

## ENFORCEABLE UNDERTAKING

This undertaking is **given** by Charles Sturt University ABN 83 878 708 551 and **accepted** by the Fair Work Ombudsman pursuant to s 715 of the *Fair Work Act 2009*

## 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* (**FW Act**) by Charles Sturt University (**CSU**).

### COMMENCEMENT

2. The Undertaking comes into effect when:
  - a) the Undertaking is executed by CSU; and
  - b) the FWO accepts the Undertaking so executed (as evidenced by the FWO's endorsement below) (**Commencement Date**).

### BACKGROUND

3. CSU is established under the *Charles Sturt University Act 1989 (NSW)* with its principal object being the promotion of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence. CSU is the largest regionally based university in Australia. As at 31 January 2022, CSU's workforce includes 1,586 permanent full-time employees, 426 permanent part-time employees and 1,055 casual employees.
4. CSU is a registered charity under the *Australian Charities and Not-for-Profits Commissions Act 2012* (Cth) and is subject to the governance and accountability obligations under the *Higher Education Support Act 2003* (Cth), the *Tertiary Education Quality and Standards Agency Act 2011* (Cth) and the *Higher Education Standards Framework (Threshold Standards) 2021* (Cth).
5. Between October 2021 and the execution of the Undertaking, CSU notified the FWO that:
  - a) in December 2020, CSU commenced an internal audit of its payroll processes, with a focus on compliance with its enterprise agreements, the *Charles Sturt University Enterprise Agreement 2018 – 2021 (Variation 2022)* (**2022 Agreement**), the *Charles Sturt University Enterprise Agreement 2018 – 2021* (**2018 Agreement**) and the *Charles Sturt University Enterprise Agreement 2013 – 2016* (**2013 Agreement**) (collectively, the **Agreements**);

- b) following the internal audit, CSU engaged KPMG Australia (**KPMG**) to oversee the further investigation and remediation of risks identified (**Remediation Project**);
  - c) as a result of the Remediation Project, and as detailed in documents produced by KPMG and shared with the FWO, a total underpayment of \$3,237,390 impacting 2,526 casual employees covered by the Agreements over the period from 1 July 2015 to 9 June 2022 (**Affected Employees**) was identified. Additional payments of \$1,454,089 were also identified (including \$628,261 in relation to interest on the outstanding wage underpayment and \$475,941 in relation to superannuation and interest on superannuation);
  - d) CSU has not sought to set off any payments in calculating the above reported figures;
  - e) CSU is fully committed to remedying the non-compliance in full as soon as possible and by the dates set out in the Undertaking;
  - f) the non-compliance identified following the internal audit and Remediation Project was the result of:
    - i) misapplication of minimum engagement periods;
    - ii) a lack of defined guidelines to ensure consistency in the application of academic casual rates; and
    - iii) a lack of system controls to identify timesheet entries inconsistent with the terms of the Agreements.
  - g) CSU will implement changes to policy and controls to address the underlying causes of the underpayments as part of its wage remediation program; and
  - h) CSU will implement on-going compliance monitoring activities including the effective implementation of controls, to ensure the accuracy of payments.
6. The FWO acknowledges the cooperation and early and open disclosures made by CSU to the FWO.
7. The FWO also acknowledges CSU's commitment to establish and implement comprehensive systems/processes across the institution to avoid any future similar contraventions occurring as detailed in, but not limited to, the Undertakings in clause 19 below.

8. In consideration of these matters, the FWO accepts this Undertaking, the terms of which are set out below.

#### **ADMISSIONS AND UNDERTAKINGS**

9. The FWO has formed a reasonable belief, and CSU admits, that between 1 July 2015 and 9 June 2022 (**Relevant Period**), CSU contravened:
- a) section 50 of the FW Act by failing to pay each Affected Employee the amount or amounts to which that employee was entitled under each of the Agreements as set out in Attachment A; and
  - b) subsection 535(1) of the FW Act by failing to make and keep employee records as prescribed.
10. The contraventions identified in clause 9 of this Undertaking do not include:
- a) any contraventions which relate to or arise as a consequence of CSU failing to correctly apply the Agreements to any employee who is not an Affected Employee or because of any failure by CSU to correctly apply the Agreements to an Affected Employee other than those set out in clause 9 above; and
  - b) any contraventions which have not yet occurred at the date that this Undertaking is offered by CSU.
11. Upon commencement of this Undertaking, CSU will take the actions set out at clauses 12 to 26 (inclusive) below.
12. CSU will take all reasonable steps to locate each Affected Employee owed an outstanding Wage Underpayment, Interest Amount or Superannuation Amount. Reasonable steps will include, but are not limited to, repeated and multi-channel attempts to contact an Affected Employee through:
- a) last known details from employee files including email, mobile telephone for direct calls and SMS and last known address for post; and
  - b) utilisation of assistance by the Head of Department or relevant manager of the former employee as appropriate.
13. By 1 February 2023, CSU will:

- a) pay to each Affected Employee that CSU has located, any outstanding Wage Underpayment relating to that Affected Employee;
- b) pay to the nominated superannuation fund for each Affected Employee, any outstanding Superannuation Amount relating to that Affected Employee; and
- c) pay to each Affected Employee that CSU has located and their respective nominated superannuation fund, the associated Interest Amount (of the outstanding Wage Underpayment and outstanding Superannuation Amount) relating to that Affected Employee.

