ENFORCEABLE UNDERTAKING

This undertaking is **given** by Sunwater Limited (hereafter “**Sunwater**”) 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 6 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 Sunwater (ABN 17 020 276 523), Green Square North, Level 9, 515 St Pauls Terrace, Fortitude Valley, Queensland, 4006.

## COMMENCEMENT

1. This Undertaking comes into effect when:
   1. the Undertaking is executed by Sunwater; and
   2. the FWO accepts the Undertaking so executed, by providing to Sunwater a copy of the Undertaking executed by or on behalf of the FWO (**Commencement Date**).

## B**ACKGROUND**

1. Sunwater is an Australian state government owned public company that is a water service provider and owner and operator of large dams and water supply infrastructure in Queensland. As at June 2020 Sunwater employed 429 employees with approximately 75% of those employees employed in accordance with the terms and conditions set out in the *SunWater Enterprise Agreement 2015-2018* (**2015 Agreement**) and approximately 25% of those employees employed in accordance with the terms and conditions set out in individual employment contracts (**IEC employees**).
2. In December 2019, Sunwater notified the FWO that it had:
   1. identified that it had incorrectly treated a number of its current and former IEC employees who are or were classified as level SW08, SW09 or SW10 (**relevant employees**) as if the 2015 Agreement and its predecessor agreements, being the *SunWater Collective Agreement 2006-2009, SunWater Enterprise Agreement 2009-2012* and *Sunwater Enterprise Agreement 2013-2015* (collectively referred to as **the 2015 Agreement and its predecessor agreements**), did not apply to them, which may have resulted in some relevant employees being underpaid (**potential underpayment issue**);
   2. notified the Queensland government, all current Sunwater employees, all former Sunwater employees that it was able to contact and the relevant industrial organisations about the potential underpayment issue; and
   3. engaged Allens and McGrathNicol to assist it to determine:
3. whether the terms and conditions on which it employed the relevant employees did not satisfy the minimum terms and conditions in the 2015 Agreement and its predecessor agreements; and
4. if the terms and conditions on which it employed the relevant employees did not satisfy the minimum terms and conditions in the 2015 Agreement and its predecessor agreements, the amount of any underpayments.
5. Prior to the execution of this Undertaking, Sunwater notified the FWO that it had:
   1. implemented new systems and processes to ensure that from 1 July 2020 the terms and conditions on which it employs IEC employees to whom the 2015 Agreement (or replacement) applies satisfy the minimum terms and conditions in the 2015 Agreement (or replacement);
   2. identified that the terms and conditions on which it employed the relevant employees did not satisfy the minimum terms and conditions in the 2015 Agreement and its predecessor agreements, resulting in:
6. underpayments and potential underpayments to the employees listed in Schedule A (**Schedule A Employees**) between 28 November 2006 and 30 June 2020 (**Review Period**); and
7. potential underpayments to the employees listed in Schedule B (**Schedule B Employees**) during the Review Period;
   1. made full or partial rectification payments to the Schedule A employees for the underpayments identified for the periods in column C of Schedule A by paying each of the Schedule A Employees the amounts referred to in column D of Schedule A to this Undertaking (**Schedule A**);
   2. rectified any associated superannuation underpayments in respect of the amounts referred to in sub-clause 5(c) above as required by law to each of the Schedule A Employees, by paying any such required superannuation contributions (as referred to in column F of Schedule A) to the chosen, complying superannuation fund nominated by the employee;
   3. paid interest to each of the Schedule A Employees on the amount referred to in column D of Schedule A, in the sum referred to in column E of Schedule A, calculated using simple interest at an interest rate that is 4% above the cash rate published by the Reserve Bank of Australia (**RBA**) for the period in which the underpayment occurred; and
   4. commenced a procurement process to engage an independent third party to review the methodology used to determine the underpayment amounts referred to in clause 5(b)(i) of this Undertaking and provide Sunwater with a report setting out the findings of the review (**Methodology Review Report**).

## ADMISSIONS

1. The FWO has a reasonable belief, and Sunwater admits, that Sunwater contravened:
   1. Item 2(2) of Schedule 16 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* between 1 July 2009 and 18 November 2009; and
   2. section 50 of the FW Act between 19 November 2009 and 30 June 2020,

by failing to pay each of the Schedule A Employees and Schedule B Employees in the manner set out at clause 4(a) above the amount or amounts to which that employee was entitled under the 2015 Agreement and its predecessor agreements.

