



Australian Government

Fair Work
OMBUDSMAN

ENFORCEABLE UNDERTAKING

This undertaking is **given** by Charles Darwin University and **accepted** by the Fair Work Ombudsman pursuant to section 715 of the *Fair Work Act 2009* (Cth)

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 Darwin University (ABN 54 093 513 649) (**CDU**).

COMMENCEMENT

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

BACKGROUND

3. CDU is a public university incorporated by the *Charles Darwin University Act 2003* (NT). CDU has three faculties, a TAFE and an International College. According to its 2024 Annual Report (latest publicly available), in 2023-2024 CDU employed 1,481 full-time equivalent (FTE) staff, including 635 Higher Education Teaching academic (**HE Academic**) and Vocational Education and Training academic (**VET Academic**) staff and 846 Professional Staff.
4. CDU is a registered charity under the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) and is a higher education provider 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) (collectively, **Statutory Governance Obligations**).
5. On 1 March 2022, CDU self-reported to the FWO that CDU was undertaking a Casual Underpayment Project and:
 - a. had engaged Clayton Utz to undertake a forensic audit of CDU's payroll system to identify underpayments;
 - b. as a result, had identified likely underpayments to some casual employees engaged in professional and academic roles across a range of business units and schools,

necessitating further assessment of 4,499 casual employees employed by CDU between 1 February 2016 and 31 January 2022 (**Relevant Period**);

- c. believed that there were underpayments due to non-payment of minimum engagement periods and the rostering of casual employees for one hour of work rather than the minimum of three; and
- d. had also considered whether casual employees have an entitlement to payment of district allowance, which CDU has not historically paid to casual employees.

6. The Casual Underpayment Project reviewed non-compliance with the obligations set out in the following enterprise agreements applicable to HE Academic, VET Academic and Professional Employees:

- a. the *Charles Darwin University and Union Enterprise Agreement 2013* (**CDU EA 2013**);
 - b. the *Charles Darwin University and Union Enterprise Agreement 2018* (**CDU EA 2018**); and
 - c. the *Charles Darwin University and Union Enterprise Agreement 2022* (**CDU EA 2022**).
- (collectively, **CDU Enterprise Agreements**)

7. On 21 November 2023, CDU advised:

- a. it had identified 471 current and 2,612 former employees potentially impacted by the Casual Underpayment Project;
- b. a total of 54,988 fortnights of timesheets were to be reviewed, with complete timesheet evidence unavailable for 2,341 employees; and
- c. they were undertaking analysis of Professional Employees in relation to minimum hours, penalty and overtime rates as applicable under provisions of the CDU Enterprise Agreements.

8. On 30 January 2025, CDU advised:

- a. it had updated the Casual Underpayment Project and split the potentially impacted employees into streams of work, specifically Professional Employees, VET Academics, HE Academics and those who have worked in multiple streams of work;
- b. it was about 45% of the way through analysis and payment of underpayments to 1,064 Professional Staff, expecting to be completed by the end of February 2025,

after which it would commence its analysis and payment of underpayments to 228 VET Academics, with analysis and payment of 1,509 HE Academics to commence later in 2025 and 272 multiple stream employees in early 2026 (a total of 3,073 current and former employees); and

- c. it had taken specific actions to improve the timeline of its remediation program, including hiring additional processing resources, sourcing and implementing character recognition software to digitise data, streamlining the process for making payments to individuals with the introduction of the new HR Payroll System and exploring outsourcing to ensure backup options are available for resourcing.

9. On 5 September 2025, CDU:

- a. advised it had progressed analysis and payment of underpayments to Professional Staff, and commenced analysis and payment of underpayments to VET Academics;
- b. provided evidence in relation to the calculation methodology, payment and communication for reported underpayments to Professional Staff and VET Academics.

10. On 29 January 2026, CDU advised:

- a. it had completed analysis and payments in respect of VET Academics;
- b. it was on track to:
 - i. complete analysis and payments to underpaid Professional Staff by end of February 2026;
 - ii. complete analysis and payments to underpaid HE Academics by end of May 2026;
 - iii. complete analysis and payments to underpaid multiple stream employees by end of August 2026;
 - iv. finalise all payments in relation to all underpaid employees by end of September 2026;
 - v. complete the unclaimed monies process by end of October 2026.

11. As of 29 January 2026, the Casual Underpayment Project, has identified:

- a. a total underpayment of \$4,111,181.00 (including superannuation and Interest) (**Total Underpayment**) to 158 current and 665 former employees (**Affected Employees**), for the Relevant Period;
- b. the Total Underpayment comprises:
 - i. \$823,972.00 (including superannuation where applicable and Interest on all payments) to 481 current and former Professional Staff;
 - ii. \$3,111,222.00 (including superannuation where applicable and Interest on all payments) to 144 current and former VET Academics;
 - iii. \$175,987.00 (including superannuation where applicable and Interest on all payments) to 198 current and former HE Academics;
- c. that the non-compliance has primarily arisen as a result of the decentralised processing of timesheets and a lack of knowledge regarding the complexity involved in the pay structures for casual employees.

