



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Southern Cross Care (NSW & ACT) Limited (ABN 76 131 082 374) and **accepted** by the Fair Work Ombudsman pursuant to section 715 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 Southern Cross Care (NSW & ACT) Limited (ABN 76 131 082 374), of 16-18 Bridge Street, EPPING, NEW SOUTH WALES (hereafter "**SCC NSW/ACT**").

COMMENCEMENT OF ENFORCEABLE UNDERTAKING

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

BACKGROUND

3. SCC NSW/ACT is a not-for-profit organisation that operates in New South Wales (**NSW**) and the Australian Capital Territory (**ACT**). SCC NSW/ACT provides residential aged care services, home care services and retirement living.
4. SCC NSW/ACT employs approximately 2,300 employees across 27 residential aged care homes, 27 retirement living villages and its home care business across Sydney, the Central and Far North NSW Coast, the Riverina and South West Slopes regions of NSW, and the ACT.
5. Some SCC NSW/ACT employees are engaged under the *Southern Cross Care (NSW & ACT) Enterprise Agreement 2017-2020* (**the EA**).
6. On 24 November 2023, SCC NSW/ACT reported to the FWO that it had identified the incorrect application of the EA in relation to overtime, allowances, and shift penalties. These errors resulted in underpayments to current and former employees.
7. SCC NSW/ACT conducted a self-audit in 2023 after initially identifying errors relating to the allocation of overtime, and then subsequently engaged KPMG to conduct a broader review, which identified the non-compliance with the EA relating to underpayment of allowances and shift penalties.
8. Upon completion of the KPMG audit, SCC NSW/ACT had calculated that \$11,771,825 was owed to 5,550 employees (**the Affected Employees**), inclusive of interest and

superannuation.

9. Prior to the execution of this Undertaking, SCC NSW/ACT notified the FWO that it had rectified the underpayments for 3,603 of the Affected Employees, totalling \$10,135,122 (inclusive of interest and superannuation).
10. The FWO acknowledges the cooperation and early and open disclosures made by SCC NSW/ACT to the FWO.

ADMISSIONS

11. The FWO has a reasonable belief, and SCC NSW/ACT admits, that SCC NSW/ACT contravened section 50 of the FW Act between 4 July 2017 to 6 October 2024 (**Relevant Period**) by failing to pay each of the Affected Employees the amount or amounts to which that employee was entitled under the EA (**the Underpayments**), as identified in Schedule A to this Undertaking, in respect of the following provisions of the EA:
 - a. clause 15.5(f) which relates to the payment of an allowance for working a broken shift;
 - b. clause 18.1(a)(i) which relates to the payment of overtime for work in excess of an employee's ordinary hours;
 - c. clause 18.1(d) which relates to the payment of overtime when an employee is deprived of part of their break between shifts;
 - d. clauses 19.1 and clause 3 of undertaking AG2017/3801 given in relation to the EA, which concerns the payment of shift penalty rates for work performed during shifts that commence between the specified timeframes within clause 19.1 and clause 3 of undertaking AG2017/3801;
 - e. clause 19.2(a) which relates to the payment of time and one half for work between midnight Friday and midnight Saturday;
 - f. clause 19.2(b) which relates to the payment of time and three-quarters for work between midnight Saturday and midnight Sunday;
 - g. clause 21.1(a) which relates to the payment of an in-charge allowance for registered nurses who are designated and rostered by the employer to be in charge during the day, evening or night of a residential aged care facility;
 - h. clause 21.3(d) which relates to the payment of a safety shoe allowance in lieu of supplying safety shoes for employees performing the role of Maintenance and Kitchen Staff;

