



Australian Government

Fair Work  
OMBUDSMAN

### ENFORCEABLE UNDERTAKING

This undertaking is **given** by Suncorp Staff Pty Ltd (ACN 010 869 726); Suncorp Insurance Services Limited (ACN 000 746 092) and Australian Associated Motor Insurers Pty Limited (ACN 004 791 744) 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 11 of this undertaking.

## ENFORCEABLE UNDERTAKING

### PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by:
  - (a) Suncorp Staff Pty Ltd (ACN 010 869 726) (**Suncorp Staff**), Level 23, 80 Ann Street, Brisbane City, QLD 4000;
  - (b) Suncorp Insurance Services Limited (ACN 000 746 092) (**Suncorp Insurance**), Level 23, 80 Ann Street, Brisbane City, QLD 4000; and
  - (c) Australian Associated Motor Insurers Pty Limited (ACN 004 791 744) (**AAMI**), Level 23, 80 Ann Street, Brisbane City, QLD 4000.

### COMMENCEMENT

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

### BACKGROUND

3. Suncorp Group Limited (**Suncorp**) is a top 50 ASX listed company providing a range of banking and insurance services in Australia and New Zealand. As at 31 July 2022 Suncorp employed 13,336 employees in Australia.
4. On 8 May 2020, Suncorp notified the FWO that as a result of an internal review conducted in November 2019 with the support of Deloitte, it had identified suspected underpayments within Suncorp Staff, Suncorp Insurance and AAMI (**Suncorp Entities**), impacting employees covered by the *Suncorp Group Enterprise Agreement 2015* (**2015 Agreement**). Suncorp reported that the possible underpayment errors related to:
  - (a) inconsistencies with the rostering and payroll system meaning base pay employees may not have been paid the correct overtime, shift penalties and public holiday loadings;
  - (b) payment in lieu of notice resulting in employees being paid at their base rate of pay as opposed to full rate of pay; and

- (c) long service leave accrual calculations for long service leave in New South Wales, Australian Capital Territory, Tasmania and South Australia may not completely reflect legislative requirements.
5. With the support of Deloitte, Suncorp has performed a historical review of all entitlements dating back to 3 May 2014 (**Review**). The Review considered matters which included impacted employees covered by the Suncorp Group Enterprise Agreement 2011 (**2011 Agreement**) and the 2015 Agreement (collectively the **Agreements**).
  6. Suncorp separately engaged Ernst and Young (**EY**) to independently verify the outcomes from the Review (**EY Report**).
  7. The reported underpayments arise from issues including:
    - (a) a self-service process involving employees applying for additional entitlements in addition to their ordinary hours and leaders approving these entitlements, prior to payment (**self-service issue**); and
    - (b) the inconsistent application across the Suncorp Entities of the 'Rostered Employee' term in the Agreements during the period between 3 May 2014 to 25 March 2022 (**Period**), where a 'Rostered Employee' is defined as *"one who is regularly rostered to work shifts in which some or all of their working hours regularly fall outside the scope of ordinary hours"* (**Rostered Employee Issue**).
  8. The outcome of the Review is that 15,828 current and former employees have been underpaid approximately \$26 million during the Period.
  9. Prior to the execution of this Undertaking, Suncorp notified the FWO that it had:
    - (a) rectified the underpayments for the Period, by paying (or attempting to pay) each of the employees referred to in Column A of Schedule A to this Undertaking (**Schedule A Employees**) the amounts referred to in column B of Schedule A;
    - (b) rectified any associated superannuation underpayments as required by law to each of the Schedule A Employees the amounts referred to in Column D of Schedule A to this Undertaking, by paying any such required superannuation contributions to the chosen superannuation fund of the employee or to the ATO;
    - (c) paid interest to each of the Schedule A Employees or to the ATO on the amount