12. As of 29 January 2026, CDU was yet to complete:

- a. payment of \$504,886.00 (including superannuation and Interest) (**Unpaid Underpayment Amount**) of the Total Underpayment to 211 Affected Employees (**Unpaid Calculated Employees**), comprising:
 - i. \$24,169.00 (including superannuation where applicable and Interest on all payments) not yet paid to 2 current and former Professional Staff;
 - ii. \$304,730.00 (including superannuation where applicable and Interest on all payments) not yet paid to 11 current and former VET Academics;
 - iii. \$175,987.00 (including superannuation where applicable and Interest on all payments) not yet paid to 198 current and former HE Academics; and
- b. analysis of pay records and determination of any potential underpayments in relation to 1,483 current and former employees (**Uncalculated Employees**), comprising:
 - i. 108 current and former Professional Staff;
 - ii. 1,139 current and former HE Academics;
 - iii. 236 current and former multiple stream employees.

13. Since the self-report, the FWO has investigated CDU's non-compliance with workplace laws. The FWO has communicated its expectation for CDU to undertake a wider review of its potential non-compliance with workplace laws, as set out in clauses 28 to 46 below.
14. The FWO acknowledges the co-operation and open disclosures made by CDU to the FWO, including the provision of detailed documentation relating to the Casual Underpayment Project as requested from time to time by the FWO.
15. The FWO acknowledges that CDU will also establish and implement comprehensive systems/processes and training across the institution to mitigate any future similar contraventions occurring as detailed in the Undertakings in clauses 47 to 54 below.

ADMISSIONS

16. The FWO has a reasonable belief, and CDU admits, that during the Relevant Period, CDU contravened section 50 of the FW Act by failing to pay each of the Affected Employees the amount of the Total Underpayment to which they were entitled to receive in respect of:
 - a. the CDU EA 2022:
 - i. clause 10.5 – minimum period of engagement for casual employees;
 - ii. clause 15 – overtime rates and time off in lieu;
 - iii. clauses 75.3 to 75.19 – casual hourly rates of pay for HE Academics;
 - iv. clauses 80.3 to 80.5 – casual hourly rates of pay for VET Academics;
 - b. the CDU EA 2018:
 - i. clause 10.3 – minimum period of engagement for casual employees;
 - ii. clause 15 – overtime rates and time off in lieu;
 - iii. clauses 73.3 to 73.19 – casual hourly rates of pay for HE Academics;
 - iv. clauses 79.3 to 79.5 – casual hourly rates of pay for VET Academics;
 - c. the CDU EA 2013:
 - i. clause 23 – hours of work and overtime;
 - ii. clauses 66.5 to 66.21 – casual hourly rates of pay for HE Academics;

- iii. clauses 66.22 to 66.23 – casual hourly rates of pay for VET Academics.

17. The contraventions referred to in clause 16 do not include:

- a. any contraventions which relate to or arise as a consequence of CDU failing to correctly apply the CDU Enterprise Agreements to any employee who is not one of the Affected Employees; or
- b. any contraventions, other than those specified in clause 16 above, which relate to or arise because of any failure by CDU to correctly apply the CDU Enterprise Agreements to an Affected Employee; or
- c. any contraventions which have not yet occurred at the date that this Undertaking is offered by CDU.

18. In addition to the matters set out in clause 16 above, where the FWO has obtained an appropriate level of assurance as to the methodology and approach to CDU's ongoing remediation process, the FWO and CDU may agree to enter into a written addendum to this Undertaking from CDU in relation to any further contraventions arising from the steps outlined in clauses 22 to 46 below. The process by which the FWO and CDU may enter into an addendum to this Undertaking is set out at Attachment C.

19. Where such an addendum is agreed to, from the date of execution:

- a. the addendum will operate as a variation to this Undertaking agreed to by the FWO within the meaning of section 715(3) of the FW Act;
- b. the FWO agrees that this Undertaking is given for any further contraventions specified in an addendum, within the meaning of sections 715(2) and 715(4) of the FW Act;
- c. any further contraventions in an addendum are taken to be part of the contraventions admitted in clause 16 above; and
- d. any employee affected by a contravention specified in an addendum is taken to be one of the Affected Employees within the meaning of clause 16 above, save that dates for compliance with the steps outlined in clauses 22 to 46 below in respect of these employees are to be as determined in accordance with the process in Attachment C.

UNDERTAKINGS

20. Upon commencement of this Undertaking, CDU will take the actions set out at clauses 21 to 75 (inclusive) below.

Schedule of Affected Employees and Unpaid Calculated Employees

21. Within 7 days of the Commencement Date, CDU will provide to the FWO a schedule with the names of all Affected Employees and Unpaid Calculated Employees and the respective individual underpayment (itemised to include superannuation where applicable and Interest) for each Affected Employee.

