

## Enforceable Undertaking

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Given to the Australian Communications and Media Authority (**ACMA**) under section 205W of the *Broadcasting Services Act 1992* (Cth) (**Act**) by **Tully Sugar Limited (ACN 011 030 256)**

Accepted by the ACMA under Part 14D of the Act on 24 11 2024.

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## 1. Person giving the Enforceable Undertaking

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- 1.1. This Enforceable Undertaking is given to the ACMA by Tully Sugar Limited (ACN 011 030 256) (TSL).

## 2. Background

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- 2.1. TSL operates a raw sugar milling and molasses facility in Tully, Queensland. As part of its community contribution strategy, in the early 1990s, TSL acquired a 10% interest in Coastal Broadcasters Pty Ltd (ACN 009 754 456) (**Coastal Broadcasters**), which operates a local radio station. Due to TSL's interest in Coastal Broadcasters, and as a foreign stakeholder in an Australian media company, TSL is subject to certain notification requirements that are provided for under Division 10A of Part 5 of the *Broadcasting Services Act 1992 (Cth)* (the **Act**).
- 2.2. As a foreign stakeholder in an Australian media company, TSL was required to lodge notifications in accordance with section 74H of the Act within 30 days after the end of each financial year. On 17 January 2023, the ACMA issued a formal warning to TSL under section 205XA of the Act, indicating that the ACMA was satisfied that TSL was a foreign stakeholder in Coastal Broadcasters at the end of the 2021-22 financial year and that TSL had not notified the ACMA in writing of the matters specified in subsection 74H(1).
- 2.3. TSL acknowledges that it failed to satisfy its reporting requirements on the basis set out in the formal warning dated 17 January 2023. TSL further acknowledges that it was delayed in lodging the notification under subsection 74H(1) of the Act in the 2022-23 financial year until 3 October 2023, being more than 30 days after the end of the relevant financial year.
- 2.4. TSL has offered this Undertaking under section 205W of the Act to demonstrate that it will take the specified actions directed to ensuring that TSL does not contravene this Act, or is unlikely to contravene this Act, in the future.

## 3. Defined terms & interpretation

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### 3.1. Defined terms

- (a) **ACMA** means the Australian Communications and Media Authority.
- (b) **Act** means the *Broadcasting Services Act 1992 (Cth)*.
- (c) **Approved Independent Assurance Practitioner** means the person approved by the ACMA and appointed by TSL under clause 6.5 - 6.6 of this Undertaking.
- (d) **Approved Terms and Engagement** has the meaning given to it in clause 6.5 of this Undertaking.
- (e) **Business Day** means a day other than a Saturday, Sunday or public holiday on which banks are open for business in Queensland.
- (f) **Change of Control** means:
- (i) the assignment or other transfer of the legal or beneficial ownership of some or all of the share capital of TSL to any other person or entity that results in a less than 2.5% interest in an Australian media company; or
  - (ii) the sale or transfer of any assets necessary, or which may be necessary to enable TSL to continue to comply with this Undertaking in its entirety.
- (g) **Coastal Broadcasters** means Coastal Broadcasters Pty Ltd (ACN 009 754 456).
- (h) **Commencement Date** has the meaning given to it in clause 4.1 of this Undertaking.

- (i) **Compliance Report** has the meaning given to it in clause 6.9 of this Undertaking.
- (j) **Controls** has the meaning given to it in clause 6.2(b) of this Undertaking.
- (k) **Further Report** has the meaning given to it in clause 6.15 of this Undertaking.
- (l) **Proposed Independent Assurance Practitioner** has the meaning given to it in clause 6.2 - 6.4 of this Undertaking.
- (m) **Term** has the meaning given to it in clause 4 of this Undertaking.
- (n) **Terms of Engagement** has the meaning given to it in clause 6.2(d) of this Undertaking.
- (o) **TSL** means Tully Sugar Limited (ACN 011 030 256).
- (p) **Undertaking** means this Enforceable Undertaking given by TSL to the ACMA.

### 3.2. Interpretation

- (a) In this Undertaking, the following provisions apply unless the context otherwise requires:
  - (i) a reference to this Undertaking includes all of the provisions of this document;
  - (ii) headings are inserted for convenience only and do not affect the interpretation of this Undertaking;
  - (iii) if the day on which any act, matter or thing is to be done under this Undertaking is not a Business Day, the act, matter or thing will be done on the next Business Day;
  - (iv) terms which are defined in the Act have the same meaning in this undertaking, unless otherwise specified, and a reference in this Undertaking to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
  - (v) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation;
  - (vi) a construction that would promote the purpose - or object - underlying the Undertaking (whether expressly stated or not) will be preferred to a construction that would not promote that purpose or object; and
  - (vii) in performing its obligations under this Undertaking, TSL will do everything reasonably within its power to ensure that its performance of those obligations is done in a manner which is consistent with promoting the purpose and object of this Undertaking.