14. By 28 February 2023, CSU will provide to the FWO Reasonable Evidence of:

- a) all payments made to rectify the Total Underpayment and Interest Amount; and
- b) the steps taken in accordance with clause 12, for any Affected Employee whom CSU could not locate.

15. Every 90 days from 28 February 2023 until 28 February 2024, CSU will provide to the FWO Reasonable Evidence of:

- a) the steps taken in accordance with clause 12 in the previous 90 days; and
- b) any payments subsequently made to rectify the Total Underpayment and Interest Amount.

16. If any of the Affected Employees to whom a Wage Underpayment is owed cannot be located by 28 February 2024, CSU will pay the Wage Underpayments owing to those Affected Employees (as set out in clause 13) to the Commonwealth of Australia in accordance with section 559 of the FW Act by 1 April 2024. CSU will complete the required documents supplied by the FWO for this purpose.

17. In the event that the FWO is able to locate and contact any Affected Employees to whom the Wage Underpayments are owed as set out in clause 16 directly above, the FWO will (in addition to its obligations under section 559 of the FW Act) notify CSU in writing of the name, contact and payment method details of the Affected Employee.

18. Within 28 days of receiving any such notice under clause 17 CSU will:

- a) pay to the Affected Employee the Interest Amount relating to the Affected Employee's



Wage Underpayment as set out in clause 13; and

- b) pay to the Affected Employee's nominated superannuation fund, the Superannuation Amount and associated Interest Amount relating to the Affected Employee as set out in clause 13.

**Reviews, systems improvements and training**

19. By 1 February 2023, CSU will, in further consultation with FWO, undertake, implement or have implemented the following reviews, systems improvements and/or training to avoid any repeat of similar contraventions that are relied on as the basis for this Undertaking:

- a) develop, distribute and implement written guidelines to ensure consistency in application of casual academic pay rates;
- b) perform a detailed review of CSU's payroll processes to analyse areas for automation and streamlining;
- c) implement the actions identified as a result of the review detailed in b) above;
- d) develop guidance on the minimum engagement periods for casual professional staff for all business schools and units and ensure that the guidance is communicated to all relevant existing and commencing staff;
- e) enhance system configurations for casual academics to align pay code types with the appropriate contracting types;
- f) implement system controls to restrict pay code selection to only those consistent with the terms of the enterprise agreement;
- g) conduct post implementation checks of the controls described in clauses 19 e) and f) above to ensure both effectiveness of operation of system controls and accuracy of resulting payment outcomes;
- h) provide additional training and briefings to existing Workload Planners, Unit Coordinators, Payroll and People and Culture staff as well as to such staff engaged during the operation of this Undertaking to understand their obligations and as necessary, the changes made to controls (as described in clauses 19 e) and f) above); and
- i) implement on-going compliance monitoring activities through appropriate mechanisms to confirm accuracy of payments.

20. By 28 February 2023, CSU will provide to the FWO Reasonable Evidence of CSU's compliance with clause 19.

#### **Establishment of a complaints and review mechanism for Affected Employees**

21. By 5 September 2022, CSU will establish a complaints and review mechanism (**Mechanism**) for Affected Employees in relation to the Total Underpayments and Interest Amounts. The existence of the Mechanism will be promoted to Affected Employees in each communication in relation to the Total Underpayments. Guidance will be issued to all decision makers under the terms of the Mechanism detailing CSU's approach to assumptions and expectations in regard to resolving the disputes.
22. CSU will notify the FWO within 14 days of becoming aware of any dispute covered by clause 21 and will take all necessary steps to seek to resolve any dispute in line with the process detailed in clause 53 of the 2018 Agreement.
23. CSU will establish and maintain centralised oversight of any dispute covered by clause 21 above to ensure consistent management and outcomes.
24. Where appropriate, the FWO will notify CSU within 14 days of any Request for Assistance being received by an Affected Employee where the FWO identifies that the Mechanism has not first been followed. Where appropriate, the FWO will take no further action in relation to such a Request for Assistance until the Mechanism has been followed.
25. Within 60 days of receipt, CSU will provide to the FWO information regarding the outcome of any complaint and/or review made under the Mechanism. CSU will also provide, within a reasonable period specified by the FWO, any such further reasonable evidence that the FWO requires to satisfy itself that CSU has met its obligations with respect to the Affected Employees under this Undertaking and/or the FW Act.
26. CSU undertakes to cooperate fully in relation to any Request for Assistance received by the FWO in relation to an Affected Employee where the dispute has not been satisfactorily resolved under the terms of the Mechanism.