Unpaid Calculated Employees and Uncalculated Employees

22. CDU undertakes to make payments totalling the Unpaid Underpayment Amount to the Unpaid Calculated Employees by 30 June 2026.
23. CDU undertakes to analyse pay records and determine any potential further underpayments (including superannuation where applicable and Interest on all payments) in respect of Uncalculated Employees by 31 August 2026 (**Uncalculated Underpayment Amount**).
24. CDU undertakes to pay the Uncalculated Underpayment Amount to any affected Uncalculated Employees by 30 September 2026.
25. If any of the Unpaid Calculated Employees or Uncalculated Employees cannot be located, CDU will, by 28 February 2027:
- a. provide to the FWO's Unclaimed Monies Team a schedule detailing any Unpaid Calculated Employees or Uncalculated Employees who cannot be contacted and, as such, to whom CDU are unable to make remediation payments as a result of clauses 22 or 24; and
 - b. pay their underpayments owing (excluding any superannuation and Interest) to the Commonwealth of Australia in accordance with section 559 of the FW Act within 180 days of identifying the scope of any underpayments. CDU will complete the required documents supplied by the FWO for this purpose.

26. In respect of any underpayment amounts calculated as a result of clause 23, and any payments made to Uncalculated Employees as a result of clause 24, CDU undertakes by 31 October 2026 to provide to the FWO:

- a. the methodology used in calculating the Uncalculated Underpayment Amount;
- b. a schedule detailing the names and underpayment amount identified as a result of clause 23 and underpayment amount rectified as a result of clause 24 for each affected Uncalculated Employee. The schedule will identify the amounts paid in respect of wages, interest on wages, superannuation and interest on superannuation for each identified Uncalculated Employee.

27. The FWO will review the information provided by the CDU as part of clause 26 and, as required, CDU will:

- a. make any necessary changes to the calculation methodology identified by the FWO, and calculate and make payment of any additional underpayment amounts owing as a result of the identified changes; and/or
- b. provide the FWO with a written response to any proposed changes that CDU objects to within 30 days.

External Independent Compliance Audit

28. CDU undertakes to engage, at its cost, an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct two independent audits (the **Audits**) of CDU's compliance with the FW Act and *Fair Work Regulations 2009* (Cth) (**FW Regulations**) in relation to the:

- a. *Charles Darwin University and Union Enterprise Agreement 2025* (**CDU EU 2025**); and/or
- b. any future replacement instruments,

(collectively, the **Industrial Instruments**).

29. CDU will notify the FWO of its proposed Independent Auditor by no later than 3 months after the Commencement Date. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require CDU 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 before being engaged by CDU.

30. CDU must ensure that each of the Audits conducted by the Independent Auditor includes:
- a. an assessment of 5% of all employees to whom the Industrial Instruments apply, across a range of classifications, locations, faculties and schools and employment types (full time, part time and casual employment) during the relevant audit period (**Sampled Employees**) in respect of their employment by CDU;
 - b. an assessment of whether the Sampled Employees have been correctly classified by CDU;
 - c. an assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period are in compliance with the FW Act, FW Regulations and the Industrial Instruments;
 - d. 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
31. CDU must ensure that each of the written reports referred to in clause 30(30.d) above contains the following declarations from the Independent Auditor:
- a. that the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - b. notwithstanding that the Independent Auditor is retained by CDU, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from CDU in preparing the report;
 - c. that the report is provided in accordance with applicable professional standards (which will be listed in the report); and
 - d. that the report is provided to the FWO for its benefit and the FWO can rely on the report.

The First Audit

32. CDU must ensure the Independent Auditor commences the first of the Audits within 9 to 12 months of the Commencement Date (**First Audit**).
33. The relevant audit period for the First Audit must be at least two consecutive full pay periods falling within the preceding 6 months of the start of the First Audit.
34. Within 8 months of the Commencement Date, CDU will provide for the FWO's approval,

details of the methodology to be used by the Independent Auditor to conduct the First Audit.

35. CDU will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO within 15 months of the Commencement Date setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. CDU will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to CDU without the FWO's approval. CDU will be given the opportunity to review the draft written report for the sole purpose of providing standard management responses to ensure there are no factual inaccuracies. Any such comments will be submitted through the Independent Auditor for consideration in the final report.
36. CDU 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 28 days of FWO providing any comments on the draft report to the Independent Auditor. CDU will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to CDU without the FWO's approval.