## 4. Term

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### 4.1. This Undertaking, commences when:

- (a) it has been executed by TSL; and
- (b) so executed, it has been accepted by the ACMA and written notification of that acceptance has been provided to TSL

(the **Commencement Date**).

### 4.2. This Undertaking ceases to have effect on the earlier of:

- (a) a Change in Control such that key obligations in the Act no longer apply to TSL; or
- (b) once the Further Report provided for under 6.16(b) has been provided to the ACMA; or
- (c) the day when the ACMA gives written notice to TSL that it is satisfied that TSL has completed its obligations in this Undertaking.

## **5. Withdrawal or variation**

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- 5.1. This Undertaking may only be withdrawn or varied with the written consent of the ACMA in accordance with subsection 205W(3) of the Act.
- 5.2. Any variation to a timeframe or approval that is required or permitted to be given by the ACMA under this Undertaking will be given in writing to TSL.

## **6. Undertakings given by TSL**

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TSL undertakes in accordance with paragraph 205W(1)(c) of the Act to take the actions specified below, directed towards ensuring that it does not breach the Act, or is unlikely to breach the Act, in the future.

### *Obligation to appoint an Approved Assurance Practitioner*

- 6.1. TSL will appoint and maintain an Approved Independent Assurance Practitioner to conduct an assurance assessment and controls review and prepare reports for TSL on the basis set out in this clause 6.

### *Process for nominating and approving a Proposed Independent Assurance Practitioner*

- 6.2. Within 5 Business Days of the Commencement Date, TSL will provide the ACMA with the following:
  - (a) written notice of a Proposed Independent Assurance Practitioner (including the name and qualifications of the Proposed Independent Assurance Practitioner);
  - (b) the Proposed Independent Assurance Practitioner's experience in assessing business systems and processes used to manage and mitigate risks (**Controls**);
  - (c) the Proposed Independent Assurance Practitioner's relationship, if any, with TSL; and
  - (d) draft terms of reference for the conduct of the independent engagement (**Terms of Engagement**).
- 6.3. The ACMA will have the discretion to approve or reject in writing the Proposed Independent Assurance Practitioner identified in the notice to the ACMA.
- 6.4. Without limiting the ACMA's discretion, in deciding whether to approve a Proposed Independent Assurance Practitioner, the ACMA may have regard to factors, including that:
  - (a) the person named in the notice or identified by the ACMA has the qualifications and experience necessary to carry out the functions of the Approved Independent Assurance Practitioner;
  - (b) the person named in the notice or identified by the ACMA is sufficiently independent of TSL;
  - (c) the Terms of Engagement are consistent with the Undertaking and acceptable to the ACMA.

*Appointment of the Approved Independent Assurance Practitioner*

- 6.5. After receiving a written notice from the ACMA of its approval of a Proposed Independent Assurance Practitioner and the Terms of Engagement (together, **Approved Terms of Engagement**), TSL will, within 10 Business Days of such approval:
- (a) appoint the person approved by the ACMA as the Approved Independent Assurance Practitioner on the Approved Terms of Engagement; and
  - (b) forward to the ACMA a copy of the executed Approved Terms of Appointment.
- 6.6. The Approved Independent Assurance Practitioner is to be appointed for the Term of the Undertaking.

*Failure to appoint*

- 6.7. If the Approved Independent Assurance Practitioner has not been appointed within 10 Business Days of the Commencement Date, the ACMA may, in its absolute discretion:
- (a) identify and approve a person as the Approved Independent Assurance Practitioner, including approving the draft terms of appointment; and / or
  - (b) direct TSL to appoint a person who the ACMA has deemed is an Approved Independent Assurance Practitioner.

*Obligations of the Approved Independent Assurance Practitioner*

- 6.8. TSL will procure that any Terms of Engagement for the Approved Independent Assurance Practitioner include obligations on the Approved Independent Assurance Practitioner:
- (a) to maintain independence from TSL (except to the extent that the Approved Independent Assurance Practitioner engages in auditing work unrelated to this Undertaking);
  - (b) to conduct a reasonable assurance assessment and further Controls review according to the Approved Terms of Engagement.

