



Australian Government

# Fair Work

## OMBUDSMAN

### ENFORCEABLE UNDERTAKING

This undertaking is **given** by Qantas Airways Limited (ABN 16 009 661 901) and **accepted** by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clauses 7 and 8 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 Qantas Airways Limited (**Qantas**), ABN 16 009 661 901, 10 Bourke Road, Mascot NSW 2020.

### COMMENCEMENT

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

### BACKGROUND

3. Qantas is an Australian public company that operates international and domestic airlines, freight services and loyalty programs. The Qantas Group employs over 27,000 workers.
4. In February 2019, Qantas notified the FWO that:
  - (a) in mid-2018, it identified that:
    - (i) the *Australian Services Union (Qantas Airways Limited) Agreement 11* (**ASU EA 11**) may apply to a number of its current employees whom it had not been applying that enterprise agreement to; and
    - (ii) the terms and conditions on which it employed those employees may not be sufficient to satisfy the minimum terms and conditions in ASU EA 11, potentially resulting in underpayments;
  - (b) following the event described at (a) above, it commenced an internal review to determine whether there were any current employees to whom ASU EA 11 and/or *Australian Services Union (Qantas Airways Limited) Agreement 10* (**ASU EA 10**), which operated from 6 November 2013, and/or the *Australian Services Union (Qantas Airways Limited) Agreement 9* (**ASU EA 9**), which operated from 9 June 2011, applied or had applied to and, if so, whether those employees had been underpaid; and



- (c) Qantas' internal review identified that:
  - (i) it had incorrectly failed to apply ASU EA 11, ASU EA 10 and/or ASU EA 9 to a number of its current employees who were entitled to the benefit of one or more of those enterprise agreements; and
  - (ii) the terms and conditions on which it employed those employees was not sufficient to satisfy the minimum terms and conditions in one or more of those enterprise agreements, resulting in underpayments.
- 5. Prior to the execution of this Undertaking, Qantas notified the FWO that it:
  - (a) in February and July 2019, made rectification payments to the employees named in column A of Schedule A to this Undertaking (**Schedule A Employees**) by paying each of the Schedule A Employees the amounts referred to in column E of Schedule A;
  - (b) 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 that is 6% above the cash rate last published by the Reserve Bank of Australia (**RBA**) for each relevant financial year;
  - (c) will make a one-off payment of \$1,000 to each of the Schedule A Employees (noting some have already received this payment);
  - (d) as a part of its internal review, identified the further employees listed in Schedule B to this Undertaking (**Schedule B Employees**) to whom ASU EA 11, ASU EA 10 or ASU EA 9 are likely to have applied but who may not have been paid by Qantas in accordance with those enterprise agreements; and
  - (e) in November 2019, made part-rectification payments to the Schedule B Employees.
- 6. Qantas is now in the process of finalising its internal review and will ensure all impacted employees (both current and former) are reimbursed for any underpayment of workplace entitlements.

## ADMISSIONS

7. The FWO has a reasonable belief, and Qantas admits, that Qantas contravened:

(a) section 50 of the FW Act between 9 June 2011 and 28 June 2019 (**Relevant Period**) by failing to pay each of the Schedule A Employees the amount or amounts to which that employee was entitled under ASU EA 11, ASU EA 10 or ASU EA 9 in respect of each provision of any of those instruments which is identified in Schedule A to this Undertaking in relation to that employee:

- (i) clause 12: Introduction of change - Airline Officers Only;
- (ii) clause 18: Part-Time Employment - Airline Officers Only;
- (iii) clause 24: Classifications and Rates of Pay;
- (iv) clause 26: Allowances - Airline Officers Only;
- (v) clause 27: Allowances;
- (vi) clause 33: Payment of Wages;
- (vii) clause 35.2: Progression on Promotion for Classification – Airline Officers Only, at Levels 2 to 9;
- (viii) clause 37: Superannuation – Choice of Funds (in respect of ASU EA 11 only);
- (ix) clause 39: 20<sup>th</sup> Day Payout - Airline Officers Only;
- (x) clause 41: Hours of Duty – Daywork and Shiftwork - Airline Officers Only;
- (xi) clause 43: Breaks;
- (xii) clause 44: Overtime;
- (xiii) clause 45: Sunday Work;
- (xiv) clause 47: Annual Leave;
- (xv) clause 53: Public Holidays;
- (xvi) clause 54: Consultation;
- (xvii) clause 56: Redundancy Payments;
- (xviii) clause 60: Annual Leave Loading;

- (xix) clause 77: Salary Review; and
  - (xx) clause 79: Salary Adjustment Amount.
- (b) section 535 of the FW Act by failing to make and keep employee records as required by regulation 3.34 of the *Fair Work Regulations 2009* (**FW Regulations**) in respect of each of the Schedule A Employees for the Relevant Period.
8. The FWO also has a reasonable belief, and Qantas also admits, that Qantas contravened:
- (a) section 50 of the FW Act by failing to pay the Schedule B Employees the amount or amounts to which that employee was entitled under ASU EA 11, ASU EA 10 or ASU EA 9 during the Relevant Period; and
  - (b) section 535 of the FW Act by failing to make and keep employee records as required by regulation 3.34 of the FW Regulations in respect of each of the Schedule B Employees during the Relevant Period.
9. The contraventions identified in clause 7 and 8 of this Undertaking do not include:
- (a) any contraventions which relate to or arise as a consequence of Qantas failing to correctly apply ASU EA 11, ASU EA 10 or ASU EA 9 to any employee not listed in Schedule A or Schedule B to this Undertaking (**Non-schedule Employees**). For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees 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 Qantas (whether or not those contraventions are identified in the Independent Assessment described at clause 15 below or the Independent Audits described at clause 23 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 Qantas and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## UNDERTAKINGS