The Second Audit

37. Where the FWO identifies any systemic contravention from the First Audit Report, CDU must ensure the Independent Auditor commences the second of the Audits within 21 to 24 months of the Commencement Date (**Second Audit**).
38. The relevant audit period for the Second Audit must be at least two full pay periods falling within the preceding six months of the start of the Second Audit.
39. Within 20 months of the Commencement Date, CDU will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
40. CDU will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO within 27 months of the Commencement Date, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. CDU will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to CDU without the FWO's approval. CDU will be given the opportunity to review the draft written report for the sole purpose of providing standard management responses to ensure there are no factual inaccuracies. Any such comments will be submitted through the Independent Auditor for consideration in the final

report.

41. CDU 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 28 days of FWO providing any comments on the draft report to the Independent Auditor. CDU will ensure the Independent Auditor does not provide the written report, or a copy of the same, to CDU without the FWO's approval.

Outcome of Audits

42. If any of the Audits identify underpayments to any current or former employees, CDU will:
 - a. rectify any underpayments identified in the relevant audit period; and
 - b. conduct a reconciliation of the amounts paid and owed to those employees in the 12-month period immediately before the relevant audit period, and rectify any underpayments that are identified.
43. CDU will provide to the FWO Reasonable Evidence of such rectification within 60 days of being informed by the FWO of the requirement to undertake the reconciliation.
44. If any employees identified in the Audits as having underpayments owing to them cannot be located within 120 days of the conclusion of each Audit, CDU will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. CDU will complete the required documents supplied by the FWO for this purpose.
45. 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, CDU will engage the same approved auditor, as set out at clause 28, to conduct a further audit of all its employees to whom the Industrial Instruments apply, as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by CDU and must adhere to the same requirements as the First and Second Audit, as set out at clauses 28 to 31 above, including approval of the auditor's proposed methodology prior to the Additional Audit commencing and reporting to the FWO following the Additional Audit. Any underpayments identified by the Additional Audit are to be rectified within a timeframe that is to be agreed with the FWO.
46. If requested by the FWO, CDU 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.

Workplace relations systems, processes and training

Workplace relations systems and processes

47. Within 120 days of the Commencement Date, CDU will provide the FWO with detailed information about the systems and processes it is implementing (whether planned and/or in progress and/or completed) to ensure future compliance with its obligations under the FW Act, the FW Regulations and Industrial Instruments, including reconfiguring and updating payroll and record keeping systems (**HRIS System**).
48. CDU will also undertake the following steps to ensure that the HRIS System supports compliance with workplace laws:
- a. within 60 days of the finalisation of the First Audit Report by the Independent Auditor in accordance with clause 36, complete a recalculation of the payroll outcomes for the relevant audit period of the First Audit (as set out in clause 33) using the HRIS System;
 - b. generate and provide to the FWO a copy of a report that outlines the findings of the recalculation within 30 days of the recalculation being finalised; and
 - c. if the recalculation under clause 48(a) is inconsistent with any entitlements calculated as owing as part of the First Audit, the report under clause 48(b) will also outline proposed further improvements to the HRIS System aimed at rectifying these inconsistencies.
49. The FWO may, within 28 days of receiving the information under clauses 47 and 48(b), seek reasonable further information regarding the systems and processes improvements from CDU by issuing a written notice to CDU specifying the additional information required. CDU must provide the information specified in such a notice within 21 days of receipt to the FWO.

Mandatory training

50. Within 9 months of the Commencement Date, CDU will ensure that all current employees of CDU with responsibility for management of employees, human resources, recruitment, payroll, timesheet approval and rostering have completed training which satisfies clause 51 below.
51. The mandatory training must:
- a. be provided face-to-face or online by an internal or external workplace relations,

human resources or employment law expert, approved by the FWO before the training is provided; and

- b. cover, at a minimum:
 - i. how to correctly apply entitlements under the Industrial Instruments;
 - ii. record keeping requirements and obligations under the FW Act and Fair Work Regulations; and
 - iii. other entitlements and obligations under the FW Act, including the National Employment Standards; and
- c. be provided on an ongoing basis to all new or existing employees who acquire or hold responsibility for management of employees, human resources, recruitment, payroll, timesheet approval and rostering for the Duration of the Undertaking.

52. Every 6 months from the Commencement Date for the Duration of the Undertaking, CDU will provide to the FWO evidence of its compliance with clause 50 including:

- a. a copy of the training materials used; and
- b. a schedule or list of the employees who received the training and the date on which they attended.

53. Within 6 months of the Commencement Date, CDU will ensure that all current casual Professional Employees, VET Academics and HE Academics covered by the CDU EU 2025 receive education (including updated CDU webpage resources, information sheets and the introduction of additional training) regarding their minimum entitlements in respect of which CDU self-reported to the FWO, as outlined in clause 16 above.

54. Within 9 months of the Commencement Date, CDU will provide to the FWO evidence of its compliance with clause 53, including:

- a. a copy of the training materials used; and
- b. a schedule or list of the employees who received the training and the date on which they attended.

