

ABC signs Enforceable Undertaking

19 June 2020

The Australian Broadcasting Corporation (ABC) has back-paid over \$11.9 million to more than 1,800 current and former casual staff and entered into an [Enforceable Undertaking \(EU\) \(DOCX 162.3KB\)](http://www.fairwork.gov.au/ArticleDocuments/1505/enforceable-undertaking-abc-final-redacted.docx.aspx) (www.fairwork.gov.au/ArticleDocuments/1505/enforceable-undertaking-abc-final-redacted.docx.aspx) (PDF 14.8MB) (www.fairwork.gov.au/ArticleDocuments/1505/executed-enforceable-undertaking-abc-final-redacted.pdf.aspx) with the Fair Work Ombudsman.

An investigation was launched after the ABC reported to the FWO that it had found instances where casual employees had not received entitlements under its enterprise agreements.

Fair Work Inspectors identified that some casual staff were receiving flat rates of pay insufficient to cover entitlements including overtime, penalty rates and some allowances, and in some cases employees were paid less than the minimum hourly rate.

In total, 1,907 ABC employees were underpaid \$12,029,038, most between October 2012 and February 2019. As at 27 May 2020, the ABC has back-paid \$11,983,950 to 1828 employees. The broadcaster has paid affected workers 5.25 per cent interest on back-payments, superannuation, and 5.25 per cent interest on superannuation.

Fair Work Ombudsman Sandra Parker said that an EU was considered appropriate after the ABC took immediate steps to rectify the error and improve its systems to ensure future compliance.

"Enforceable Undertakings are provided for under the Fair Work Act and can be utilised for employers who self-disclose non-deliberate, though still serious, breaches to the Fair Work Ombudsman. We expect employers who self-disclose non-compliance to fully cooperate with our investigations, fast track all back-payments and take remediation action," Ms Parker said.

The terms of the EU are enforceable by a court.

"Under the Enforceable Undertaking, the ABC has committed to improving workplace practices across its whole workforce and will invest significantly in improved systems and processes, which will benefit its current and future employees," Ms Parker said.

"The ABC will also engage and pay for an independent expert, approved by the FWO, to conduct annual audits of its workplace compliance for the next three years. In addition, the ABC must implement an electronic record-keeping and rostering system, and train payroll and HR staff."

In recognition of the seriousness of its contraventions, the ABC will also make a contrition payment of \$600,000. This payment is consistent with FWO's approach to other similar self-reported breaches of the Fair Work Act and takes account of what a court might have imposed by way of civil penalties.

The contrition payment, like a penalty ordered by a court, will be paid into the Commonwealth's Consolidated Revenue Fund for the benefit of the broader Australian community.

"While the extent and duration of the underpayments are disappointing, the FWO acknowledges the ABC's remediation efforts, such as its comprehensive back payment initiatives and its commitment to avoid a repeat of this failure," Ms Parker said.

"In cases such as this where the breaches are not the result of deliberately unlawful conduct, the FWO's focus is on ensuring employees get their entitlements paid to them as quickly as possible. Through the investigation and Enforceable Undertaking, lessons are learned and systems put in place to avoid such serious underpayments in the future."

"When taken as a whole, these kinds of Enforceable Undertakings strike the right balance between ensuring repayment to employees and encouraging employers to come forward and take appropriate remediation action," Ms Parker said.

"The Fair Work Ombudsman saw no justification in treating a public statutory company differently from any private sector company – all employers must comply with Australia's workplace laws."

"Contrition payments provide a deterrent to non-compliance, which is commensurate with a penalty that a court might impose, but without the cost and delay of drawn out litigations," Ms Parker said.

Affected ABC staff worked across the country in roles including camera operators, make-up artists, graphic designers, production managers, directors, producers, reporters and presenters.

Underpayments ranged from \$7 to \$180,000, with full remediation to occur by 31 July 2020. The broadcaster will also calculate and back-pay entitlements owed to a small number of breakfast shift producers due to time sheet errors, and some misclassified technology staff.

In addition to the annual audits, the ABC must engage and pay for an external expert to complete a broader review of its workplace compliance and will implement the expert's recommendations. It will also place notices on its intranet, corporate website, LinkedIn and Twitter channels.

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