10. Qantas will take the actions set out at clauses 11 to 74 below.

### Review and rectification of underpayments

11. Qantas will:

- (a) calculate the quantum of any underpayments, including any superannuation entitlements payable on those amounts, to each of the Schedule A Employees and Schedule B Employees under ASU EA 11, ASU EA 10 and ASU EA 9 during the Relevant Period (**Underpayments**) prior to making the rectification payments in respect of the Underpayments in accordance with sub clauses (b), (c) and (d) below;
- (b) by 28 February 2020, pay each of the current Schedule A Employees and current Schedule B Employees to whom the Underpayments relate:
  - (i) the underpayment amounts identified as owing to them;
  - (ii) any superannuation payments which may be required by law, by making payment to their chosen superannuation fund;
  - (iii) interest on the amount referred to in (i) as set out at in the Notes to Schedule A, calculated using an interest rate that is 6% above the last cash rate published by the RBA for each relevant financial year; and
  - (iv) an additional payment of \$1,000.00;
- (c) by 24 March 2020, pay each of the former Schedule A Employees and former Schedule B Employees to whom the Underpayments relate:
  - (i) the underpayment amounts identified as owing to them;
  - (ii) any superannuation payments which may be required by law, by making payment to their chosen superannuation fund;
  - (iii) interest on the amount referred to in (i) as set out in the Notes to Schedule A, calculated using an interest rate that is 6% above the last cash rate published by the RBA for each relevant financial year; and
  - (iv) an additional payment of \$1,000.00; and

- (d) by 24 April 2020, pay any of the current or former Schedule A or B Employees whom Qantas determines may be owed an additional amount with respect to on call and overtime. By 24 April 2020, Qantas will provide the FWO a schedule, in the form of Schedule A, of the employees and any additional payments made to them pursuant to this sub clause 11(d).
12. By 24 May 2020, Qantas will provide the FWO evidence of all payments made to current and former employees to rectify the Underpayments.
13. If any of the current or former employees to whom Underpayments are owed cannot be located by 24 May 2020, Qantas will pay the underpayment amounts (excluding interest and the additional payment of \$1,000.00) owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. Qantas will complete the required documents supplied by the FWO for this purpose.
14. In the event that the FWO is able to locate and contact any current or former Qantas employees to whom Underpayments are owed, the FWO will (in addition to its obligations under section 559 of the FW Act) notify Qantas in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice Qantas will pay the current or former employee:
- (a) interest on the amount already paid by Qantas to the Commonwealth of Australia in respect of that employee, calculated up until the date on which Qantas paid the underpayment amount owing to the Commonwealth of Australia pursuant to clause 13 above, using an interest rate that is 6% above the last cash rate published by the RBA for each relevant financial year; and
- (b) an additional payment of \$2,000.00.

#### **Independent Assessment**

15. By 24 March 2020, Qantas must, at its cost, engage an appropriately qualified, experienced, external and independent expert, approved in writing by the FWO under clause 16, (**Independent Expert**), to conduct an independent assessment of the outcomes of Qantas' internal review described at clause 11 above (**Independent Assessment**).



16. Qantas must notify the FWO of its proposed Independent Expert and ensure that they are an:
- (a) accounting professional (Certified Practising Accountant, Chartered Accountant);
  - (b) auditor (Registered Company Auditor within an Authorised Audit Company); or
  - (c) lawyer (admitted, practising lawyer and employment law specialist),
- by no later than 3 March 2020. The FWO may in its sole discretion approve the Independent Expert or otherwise require Qantas to propose other Independent Experts until the FWO has approved in writing an Independent Expert. The Independent Expert must be approved by the FWO in writing prior to being engaged by Qantas.
17. Qantas must ensure the Independent Assessment commences by no later than 27 April 2020 and that the Independent Expert assesses whether:
- (a) ASU EA 11, ASU EA 10 and/or ASU EA 9 applies, or previously applied, to each of the Schedule A Employees and Schedule B Employees;
  - (b) the Schedule A Employees and Schedule B Employees were correctly classified by Qantas under ASU EA 11, ASU EA 10 and/or ASU EA 9;
  - (c) the Underpayments were correctly calculated by Qantas, including identifying any Schedule A Employees or Schedule B Employees to whom Qantas incorrectly determined ASU EA 11, ASU EA 10 and/or ASU EA 9 did not apply, as well as calculating any incorrect calculations, any issues with the methodology used and whether the calculations include any unlawful set-offs, deductions or reconciling of overpayments; and
  - (d) Qantas has now paid each of the Schedule A Employees and Schedule B Employees to whom ASU EA 11, ASU 10 and/or ASU EA 9 applies, or applied, any amounts payable to them under clause 11 above.
18. Qantas must ensure that the Independent Expert provides a report (**Expert Report**) of its Independent Assessment directly to the FWO, and for the benefit of the FWO, setting out its findings, and the facts and circumstances supporting its findings by 14 October 2020. Qantas must ensure the Independent Expert does not provide the Expert Report, or a copy of the same, to Qantas without the FWO's approval.



19. Qantas must ensure that the Expert Report contains the following declarations from the Independent Expert:
- (a) the Independent Expert has no actual, potential or perceived conflict of interest in providing the Expert Report on Qantas to the FWO;
  - (b) notwithstanding that the Independent Expert is retained by Qantas, the Independent Expert undertakes that it has acted independently, impartially, objectively and without influence from Qantas in preparing the Expert Report;
  - (c) the Expert Report is provided in accordance with applicable professional standards (which will be listed in the Expert Report); and
  - (d) the Expert Report is provided to the FWO for its benefit and the FWO can rely on the Expert Report.
20. If the Independent Assessment identifies that any Schedule A Employees or Schedule B Employees are owed amounts additional to those calculated and paid by Qantas, Qantas will pay those additional amounts to the current and former employees, and provide evidence of such payment to the FWO within six weeks of being notified of the additional amounts owing by the FWO.
21. If any of the Schedule A Employees or Schedule B Employees identified in the Expert Report as being owed amounts additional to the Underpayments calculated by Qantas cannot be located and paid within six weeks of being notified of the additional amounts owing by the FWO, Qantas will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Qantas will complete the required documents supplied by the FWO for this purpose.
22. The FWO acknowledges that Qantas does not contravene this Undertaking in the event that:
- (a) the Independent Expert makes a finding in relation to coverage, classification and/or additional amounts to be rectified under the ASU EA 11, ASU EA 10 and/or ASU EA 9 that is contrary to the determination made by Qantas in its internal review under clause 11 above, provided Qantas pays any additional amounts owing to current and former employees in accordance with clause 20 above on or

before the date in clause 20 or to the Commonwealth of Australia in accordance with clause 21 above on or before the date in clause 21; and

- (b) for the avoidance of doubt Qantas acknowledges that this Undertaking does not relate to any other contraventions that may be identified by the Independent Expert which are not identified in clauses and Schedule A or are not contraventions of ASU EA 11, ASU EA 10 or ASU EA 9 relating to the employment of the Schedule B Employees during the Relevant Period.