Notification to Employees

55. Within 30 days of, but not prior to, the FWO publishing a media release on its website in respect of this Undertaking, CDU will send an email to all current employees in the form of **Attachment A**.
56. Within 30 days of, but not prior to, the FWO publishing a media release on its website in respect of this Undertaking, CDU will send an email to all former employees, employed under the CDU Enterprise Agreements, to their last known email address (or for those in respect of whom CDU does not have an email address, by post to their last known residential address), notifying them of the existence and commencement of this Undertaking, in the terms set out in **Attachment A**.
57. If requested by the FWO, CDU will, within 14 days, provide Reasonable Evidence of its compliance with clauses 55 to 56.

Complaints and Review Mechanism

58. The FWO acknowledges that the CDU has established a complaints and review mechanism which allows employees to raise workplace concerns, including concerns about pay, entitlements, conditions of employment and compliance with workplace obligations (**CDU Complaints and Review Mechanism**). As part of the CDU Complaints and Review Mechanism, employees may raise matters informally in the first instance through discussion with their manager, supervisor, People and Culture, or Payroll Services, where appropriate. Where a matter cannot be resolved informally, or where informal resolution is not appropriate, the matter may be escalated through a formal complaints process for review and response by an appropriate decision-maker. CDU will continue to maintain the CDU Complaints and Review Mechanism as an accessible pathway for employees to raise, escalate and seek review of workplace concerns.
59. Within 30 days of the Commencement Date, CDU will additionally establish a complaints and review mechanism for the Affected Employees, any Uncalculated Employees for whom underpayments are calculated as a result of the contraventions outlined in clause 16, and/or any additional current or former employees affected by any further contraventions identified as a result of clauses 22 to 46, who do not believe they have received their correct

entitlements in relation to the underpayment amount owing to them (**Mechanism**). The Mechanism is to be maintained for the Duration of the Undertaking.

60. For the avoidance of doubt, the Mechanism should as far as practicable be consistent with the CDU Complaints and Review Mechanism and the process for the resolution of disputes established under Dispute Resolution clause 63 of the CDU EU 2025 (and in accordance with the relevant clause under any predecessor instruments).
61. CDU will issue written guidance to all decision makers under the terms of the Mechanism (CDU's Senior Executive Team, comprising its Vice-Chancellor, Provost, Vice-Presidents and Pro Vice-Chancellors, and any future additional or replacement personnel) detailing CDU's approach to assumptions and expectations when resolving complaints or disputes. Where there is a lack of records to determine an employee's entitlements, or an ambiguity as to the interpretation of the CDU Enterprise Agreements or the Industrial Instruments, and a lack of clear policy as to the interpretation to be applied, the Mechanism will be applied in a way that is favourable to employees.
62. CDU will report to the FWO all instances of complaints or disputes arising from the Mechanism on a quarterly basis, including the outcomes of these complaints or disputes.
63. CDU will establish and maintain centralised oversight of any complaint arising from the Mechanism via its People and Culture Team to ensure consistent management and outcomes.
64. Where the FWO considers it appropriate, the FWO will refer to CDU within 21 days any request for assistance from employees being received by the FWO where the FWO identifies that the Mechanism has not first been applied.
65. Within 60 days of receipt of a referral in accordance with clause 64, CDU will apply the Mechanism and report the outcome of the complaint or dispute to the FWO in writing. CDU will also provide, within a reasonable period specified by the FWO, Reasonable Evidence relied upon to satisfy itself that CDU met its obligations with respect to employees.
66. CDU undertakes to cooperate fully in relation to any request for assistance received by the FWO in relation to an employee where the employee does not consider the complaint has been suitably addressed through the application of the Mechanism.

Statutory Governance Obligations and Worker Voice

67. As part of CDU's Statutory Governance Obligations, the Council of the University (as set out in Part 3 of the *Charles Darwin University Act 2003 (NT)*) (**Council**) will prioritise and embed the monitoring of CDU's compliance with the FW Act, the FW Regulations, and the Industrial Instruments for the Duration of the Undertaking by:

- a. ensuring that the Council and Audit, Risk and Compliance Committee are notified of this Undertaking as soon as practicable and no later than 30 days after the Commencement Date;
- b. ensuring that the Council and Audit, Risk and Compliance Committee are notified as soon as practicable of any other contraventions, or potential contraventions, of the Industrial Instruments identified by the Audits;
- c. including workplace relations compliance objectives in the performance metrics of any senior staff position elected or appointed by the Council;
- d. within 3 months of the Commencement Date, creating a standing agenda item for the Council and the Audit, Risk and Compliance Committee to receive reports on compliance with the FW Act;
- e. within 3 months of the Commencement Date, creating a standing agenda item for Council and the Audit, Risk and Compliance Committee to discuss and address (where identified) compliance with CDU's obligations pursuant to this Undertaking for the Duration of the Undertaking; and
- f. within 3 months of the Commencement Date, creating a standing agenda item for the Joint Consultative Committee (as set out in clause 62 of the CDU EU 2025) (**JCC**) to discuss compliance with CDU's obligations pursuant to this Undertaking for the Duration of the Undertaking.