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

27. CSU 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.

28. 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.

#### **No Inconsistent Statements**

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

#### **ACKNOWLEDGEMENTS**

30. CSU acknowledges that:

- a) the FWO may;
  - i) make this Undertaking available on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
  - ii) release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
  - iii) issue a media release in relation to this Undertaking;
  - iv) from time to time, publicly refer to the Undertaking and its terms; and
  - v) rely upon the admissions made by CSU set out in clause 9 above in respect of decisions taken regarding enforcement action in the event that CSU is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by CSU 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, CSU may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and



- d) if CSU 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 CSU in clause 10 above, and also in respect of the question of costs.

## Dictionary

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

- **Interest Amount** means the amount reported to the FWO as detailed at clause 5 c) plus any additional interest amounts accrued in relation to the contraventions set out at clause 9 above. Interest on a Wage Underpayment is accrued and to be calculated at the simple method at a rate of 4.85% per annum to 1 February 2023. Interest on Superannuation is accrued and to be calculated at the simple method at a rate of 10% per annum to 1 February 2023. However, in respect of payments not made by 1 February 2023, the interest on a Wage Underpayment and Superannuation is accrued and to be calculated at the simple method at the respective rates of 4.85% and 10% per annum to 28 February 2024.
- **Reasonable Evidence** means such evidence as the FWO may reasonably require, and which could reasonably be expected to comfortably satisfy a court of:
  - a) the truth of any fact asserted by CSU or by any of its servants or agents; and/or
  - b) the accuracy and correctness of any information provided by CSU, or by any of its servants or agents; and/or
  - c) compliance by CSU with any term of this Undertaking.
- **Superannuation Amount** means the amount reported to the FWO as detailed at clause 5c) plus any additional outstanding amounts identified as an underpayment of superannuation as a result of contraventions set out at clause 9 above.
- **Total Underpayment** means the Wage Underpayment and the Superannuation Amount.
- **Wage Underpayment** means the amount reported to the FWO as detailed at clause 5c) plus any additional outstanding amounts identified as an underpayment of wages as a

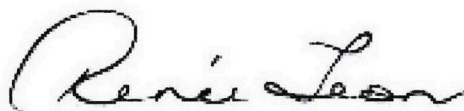
result of contraventions set out at clause 9 above.

**Executed as an undertaking**

EXECUTED for and on behalf of Charles Sturt University by its authorised signatory:

Professor Renee Leon, Vice-Chancellor

(Name and position of authorised  
signatory)



(Signature of authorised signatory)

in the presence of:

Jade Farrant, Executive Officer

(Name of witness)



(Signature of witness)

26.8.2022

(Date)

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

MARK SCULLY

DEPUTY FAIR WORK OMBUDSMAN - COMPLIANCE &

[Insert name and role of Delegate] ENFORCEMENT



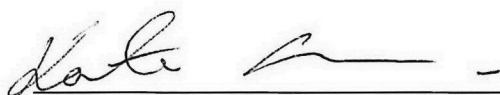
(Signature of Delegate)

29 August 2022

(Date)

Delegate for the FAIR WORK OMBUDSMAN

in the presence of:



(Signature of witness)

Kate Anderson.

(Name of Witness)

<b>Casual employment</b>	
<b>Primary Provisions</b>	<b>Secondary Provisions</b>
<b>2022 Agreement</b>	
Clause 21.14, page 12	<p>Schedule I, Part B, clause 5 (doctoral qualification)</p> <p>Schedule I, Part B, clause 6 (basic lecture, repeat lecture, tutorial, repeat tutorial)</p> <p>Schedule I, Part B, clause 12 (significant marking)</p> <p>Schedule I, Part B, clause 14 (Other required Academic Activity); and</p> <p>Schedule II, Part B, clause (iv) (minimum engagement periods).</p>
<b>2018 Agreement</b>	
Clause 21.14, page 21	<p>Schedule I, Part B, clause 4 (doctoral qualification)</p> <p>Schedule I, Part B, clause 5 (basic lecture, repeat lecture, tutorial, repeat tutorial)</p> <p>Schedule I, Part B, clause 11 (significant marking)</p> <p>Schedule I, Part B, clause 13 (Other required Academic Activity); and</p> <p>Schedule II, Part B, clause (iv) (minimum engagement periods).</p>
<b>2013 Agreement</b>	
Clause 21.14, page 12	<p>Schedule I, Part B, clause 4 (doctoral qualification)</p> <p>Schedule I, Part B, clause 5 (basic lecture, repeat lecture, tutorial, repeat tutorial)</p> <p>Schedule I, Part B, clause 11 (significant marking)</p> <p>Schedule I, Part B, clause 13 (Other required academic activity); and</p> <p>Schedule II, Part B, clause (iv) (minimum engagement periods).</p>