### **Independent Audits**

- 23. Qantas must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct three audits of Qantas' compliance with the FW Act and FW Regulations, in relation to ASU EA 11, and any future agreements that replace ASU EA 11 (**Audits**).
- 24. Qantas will notify the FWO of its proposed Independent Auditor by no later than 24 March 2020. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Qantas 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 Qantas.
- 25. Qantas must ensure that each of the Audits conducted by the Independent Auditor includes:
  - (a) an assessment of whether ASU EA 11 (or replacement instruments) applies to 20% of the Qantas employees who either commenced employment, or whose role and function changed, during the relevant pre-audit period in respect of their employment by Qantas (**Sampled Employees**), excepting that any Qantas employees who are covered by another Qantas enterprise agreement are excluded from the Sampled Employees;
  - (b) an assessment of whether the Sampled Employees to whom ASU EA 11 (or replacement instruments) applies have been correctly classified by Qantas;

- (c) an assessment of whether the pay and conditions of the Sampled Employees to whom ASU EA 11 (or replacement instruments) applies during the relevant audit period is in compliance with the FW Act and ASU EA 11 (or replacement instruments);
- (d) an assessment of whether Qantas' payroll and record keeping systems and processes are compliant with the FW Act in respect of employees to whom ASU EA 11 (or replacement instruments) applies and if not setting out any non-compliance found; and
- (e) direct contact with Sample Employees to whom ASU EA 11 (or replacement instruments) applies by way of site visits to at least five different sites (where possible), to ensure accuracy of hours worked;
- (f) 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
- (g) that each of the written reports referred to in (f) 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 Qantas, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Qantas 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. Qantas must ensure the Independent Auditor commences the first of the Audits by no later than 1 April 2021 (**First Audit**).

27. For the First Audit, the relevant pre-audit period to assess Sampled Employees is 1 August 2019 to 31 January 2021.
28. The relevant audit period for the First Audit must be at least two full pay periods falling within the period 1 February 2021 to 31 March 2021.
29. By 16 March 2021, Qantas will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
30. Qantas will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 14 October 2021, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. Qantas will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Qantas without the FWO's approval.
31. Qantas 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 one month of FWO providing any comments on the draft report to the Independent Auditor. Qantas will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to Qantas without the FWO's approval.

#### The Second Audit

32. Qantas must ensure the Independent Auditor commences the second of the Audits by no later than 1 April 2022 (**Second Audit**).
33. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 1 February 2021 to 31 January 2022.
34. The relevant audit period for the Second Audit must be at least two full pay periods falling within the period 1 February 2022 to 31 March 2022.
35. By 16 March 2022, Qantas will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
36. Qantas will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 15 October 2022, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. Qantas will ensure the Independent Auditor does not provide the draft

written report, or a copy of the same, to Qantas without the FWO's approval.

37. Qantas 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 one month of FWO providing any comments on the draft report to the Independent Auditor. Qantas will ensure the Independent Auditor does not provide the written report, or a copy of the same, to Qantas without the FWO's approval.

#### The Third Audit

38. Subject to clause 44 below, Qantas must ensure the Independent Auditor commences the third of the Audits by no later than 1 April 2023 (**Third Audit**).
39. For the Third Audit, the relevant pre-audit period to assess Sampled Employees is 1 February 2022 to 31 January 2023.
40. The relevant audit period for the Third Audit must be at least two full pay periods falling within the period 1 February 2023 to 31 March 2023.
41. By 16 March 2023, Qantas will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Third Audit.
42. Qantas will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Third Audit directly to the FWO by 15 October 2023, setting out the draft Third Audit findings, and the facts and circumstances supporting the Third Audit findings. Qantas will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Qantas without the FWO's approval.
43. Qantas will use its best endeavours to ensure the Independent Auditor finalises the Third Audit and provides a written report of the Third Audit (**Third Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. Qantas will ensure the Independent Auditor does not provide the written report, or a copy of the same, to Qantas without the FWO's approval.
44. The FWO may, in its absolute discretion, determine that Qantas does not need to conduct the Third Audit. Where the FWO determines this is the case, the FWO shall advise Qantas in writing by 1 February 2023.



## Outcome of Audits

45. If any of the Audits identify underpayments to any current or former employees, Qantas 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. Qantas will provide to the FWO evidence of such rectification within 28 days 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 Third Audit (or Second Audit in the event the FWO determines a Third Audit does not need to be conducted), Qantas will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Qantas 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, Qantas 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 ASU EA 11 (or replacement instrument) applies (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by Qantas.
49. If requested by the FWO, Qantas will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 28 days of such a request.

## Employee Hotline

50. By 24 March 2020, at its own expense, Qantas will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom ASU EA 11 (or predecessor instruments during the Relevant Period) applies, 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 Qantas to operate the Employee Hotline.
52. Qantas will:
  - (a) ensure the Employee Hotline remains operational for a period of 12 months;
  - (b) ensure that the telephone number and email address are included on a communication to all Schedule A Employees and Schedule B Employees (see clause 52(c)), the workplace notice (see clauses 59 to 62), the public notice (see clauses 56 to 58) and the social media notice (see clauses 66 to 68);
  - (c) communicate the existence and purpose of the Employee Hotline by way of email to the last known email address of all Schedule A Employees and Schedule B Employees (or by letter to the last known address for former employees where Qantas does not have their email). Qantas will:
    - (i) ensure the email or letter is in the form of Attachment A to this Undertaking; and
    - (ii) provide evidence to the FWO that the email or letter has been sent to all Schedule A Employees and Schedule B Employees by 31 July 2020;
  - (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 Hotline to the FWO every three months from the establishment of the Employee Hotline.