68. CDU will commit to promoting workplace relations compliance through ongoing consultation and communication with employees including through the JCC.

69. If requested by the FWO, CDU will provide the FWO with any documents held by the Council, the Audit, Risk and Compliance Committee or the JCC relating to the monitoring of CDU's

compliance with the FW Act and the Undertaking, including but not limited to reports or other materials prepared for or copies of minutes of the Council, the Audit, Risk and Compliance Committee or the JCC.

Contribution Payment

70. Within 7 days of the Commencement Date, CDU will make a contribution payment of \$200,000.
71. CDU will provide evidence to the FWO of the contribution payment being made within 14 days of making payment to the Cleaning Accountability Framework (CAF) in accordance with the FWO's strategic collaboration with the CAF.

Extensions on time for completion

72. CDU may request an extension of a time specified for completion of an obligation under this Undertaking. The FWO will not unreasonably deny a request for an extension of time.
73. Where a time specified for undertaking an obligation 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

74. CDU 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.

No limitation on use of information

75. CDU will not assert, or seek to assert, any limitation on how the FWO may use or rely on the information provided pursuant to the Undertaking in the lawful performance of its statutory functions and powers.

ACKNOWLEDGEMENTS

76. CDU acknowledges that:

- a. the FWO may:
 - i. make this Undertaking available on the FWO internet site at 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 CDU set out in clause 16 above in respect of decisions taken regarding enforcement action in the event that CDU is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by CDU to comply with its obligations under this Undertaking;
- b. consistent with the legislative 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 subsection 715(3) of the FW Act, CDU may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d. if CDU contravenes any of the terms of this Undertaking:
 - i. the FWO may apply to any of the Courts set out in subsection 715(6) of the FW Act, for orders under subsection 715(7) of the FW Act; and
 - ii. this Undertaking may be provided to the Court as evidence of the admissions made by CDU in clause 16 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.

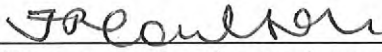
The following defined terms are adopted in this Undertaking:

- **Duration of the Undertaking** means from the date of Commencement until CDU completes the final obligation set out in this EU to discharge the Undertaking.
- **Interest** in relation to the Total Underpayment, Unpaid Underpayment Amount and Uncalculated Underpayment Amount is, accrued and calculated at 5% using the simple method.
- **Reasonable Evidence** means such evidence as the FWO may reasonably require and which could reasonably be expected to satisfy a court of:
 - the truth of any fact asserted by CDU or by any of its servants or agents; and/or
 - the accuracy and correctness of any information provided by CDU, or by any of its servants or agents; and/or
 - compliance by CDU with any term of this Undertaking.

Executed as an undertaking

EXECUTED by an authorised person of Charles Darwin University (ABN 54 093 513 649):

Professor Fiona Coulson
Interim Vice-Chancellor and President




(Signature of authorised signatory)

in the presence of:

Peta Pree

(Name of witness)



(Signature of witness)

9/6/26

(Date)

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

Brodie Smith
Executive Director - Enforcement
Delegate for the FAIR WORK OMBUDSMAN

19 June 2026

(Date)

in the presence of:

(Signature of witness)

Crishna Budd

(Name of Witness)

ATTACHMENT A

Dear Colleagues

I write to advise you of our ongoing work to ensure we have identified and corrected any errors or processes that have led to any underpayment of current and former CDU staff.

Commencing in March 2022, CDU voluntarily disclosed contraventions of the *Charles Darwin University and Union Enterprise Agreement 2022*, *Charles Darwin University and Union Enterprise Agreement 2018* and *Charles Darwin University and Union Enterprise Agreement 2013* to the Fair Work Ombudsman (FWO).

The contraventions related to failing to correctly pay casual hourly rates of pay, penalty rates, minimum engagement period, time-off-in-lieu of overtime, overtime and overtime related entitlements to casual staff.

We have been working to ensure that all impacted staff have been paid and have committed to completing any outstanding remediation payments by no later than 31 August 2026.

We sincerely and unreservedly apologise. We are committed to resolving any issues that occurred and taking action so that staff are paid appropriately and receive their full entitlements.

Since 2022, we have been working with the FWO to rectify these issues and on <insert day/date> entered into an Enforceable Undertaking. An Enforceable Undertaking is a formal, legally binding agreement with the FWO that sets out how we will identify and rectify any underpayments, strengthen our systems, and ensure compliance with Commonwealth workplace laws.

This has been a highly complex and comprehensive process. The finalisation and release of the Enforceable Undertaking by FWO means we can now communicate directly with current and former employees about this undertaking.