- i. clause 21.3(e) which relates to the payment of a laundry allowance where required in lieu of supplying a uniform;
 - j. clause 21.5(a) which relates to the payment of an on-call allowance to an employee who is directed by their manager and is rostered and agrees to be on call, for each 24 hour period or part thereof;
 - k. clause 21.5(b) which relates to the payment of an on-call meal allowance to employees directed to remain on call during a meal break;
 - l. clause 21.6 which relates to the payment of a meal allowance to employees who work overtime for more than two hours and such overtime goes beyond 7:00 a.m., 1:00 p.m., and 6:00 p.m.; and
 - m. clause 22.6(a) which relates to the payment of annual leave loading.
12. For the avoidance of doubt, this Undertaking is not given in respect of:
- a. any contraventions which relate to or arise as a consequence of SCC NSW/ACT failing to correctly apply the EA to any employee who is not one of the Affected Employees, or because of any failure by SCC NSW/ACT to correctly apply a clause of the EA to an Affected Employee other than those set out in clause 11 above; or
 - b. any contraventions which have not yet occurred at the date that this Undertaking is offered by SCC NSW/ACT; or
 - c. any contraventions of a particular clause of the EA by SCC NSW/ACT which occurred outside of the Relevant Period.

UNDERTAKINGS

13. SCC NSW/ACT will take the actions set out at clauses 15 to 50 (inclusive) below.

Rectify Underpayments to employees

14. The FWO acknowledges that, as at the Commencement Date, SCC NSW/ACT has made payments to 3,603 Affected Employees totalling \$10,135,122 (inclusive of interest and superannuation.)
15. SCC NSW/ACT will:
- a. continue to take reasonable steps to locate and pay each Affected Employee who has not yet received the amount or amounts to which that employee was entitled under the EA as identified in Schedule A to this Undertaking;
 - b. provide monthly updates to the FWO on payments made, including Reasonable Evidence of payments made.

16. If any former Affected Employees to whom an Underpayment is owed cannot be located within 60 days of the Commencement Date, SCC NSW/ACT will pay the Underpayment owing to those Affected Employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. SCC NSW/ACT will complete the required documents supplied by the FWO for this purpose.
17. In the event that the FWO is able to locate and contact any Affected Employees to whom the Underpayments are owed under clause 16 of this Undertaking, with the consent of the Affected Employee, the FWO will (in addition to its obligations under section 559 of the FW Act) notify SCC NSW/ACT in writing of the name and contact details, of the Affected Employee.
18. Within 21 days of receiving any such notice under clause 17 of this Undertaking, SCC NSW/ACT will:
 - a. pay to the Affected Employee the Interest Amount relating to their Underpayment; and
 - b. pay to the Affected Employee's nominated superannuation fund any outstanding superannuation amount owed.

Notification to Affected Employees

19. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, SCC NSW/ACT will issue a letter (**Notification Letter**) in the form of **Attachment A** to the last known address or email address of each former Affected Employee.
20. Within 7 days of sending the final Notification Letter, SCC NSW/ACT will provide the FWO with written assurance in the form of a letter or an email, to confirm that each of the former Affected Employees has been issued with a copy of the Notification Letter.
21. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, SCC NSW/ACT will post to the home page of its intranet site, in a prominent location, a notice in the form of **Attachment B**. This notice shall stay in place on the home page for 1 month.
22. Within 7 days of posting the intranet notice, SCC NSW/ACT will provide evidence to the FWO that the intranet notice has been posted.

Independent Audits

23. SCC NSW/ACT must, at its cost, engage KPMG, being an appropriately qualified,

experienced, external and independent accounting professional (**Independent Auditor**) to conduct an initial audit of SCC NSW/ACT's compliance with the FW Act and *Fair Work Regulations 2019* (Cth) (**FW Regulations**) in relation to the EA and any future industrial instruments that may replace the EA (**First Audit**). The KPMG team engaged for the audit will be an entirely separate team to that which assisted SCC NSW/ACT with the remediation payments. Dependent on the outcome of the First Audit, a second audit (**Second Audit**) may be required in accordance with clause 31 of this Undertaking.