- referred to in Column D of Schedule A, in the sum referred to in Column E of Schedule A, calculated using an interest rate of 10%;
- (d) paid interest to each of the Schedule A Employees on the amount referred to in Column B of Schedule A, in the sum referred to in Column C of Schedule A, calculated using an interest rate of 4.25%;
  - (e) communicated its interpretations of the 'Rostered Employee' term in the Agreements, namely '*Base Pay Rostered Employee*' and '*Fixed Salary Rostered Employee*', to employees and relevant areas of the Suncorp Entities;
  - (f) applied its interpretations of the 'Rostered Employee' term in the Agreements from 1 July 2021;
  - (g) upgraded its payroll system on 26 March 2022 to assist with operationalising these interpretations, integrate rostering data and automate the calculation of time-based entitlements (**Technology Solution**);
  - (h) issued a number of internal and public apologies including an ASX announcement on 11 May 2020, through a Market Update video shared on 11 May 2020 and letters sent to current and former employees from 7 July 2021;
  - (i) launched a compulsory learning program on 23 May 2022 covering the topics of 'Pay, Leave and Record Keeping Accountabilities' for leaders and team members completed in July and August 2022 (**Training**); and
  - (j) facilitated avenues for current and former employees of Suncorp to raise queries regarding their pay and leave entitlements through Suncorp's external website, Suncorp's internal intranet, the Suncorp People Connect Hotline, the dedicated Pay and Leave Review hotline (managed by Deloitte) and a secure online portal (managed by Deloitte). The Finance Sector Union also facilitated avenues for current and former employees of Suncorp to raise queries via a dedicated page on its website.

10. Suncorp has co-operated with the FWO since the self-report in May 2020.

## ADMISSIONS

11. The FWO has a reasonable belief, and the Suncorp Entities admit, that the Suncorp Entities contravened:

- (a) section 44 of the FW Act during the Period, by failing to pay each of the

Schedule A Employees the amount or amounts to which that employee was entitled under the FW Act in respect of the provision of the NES which is identified in Schedule A to this Undertaking in relation to that employee:

- (i) section 117 of the FW Act in relation to payment in lieu of notice;
- (b) section 50 of the FW Act during the Period, by failing to pay each of the Schedule A Employees the amount or amounts to which that employee was entitled under the Agreements in respect of each provision which is identified in Schedule A to this Undertaking in relation to that employee:
  - (i) clause 57 in respect of overtime;
  - (ii) clause 58.1 in respect of shift loadings;
  - (iii) clause 58.1 in respect of work performed on Saturdays and Sundays;
  - (iv) clause 58.2 in respect of annual leave loading;
  - (v) clause 58.3 in respect of work performed on public holidays;
  - (vi) clause 46(c) in respect of base rates of pay;
  - (vii) clause 38 in respect of long service leave;
  - (viii) clause 45.3 in respect of redundancy;
  - (ix) clause 59.1 in respect of meal allowances;
  - (x) clause 63(c) in respect of Rostered Employee Fixed Salary; and
  - (xi) clause 47 in respect of superannuation.

12. The contraventions identified in clause 11 of this Undertaking do not include:

- (a) any contraventions relating to the Rostered Employee Issue or self-service issue which impact current or former employees of the Suncorp Entities not listed in Schedule A to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of the Rostered Employee Issue or self-service issue 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 yet occurred at the date that this Undertaking is offered by the Suncorp Entities (whether or not those contraventions are identified in the Independent Audits described at clause 18 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 Suncorp Entities and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## **UNDERTAKINGS**

- 13. The Suncorp Entities will take the actions set out at clauses 14 to 46 below.

### **Review and rectification of underpayments**

- 14. If any of the current or former employees to whom Underpayments are owed cannot be located by 1 September 2023, the Suncorp Entities will pay the underpayment amounts owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act.
- 15. In the event that the FWO is able to locate and contact any current or former employees to whom Underpayments are owed, who have not been located and paid by the Suncorp Entities in accordance with clause 9 of this Undertaking, the FWO will (in addition to its obligations under s 559 of the FW Act) notify the Suncorp Entities in writing of the name and contact details of the current or former employee. Within 28 days of receiving any such notice the Suncorp Entities will pay the current or former employee:
  - (a) interest on the amount already paid by the Suncorp Entities to the Commonwealth of Australia in respect of that employee, calculated for each financial year from the date that the employee first became entitled to that amount until the date Suncorp attempted to make payment to the relevant employee's last known bank account, on which that amount is paid, using an interest rate of 4.25%; and
  - (b) interest of 10% on any amount payable in relation to superannuation.
- 16. By 15 June 2023, the Suncorp Entities will provide the FWO a signed letter of assurance from their Group Executive (People, Culture and Advocacy) confirming their belief that

based on the Review and EY report, the remediation and rectification program has been conducted thoroughly and correctly, the Suncorp Entities consider they are now fully compliant and confirming that all underpayments have been rectified as per the FW Act and applicable Agreements.

17. Within 30 days of the Commencement Date, Suncorp will provide the FWO information about the new systems and processes that have been put in place to achieve ongoing compliance.

