instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). The Companies will engage the Independent Auditor to conduct an independent assessment of the outcomes of any Additional Audit (**Independent Assessment**). Any Additional Audit and Independent Assessment must be paid for by the Companies.
49. If requested by the FWO, the Companies will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 14 days of such a request.

#### **Employee Hotline**

50. Within 45 days of the Commencement Date, at their own expense, one of the Companies will engage an independent organisation to operate a dedicated telephone number and email address on behalf of each of the Companies for all current and former employees to whom the Instruments 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.
51. The independent organisation must be approved by the FWO prior to being engaged by one of the Companies to operate the Employee Hotline.
52. The Companies will:
  - (a) Ensure the Employee Hotline remains operational for a period of 3 months from the Commencement Date;

- (b) Ensure that the telephone number and email address are included in the Workplace Notice to employees to whom the Instruments apply (see clauses 56 to 59).
- (c) Communicate the existence and purpose of the Employee Hotline by way of letter in the form of Attachment B (**Letter to Employees**) to this Undertaking to the last known address of all current and former employees to whom the Instruments apply, or had applied, known as at the Commencement Date, and dating back to 1 July 2014.
- (d) Provide evidence to the FWO that the Letter to Employees has been mailed to all required current and former employees within 14 days of the establishment of the Employee Hotline;
- (e) Take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
- (f) Provide a de-identified list of enquiries received by the Employee Hotline to the FWO at the end of the 3 month period from the establishment of the Employee Hotline.

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

##### Apology to Employees

53. The Companies will send a letter of apology (**Apology Letter**) to the last known address of all Affected Employees, within 45 days of the Commencement Date. The Apology Letter will be in the form of:
- (a) Attachment C to this Undertaking for current employees and former employees who have received a remediation payment; and
  - (b) Attachment C1 to this Undertaking for former employees who have not yet received a remediation payment.

54. The Companies will provide evidence to the FWO that the Apology Letter has been sent to all affected employees within 60 days of the Commencement Date.

##### Media Release

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

##### Workplace Notice

56. Within 45 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, the Companies will cause to be displayed within each of their Australian

worksites where the current Affected Employees work (excluding workplaces that are the private residential homes of customers of the Companies) a notice in the form of Attachment D to this Undertaking (**Workplace Notice**).

57. The Companies must ensure the Workplace Notice is:
- (a) At least A3 size;
  - (b) Clearly displayed in a location to which all employees have access (for example, by placement on a staff noticeboard); and
  - (c) Displayed for a period of 28 continuous days.
58. Within 7 days of first displaying the Workplace Notice, the Companies will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of their worksites or on the AU Group's intranet page.
59. At the end of the 28 day period referred to in clause 57 above, the Companies will provide confirmation to the FWO that the Workplace Notice has been continuously displayed at each location for the required period.

#### **Contribution Payment**

60. Within 45 days of the Commencement Date, one of the Companies (on behalf of each of the Companies) will make a contribution payment of \$250,000 to the Consolidated Revenue Fund.
61. The Company referred to in clause 60 will provide evidence to the FWO of any contribution payment within 14 days of making payment to the Consolidated Revenue Fund.

#### **No Inconsistent Statements**

62. The Companies must use their best endeavours to ensure that their officers, employees or agents, and the officers, employees or agents of AUL and other members of AU Group, 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.

#### **ACKNOWLEDGEMENTS**

63. The Companies acknowledges that:
- (a) The FWO may;
    - (i) make this Undertaking (and any of the Attachments hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);

- (ii) release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
  - (iii) issue a media release in relation to this Undertaking;
  - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
  - (v) rely upon the admissions made by the Companies set out in paragraphs 14 to 19 above in respect of decisions taken regarding enforcement action in the event that any of the Companies are found to have failed to comply with their workplace relations obligations in the future, including but not limited to any failure by any of the Companies 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, a Company may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) If any of the Companies contravene any of the terms of this Undertaking:
- (i) the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
  - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by the Companies in paragraphs 14 to 19 above, and also in respect of the question of costs.