24. SCC NSW/ACT will notify the FWO of its proposed Independent Auditor by no later than 1 April 2026. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require SCC NSW/ACT 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 SCC NSW/ACT.
25. SCC NSW/ACT must ensure that any Audit conducted by the Independent Auditor in accordance with this Undertaking include:
 - a. an assessment of at least 10% of all employees to whom the EA (or any replacement industrial instrument) applies, across a range of classifications, locations and employment types (full time, part time and casual employment), during the relevant audit period (**Sampled Employees**) in respect of their employment by SCC NSW/ACT;
 - b. an assessment of whether the Sampled Employees have been correctly classified by SCC NSW/ACT;
 - 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, the FW Regulations and the EA (or replacement industrial instrument);
 - d. the production of a written report on any Audit undertaken in accordance with this Undertaking, setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
 - e. that each of the written reports referred to in (d) above contains the following declarations from the Independent Auditor:
 - i. the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - ii. notwithstanding that the Independent Auditor is retained by SCC NSW/ACT the Independent Auditor undertakes that it has acted

independently, impartially, objectively and without influence from SCC NSW/ACT in preparing the report;

- iii. the report is provided in accordance with applicable professional standards (which will be listed in the report); and
- iv. the report is provided to the FWO for its benefit and the FWO can rely on the report.

The First Audit

- 26. SCC NSW/ACT must ensure the Independent Auditor commences the First Audit by no later than 30 June 2027 or by such other date as agreed with the FWO.
- 27. The relevant audit period for the First Audit must be at least 2 full pay periods falling within the period 6 April 2027 – 3 May 2027 (**Relevant Audit Period**).
- 28. By 1 March 2027, SCC NSW/ACT will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 29. SCC NSW/ACT will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 30 November 2027 setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. SCC NSW/ACT will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to SCC NSW/ACT without the FWO's approval.
- 30. SCC NSW/ACT will use its 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 1 month of FWO providing any comments on the draft report to the Independent Auditor. SCC NSW/ACT will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to SCC NSW/ACT without the FWO's approval.

The Second Audit

- 31. Should the First Audit determine the pay and conditions of the Sampled Employees during the Relevant Audit Period are not in compliance with the FW Act, the FW Regulations and the EA (or replacement industrial instrument), this will trigger the requirement for the Second Audit. For clarity, if the pay and conditions of the Sampled Employees during the relevant audit period are in compliance with the FW Act, the FW Regulations and the EA (or replacement industrial instrument), SCC NSW/ACT will not be required to undertake a Second Audit.

32. If the Second Audit is triggered in accordance with clause 31, SCC NSW/ACT must ensure the Independent Auditor commences the Second Audit by no later than 30 June 2028 (**Second Audit**).
33. The relevant audit period for the Second Audit must be at least 2 full pay periods falling within the period 2 April 2028 – 30 April 2028.
34. By 1 March 2028, SCC NSW/ACT will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
35. SCC NSW/ACT will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 30 November 2028, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. SCC NSW/ACT will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to SCC NSW/ACT without the FWO's approval.
36. SCC NSW/ACT will use its 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 1 month of FWO providing any comments on the draft report to the Independent Auditor. SCC NSW/ACT will ensure the Independent Auditor does not provide the written report, or a copy of the same, to SCC NSW/ACT without the FWO's approval.

Outcome of Audits

37. If any of the Audits identify underpayments to any current or former employees, SCC NSW/ACT will:
 - a. rectify any underpayments identified in the relevant audit period; and
 - b. conduct a reconciliation of the amounts paid and owed to those employees in the 12-month period immediately prior to the relevant audit period, and rectify any underpayments that are identified.
38. SCC NSW/ACT will provide to the FWO Reasonable Evidence of such rectification within 60 days of undertaking the reconciliation.
39. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of each Audit, SCC NSW/ACT will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. SCC NSW/ACT will complete the required documents supplied by the FWO for this purpose.

System Improvements

40. FWO acknowledges that SCC NSW/ACT is well progressed on “Project IRIS” (to implement a new time and attendance system). As of the Commencement Date, a vendor has been selected and SCC NSW/ACT is engaged in preparatory works in readiness for implementation.
41. SCC NSW/ACT will inform the FWO within two weeks of Project Iris being implemented.

