**ENFORCEABLE UNDERTAKING**

This undertaking is **given** by the Australian Broadcasting Corporation 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 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 the Australian Broadcasting Corporation (ABN: 52 429 278 345) (**ABC**).

# TERM

1. This Undertaking comes into effect when:
   1. the Undertaking is executed by the ABC; and
   2. the FWO accepts the Undertaking so executed (**Commencement Date**).
2. This Undertaking ceases to have effect:
   1. three years from the Commencement Date; or
   2. if withdrawn by the ABC pursuant to section 715(3) of the FW Act.

# BACKGROUND

1. The ABC is a government funded broadcaster of Australian and overseas created content. For the pay period ending 29 March 2020, the ABC had a workforce of approximately 5,170 employees, of which approximately 1,020 employees are engaged on a casual basis.
2. In December 2018, the ABC notified the FWO that, following a complaint from an individual employee in November 2018, it identified that it had underpaid a then undetermined number of employees as a result of its practice of paying a portion of its casual workforce flat hourly rates of pay.
3. The ABC admitted that it had identified instances where it had not paid amounts sufficient to compensate employees for the penalty rates and overtime they were entitled to under the *ABC Enterprise Agreement 2010* (**2010 EA**)*, ABC Enterprise Agreement 2013-2016* (**2013 EA**) and the *ABC Enterprise Agreement 2016-2019* (**2016 EA**) (collectively, **ABC EAs**).
4. The FWO commenced an investigation into this issue on 20 December 2018 (**FWO Investigation**). Through the FWO Investigation, the FWO identified instances where the ABC had also failed to pay casual employees the applicable minimum hourly rates of pay under the ABC EAs.
5. Prior to the execution of this Undertaking, the ABC had:
   1. on 20 December 2018, notified ABC employees in its News Division and the FWO of the issue, and the potential for underpayments to have occurred;
   2. on 10 January 2019, released a statement and subsequently notified all current ABC employees at that date that an underpayment may have occurred for approximately 2,500 casual employees engaged on a flat rate, that the FWO had been notified, and that a review had commenced;
   3. on 11 February 2019, notified all affected ABC employees and the FWO that as of the pay period commencing 18 February 2019:
      1. all casual employees would be paid according to schedule, band and pay point in the 2016 EA (and subsequently under the *ABC Enterprise Agreement 2019-2022* (**2019 EA**):
      2. where this would be less than the flat rate a casual employee was receiving immediately prior to 18 February 2019, the ABC would provide that employee with an additional payment equivalent to the difference between what they would have been paid on their flat rate and what they would now be paid according to their schedule, band and pay point under the EA, for the duration of their current casual contract; and
      3. a detailed internal review into potential underpayments had commenced (**Casual Employee Notification**); and
   4. in April 2019, engaged PricewaterhouseCoopers (**PwC**) as an external expert to perform a compliance review of all casual employees paid at a flat rate, with the review including 2,575 former and current casual employees of the ABC since 2012 (**Compliance Review**).
6. Each of the casual employees identified during the Compliance Review as being underpaid within the period of 22 October 2012 to 17 February 2019 (**Relevant Period**) are listed in Schedule 1 to this Undertaking (**Schedule 1 Employees** or **Affected Employees**)**.**
7. The FWO Investigation also identified that, prior to 18 February 2019, the ABC had not notified a majority of casual employees engaged on flat rates of their classification and band point, as required by clause 18.2.1 of each of the ABC EAs. The ABC subsequently:
   1. conducted a review of all classifications assigned to the 2,575 casual employees who worked hours during the Relevant Period (**ABC Review**);