**Executed as an undertaking**


Executed by AU Home Care in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

ROMAN MEAD  
(Name of director)

15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)


SHARON FAVERO  
(Name of witness)

  
(Signature of director/company secretary)

MELINDA HONIG  
(Name of ~~director~~/company secretary)


15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)


SHARON FAVERO  
(Name of witness)

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

  
Mark Scully, Deputy Fair Work Ombudsman –  
Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
(Signature of witness)

16 December 2022  
(Date)

JAMES BEAUMONT  
(Name of Witness)



EXECUTED by AU Better Living in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)


ROHAN MEAD  
(Name of director)

15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)

SHARON FAVERO  
(Name of witness)

  
(Signature of director/company secretary)

MEUNDA MONIG  
(Name of director/company secretary)

15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)


SHARON FAVERO  
(Name of witness)

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

  
Mark Scully, Deputy Fair Work Ombudsman –  
Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN


in the presence of:

  
(Signature of witness)

16 December 2022  
(Date)

JAMES BEAUMONT  
(Name of Witness)

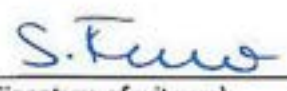
EXECUTED by Better Home Care in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

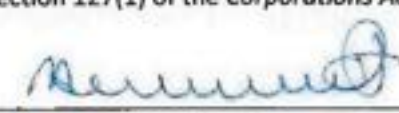
ROHAN MEAD  
(Name of director)

15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)


SHARON FAVERO  
(Name of witness)

  
(Signature of director/company secretary)

MELINDA TONIG  
(Name of director/company secretary)


15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)


SHARON FAVERO  
(Name of witness)

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

  
Mark Scully, Deputy Fair Work Ombudsman –  
Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
(Signature of witness)

16 December 2022  
(Date)

JAMES BEAUMONT  
(Name of Witness)

EXECUTED by AU Care Services in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

ROHAN MEAD  
(Name of director)

15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)

SHARON FAVERO  
(Name of witness)

  
(Signature of director/company secretary)

MELINDA TONIG  
(Name of director/company secretary)

15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)


SHARON FAVERO  
(Name of witness)

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

  
Mark Scully, Deputy Fair Work Ombudsman –  
Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
(Signature of witness)

16 December 2022  
(Date)

JAMES BEAUMONT  
(Name of Witness)


EXECUTED by AU Retirement Living in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

ROMAN MEAD  
(Name of director)

15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)


SHARON FAVERO  
(Name of witness)

  
(Signature of director/company secretary)

MELINDA HONIG  
(Name of director/company secretary)


15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)

SHARON FAVERO  
(Name of witness)

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

  
Mark Scully, Deputy Fair Work Ombudsman –  
Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
(Signature of witness)

16 December 2022  
(Date)

JAMES BEAUMONT  
(Name of Witness)


EXECUTED by KNS in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

ROHAN MEAD  
(Name of director)

15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)

SHARON FAVERO  
(Name of witness)

  
(Signature of director/company secretary)

MELINDA TONIG  
(Name of director/company secretary)


15/12/2022  
(Date)

in the presence of:

  
(Signature of witness)


SHARON FAVERO  
(Name of witness)

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

  
Mark Scully, Deputy Fair Work Ombudsman –  
Compliance and Enforcement

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

  
(Signature of witness)

16 December 2022  
(Date)

JAMES BEAUMONT  
(Name of Witness)

**Schedule A - Australian Unity EU - ALL EMPLOYEES**



**Schedule B - Australian Unity EU - AU HOME CARE EMPLOYEES**

**Schedule C - Australian Unity EU - AU BETTER LIVING EMPLOYEES**

**Schedule D - Australian Unity EU - BETTER HOME CARE EMPLOYEES**

**Schedule E - Australian Unity EU - AU CARE SERVICES EMPLOYEES**

**Schedule F - Australian Unity EU - AU RETIREMENT LIVING EMPLOYEES**

**Schedule G - Australian Unity EU - KNS EMPLOYEE**



## Attachment A – Letter of Assurance

Sandra Parker  
The Fair Work Ombudsman  
Fair Work Ombudsman  
GPO Box 9987  
MELBOURNE VIC 3001