Workplace Relations Training

42. At least one month prior to the final implementation of the new time and attendance system, SCC NSW/ACT (or an appropriate third party) will develop, plan and implement a training program for all employees within SCC NSW/ACT who have responsibility for payroll functions, on the proper use of the new time and attendance system, which reinforces the training that has already been delivered on time and attendance practices, including breaks.
43. Within one month of the final implementation of the new time and attendance system, SCC NSW/ACT (or an appropriate third party) will develop, plan and implement a training program for all employees within SCC NSW/ACT who do not fall within the scope of clause 42 of this Undertaking, on the correct processes and procedures with relation to the use of the new time and attendance system to the extent it applies to them.

Worker Voice

44. SCC NSW/ACT is committed to genuine employee and union consultation and two-way communication. In addition to following the consultative provisions of the EA in relation to workplace change, SCC NSW/ACT has established multiple ways for employees to share their views and experiences, reflecting a commitment to two-way communication and continuous improvement. These include the SCC Engagement Survey, periodic pulse surveys and monthly team meetings. Feedback and suggestion boxes are available at several residential sites to capture ongoing employee feedback, including anonymous submissions. Whistleblower complaints can be made through an externally managed hotline.
45. To further enhance immediacy and accessibility of feedback, by 30 April 2026 SCC NSW/ACT will launch a new Feedback Form (QR Code-Based) which will allow

employees to provide instant feedback by scanning a QR code displayed at each site. This feedback can be made anonymously. SCC NSW/ACT will notify the FWO within one week of the Feedback Form being introduced and will report to the FWO on the implementation of the Feedback Form, including how ideas and feedback have been addressed, within twelve months of the Commencement Date.

46. SCC NSW/ACT will continue to explore ways to improve union and employee engagement. In the event that SCC NSW/ACT has any new enterprise agreements approved by the Fair Work Commission, SCC NSW/ACT will, within two weeks of any new enterprise agreement taking effect, inform the FWO of the enterprise agreement's approval and of how any worker voice or consultative provisions contained in the agreement are to be implemented. SCC NSW/ACT commits to ensuring workplace compliance is a standing agenda item at any consultative forum that any new enterprise agreement establishes.

Corporate Governance

47. SCC NSW/ACT will review and, where necessary, amend its internal processes for reporting to SCC NSW/ACT's Board of Directors (**Board**) to ensure that the Board is appropriately notified of SCC NSW/ACT's compliance with its FW Act obligations and any potential breaches of its FW Act obligations. In particular, SCC NSW/ACT will:
- a. ensure that the Audit Reports prepared from any such audit described in clauses 23-39 are tabled before its Board including relevant communications with the FWO and details of any action to be taken by SCC NSW/ACT in relation to those reports;
 - b. ensure that the regular reporting to the Board includes details of:
 - i. any identified compliance issues, including a description of the issue, the investigation process, and the outcome; and
 - ii. any new payroll improvements, systems transformations, or payroll or rostering policies/practices that have been implemented, or may be implemented as a result of identified issues or for continuous improvement;
 - c. ensure that all notifications presented to the Board for the purposes of this clause are tabled and approved by the Board and that where issues are identified, those issues are rectified in a timely manner, with the action taken to

- address those issues being subsequently reported to the Board; and
- d. if requested by the FWO, by no later than 12 months after the Commencement Date, ensure SCC NSW/ACT provides documentation to the FWO which demonstrates that the Board is regularly updated, on at least a 3 monthly basis, on SCC NSW/ACT's compliance with its FW Act obligations and this Undertaking.
48. The FWO may, at any time while SCC NSW/ACT has obligations under this Undertaking, request copies of documents held by the SCC NSW/ACT Board in respect of its monitoring of SCC NSW/ACT's workplace relations compliance, including but not limited to relevant reports prepared for the Board and Board minutes. For the avoidance of doubt, SCC NSW/ACT is not required to provide any documents protected by legal professional privilege.