   2. engaged PwC to conduct a review of the classification process and assess whether the determinations made by ABC regarding band and classification were reasonable (**Classification Review**).
8. Following the Casual Employee Notification and Compliance Review, the ABC identified that 27 casual employees were entitled to be classified at a higher salary band for some or all of their employment during the Relevant Period. These employees are included in the broader cohort of **Affected Employees**. The additional underpayments resulting from their under-classification by the ABC are incorporated into the amounts recorded against their names in Schedule 1.
9. The FWO Investigation also identified that each of the four employees listed in Schedule 2 to this Undertaking (**Schedule 2 Employees**) continued to be underpaid up to the date listed for that employee in Column A of Schedule 2, due to being under-classified by the ABC. The underpayments for three of these employees occurred as a result of an administrative error. These four employees are also listed in Schedule 1, and are included in the broader cohort of **Affected Employees**.
10. In December 2019, the ABC informed the FWO that:
    1. in November 2019, the ABC had issued notifications to 1,886 Affected Employees of the classification, schedule, band, pay point and underpayments established during the Compliance Review; and
    2. 617 Affected Employees had active payment details in the ABC’s system, and 1,269 were inactive;
    3. on 12 December 2019, 1,438 Affected Employees received back- payments totalling $10,316,362.12, plus 5.25% interest and superannuation; and
    4. it had identified that underpayments arising from its failure to pay the transitional meal allowance compensation provided in Schedule D of the 2016 EA and the 2013 EA had not been included in its Compliance Review.
11. In May 2020, the ABC informed the FWO that:
    1. of the 2,575 casual employees included in the Compliance Review, 1,907 casual employees in total were identified as being underpaid within the Relevant Period (and so are listed in Schedule 1 as the **Affected Employees**).
    2. it had calculated the transitional meal allowance compensation owing to the Affected Employees and any applicable superannuation and interest owing on those amounts;
    3. as of May 2020, the amended total underpayment for the Affected Employees was $12,029,038 (excluding 5.25% interest and superannuation contributions).
    4. as of May 2020, 1,828 Affected Employees are either still employed by the ABC (with current contact and bank details), or have made contact with the ABC in response to the November 2019 correspondence referred to at clause 13(a) above, or subsequent notifications sent in April 2020 to an additional 21 Affected Employees.
12. As at 27 May 2020, the ABC had paid 1828 of the Affected Employees a total of $11,983,950.33, excluding interest, superannuation and interest on superannuation.
13. The ABC has informed the FWO it is committed to attempting all reasonable avenues to obtain responses and payment details from the remaining Affected Employees who have not yet made contact since notifications were sent in November 2019 or April 2020, respectively.
14. In April and May 2020, the ABC notified the FWO of three additional issues:
    1. the ABC had identified an underpayment of superannuation in respect of 89 of the Affected Employees. The ABC informed the FWO that:
       1. in January 2020, the ABC identified that the higher total annual remuneration being received by some casual employees, once the correct pay rate was applied, had resulted in a higher nominal annual salary for the purposes of calculating superannuation contributions under the *Superannuation (PSSAP) Trust Deed* (Cth);
       2. this had resulted in an underpayment of superannuation by the ABC to 89 Affected Employees; and
       3. the ABC intended to rectify this issue by making all required additional superannuation contributions by 30 April 2020, including the payment of 5.25% interest on all such underpayments of superannuation.