## **Notices – Internal and External**

### Apology to Employees

53. Qantas will send a letter of apology (**Apology Letter**) to all affected employees found by the Independent Assessment in accordance with clause 20 to have been owed amounts additional to those calculated and paid by Qantas as part of its internal review within eight weeks of being advised of the additional amounts owing. The Apology Letter will

be in the form of Attachment B to this Undertaking.

54. Qantas will provide evidence to the FWO that the Apology Letter has been sent to all affected employees, found by the Independent Assessment to be owed amounts additional to those calculated and paid by Qantas, three weeks after the date in clause 53.

#### Media Release

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

#### Public Notice

56. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, Qantas will place a notice in *The Weekend Australian* and the *Weekend Fin - Australian Financial Review* (**Public Notice**).
57. The Public Notice must:
- (a) bear the name and logo of Qantas;
  - (b) appear within the first 5 pages of *The Weekend Australian* and *The Weekend Fin - Australian Financial Review*;
  - (c) be at least 10 cm x 8 cm; and
  - (d) contain wording in the form of Attachment C.
58. Qantas will inform the FWO when the Public Notice will be published and provide a copy to the FWO within seven days of its publication.

#### Workplace Notice

59. Within 7 days of the FWO publishing a media release on its website in respect of this Undertaking, Qantas will cause to be displayed on its Intranet site a notice in the form of Attachment C to this Undertaking (**Workplace Notice**).
60. Qantas must ensure the Workplace Notice:
- (a) is displayed in at least size 10 font; and
  - (b) remains on its Intranet site, accessible through a hyperlink on the front page of its

Intranet site, for a period of 28 continuous days.

61. Within 7 days of first placing the Workplace Notice on its Intranet, Qantas will provide evidence to the FWO of its placement.
62. At the end of the 28 day period referred to in paragraph 60 above, Qantas will provide confirmation to the FWO that the Workplace Notice has been continuously displayed on its Intranet.

#### Website Notice

63. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, Qantas will place a notice on its website, accessible through a hyperlink on the front page of [www.qantas.com.au](http://www.qantas.com.au) (**Website Notice**).
64. The Website Notice must:
  - (a) be in the form of the Website Notice set out at Attachment C;
  - (b) be displayed in at least size 10 font; and
  - (c) remain on the website for a period of 1 month.
65. Within 7 days of placing the Website Notice on its website, Qantas will provide to the FWO evidence of its placement.

#### Social Media Notice

66. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, Qantas will place a post on its Facebook page (**Social Media Notice**).
67. The Social Media Notice must:
  - (a) be posted to Qantas' timeline, pinned to the top of the Facebook page in public view;
  - (b) remain on the Facebook page for a continuous period of at least one month; and
  - (c) be in the form of the Social Media Notice set out at Attachment C.
68. Within 7 days of posting the Social Media Notice to its Facebook page, Qantas will provide to the FWO evidence of the post.

### **Contrition Payment**

69. Qantas will make the following contrition payments to the Consolidated Revenue Fund:

- (a) by 24 April 2020, a payment equal to 5.5% of any underpayments to the Schedule A Employees and Schedule B Employees identified during Qantas' internal review set out at clauses 11 and 12 above (subject to clause 70 below); and
  - (b) by 27 November 2020 (or within six weeks of receiving a copy of the Expert Report, whichever is the later), a payment equal to 7% of any amounts additional to the underpayments calculated and paid by Qantas to Schedule A Employees and Schedule B Employees in accordance with clauses 11 to 13 above which are identified by the Independent Expert during the Independent Assessment set out at clauses 18 to 22 above (subject to clause 70 below).
70. For the avoidance of doubt, the interest component referred to in clause 5(b) above and the one-off payment of \$1,000 referred to in clause 5(c) above does not form part of the underpayments for the purpose of calculating contrition payments pursuant to clause 69 above.
71. Qantas will provide evidence to the FWO of any contrition payment within 14 days of making payment to the Consolidated Revenue Fund.

### **No Inconsistent Statements**

72. Qantas 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.

### **Extensions on times for completion**

73. Qantas may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. The FWO will not unreasonably withhold agreement on a request for an extension of time.
74. 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 FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

## **ACKNOWLEDGEMENTS**

75. Qantas 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 Qantas set out in paragraphs 7 and 8 above in respect of decisions taken regarding enforcement action in the event that Qantas is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Qantas 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, Qantas may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if Qantas 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 Qantas in clauses 7 and 8 above, and also in respect of the question of costs.



**Executed as an undertaking**

EXECUTED by Qantas Airways Limited in accordance with section 127(1) of the Corporations Act 2001:

  
(Signature of director)

ALAN JOYCE  
(Name of director)

2/3/2020  
(Date)

in the presence of:

  
(Signature of witness)

STEPHEN JAMES WOODBURY  
(Name of witness)

  
(Signature of director/company secretary)

ANDREW FINCH  
(Name of director/company secretary)

2/3/2020  
(Date)

in the presence of:

  
(Signature of witness)

STEPHEN JAMES WOODBURY  
(Name of witness)

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

Sandra Parker, Fair work Ombudsman  
[Insert name and role of Delegate]

Delegate for the FAIR WORK  
OMBUDSMAN

in the presence of:

  
(Signature of witness)

11/2/2020  
(Date)

JACQUI BURNS  
(Name of Witness)

## Attachment A – Letter to employees

Dear <insert name >

As you may be aware, Qantas Airways Limited (**Qantas**) has admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by failing to identify that the *Australian Services Union (Qantas Airways Limited) Agreement 11*, and its predecessors, the *Australian Services Union (Qantas Airways Limited) Agreement 10* and the *Australian Services Union (Qantas Airways Limited) Agreement 9* applied to some of its employees, and thereby underpaid some of those employees by failing to comply with its obligations under those agreements. Qantas will be in contact with any employees who it determines are owed an additional amount separately.