Dear Sandra

I am writing on behalf of Australian Unity Home Care Services Pty Ltd, Australian Unity Better Living Services Pty Ltd, Better Home Care Pty Ltd, Australian Unity Care Services Pty Ltd, Australian Unity Retirement Living Management Pty Ltd and KNS Essential Care Pty Ltd (**the Companies**) in my capacity as the Chief Financial Officer of the Australian Unity Group. This letter follows a process where the Companies self-reported that:

- they had identified instances of non-compliance with 10 current and former enterprise agreements, 2 state awards and the Social, Community, Home Care and Disability Services Industry Award 2010 (**SCHADS award**) by the Companies; and
- these instances of non-compliance had resulted in underpayments of approximately \$5.54 million in wages, \$838,704 in leave payments, \$267,482 in superannuation contributions and \$717,449 in interest to employees across the Companies.

I write to provide the Fair Work Ombudsman with my assurance that based on the information provided to me and my discussions with relevant Company employees, I am satisfied that:

- a. the process by which the Companies calculated and rectified the underpayments of wages, leave payments and accruals and superannuation to their current and former employees was correctly undertaken;
- b. each of the Companies are compliant with the *Fair Work Act 2009* as it relates to the 2020 SCHADS Award and the applicable enterprise agreements; and
- c. as of [date] all former and current employees impacted by the underpayments, apart from those who have not been able to be located by the Companies, have been paid their entitlements (plus interest) under the applicable industrial instruments by the Companies.

Sincerely

<Insert Signature block of Darren Mann, Group Executive Finance & Strategy and CFO>

## Attachment B – Letter to Employees

Dear <insert name >

### Re: Conclusion of wages and entitlements review

At Australian Unity, we are committed to doing the right thing for our employees and our customers.

We recently finalised a self-initiated review of the wages and entitlements relating to some current and former employees in our Home Care Services, Indigenous Services, Residential Communities and Disability Services businesses. Regrettably, this review found instances of underpayment and overpayment of entitlements (including wages, shift loading and allowances) and superannuation errors relating to some of our employees.

We have been cooperating with the Fair Work Ombudsman (FWO) on this since we announced our review. The Australian Unity Group, including:

- [insert relevant Company]
- [insert relevant Company – if employee had more than one relevant employing entity],

has admitted to the FWO that they contravened the *Fair Work Act 2009* (Cth) by failing to correctly apply the:

- [insert Instrument for relevant Company]
- [insert Instruments – if more than one relevant Instrument contravened for the employee],

and thereby underpaid some employees by failing to comply with its obligations under those instruments. In some instances, Australian Unity also incorrectly calculated accruals of annual or personal/carer's leave.

Australian Unity deeply regrets and apologises for these contraventions. We always seek to pay our people correctly and would never intentionally underpay anyone. We appreciate and value the work our people do to support our customers and the significant impact this has on our broader community.

We understand you may have questions about 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 Linchpin Legal, an independent party that can assist you with your enquiries. Linchpin Legal can be contacted on [redacted] or at [redacted] and, if required, on a confidential basis.

Alternatively, you can continue to contact our Employee Central team on 1300 448 490 (option 3) or email [payreview@australianunity.com.au](mailto:payreview@australianunity.com.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](http://www.fairwork.gov.au) or on 13 13 94.

Yours sincerely

<Employer name>

## Attachment C – Letter of Apology

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES (CURRENT EMPLOYEES AND FORMER EMPLOYEES WHO HAVE RECEIVED A REMEDIATION PAYMENT)

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

**Re: Your summary following our wages and entitlements review**

Australian Unity has been undertaking a self-initiated review of the wages and other entitlements relating to some current and former employees in Home Care Services, Indigenous Services, Residential Communities and Disability Services. Regrettably, this review found instances of underpayment and overpayment of entitlements (including wages, shift loading and allowances) and superannuation errors relating to some of our employees.

We have ended our review and are working through the final stages with the Fair Work Ombudsman (FWO).