(**Superannuation Underpayment**)

* 1. The ABC had identified a further underpayment arising from the under-classification of the 6 employees engaged as technologists listed in Schedule 3 to this Undertaking. The ABC informed the FWO that:
     1. in November 2019, the Community and Public Sector Union raised an issue with the ABC relating to the underpayment of wages to a single employee who was being paid as a Band 1 level technologist;
     2. in around February 2020, the ABC formed the view that the ABC’s Work Level Standards do not permit any technologists to be graded at a Band 1 level, and they must be graded to at least the Band 2 level;
     3. the ABC had considered this issue over the period of November 2019 to February 2020 and by February 2020 had identified 6 employees affected by the issue who had been underpaid;
     4. the ABC had instructed PwC to calculate the underpayments to the 6 employees listed in Schedule 3 and any other technologists engaged at band 1 from 22 October 2012 onwards (collectively, **Underpaid Technologists**), including interest at 5.25% per annum, and intended to make rectification payments based on those calculations.

(**Technologist Underpayments**)

* 1. the ABC had identified a further underpayment issue arising from failing to properly record the shift times of 6 breakfast producers listed in Schedule 4 to this Undertaking whose shifts started at 4.30am (**Underpaid Breakfast Shift Producers**). The ABC informed the FWO that:
     1. it appeared that from about May 2018 the ABC incorrectly copied the shift times of another employee (who commenced work at 5.15am each day) into the payroll system for each of the Underpaid Breakfast Shift Producers, even though each of the Underpaid Breakfast Shift Producers commenced work at 4.30am each morning;
     2. the finish times of the Underpaid Breakfast Shift Producers were incorrectly recorded as being 45 minutes later than their actual finish time;
     3. this meant that from around May 2018 each of the Underpaid Breakfast Shift Producers were not paid applicable penalty rates for the time between 4:30am and 5:15am on each day that they worked;
     4. the ABC would back pay each of the Underpaid Breakfast Shift Producers for this time, and pay interest at 5.25% per annum, by 30 June 2020.

(**Breakfast Shift Producers Underpayments**)

1. Prior to entering into this Undertaking the ABC has:
   1. allocated to each of the Affected Employees classification(s) under the ABC EAs during the Relevant Period (**Classification Rectification**);
   2. calculated the quantum of any underpayments which occurred as a result of contraventions outlined in clauses 19[(a),](#bookmark3) [(c)](#bookmark4) and (d) of this Undertaking, including any superannuation entitlements payable on those amounts, to each of the Affected Employees under the ABC EAs during the Relevant Period (**Flat Rate Underpayments**);
   3. where applicable, made the abovementioned calculations of the Flat Rate Underpayments based on the Affected Employees being allocated to the mid-point pay point for their classification, or, if an Affected Employee held the same role at a higher pay point during the Relevant Period or on 18 February 2019, at the higher pay point; and
   4. partially rectified the Flat Rate Underpayments by making the following payments to the majority of the Affected Employees:
      1. the amount listed in Column B of Schedule 1 to the employee, in respect of the amount of the Flat Rate Underpayment;
      2. the amount listed in Columns C and D of Schedule 1 to the employee’s chosen superannuation fund, in respect of any superannuation payments which may be required by law; and
      3. the amount listed in Column E of Schedule 1 to the employee, in respect of interest on the amount referred to in (i) above, calculated using an interest rate of 5.25%.

# ADMISSIONS

1. The FWO has a reasonable belief, and the ABC admits, that the ABC contravened:
   1. section 50 of the FW Act during the Relevant Period by failing to pay the Schedule 1 Employees the amount or amounts to which that employee was entitled under the ABC EAs under the provisions listed below:
      1. 2010 EA:
2. clause 14.6.3 (casual loading);
3. clause 17.3.1 (minimum rates of pay);
4. clause 25.3 (general overtime entitlements);
5. clause 26.4 (schedule A (non-rostered) employees public holiday penalties);
6. clause 26.5 (schedule A (non-rostered) employees overtime rates);
7. clause 27.7 (schedule A (rostered) employees special rates);
8. clause 27.8 (schedule A (rostered) employees shift penalties);
9. clause 27.9 (schedule A (rostered) employees overtime rates);
10. clause 28.7 (schedule B (rostered) employees shift penalties);
11. clause 28.8 (schedule B (rostered) employees special rates);
12. clause 28.9 (schedule B (rostered) employees overtime rates);
13. clause 29 (meal allowance);
14. clause 34.1 (district allowance);
    * 1. 2013 EA:
15. clause 14.6.3 (casual loading);
16. clause 17.3.1 (minimum rates of pay);
17. clause 25.3 (general overtime entitlements);
18. clause 26.4 (schedule A (non-rostered) employees public holiday penalties);
19. clause 26.5 (schedule A (non-rostered) employees overtime rates);
20. clause 27.7 (schedule A (rostered) employees special rates);
21. clause 27.8 (schedule A (rostered) employees shift penalties);
22. clause 27.9 (schedule A (rostered) employees overtime rates);
23. clause 28.7 (schedule B (rostered) employees shift penalties);
24. clause 28.8 (schedule B (rostered) employees special rates);
25. clause 28.9 (schedule B (rostered) employees overtime rates);
26. clause 29 (meal allowance);
27. clause 34.1 (district allowance);
    * 1. 2016 EA:
28. clause 14.6.5 (casual loading);
29. clause 17.3.1 (minimum rates of pay);
30. clause 24.3 (general overtime rates);
31. clause 25.4 (schedule A (non-rostered) employees public holiday penalties);
32. clause 25.5 (schedule A (non-rostered) employees overtime rates);
33. clause 26.8 (schedule A (rostered) employees special rates);
34. clause 26.9 (schedule A (rostered) employees shift penalties);
35. clause 26.10 (schedule A (rostered) employees overtime rates);
36. clause 27.8 (schedule B (rostered) employees shift penalties);
37. clause 27.9 (schedule B (rostered) employees special rates);
38. clause 27.10 (schedule B (rostered) employees overtime rates);
39. clause 28 (meal allowance); and
40. clause 33.1 (district allowance).
    1. section 50 of the FW Act during the Relevant Period by failing to correctly assign a salary band in accordance with the Work Level Standard applying to the relevant classification, as required by clauses 18.1 and 18.2 of each of the ABC EAs, for each of the Schedule 1 Employees;
    2. section 50 of the FW Act between 17 February 2019 and 24 May 2020 by failing to pay the Schedule 2 Employees the amount or amounts to which that employee was entitled under the 2016 EA and 2019 EA.
    3. section 50 of the FW Act during the Relevant Period by failing to pay amounts that employees were entitled to under:

* + 1. schedule D to the 2013 EA (Meal Allowance Transition and Compensation Provisions); and
    2. schedule D to the 2016 EA, (Meal Allowance Transition and Compensation Provisions).
  1. section 50 of the FW Act during the period of 22 October 2012 to 29 January 2020 by:
     1. failing to correctly assign a salary band in accordance with the Work Level Standard applying to the relevant classification, as required by clauses 18.1 and 18.2 of each of the ABC EAs, in relation to each employee listed in Schedule 3;
     2. failing to pay the employees listed in Schedule 3 the amount or amounts to which those employees were entitled under the provisions of the ABC EAs listed at paragraph (a)(i)–(iii), above.
  2. Section 50 of the FW Act by failing to pay amounts the Underpaid Breakfast Shift Producers were entitled to under the 2016 EA under the provisions listed below:
     1. clause 26.8 (schedule A (rostered) employees special rates);
     2. clause 26.9 (schedule A (rostered) employees shift penalties); and
     3. clause 26.10 (schedule A (rostered) employees overtime rates);

1. The contraventions identified in clause 19 of this Undertaking do not include:
   1. any contraventions which relate to or arise as a consequence of the ABC failing to correctly apply the ABC EAs to any employee not listed in Schedules 1 to 4 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 the ABC failing to correctly apply the ABC EAs 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 the ABC (whether or not those contraventions are identified in the Independent Assessment described at clause [5](#bookmark22)0 below or the Independent Audits described at clause 78 below, or are notified to the FWO in accordance with clause [101](#bookmark34) 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 the ABC and the FWO’s acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

# UNDERTAKINGS

1. The ABC will take the actions set out at clauses 22 to 116, below. The FWO acknowledges that the ABC has completed or commenced some of these steps at the Commencement Date, and any steps so completed or commenced by the ABC on or before the Commencement Date can be relied on by the ABC in satisfaction of the obligations set out at clauses 22 to 116, below.

# Contrition Payment

1. Within 60 days of the Commencement Date the ABC will make a contrition payment to the Consolidated Revenue Fund of $600,000.
2. The ABC will provide evidence to the FWO of any contrition payment within 14 days of making payment to the Consolidated Revenue Fund.