We understand however that you may have questions and concerns relating to this and other employment issues. To address these concerns a hotline has been established for all employees to access. The hotline is being operated by <insert entity name>, an independent party that can assist you with your enquiries. <Insert name > can be contacted on <insert contact number> or at <insert email address> and, if required, on a confidential basis.

Should you wish to discuss your concerns directly with Qantas you can contact our enquiry line on <insert telephone number/ email address>. We will make every attempt to resolve your enquiry within 30 days of receiving it and commit to maintaining open communication with you about the progress of your enquiry. You can contact Qantas' enquiry line via <insert email address or telephone call>.

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

Qantas expresses its sincere regret and apologises to you for failing to comply with our lawful obligations:

Yours sincerely

<Employer name>

## Attachment B – Letter of Apology

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES FOUND BY THE INDEPENDENT ASSESSMENT TO BE OWED ADDITIONAL AMOUNTS

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Qantas Airways Limited (**Qantas**) for non-compliance with Commonwealth workplace relations laws.

Qantas has formally admitted to the Fair Work Ombudsman (**FWO**) that it contravened the *Fair Work Act 2009* (Cth) by failing to identify that the *Australian Services Union (Qantas Airways Limited) Agreement 11*, the *Australian Services Union (Qantas Airways Limited) Agreement 10* and the *Australian Services Union (Qantas Airways Limited) Agreement 9* applied to some of its employees and thereby underpaid some of those employees by failing to comply with its obligations under those agreements.

Regrettably, it has been determined that you were affected by these contraventions.

Qantas is taking steps to remedy the contraventions. A review has determined that you are/or were owed an additional amount, being:

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

In addition, Qantas will also pay you \$[insert amount] in respect of interest and an additional one off payment of \$1,000 (if this has not already been paid to you).

You will/have receive/d this payment on [insert date] and will be provided with a payment advice regarding the payment. This is in addition to the amount previously paid to you in [date].

Qantas has formally admitted to the FWO that Qantas did not comply with its obligations under Commonwealth workplace relations laws and 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.

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

Should you have any questions or concerns about this or any other employment matter there are two options available to you to assist you with the matter:

- (a) a hotline has been established and is being operated by <insert entity name>, an independent party that can assist you with your enquiries, on a confidential basis if required. <insert entity name> can be contacted on <insert contact number> or at <insert email address>; or
- (b) Qantas will maintain a non-confidential enquiry line that you can contact at any time with any enquiries you have. 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. You can contact this enquiry line via <insert email address or telephone call>.

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 – Form of Public, Website, Social Media and Workplace Notice

Qantas recently undertook a review of its payroll systems and processes and determined that it contravened the *Fair Work Act 2009* (Cth) by failing identify that the *Australian Services Union (Qantas Airways Limited) Agreement 11* and previous Agreement applied to some of its employees.

In February 2019, Qantas formally admitted to the Fair Work Ombudsman (**FWO**) that contraventions of Agreements had occurred and consequently a number of employees had been underpaid.

Qantas has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

Qantas will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance such as, conducting three independent audits and formally apologising to individual employees.

Qantas expresses its sincerest regrets and apologises for these contraventions.

If you worked for [Subject] during the period June 2011 to June 2019 and have queries or questions relating to your employment, please contact either:

- the hotline being operated by independent third party <insert entity name> on <contact number>. This hotline can be contacted on a confidential basis or at <insert email address>; or
- Qantas directly through their non-confidential enquiry line on <insert contact number or email address>.

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



Schedule A to the undertaking given by Qantas Airways Limited and accepted by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009*

### EXPLANATORY NOTES

The Clauses Contravened are set out in the notes listed below. Applicable notes are then listed in the Clauses Contravened column in respect of each employee for each relevant enterprise agreement.

- **Note 1:** Minimum rates / breaks / public holidays - clauses 24, 33, 41, 43, and 53, and for Senior Professionals also clauses 77 and 79 of each of ASU EA 9, ASU EA 10 and ASU EA 11
- **Note 2:** Annual leave - clauses 47 of each of ASU EA 9, ASU EA 10 and ASU EA 11
- **Note 3:** Superannuation - clause 37 of ASU EA 11
- **Note 4:** Full-time overtime - clauses 43, 44 and 45 of each of ASU EA 9, ASU EA 10 and ASU EA 11
- **Note 5:** Part-time overtime - clause 18.5 of each of ASU EA 9, ASU EA 10 and ASU EA 11
- **Note 6:** On-call associated overtime - clause 27 and for Senior Professional 1 employees also clauses 43, 44 and 4,5 of each of ASU EA 9, ASU EA 10 and ASU EA 11
- **Note 7:** 20th Day - clauses 39, 41, 43 and 44 of each of ASU EA 9, ASU EA 10 and ASU EA 11
- **Note 8:** First aid allowance - clause 26 of ASU EA 9, ASU EA 10 and ASU EA 11

Any employees classified as Senior Professional 1 during the Relevant Period are identified by \* and any employees classified as Senior Professional 2 during the Relevant Period are identified by \*\* with start date(s) included where the employee was not in the relevant classification for the whole of the Relevant Period.