Members of the Australian Unity Group, including:

- [insert relevant Company]
- [insert relevant Company – if employee had more than one relevant employing entity],

have formally admitted to the FWO that they contravened the *Fair Work Act 2009* (Cth) by failing to correctly comply with their obligations under the:

- [insert Instruments for relevant Company]
- [insert Instruments – if more than one relevant Instrument contravened for the employee],

and thereby underpaid some employees covered by those instruments. In some instances, Australian Unity also incorrectly calculated accruals of annual or personal/carer's leave.

I apologise on behalf of Australian Unity for the non-compliance with Commonwealth workplace relations laws. Australian Unity deeply regrets these contraventions. We always seek to pay our people correctly and would never intentionally underpay anyone.

Regrettably, as you know from our previous communications with you, it was determined that you were affected by these contraventions.

Australian Unity Group, including:

- [insert relevant Company]
- [insert relevant Company – if employee had more than one relevant employing entity],

has taken steps to remedy the contraventions. As you know, our review determined that you were owed an additional amount, being:



- (a) \$[insert amount] in respect of minimum entitlements;
- (b) \$[insert amount] in respect of leave entitlements;
- (c) \$[insert amount] in respect of superannuation; and
- (d) \$[insert amount] in respect of interest.

You have received these payments on [insert date] along with a letter explaining each one.

Members of the Australian Unity Group, including:

- [insert relevant Company],
- [insert relevant Company – if employee had more than one relevant employing entity],

have entered into an Enforceable Undertaking with the FWO, a copy of which will be available at [www.fairwork.gov.au](http://www.fairwork.gov.au).

As part of the Enforceable Undertaking, we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

We understand that you may have questions about this or any other employment matter. To address these concerns a hotline has been established and is being operated by Linchpin Legal, an independent party that can assist you with your enquiries, on a confidential basis if required. Linchpin Legal can be contacted on [redacted] or at [redacted].

Alternatively you can contact our Employee Central team on 1300 448 490 (option 3) or email [payreview@australianunity.com.au](mailto:payreview@australianunity.com.au). We'll 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](http://www.fairwork.gov.au) or on 13 13 94.

We again apologise for these errors. We appreciate and value your work in supporting our customers and the significant impact that has on the broader community.

Yours sincerely

<Employer name>

## Attachment C1 – Letter of Apology

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES (FORMER EMPLOYEES WHO HAVE NOT YET RECEIVED A REMEDIATION PAYMENT)

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

**Re: Your summary following our wages and entitlements review**

Australian Unity has been undertaking a self-initiated review of the wages and other entitlements relating to some current and former employees in Home Care Services, Indigenous Services, Residential Communities and Disability Services. Regrettably, this review found instances of underpayment and overpayment of entitlements (including wages, shift loading and allowances) and superannuation errors relating to some of our employees.

We have ended our review and are working through the final stages with the Fair Work Ombudsman (FWO).

Members of the Australian Unity Group, including:

- [insert relevant Company]
- [insert relevant Company – if employee had more than one relevant employing entity],

have formally admitted to the FWO that they contravened the *Fair Work Act 2009* (Cth) by failing to correctly comply with their obligations under the:

- [insert Instruments for relevant Company]
- [insert Instruments – if more than one relevant Instrument contravened for the employee],

and thereby underpaid some employees covered by those instruments. In some instances, Australian Unity also incorrectly calculated accruals of annual or personal/carer's leave.

I apologise on behalf of Australian Unity for the non-compliance with Commonwealth workplace relations laws. Australian Unity deeply regrets these contraventions. We always seek to pay our people correctly and would never intentionally underpay anyone.

Regrettably, as you know from our previous communications with you, it was determined that you were affected by these contraventions.

Australian Unity Group, including:

- [insert relevant Company]
- [insert relevant Company – if employee had more than one relevant employing entity],

has taken steps to remedy the contraventions. As you know, our review determined that you were owed an additional amount, being:

- (e) \$[insert amount] in respect of minimum entitlements;
- (f) \$[insert amount] in respect of leave entitlements;
- (g) \$[insert amount] in respect of superannuation; and
- (h) \$[insert amount] in respect of interest.