As outlined in the Enforceable Undertaking, we will shortly engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist to commence a comprehensive audit of our compliance with the *Charles Darwin University and Union Enterprise Agreement 2025* and rectify any further underpayments identified by the review.

We understand that this correspondence may raise questions and concerns. To address these, a dedicated complaints and review mechanism has been established to assist with enquiries. This mechanism can be accessed by contacting 08 8946 7548 or Casualsalaryreview@cdu.edu.au.

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

We recognise you may be disappointed and again apologise unreservedly to any staff who have been affected. You have our commitment that we are taking action to make this right. Getting

this correct isn't just about compliance – it's about honouring the trust you place in us and the valuable work you do every day.

Thank you for your continued contributions to our university community.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'F Coulson', written in a cursive style.

Professor Fiona Coulson
Interim Vice-Chancellor and President

ATTACHMENT B

Dear Colleagues,

As you may be aware, the Interim Vice-Chancellor, Professor Fiona Coulson has written to current and former employees advising that CDU has entered into an Enforceable Undertaking with the Fair Work Ombudsman (FWO).

An Enforceable Undertaking is a formal, legally binding agreement with the FWO that sets out how we will identify and rectify any underpayments, strengthen our systems, and ensure compliance with Commonwealth workplace laws.

This followed CDU voluntarily disclosing contraventions of the *Charles Darwin University and Union Enterprise Agreement 2022*, *Charles Darwin University and Union Enterprise Agreement 2018* and *Charles Darwin University and Union Enterprise Agreement 2013* to the FWO. The contraventions related to failing to correctly pay casual hourly rates of pay, penalty rates, minimum engagement period, time-off-in-lieu of overtime, overtime and overtime related entitlements to casual staff.

As outlined in the Enforceable Undertaking, we will shortly engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist to commence a comprehensive audit of our compliance with the *Charles Darwin University and Union Enterprise Agreement 2025* and rectify any further underpayments identified by the review.

You are receiving this correspondence as you have been identified as a current or former employee covered by the *Charles Darwin University and Union Enterprise Agreement 2025* and will have your records reviewed as part of the Undertaking.

CDU is committed to providing payments to any affected employees in the event that an underpayment is identified. This payment will include interest on any payment owed to you.

We understand that this correspondence may raise questions and concerns. To address these, a dedicated complaints and review mechanism has been established to assist with enquiries. This mechanism can be accessed by contacting 08 8946 7548 or Casualsalaryreview@cdu.edu.au.

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

We recognise you may be disappointed and again apologise unreservedly to any staff who have been affected. You have our commitment that we are taking action to make this right. Getting this correct isn't just about compliance – it's about honouring the trust you place in us and the valuable work you do every day.

You have our commitment that we are taking action to make this right and we appreciate your patience as we work through this process.

Yours sincerely
Chief People Officer

ATTACHMENT C – ADDENDA FOR ADDITIONAL CONTRAVENTIONS

This Attachment C is intended to set out an agreed process by which the FWO and CDU may enter into an Addendum to this Undertaking, as set out in clause 18 above.

Addendum Requests by CDU

C.1 At any time during the Duration of the Undertaking, CDU may make a request in writing to the FWO under clause C.2 to discuss making an Addendum (**Addendum Request**), if:

- (a) CDU has identified an additional contravention of section 50 of the FW Act (**Proposed Additional Contravention**);
- (b) the Proposed Additional Contravention arose from CDU failing to pay an amount or amounts to which an employee was entitled under an enterprise agreement, and is not already covered in clause 16 above; and
- (c) CDU wishes for the Proposed Additional Contravention to be added to the contraventions the subject of this Undertaking, as listed in clause 16 above.

C.2 An Addendum Request:

- (a) is to be made by or on behalf of CDU to an officer of the FWO nominated at the time of commencement of this Undertaking (or varied by the FWO in writing at any time);
- (b) must include the following information, to ensure that the FWO is able to form a reasonable belief as to whether a contravention has occurred, within the meaning of section 715(1) of the FW Act:
 - (i) details of the Proposed Additional Contravention, including the relevant section(s), regulation(s) and clause(s) of the FW Act, FW Regulations, the CDU Enterprise Agreements and/or the Industrial Instruments;
 - (ii) all assumptions, methodology or interpretations adopted by CDU in determining that there has been a Proposed Additional Contravention;
 - (iii) the number of employees affected by the Proposed Additional Contravention;
 - (iv) the quantum of underpayment (if any) resulting from the Proposed Additional Contravention;
- (c) must be accompanied by documentary evidence to support the matters set out in clause C.2, including:

- (i) any calculations performed by CDU in relation to the Proposed Additional Contravention;
- (ii) any communications with affected employees (whether individually or in a group) about the Proposed Additional Contravention, including in relation to the assumptions, methodology or interpretations used in determining that the Proposed Additional Contravention has occurred; and
- (iii) employee records for:
 - (1) a sample of 5% of employees affected by the Proposed Additional Contravention, with a minimum sample size of 5 employees; or
 - (2) all affected employees if the Proposed Additional Contravention affects fewer than 5 employees;
- (d) must include a statement that CDU admits the Proposed Additional Contravention.