[illegible]











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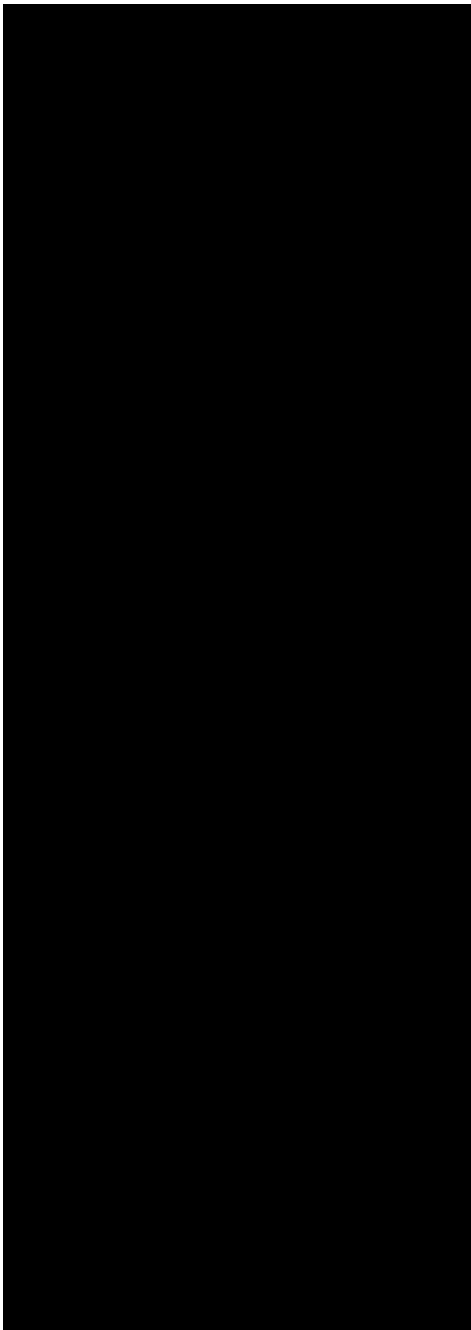
20th Days	Note 7	Yes	\$	26,416.35			
Base Pay	Note 1	Yes	\$	13,623.21	\$	4,305.15	\$ 1,000.00 \$ 23,099.60
Super	Note 3	Yes	\$	4,711.22			
Base Pay	Note 1, Note 2	Yes	\$	4,137.01	\$	499.23	\$ 1,000.00 \$ 31,605.76
Super	Note 3	Yes	\$	1,335.03			
20th Days	Note 7	Yes	\$	24,694.49			
Base Pay	Note 1	Yes	\$	8,352.79	\$	2,272.57	\$ 1,000.00 \$ 13,708.12
Super	Note 3	Yes	\$	2,080.75			
Base Pay	Note 1	Yes	\$	34,116.80	\$	9,334.19	\$ 1,000.00 \$ 51,756.57
Super	Note 3	Yes	\$	7,305.53			
Super	Note 3	Yes	\$	253.50	\$	13.49	\$ 1,000.00 \$ 1,268.99
Super	Note 3	Yes	\$	27.59	\$	1.57	\$ 1,000.00 \$ 1,029.56
Super	Note 3	Yes	\$	1,513.68	\$	10.54	\$ 1,000.00 \$ 2,594.20
Super	Note 3	Yes	\$	603.45	\$	105.62	\$ 1,000.00 \$ 1,729.09
Super	Note 3	Yes	\$	123.44	\$	6.57	\$ 1,000.00 \$ 7,293.11
PT Overtime	Note 5	Yes	\$	263.02		29.96	
20th Days	Note 7	Yes	\$	5,870.09			
Super	Note 3	Yes	\$	305.97	\$	16.28	\$ 1,000.00 \$ 1,322.25
Super	Note 3	Yes	\$	3,192.17	\$	251.60	\$ 1,000.00 \$ 4,443.77
Super	Note 3	Yes	\$	137.31	\$	7.72	\$ 1,000.00 \$ 1,145.03
Super	Note 3	Yes	\$	330.80	\$	39.47	\$ 1,000.00 \$ 10,417.93
20th Days	Note 7	Yes	\$	9,047.68			
Super	Note 3	Yes	\$	35.71	\$	1.90	\$ 1,000.00 \$ 7,417.18
20th Days	Note 7	Yes	\$	6,376.51			
Super	Note 3	Yes	\$	217.12	\$	11.55	\$ 1,000.00 \$ 1,225.07
Super	Note 3	Yes	\$	1,187.02	\$	232.80	\$ 1,000.00 \$ 2,419.62
Super	Note 3	Yes	\$	20.68	\$	1.16	\$ 1,000.00 \$ 2,414.15
20th Days	Note 7	Yes	\$	1,392.31			
Super	Note 3	Yes	\$	12.70	\$	0.68	\$ 1,000.00 \$ 1,013.38
Super	Note 3	Yes	\$	24.95	\$	1.33	\$ 1,000.00 \$ 1,026.28
Super	Note 3	Yes	\$	85.57	\$	4.55	\$ 1,000.00 \$ 1,090.12
Super	Note 3	Yes	\$	15.69	\$	0.84	\$ 1,000.00 \$ 1,016.53
Super	Note 3	Yes	\$	168.97	\$	11.24	\$ 1,000.00 \$ 1,480.21
Super	Note 3	Yes	\$	363.77	\$	19.36	\$ 1,000.00 \$ 1,383.13
Super	Note 3	Yes	\$	244.82	\$	13.03	\$ 1,000.00 \$ 1,257.85
Super	Note 3	Yes	\$	495.78	\$	26.05	\$ 1,000.00 \$ 1,515.84
Super	Note 3	Yes	\$	242.75	\$	12.92	\$ 1,000.00 \$ 1,355.66
Super	Note 3	Yes	\$	159.20	\$	8.47	\$ 1,000.00 \$ 1,107.67
Super	Note 3	Yes	\$	92.08	\$	4.90	\$ 1,000.00 \$ 1,099.96
Super	Note 3	Yes	\$	134.82	\$	7.17	\$ 1,000.00 \$ 1,142.00
Super	Note 3	Yes	\$	122.05	\$	6.53	\$ 1,000.00 \$ 1,129.18
Super	Note 3	Yes	\$	281.44	\$	14.98	\$ 1,000.00 \$ 1,296.42
Super	Note 3	Yes	\$	134.45	\$	7.58	\$ 1,000.00 \$ 4,907.52
20th Days	Note 7	Yes	\$	3,765.51			
Super	Note 3	Yes	\$	178.32	\$	9.48	\$ 1,000.00 \$ 1,187.20
Super	Note 3	Yes	\$	108.31	\$	5.66	\$ 1,000.00 \$ 6,578.10
20th Days	Note 7	Yes	\$	5,466.17			
Super	Note 3	Yes	\$	122.65	\$	6.53	\$ 1,000.00 \$ 1,129.18
Super	Note 3	Yes	\$	105.33	\$	5.66	\$ 1,000.00 \$ 5,392.07