We have sent letters to you regarding these payments, however you haven't provided your banking and superannuation details to us. Here's how to receive your payment.

- If your bank and superannuation details have not changed since your time at Australian Unity please contact our Wage Remediation team on 1300 448 490 (choose Option 3) or email [payreview@australianunity.com.au](mailto:payreview@australianunity.com.au) to confirm payment is to be made into those accounts.
- If your bank and/or superannuation details have changed:
  1. Please contact our Wage Remediation team on 1300 448 490 (choose Option 3) and have on hand the following information so that we can confirm your identity over the phone. You'll need to provide TWO forms of identification from Category A and ONE form of identification from Category B as follows.

*Category A*

- Emergency Contact details on our files
- Personal phone number
- Personal Email Address
- Date of Birth

*Category B*

- Former Bank Account/super fund details
- Tax File Number

The information you provide must reflect the details in your Australian Unity employment records. If you can't confirm the details that are in our records, or if your details are different to our records, we'll ask you to provide other documents to confirm your identification.

2. Once we have confirmed your identity, we'll email you the forms for you to complete.
3. Once you've completed the forms simply email them back to us and we'll then make the remediation payment in the next available pay run.

Members of the Australian Unity Group, including:

- **[insert relevant Company],**
- **[insert relevant Company – if employee had more than one relevant employing entity],**

have entered into an Enforceable Undertaking with the FWO, a copy of which will be available at [www.fairwork.gov.au](http://www.fairwork.gov.au).

As part of the Enforceable Undertaking, we have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

We understand that you may have questions about this or any other employment matter. To address



these concerns a hotline has been established and is being operated by Linchpin Legal, an independent party that can assist you with your enquiries, on a confidential basis if required. Linchpin Legal can be contacted on [REDACTED] or at [REDACTED].

Alternatively you can contact our Employee Central team on 1300 448 490 (option 3) or email [payreview@australianunity.com.au](mailto:payreview@australianunity.com.au). We'll 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](http://www.fairwork.gov.au) or on 13 13 94.

We again apologise for these errors. We appreciate and value your work in supporting our customers and the significant impact that has on the broader community.

Yours sincerely

<Employer name>

## Attachment D – Form of Workplace Notice

At Australian Unity, we are committed to doing the right thing for our employees and our customers.

The Group recently finalised a self-initiated review of its payroll systems and processes in relation to its Home Care Services, Indigenous Services, Residential Communities and Disability Services businesses. Regrettably, this review found instances of underpayment and overpayment of entitlements (including wages, shift loading and allowances) and superannuation errors relating to some of our employees.

On [Date], six members of the Group — Australian Unity Home Care Services Pty Ltd, Australian Unity Better Living Services Pty Ltd, Better Home Care Pty Ltd; Australian Unity Care Services Pty Ltd; Australian Unity Retirement Living Management Pty Ltd; and KNS Essential Care Pty Ltd formally admitted to the Fair Work Ombudsman (FWO) that contraventions of Agreements and Awards had occurred and consequently a number of employees had been underpaid. In some instances, this included incorrect accruals of annual or personal/carer's leave.

We have now entered into an Enforceable Undertaking with the FWO to ensure ongoing compliance with Commonwealth workplace laws. As part of this, the Group commits to undertaking a number of activities to ensure our ongoing compliance, including conducting two independent audits and formally apologising to impacted employees. These activities have been complemented by improvements to our systems and processes to minimise the risk of these issues reoccurring.

Australian Unity deeply regrets and apologises for these contraventions. We always seek to pay our people correctly and would never intentionally underpay anyone. We appreciate and value the work our people do to support our customers and the significant impact this has on our broader community.

If you worked for any of the member companies of the Australia Unity Group mentioned above during the period of 1 July 2014 to 22 October 2021 and have questions relating to your employment, please contact either:

- the hotline being operated by independent third party Linchpin Legal on [REDACTED]. This hotline can be contacted on a confidential basis or at [REDACTED]; or
- Australian Unity via our Employee Central team on 1300 448 490 (option 3) or by email at [payreview@australianunity.com.au](mailto:payreview@australianunity.com.au).

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