1. The FWO has a reasonable belief, and Sunwater admits, that Sunwater contravened 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 and Schedule B Employees between 1 July 2009 and 30 June 2020.
2. The contraventions identified in clauses 6 and 7 of this Undertaking do not include:
   1. any contraventions which relate to or arise as a consequence of Sunwater failing to correctly apply the 2015 Agreement and its predecessor agreements to any current or former 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 who were underpaid as a result of Sunwater failing to correctly apply the 2015 Agreement and its predecessor agreements 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
   2. any contraventions which have not yet occurred at the date that this Undertaking is offered by Sunwater (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 Sunwater and the FWO’s acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## UNDERTAKINGS

1. Sunwater undertakes to take the actions set out at clauses 10 to 57 below.

**Quantification and rectification of underpayments**

1. Sunwater will:
   1. calculate the quantum of any underpayments to each of the Schedule A Employees and Schedule B employees in respect of the 2015 Agreement and its predecessor agreements during the Review Period (**Underpayments**), superannuation entitlements payable in respect of any Underpayments and interest with respect of any Underpayments;
   2. by 31 August 2020, pay each of the Schedule A Employees to whom the Underpayments relate:
2. the Underpayment amounts owed to them;
3. any superannuation payments which may be required by law, by making payment to their chosen superannuation fund;
4. interest on the Underpayment amounts owed to them, calculated using simple interest at an interest rate that is 4% above the cash rate published by the RBA for the period in which the Underpayment occurred; and
   1. by 31 October 2020, pay each of the Schedule B Employees to whom the Underpayments relate:
5. the Underpayment amounts owed to them;
6. any superannuation payments which may be required by law, by making payment to their chosen superannuation fund;
7. interest on the Underpayment amounts owed to them, calculated using simple interest at an interest rate that is 4% above the cash rate published by the RBA for the period in which the Underpayment occurred.

**Rectification of Underpayments to employees who cannot be located**

1. If any of the current or former employees to whom Underpayments are owed cannot be located, Sunwater will, by 30 November 2020, pay the Underpayment amounts owing to those employees (excluding interest) to the Commonwealth of Australia in accordance with section 559 of the FW Act. Sunwater will complete the required documents supplied by the FWO for this purpose.
2. In the event that the FWO is able to locate and contact any current or former Sunwater employees to whom Underpayments are owed, the FWO will (in addition to its obligations under s 559 of the FW Act) notify Sunwater in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice Sunwater will pay the current or former employee interest on the amount already paid by Sunwater 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 on which that amount is paid, using an interest rate that is 4% above the cash rate published by the RBA for the period in which the Underpayment occurred.

**Provision of information to the FWO**

1. By 30 November 2020, Sunwater will provide the FWO with:
   1. the methodology used to determine the classification of each of the Schedule A Employees and Schedule B Employees in accordance with the 2015 Agreement and its predecessors;
   2. the methodology used to determine the Underpayment amounts for the Schedule A Employees and Schedule B Employees;
   3. the Methodology Review Report referred to at clause 5(f) of this Undertaking;
   4. details of all payments made in accordance with clauses 10(b) and 10(c) above; and
   5. details of the provisions of the 2015 Agreement and its predecessors that it failed to comply with in relation to the Schedule A Employees and Schedule B Employees.
2. By 31 August 2020, Sunwater will provide to the FWO information about the new systems and processes that it has put in place in relation to IEC employees to ensure that the future employment of IEC employees is compliant with Sunwater’s obligations under the FW Act.
3. If the information provided by Sunwater is determined by the FWO to be insufficient to satisfy the FWO that the new systems and process are compliant with Sunwater’s obligations under the FW Act, Sunwater must, in response to a request by the FWO, provide further information as requested by the FWO within a period of 28 days.

**Letter of Assurance**

1. By 30 November 2020, Sunwater will provide to the FWO a Letter of Assurance signed by the Chief Executive Officer in the terms as set out at Attachment A.
2. The FWO will accept the Letter of Assurance and the information referred to in clauses 13 to 15 above in lieu of requiring Sunwater to be subject to an Independent Assessment of Sunwater’s:
   1. quantification and rectification of underpayments to the Schedule A Employees and Schedule B Employees and
   2. new systems and processes.