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Schedule B to the undertaking given by Qantas Airways Limited and accepted by the Fair Work Ombudsman pursuant to section 715(2) of the *Fair Work Act 2009*

			Employment period during operation of ASU EA 9				Employment period during operation of ASU EA 10				Employment period during operation of ASU EA 11			
			Payroll Effective Date (9 June 2011 to 2 July 2013)				Payroll Effective Date ( 3 July 2013 to 12 July 2016)				Payroll Effective Date (13 July 2016- current)			
ID No	First Name	Last Name	Start Date	End Date	Start Date	End Date	Start Date	End Date	Start Date	End Date	Start Date	End Date	Start Date	End Date



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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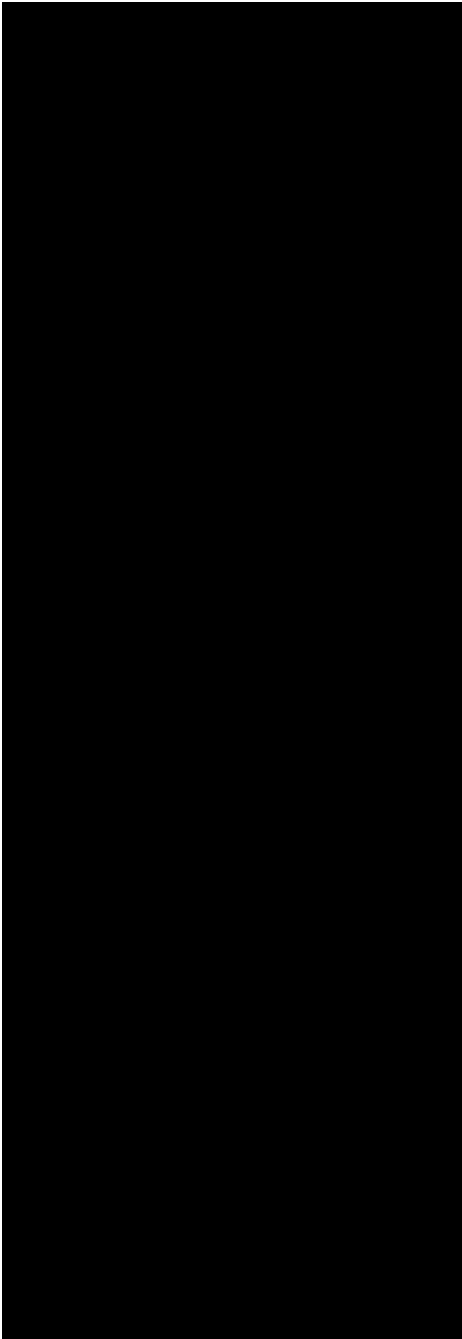
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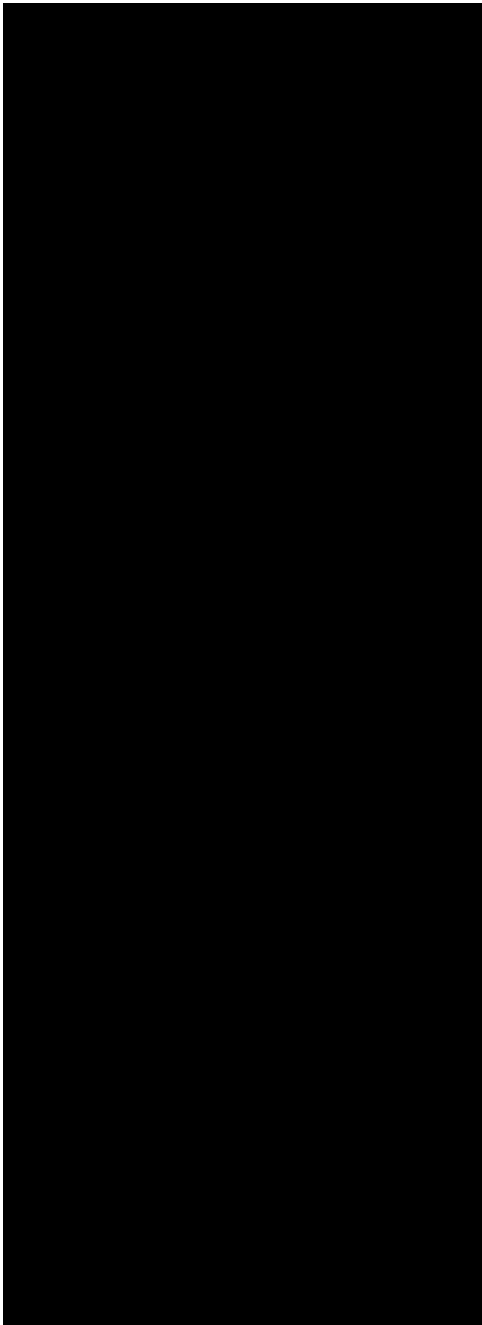
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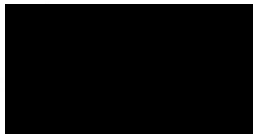
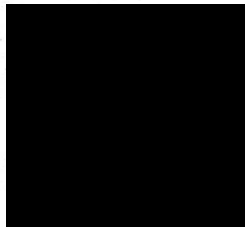
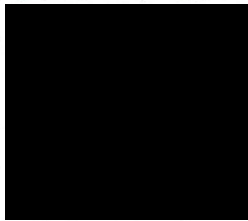
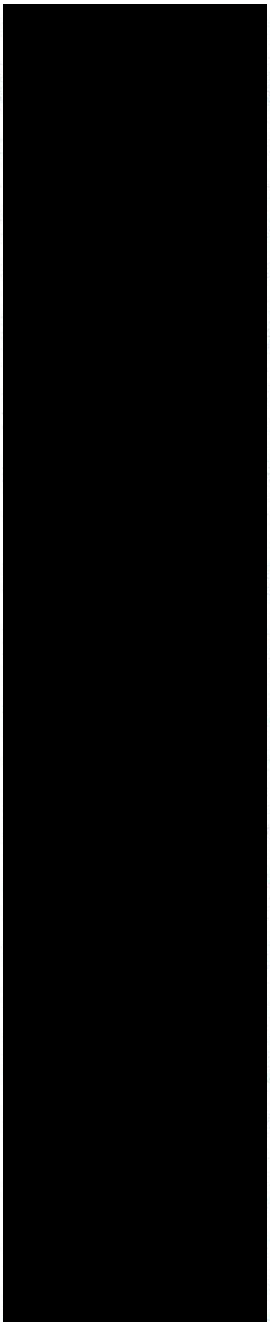
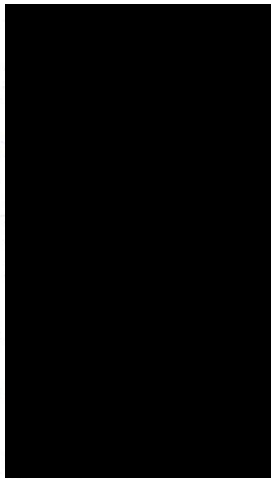
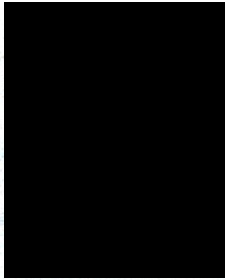
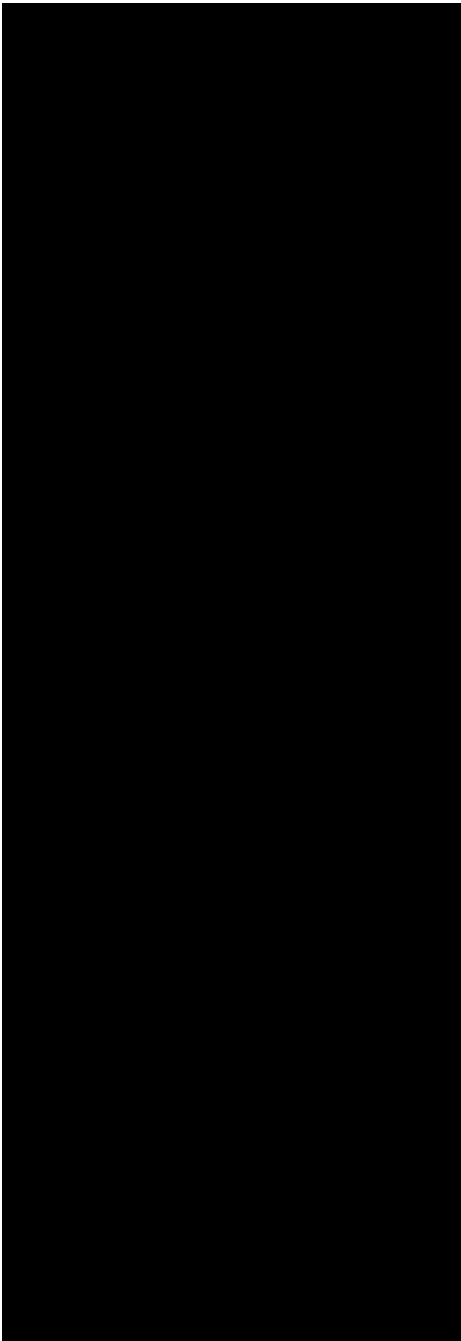
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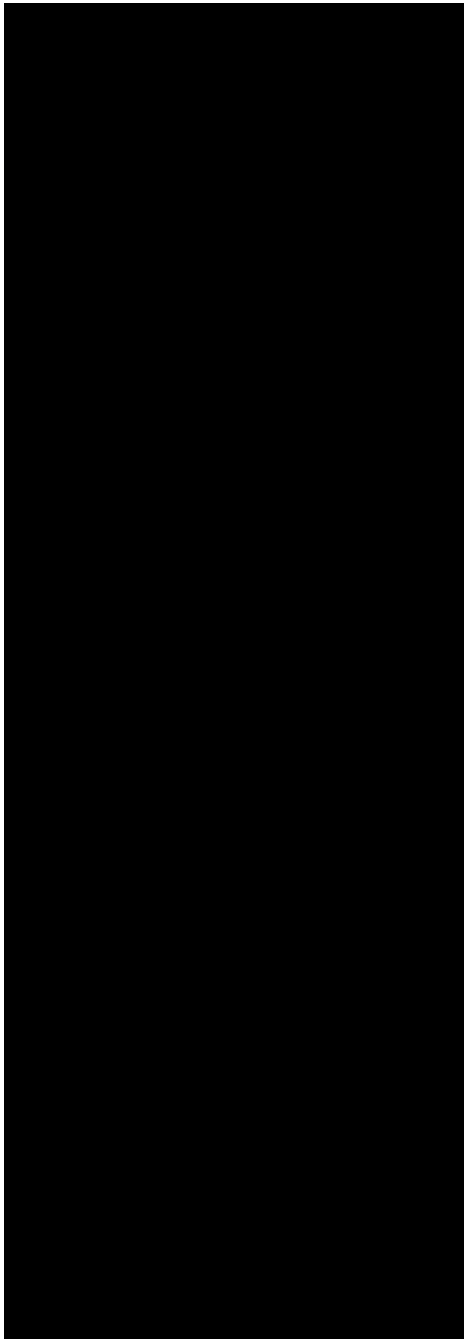
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