#### **Independent Audits**

18. Suncorp must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two annual audits of the Suncorp Entities' compliance with the FW Act and FW Regulations, in relation to the Agreement, and any future agreement that replaces the Agreement (**Audits**).
19. Suncorp will notify the FWO of its proposed Independent Auditor by no later than 15 June 2023. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Suncorp 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 Suncorp in relation to the Audits.
20. Suncorp must ensure that each of the Audits conducted by the Independent Auditor includes:
  - (a) an assessment of whether the entitlements of at least 5% of employees under the 2015 Agreement, comprising a mixture of current and former employees (**Sampled Employees**) have been correctly calculated by Suncorp. The Sampled Employees will include a range of classifications and employment types (Base Pay Rostered Employees and Fixed Salary Rostered Employees) who work in a range of different locations;
  - (b) 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

- (c) that each of the written reports referred to in (b) 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 Suncorp, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Suncorp in preparing the report;
  - (iii) the report is provided in accordance with the relevant professional standards applicable to the Independent Auditor (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

- 21. Suncorp will use its best endeavours to ensure the Independent Auditor commences the first of the Audits by 28 July 2023 (**First Audit**).
- 22. The relevant audit period for the First Audit must be at least two full consecutive pay periods covering a period from 3 April 2023 onwards.
- 23. By 6 July 2023, Suncorp will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 24. Suncorp will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO within four months of commencing the First Audit, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. Suncorp will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Suncorp or any other person without the FWO's approval.
- 25. Suncorp will use its best endeavours to ensure the Independent Auditor finalises the First Audit and provides a full written and un-redacted version of the report of the First Audit (**First Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. Suncorp will



ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to Suncorp or any other person without the FWO's approval.

#### The Second Audit

26. Suncorp will use its best endeavours to ensure the Independent Auditor commences the second of the Audits by 26 July 2024 (**Second Audit**).
27. The relevant audit period for the Second Audit must be at least two full consecutive pay periods covering the period from 3 April 2024.
28. By 28 June 2024, Suncorp will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
29. Suncorp will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO within four months of commencing the Second Audit, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. Suncorp will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Suncorp or any other person without the FWO's approval.
30. Suncorp will use its best endeavours to ensure the Independent Auditor finalises the Second Audit and provides a full written and un-redacted version of the 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. Suncorp will ensure the Independent Auditor does not provide the Second Audit Report, or a copy of the same, to Suncorp or any other person without the FWO's approval.

#### **Outcome of Audits**

31. If any of the Audits identify underpayments to any current or former employees, Suncorp will conduct a reconciliation of the amounts paid to those employees during the relevant period and rectify any underpayments that are identified. The reconciliation period for each identified employee will be from 12 months prior to the start of the audit period to the end of the relevant audit period.
32. Suncorp 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.
33. If any employees identified in the Audits as having underpayments owing to them

cannot be located within 90 days of the conclusion of the Second Audit, Suncorp will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act.

34. 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, Suncorp 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 Agreement (or replacement instrument) applies (or a particular cohort of employees within this group), as reasonably determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by Suncorp.
35. If requested by the FWO, Suncorp will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 21 days of such a request.

#### **Employee Information Channel**

36. Throughout the Review, Suncorp has engaged an external provider to operate a dedicated telephone number and online portal that has provided all current and former employees to whom the Agreement applies, or had applied, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**).
37. The Employee Hotline remained active until 30 September 2022.
38. Following the closure of the Employee Hotline, current and former employees continued to have the option to make enquiries in relation to their entitlements, underpayments or related employment concerns through existing internal channels.
39. Suncorp will set up a dedicated external telephone number and email address (**Employee Information Channel**) and:
  - (a) ensure the Employee Information Channel remains operational for a period of 60 days from the Commencement Date;
  - (b) communicate the existence and purpose of the Employee Information Channel to all current employees and ensure that the contact details

(telephone number and email address) for the Employee Information Channel are included in the communication;

- (c) communicate the existence and purpose of the Employee Information Channel to all former employees to whom the Agreement applies, or had applied and who were identified during the Review as being eligible for a remediation payment during the Period. Suncorp will:
  - (i) utilise the last known mobile, email or street address for former employees;
  - (ii) ensure the communication or a link to the communication includes words to the effect of those set out in Attachment A to this Undertaking;
  - (iii) provide evidence to the FWO that the communication has been sent to all required former employees within 30 days of issuance;
- (d) 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
- (e) provide a de-identified list of enquiries received by the Employee Information Channel to the FWO within 60 days from the establishment of the Employee Information Channel.