# Classification Rectification

1. Within 30 days of the Commencement Date, the ABC will confirm that the Classification Rectification complied with the requirements of clauses 25 to 26 below.
2. If the ABC had previously allocated an Affected Employee to a particular pay point during the Relevant Period, or on 18 February 2019, for having performed the same or equivalent duties, the ABC must not, when it performed the Classification Rectification, have allocated that employee to a lower pay point.
3. Before back-paying an Affected Employee based on a particular band, the ABC must have:
   1. provided the employee with notice of the classification and pay point they had been allocated in performing the Classification Rectification;
   2. provided the employee with information on the Work Level Standards supporting the allocation of this classification; and
   3. provided the employee with information on how to dispute this decision and the reasonable opportunity to do so.
4. If, prior to the Commencement Date, an Affected Employee disputed the classification they had been allocated by the ABC, the ABC must:
   1. if it has not already notified the FWO — immediately notify the FWO in writing of the dispute; and
   2. accept and adopt any reasonable recommendation made by the FWO on the resolution of the dispute.
5. If, within 3 months after the Commencement Date, an Affected Employee disputes the classification they have been allocated by the ABC, the ABC must:
   1. immediately notify the FWO in writing of the dispute; and
   2. accept and adopt any reasonable recommendation made by the FWO on the resolution of the dispute, including the use of dispute resolution processes under the 2019 EA.
6. If:
   1. the ABC identified or identifies that the Classification Rectification did not comply with the requirements of clauses 25 to 26 above, and determined that an Affected Employee should have been assigned to a higher band during the Relevant Period; or
   2. the ABC allocates a higher band to an Affected Employee under clauses 27 and 28;

the ABC will:

* 1. re-calculate the amounts listed in Columns B, C, D and E of Schedule 1 or Schedule 2 for that employee based on that higher band; and
  2. pay those outstanding amounts within 60 days of the Commencement Date.

1. Within 30 days of the Commencement Date, the ABC will ensure that any technologists who remain employed by the ABC have been assigned to a Band 2 (or higher) classification under the 2019 EA.

# Rectification of the Flat Rate Underpayments

1. By 9 July 2020, the ABC will pay each of the Affected Employees to whom the Flat Rate Underpayments relate:
   1. any outstanding Flat Rate Underpayment amount(s) owed to them;
   2. any outstanding superannuation payments relating to the Flat Rate Underpayments which may be required by law, by making payment to their chosen superannuation fund; and
   3. any outstanding interest on the total Flat Rate Underpayment, calculated using an interest rate of 5.25%.
2. By 16 July 2020, the ABC will provide the FWO evidence of all payments made to current and former employees to rectify the Flat Rate Underpayments.

**Rectification of Underpayments to Schedule 2 Employees**

1. By 9 July 2020, the ABC will calculate and pay to each of the Schedule 2 Employees:
   1. any outstanding amount(s) owed to them as a result of under-classifying them up to the dates listed in Schedule 2;
   2. any outstanding superannuation payments which may be required by law, by making payment to their chosen superannuation fund; and
   3. any outstanding interest on the underpayments as a result of the under-classification, calculated using an interest rate of 5.25%.
2. By 16 July 2020, the ABC will provide the FWO evidence of all payments made to the Schedule 2 Employees.

# Pay-Point Adjustment, Re-calculation and Rectification

1. If an Affected Employee had either:
   1. been engaged by the ABC in the same role at a higher pay-point than the mid-point during the Relevant Period; or
   2. been assigned to a higher pay point than the mid-point on 18 February 2019
2. The ABC will, by 9 July 2020:
   1. re-calculate the amounts listed in Columns B, C, D and E of Schedule 1 or Schedule 2 for that employee based on that higher pay-point; and
   2. pay those outstanding amounts:
      1. in relation to the re-calculated underpayment and re-calculated interest — to the employee
      2. in relation to the re-calculated superannuation — to the employee’s chosen superannuation fund.

**(Pay-point Adjustment Payments)**

# Rectification of the Superannuation underpayments

1. By 9 July 2020, the ABC will:
   1. ensure that it has correctly determined the superannuation contributions required by law in respect of the underpayment made to each of the Affected Employees and, for those employees who are members of a defined benefit fund, has advised the fund of the correct productivity contributions;
   2. rectify any underpayment of superannuation contributions to the Affected Employees by making the required payment to the relevant Affected Employees’ nominated superannuation fund; and
   3. for any payment required under (b), above, make an additional payment to the relevant Affected Employees’ nominated superannuation fund (excepting Affected Employees who are members of a defined benefit fund) in respect of interest, calculated at 5.25% per annum.
2. By 16 July 2020, the ABC will provide to the FWO:
   1. confirmation that it has made the checks and calculations required by clause 37(a); and
   2. evidence of any payments required under clauses 37(b) and 37(c).