Reporting Changes in Circumstances

49. SCC NSW/ACT will notify the FWO of any material changes of circumstances that impacts on SCC NSW/ACT's ability to comply with the undertakings contained in this Undertaking, as soon as reasonably practicable after it becomes aware of such circumstances. Such circumstances include but are not limited to:
- a. a sale or potential sale (once a binding sale agreement has been entered into) of the business, or part of the business;
 - b. ceasing or an expectation of ceasing to trade; or
 - c. the business going into administration or liquidation.

No Inconsistent Statements

50. SCC NSW/ACT must not, and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

ACKNOWLEDGEMENTS

51. SCC NSW/ACT acknowledges that:
- a. the FWO may:
 - i. make this Undertaking available on the FWO internet site at www.fairwork.gov.au;
 - ii. release a copy of this Undertaking 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 its terms; and
 - v. rely upon the admissions made by SCC NSW/ACT set out in clause 11 above in respect of decisions taken regarding enforcement action in the event that SCC NSW/ACT is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by SCC NSW/ACT 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, SCC NSW/ACT may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
 - d. if SCC NSW/ACT 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 SCC NSW/ACT in clause 11 above, and also in respect of the question of costs.

DICTIONARY

Unless the contrary intention appears, words in the singular include the plural, and other than terms defined, have their ordinary natural meaning.

- **Interest Amount** in relation to the wage underpayment is calculated in accordance with the Federal Court Pre Judgment Rate.
- **Reasonable Evidence** means such evidence as the FWO may reasonably require, and which could reasonably be expected to satisfy a court of:
 - a) the truth of any fact asserted by SCC NSW/ACT or by any of its servants or agents; and/or
 - b) the accuracy and correctness of any information provided by SCC NSW/ACT, or by any of its servants or agents; and/or
 - c) compliance by SCC NSW/ACT with any term of this Undertaking.

Executed as an undertaking

Executed for and on behalf of Southern Cross Care (NSW & ACT) Limited ABN 76 131 082 374 by its duly authorised representative and its Interim Chief Executive Officer, Anthony Dureau:



Anthony Dureau – Interim Chief Executive Officer

30 March 2026

(Date)

in the presence of:



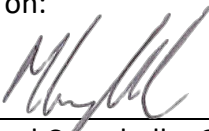
Alethea Lee

(Signature of Witness)

30 March 2026

(Name of Witness)

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



Michael Campbell – Group Manager,
Operations

31 March 2026

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

Louise Cato

(Name of Witness)

SCHEDULE A

See attached

Attachment A – Notification of Enforceable Undertaking to Affected Employees

Dear {Name of employee}

Southern Cross Care (NSW & ACT) Limited (**SCC NSW/ACT**) recently undertook a review of its payroll processes and became aware of an error relating to the underpayment of some employee entitlements under the *Southern Cross Care (NSW & ACT) Enterprise Agreement 2017-2020 (the EA)*. The underpayments related to:

- the allocation of overtime;
- the correct payment of some allowances; and
- the correct payment of shift penalties.

SCC NSW/ACT has since undertaken an extensive process to ensure that all affected employees, past and present, were notified of the error and paid their entitlements in full with interest and superannuation.

SCC NSW/ACT also self-reported this matter to the Fair Work Ombudsman (**FWO**) in November 2023. It has now entered into a formal enforceable undertaking with the FWO detailing the underpayment and the steps SCC NSW/ACT will take to avoid future errors.

Should you have any questions or concerns relating to this or any other employment issues then please direct them to wagereview@sccliving.org.au.

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

The Board of Directors and I are deeply sorry that this payment error has occurred, and assure you that we have implemented a range of measures to ensure that this does not occur again.

Sincerely,

Attachment B – Intranet Notice of Enforceable Undertaking

[HEADER] Southern Cross Care (NSW & ACT) enters into Enforceable Undertaking with the FWO

[MAIN BODY]

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