#### **Media Release**

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

#### **Training**

- 41. Suncorp must provide evidence of completion of the Training outlined in clause 9(i) to the FWO within six months of the Commencement Date (including the name and position of all attendees and the date on which the training was completed).

#### **Contrition Payment**

- 42. Within 28 days of the Commencement Date, Suncorp will make a contrition payment to the Consolidated Revenue Fund of \$520,000.

43. Suncorp will provide evidence to the FWO of any contrition payment within 14 days of making payment to the Consolidated Revenue Fund.

#### **No Inconsistent Statements**

44. Suncorp and the Suncorp Entities must not, and must use their best endeavours to ensure that its officers, employees or agents and those of any associated entities as defined in the Corporations Act 2011 (Cth) do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

#### **Extension of time for completion**

45. Suncorp may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. Suncorp will provide information setting out the basis for such a request and make a request for an extension of time at least 7 days prior to the time that Suncorp is required to complete the action as set out in this Undertaking, or such shorter period agreed in writing between Suncorp and the FWO. The FWO will not unreasonably withhold agreement on a request for an extension of time.
46. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the time specified for completion of the later obligation is correspondingly extended by the same period.

#### **ACKNOWLEDGEMENTS**

47. Suncorp 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](http://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 hereto) and its terms; and
  - (v) rely upon the admissions made by Suncorp set out in clause 11 above in respect of decisions taken regarding enforcement action in the event that Suncorp is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Suncorp to comply with its obligations under this Undertaking;
- (b) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
- (c) consistent with section 715(3) of the FW Act, Suncorp may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if Suncorp 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 Suncorp in clause 11 above, and also in respect of the question of costs.



**Executed as an undertaking**

EXECUTED by Suncorp Staff Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

Fiona Thompson  
(Name of director)

5/06/23  
(Date)

in the presence of:

  
(Signature of witness)


MARY TETERIS  
(Name of witness)

  
(Signature of director/company secretary)

Jeremy Robson  
(Name of director/company secretary)


5/6/23  
(Date)

in the presence of:

  
(Signature of witness)


Joanne Gillan  
(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)

7/6/23  
(Date)

FRANCESCO BANDO  
(Name of Witness)

**Executed as an undertaking**

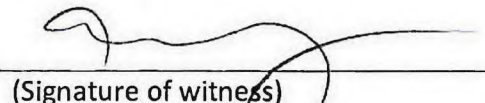
EXECUTED by Suncorp Insurance Services Limited in accordance with section 127(1) of the Corporations Act 2001:

  
(Signature of director)

FIONA THOMPSON  
(Name of director)

5/6/23  
(Date)

in the presence of:

  
(Signature of witness)

MARY TERZIS  
(Name of witness)



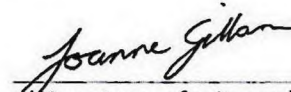
(Signature of director/company secretary)

Jeremy Robson  
(Name of director/company secretary)

5/6/23

(Date)

in the presence of:

  
(Signature of witness)

Joanne Gillan  
(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)


7/6/23

(Date)

FRANCESCO Baldo  
(Name of Witness)

**Executed as an undertaking**

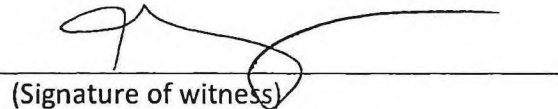
EXECUTED by Australian Associated Motor Insurers Pty Limited in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

Fiona Thompson  
(Name of director)

5/6/23  
(Date)

in the presence of:

  
(Signature of witness)

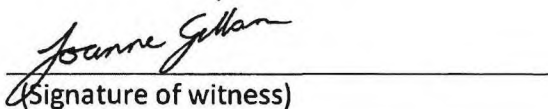
MARY TETERIS  
(Name of witness)

  
(Signature of director/company secretary)

Jeremy Robson  
(Name of director/company secretary)


5/6/23  
(Date)

in the presence of:

  
(Signature of witness)


Joanne Gillan  
(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)

7/6/23  
(Date)

FRANCESCO Baldo  
(Name of Witness)

**SCHEDULE A – Evidence of payment of underpayments for the Period  
3 May 2014 to 25 March 2022**

## **Attachment A – Communication to employees**

Suncorp's pay remediation is now complete with payments made to eligible employees from 3/05/14 to 25/03/22 and Suncorp entering an Enforceable Undertaking with the FWO. For further queries, contact +61 2 9225 5010 or [SuncorpEUqueries@hsf.com](mailto:SuncorpEUqueries@hsf.com). Alternatively, you may contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or 13 13 94.