*Compliance assurance review*

- 6.9. The Approved Independent Assurance Practitioner will conduct an assurance review and prepare a report (**Compliance Report**) that addresses TSL's current business systems and processes that it has in place to monitor and comply with the notification requirements in section 74H(1) of the Act, including:
- (a) the design and suitability of Controls in place to satisfy the notification requirements; and
  - (b) recommended actions (if any) to address any deficiencies in those Controls.
- 6.10. TSL will procure that the Approved Terms of Engagement provide the Approved Independent Assurance Practitioner with the authority:
- (a) to access the facilities, sites or operations of TSL as required; and
  - (b) to access any information or documents that the Approved Independent Assurance Practitioner considers necessary to conduct the assurance review and prepare the Compliance Report.
- 6.11. The Approved Independent Assurance Practitioner will complete the assurance review and deliver the Compliance Report to TSL within 30 Business Days of it being appointed under clause 6.5.

6.12. In response to the Compliance Report, TSL:

- (a) will prepare a written response to any recommendations contained in the Compliance Report and implement all reasonable recommendations within 20 business days of receiving the Compliance Report. Where TSL regards any recommendation in the Compliance Report as being unreasonable, TSL will record the reasons for its view in its written response; and
- (b) will provide to the ACMA a copy of the Compliance Report and its written response within 20 Business Days of receiving the Compliance Report from the Approved Independent Assurance Practitioner.

*Further Controls review*

6.13. Subject to any Change of Control event, TSL will be required to notify the ACMA of certain matters pursuant to section 74H of the Act after the end of the 2023-24 financial year.

6.14. TSL will, within 5 Business Days of giving any necessary notification to the ACMA under section 74H of the Act, engage the Approved Independent Assurance Practitioner to conduct a further assurance review. The purpose of this review will be to assess the operating effectiveness of the Controls in place regarding TSL's notification obligations under the Act since recommendations in the Compliance Report were implemented.

6.15. Within 20 Business Days of that engagement, the Approved Independent Assurance Practitioner will conduct a further assurance review of TSL's business systems and processes that it has in place to monitor and comply with the notification requirements in subsection 74H(1) of the Act since the recommendations in the Compliance Report were implemented and prepare a report addressing:

- (a) the operational effectiveness of the Controls regarding the notification referred to in clause 6.13; and
- (b) recommended actions (if any) to address any deficiencies in those Controls

(the **Further Report**).

6.16. In response to the Further Report, TSL:

- (a) will prepare a written response to any recommendations and implement all reasonable recommendations within 20 business days of receiving the Further Report. Where TSL regards any recommendation in the Further Report as being unreasonable, TSL will record the reasons for its view in its written response; and
- (b) will provide to the ACMA a copy of the Further Report and its written response within 20 Business Days of receiving the report from the Approved Independent Assurance Practitioner.

## **7. Acknowledgements**

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7.1. TSL acknowledges that:

- (a) the ACMA may make this Undertaking publicly available by publishing it on the ACMA's website;
- (b) the ACMA may, from time to time, make public comment about the Undertaking and its terms which includes issuing a media release upon its execution by the ACMA; and
- (c) the ACMA may, from time to time, publicly report on compliance with this Undertaking.

7.2. TSL also acknowledges that:

- (a) the ACMA's acceptance of this Undertaking does not affect the ACMA's power to investigate and take compliance and enforcement action arising from conduct that is not the subject of this Undertaking or arising from future conduct; and
- (b) this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from the alleged conduct, the subject of this Undertaking.



# Executed as an Enforceable Undertaking

Executed by Tully Sugar Limited (ACN 011 030 256):



Signature of director

TIANCHI YU

Name of director (print)

23 January 2024

Date



Signature of a director/company secretary

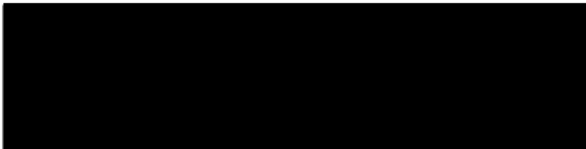
LU ZHANG

Name of director/company secretary (print)

23 January 2024

Date

Signed for an on behalf of the Australian Communications  
and Media Authority pursuant to section 205W of the Act by:



Signature of Member

CREINA CHAPMAN

Name



Signature of Member/General Manager

GRANTHA YORKE

Name