FWO response to an Addendum Request and further actions by CDU

C.3 Within 60 days of receiving an Addendum Request, the FWO will provide a response to CDU in writing, which will take the form of one of the four responses set out in column 2 of the table below and, where applicable, will require a response by CDU set out in column 3 of the table below:

Response Name	FWO conclusion based on the information provided to the FWO in accordance with clause C.2	Action required by CDU
Acceptance	<ul style="list-style-type: none"> • The FWO has sufficient information to form a reasonable belief that the Proposed Additional Contravention has occurred, is satisfied with the assumptions, methodology and interpretations adopted by CDU in relation to the Proposed Additional Contravention, and is willing to enter into discussions to make an Addendum for the purpose of clause 18 above. 	<i>None – the FWO will take the step set out in clause C.7</i>
Methodology Concern	<ul style="list-style-type: none"> • The FWO considers that the assumptions, methodology or interpretations adopted by CDU in relation to the Proposed Additional 	CDU is to inform the FWO in writing within a further 28 days whether or not it will agree to adopt the FWO’s

	<p>Contravention are not compliant with the FW Act, FW Regulations or the relevant enterprise agreement.</p> <ul style="list-style-type: none"> • The response will set out the reasons for the FWO’s views. • However, if CDU agrees to amend its assumptions, methodology or interpretations in a way that will be set out in the response (and, if applicable, conduct any further remediation of underpayments in accordance with those views), the FWO would be willing to enter into discussions to make an Addendum for the purpose of clause 18 above. 	<p>views on assumptions, methodology or interpretation and, if applicable, conduct any further remediation of underpayments in accordance with those views.</p>
Information Request	<ul style="list-style-type: none"> • The FWO does not have sufficient information to properly respond to the Addendum Request. • The response will set out any further information or documents the FWO may reasonably require. 	<p>CDU is to provide to the FWO, within a further 28 days any information or documents requested.</p>
Other refusal	<ul style="list-style-type: none"> • The FWO cannot agree to the Addendum Request for a reason other than a Methodology Concern or Information Request (for example, because it does not fall within the scope of clause C.1 or satisfy the requirements in clause C.2). • The response will set out the reasons for the FWO’s views. 	<p><i>None – the Addendum Request will lapse</i></p>

C.4 If CDU provides the requested information or documents to the FWO in response to an Information Request response, the FWO agrees to reconsider the material as if it were a fresh Addendum Request and provide another response as set out in clause C.3.

C.5 Where the FWO provides a Methodology Concern response to CDU, but CDU does not wish to adopt the FWO’s views on the assumptions, methodology or interpretations of the Proposed Additional Contravention:

(a) CDU may, as part of providing the response set out in column 3 of the table in clause C.3, provide the FWO with further material to explain its position. The FWO agrees to reasonably consider that material, but is not obliged to amend its position;

- (b) the FWO and CDU may agree to (but are not obliged to) hold discussions or exchange correspondence at any time about the assumptions, methodology or interpretations of the Proposed Additional Contravention;
- (c) if, following any further consideration, discussions or correspondence set out in clauses C.5(a) and C.5(b), the FWO and CDU jointly agree to adopt a position that is different from the Methodology Concern, the FWO will send CDU an Acceptance in writing that reflects the agreement reached;
- (d) at any time after CDU provides the response set out in column 3 of the table in clause C.3, either the FWO or CDU may inform the other party in writing that they no longer wish to pursue an Addendum Request in response to that Proposed Additional Contravention.

C.6 For the avoidance of doubt, the extension of time procedure in clauses 72 and 73 of this Undertaking applies to the procedure set out in this Attachment C.

Provision and content of an Addendum

- C.7 Within 28 days of the FWO providing CDU with an Acceptance or receiving an agreement by CDU to adopt the FWO's views and (if applicable) conduct further remediation in response to a Methodology Concern, the FWO will provide CDU with a draft Addendum concerning the Proposed Additional Contravention. The FWO and CDU agree to hold discussions to finalise the Addendum as soon as possible.
- C.8 An Addendum may include the following material:
- (a) recitals relating to the Proposed Additional Contravention, including reference to (but not copies of) any exchange of correspondence between CDU and the FWO about the assumptions, methodology or interpretations;
 - (b) the FWO's reasonable belief, and CDU's admission, of the Proposed Additional Contravention; and
 - (c) if the Addendum is to be entered into following a Methodology Concern, any mechanism for further remediation of the Proposed Additional Contravention to affected employees.

No Addendum except as agreed in writing

C.9 The parties agree that no Addendum is entered into unless a document is executed by both parties following the procedure set out in this Attachment C.