**Independent Audits**

1. Sunwater must, at its own cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two audits of Sunwater’s compliance with the FW Act, in relation to the 2015 Agreement and any future agreements that replace the 2015 Agreement (**Audits**).
2. Sunwater will notify the FWO of its proposed Independent Auditor by no later than 1 December 2020. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require Sunwater 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 Sunwater.
3. Sunwater must ensure that each of the Audits conducted by the Independent Auditor includes:
   * 1. an assessment of whether the 2015 Agreement (or replacement) applies to a sample of employees of Sunwater, that sample being 30% of the employees who either commenced employment, or whose role changed, during the relevant pre-audit period (**Sampled Employees**);
     2. an assessment of whether the Sampled Employees to whom the 2015 Agreement (or replacement) applies have been correctly classified by Sunwater;
     3. an assessment of whether the pay and conditions of the Sampled Employees who are classified as level SW08, SW09 or SW10 in accordance with the 2015 Agreement (or replacement) (**Audit Employees**) is in compliance with the FW Act and the 2015 Agreement (or replacement) during the relevant audit period;
     4. direct contact with Audit Employees who work at five different sites, to ensure accuracy of hours worked;
     5. 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
     6. that each of the written reports referred to in clause 20(e) above contains the following declarations from the Independent Auditor:
4. the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
5. notwithstanding that the Independent Auditor is retained by Sunwater, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from Sunwater in preparing the report;
6. the report is provided in accordance with applicable professional standards (which will be listed in the report); and
7. the report is provided to the FWO for its benefit and the FWO can rely on the report.

The First Audit

1. Sunwater must ensure the Independent Auditor commences the first of the Audits by no later than 1 April 2021 (**First Audit**).
2. For the First Audit, the relevant pre-audit period to assess Sampled Employees is 1 August 2020 to 31 January 2021.
3. 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.
4. By 1 March 2021, Sunwater will provide to the FWO, for the FWO’s approval details of the methodology to be used by the Independent Auditor to conduct the First Audit.
5. Sunwater will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 1 July 2021, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. Sunwater will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Sunwater before the draft written report is provided to the FWO.
6. Sunwater 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. Sunwater will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to Sunwater before the First Audit Report is provided to the FWO.
7. Once Sunwater receives the First Audit Report it will provide an unredacted copy of the report to the Queensland Treasury and the Department of Natural Resources, Mines and Energy and the relevant Minister(s) and will copy the FWO in correspondence providing the report.

The Second Audit

1. Sunwater must ensure the Independent Auditor commences the second of the Audits by no later than 1 April 2022 (**Second Audit**).
2. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 1 August 2021 to 31 January 2022.
3. 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.
4. By 1 March 2022, Sunwater will provide to the FWO, for the FWO’s approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
5. Sunwater will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 1 July 2022, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. Sunwater will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to Sunwater before the draft written report is provided to the FWO.
6. Sunwater 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. Sunwater will ensure the Independent Auditor does not provide the Second Audit Report, or a copy of the same, to Sunwater before the Second Audit Report is provided to the FWO.
7. Once Sunwater receives the Second Audit Report it will provide an unredacted copy of the report to the Queensland Treasury and the Department of Natural Resources, Mines and Energy and the relevant Minister(s) and will copy the FWO in correspondence providing the report.

**Outcome of Audits**

1. If any of the Audits identify underpayments to any current or former employees, Sunwater 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.
2. Sunwater will provide to the FWO evidence of such rectification within three months of being informed by the FWO of the requirement to undertake the reconciliation.
3. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of the Second Audit, Sunwater will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. Sunwater will complete the required documents supplied by the FWO for this purpose.
4. 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, Sunwater will engage an accounting professional or an employment law specialist approved in advance by the FWO to conduct a further audit of all its employees who are classified as level SW08, SW09 or SW10 in accordance with the 2015 Agreement (or replacement) (or a particular cohort of employees within this group), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by Sunwater.
5. If requested by the FWO, Sunwater 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**

1. Within 28 days after executing this Undertaking, at its own expense, Sunwater will engage an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the 2015 Agreement and its predecessor agreements 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.
2. The independent organisation must be approved by the FWO prior to being engaged by Sunwater to operate the Employee Hotline.
3. Sunwater will:
   1. ensure the Employee Hotline remains operational for a period of 12 months;
   2. ensure that the Employee Hotline telephone number and email address are included in a communication to all Schedule A Employees and Schedule B Employees (see clause 42(c)), the apology letter to Professionals Australia and the Australian Services Union (see clauses 43 to 44), the public notice (see clauses 46 to 48), the website notice (see clauses 49 to 51)and the social media notice (see clauses 52 to 54);
   3. 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 for whom Sunwater does not have an email address). Sunwater will:
      1. ensure the email or letter is in the form of Attachment B to this Undertaking; and
      2. provide evidence to the FWO that the email or letter has been sent to all Schedule A Employees and Schedule B Employees within 28 days after executing this Undertaking;
   4. take steps to respond to each telephone and email enquiry to the Employee Hotline and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
   5. 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 Professionals Australia and the Australian Services Union

1. Sunwater will send a letter of apology each to Professionals Australia and the Australian Services Union by 30 November 2020 (**Apology Letters**). The Apology Letters will be in the form of Attachment C to this Undertaking.
2. By 14 December 2020, Sunwater will provide evidence to the FWO that the Apology Letters have been sent to Professionals Australia and the Australian Services Union.

Media Release

1. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking (**Media Release**).

Public Notice

1. Within 28 days of, but not prior to, the FWO publishing the Media Release, Sunwater will place a notice in The Courier Mail (**Public Notice**).
2. The Public Notice must:
3. bear the name and logo of Sunwater;
4. appear within the first five pages of The Courier Mail;
5. be at least 10 cm x 8 cm; and
6. contain wording in the form of Attachment D.
7. Sunwater will inform the FWO when the Public Notice will be published and provide a copy to the FWO within seven days of its publication.

Website Notice

1. Within 28 days of, but not prior to, the FWO publishing the Media Release, Sunwater will place a notice on Sunwater’s website, accessible through a hyperlink on the front page of www.sunwater.com.au (**Website Notice**).
2. The Website Notice must:
3. be in the form of the Website Notice set out at Attachment D;
4. be displayed in at least size 10 font; and
5. remain on the website for a period of one month.
6. Within 7 days of placing the Website Notice on its website, Sunwater will provide to the FWO evidence of its placement.

Social Media Notice

1. Within 28 days of, but not prior to, the FWO publishing the Media Release, Sunwater will place a post on its Facebook page (**Social Media Notice**).
2. The Social Media Notice must:
3. be posted to Sunwater’s timeline, pinned to the top of the Facebook page in public view;
4. remain on the Facebook page for a continuous period of at least one month; and
5. be in the form of the Social Media Notice set out at Attachment D.
6. Within 7 days of posting the Social Media Notice to its Facebook page, Sunwater will provide to the FWO evidence of the post.

**Contrition Payment**

1. By 30 November 2020, Sunwater will make a contrition payment equal to 4.5% of the total Underpayments (excluding interest) to all Schedule A Employees and Schedule B Employees to the Consolidated Revenue Fund.
2. Sunwater will provide evidence to the FWO of the contrition payment within 14 days of making payment to the Consolidated Revenue Fund.

**No Inconsistent Statements**

1. Sunwater 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 to times for completion**

1. Sunwater may submit a request to the FWO for an extension to the time by which Sunwater is required to complete the actions set out at clauses 10 to 57 above. Sunwater will provide information setting out the basis for such a request and make a request for an extension of time at least 28 days prior to the time that Sunwater is required to complete the action as set out in this Undertaking. The FWO will not unreasonably withhold its agreement to such a request.

## ACKNOWLEDGEMENTS

1. Sunwater acknowledges that:
2. the FWO may;
3. 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);
4. release a copy of this Undertaking (including any of the Attachments) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
5. issue the Media Release in relation to this Undertaking;
6. from time to time, publicly refer to the Undertaking (including any of the Attachments hereto) and its terms; and
7. rely upon the admissions made by Sunwater set out in clauses 6 and 7 above and the Schedule in respect of decisions taken regarding enforcement action in the event that Sunwater is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by Sunwater to comply with its obligations under this Undertaking;
8. 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;
9. consistent with section 715(3) of the FW Act, Sunwater may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
10. if Sunwater contravenes any of the terms of this Undertaking:
11. 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
12. this Undertaking may be provided to the Court as evidence of the admissions made by Sunwater in clauses 6 and 7 above, and also in respect of the question of costs.

**Executed as an undertaking**

Each attorney executing this undertaking states that he or she has no notice of revocation or suspension of his or her power of attorney.

|  |
| --- |
| Signed for Sunwater Limited by its attorney under Power of Attorney No 717524762 dated 20 September 2016 in the presence of: |
|  |
| Witness signature |  | Attorney signature |
|  |  |
| Print name | Print name |
|  |  |  |
| Date |  | Date |

|  |  |  |
| --- | --- | --- |
| Accepted by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on: | | |
| [Insert name and role of Delegate]  Delegate for the FAIR WORK OMBUDSMAN |  | (Date) |
| in the presence of: |  |  |
| (Signature of witness) |  | (Name of Witness) |

## SCHEDULE A – Employees with Rectified Underpayments

***See attached Excel document***

**SCHEDULE B – Potentially Underpaid Employees with Underpayments yet to be Rectified**

***See attached Excel document***

**Attachment A – Letter of Assurance**

Sandra Parker

The Fair Work Ombudsman

Office of the Fair Work Ombudsman

GPO Box 9887

MELBOURNE VIC 3001

Dear Sandra

I am writing on behalf of Sunwater in my capacity as the Interim Chief Executive Officer. This letter follows a process where Sunwater self-reported that a number of underpayments had occurred following Sunwater incorrectly classifying some former and current Individual Employment Contract employees as employees that the *SunWater 2015-2018 Enterprise Agreement* and its predecessor industrial agreements did not apply to. As you are aware, Sunwater has agreed to enter into an Enforceable Undertaking with the Fair Work Ombudsman (**FWO**) in respect of these underpayments.

I write to provide the FWO with my assurance that I am satisfied:

* + - * 1. the process by which Sunwater, as assisted by its professional advisors, calculated and rectified the underpayments was correctly undertaken; and
        2. as of [date] all former and current employees impacted by the underpayments, apart from those who have not been able to be located by Sunwater, have been paid their entitlements (plus interest) under the relevant industrial instrument by Sunwater.

Sunwater has remediated all issues as a matter of priority and is committed to minimising the risk of future non-compliance.

Sincerely

[insert name]

Chief Executive Officer

Sunwater

**Attachment B – Email or letter to employees regarding Employee Hotline**

Dear <insert name>

As you may be aware, Sunwater has admitted to the Fair Work Ombudsman (**FWO**)that it contravened the *Fair Work Act 2009* (Cth) by failing to pay some employees in accordance with the *SunWater 2015-2018 Enterprise Agreement* (**the EA**) and its predecessor industrial agreements. These underpayments arose as a result of SunWater incorrectly determining that some Individual Employment Contract employees were not covered by the EA or its predecessor industrial agreements.

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

Sunwater understands that you may have questions and concerns relating to this and other employment issues. To address these concerns a hotline has been established for all employees to access. The hotline is being operated by <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 Sunwater, 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.

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

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

Yours sincerely

### <Employer name>

## Attachment C – Letter of Apology to Professionals Australia and the Australian Services Union

**FORM OF APOLOGY LETTER TO ‘PROFESSIONALS AUSTRALIA’ AND THE ‘AUSTRALIAN SERVICES UNION’**

**<Date>**

**< Name>**

**< Address>**

Dear **< Name>**

I am writing to apologise on behalf of Sunwater for non-compliance with Commonwealth workplace relations laws.

Sunwater has admitted to the Fair Work Ombudsman (**FWO**)that it contravened the *Fair Work Act 2009* (Cth) by failing to pay some employees in accordance with the *SunWater 2015-2018 Enterprise Agreement* (**the EA**) and its predecessor industrial agreements. These underpayments arose as a result of SunWater incorrectly determining that some Individual Employment Contract employees were not covered by the EA or its predecessor industrial agreements.

Sunwater has taken steps to remedy the contraventions including completing remediation payments to all affected employees on [date].

Sunwater has formally admitted to the FWO that Sunwater did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which will be available at 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.

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

Should any employees have any questions or concerns about this or any other employment matters they are able to access one of the two options below:

1. a hotline has been established and is being operated by <insert entity name>, an independent party that can assist with enquiries, on a confidential basis if required. <insert entity name> can be contacted on <insert contact number> or at <insert email address>; or
2. Sunwater will maintain a non-confidential enquiry line that employees can contact at any time with any enquiries. We will make every attempt to resolve any enquiries within 30 days of receiving it and commit to maintaining open communication with employees about the progress of their enquiry. This enquiry line can be contacted via <insert email address or telephone call>.

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

Yours sincerely

### <Sunwater>

## Attachment D – Form of Public, Website and Social Media Notice

Sunwater has admitted to the Fair Work Ombudsman (**FWO**)that it contravened the *Fair Work Act 2009* (Cth) by failing to pay some employees in accordance with the *SunWater 2015-2018 Enterprise Agreement* (**the EA**) and its predecessor industrial agreements. These underpayments arose as a result of SunWater incorrectly determining that some Individual Employment Contract employees were not covered by the EA or its predecessor industrial agreements. The underpayments span the period from 2006 to 2020.

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

Sunwater will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance such as, conducting two independent audits.

Sunwater expresses its sincerest regrets and apologises for these contraventions.

If you worked for Sunwater 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
* Sunwater directly through our non-confidential enquiry line on <insert contact number or email address>.

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