# Rectification of the Technologist Underpayments

1. By 24 July 2020, the ABC will calculate:
   1. the amount owing to any Underpaid Technologist;
   2. any superannuation payments relating to the above underpayments which may be required by law; and
   3. interest on the amount of the above underpayments, calculated using an interest rate of 5.25%.
2. By 31 July 2020 the ABC will make payments to any technologist any outstanding amounts as calculated under clause 39.
3. By 7 August 2020, the ABC will provide the FWO evidence of:
   1. the outcome of the calculations under clause 39, consisting of the names of the underpaid technologists and the amounts calculated under clauses 39(a), (b) and (c) for each employee;
   2. all payments made to current and former employees to rectify the technologist underpayments.

**Rectification of the Breakfast Shift Producers Underpayments**

1. By 24 July 2020 the ABC will calculate:
   1. the amount owing to each Underpaid Breakfast Shift Producer arising from the ABC’s failure to incorrectly record their shift start times;
   2. any superannuation payments relating to the above underpayments which may be required by law; and
   3. interest on the amount of the above underpayments, calculated using an interest rate of 5.25%.
2. By 31 July 2020 the ABC will make payments to each Underpaid Breakfast Shift Producer of any outstanding amounts as calculated under clause 42.
3. By 7 August 2020 the ABC will provide the FWO evidence of:
   1. the outcome of the calculations under clause 42, consisting of the names of the Underpaid Breakfast Shift Producers and the amounts calculated under clauses 42(a), (b) and (c) for each employee;
   2. all payments made to current and former employees to rectify the Breakfast Shift Producer Underpayments.

# Employees who the ABC Cannot Locate

1. If, by 28 days after the ABC was required to make a payment to a former employee under:
   1. clause 31 (in relation to the Flat Rate Underpayments); or
   2. clause 33 (in relation to the Schedule 2 Employees); or
   3. clause 36 (in relation to the Pay Point Adjustment Payments); or
   4. clause 40 (in relation to the Technologist Underpayments); or
   5. clause 43 (in relation to the Underpaid Breakfast Shift Producer Underpayments); or

the ABC cannot locate the employee to whom the payments are owed, the ABC will:

* 1. report to the FWO the names and last known contact details of the employees, and steps it has taken to locate the employee; and
  2. pay the underpayment owing to the employee to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. The ABC will complete the required documents supplied by the FWO for this purpose.

1. In the event that the FWO is able to locate and contact any former ABC employee to whom an underpayment referred to in clause 45 is owed, the FWO will (in addition to its obligations under s 559 of the FW Act) notify the ABC in writing of the name and contact details of the former employee.
2. Within 21 days of receiving any such notice, the ABC will:
   1. pay the former employee interest on the amount already paid by the ABC 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 of 5.25% (calculated on a simple interest basis); and
   2. pay to the former employee’s nominated superannuation fund an additional payment calculated to be the value of the superannuation payment which would have been required by law, had the ABC paid to the employee, as ordinary salary, the amount it paid to the Commonwealth.

# Financial Advice

1. For any employee referred to in this Undertaking who has been underpaid $15,000 or more, the ABC will:
   1. reimburse the employee of an amount of up to $500 (inclusive of GST) for accessing independent financial advice if:
      1. advice is provided by a registered financial advisor within 12 months of receiving payment; and
      2. the Affected Employee provides reasonable evidence of the costs of the advice; and
   2. take reasonable steps to notify those employees of their entitlement to reimbursement.
2. On the first and second anniversary of the Commencement Date, the ABC will provide the FWO with a written report on the number of employees who have been reimbursed after receiving financial advice in accordance with clause 48.

# Independent Assessment

1. Within 60 days of the Commencement Date, the ABC must propose to the FWO an appropriately qualified, experienced, external and independent expert being either an:
   1. accounting professional (Certified Practising Accountant, Chartered Accountant);
   2. auditor (Registered Company Auditor within an Authorised Audit Company); or
   3. lawyer (admitted, practising lawyer and employment law specialist).

The FWO may in its sole discretion approve the ABC’s proposed independent expert or otherwise require the ABC to propose other independent experts until the FWO has approved in writing an independent expert. The ABC must not engage the independent expert prior to the FWO approving the independent expert in writing. The independent expert approved by the FWO in accordance with this clause is referred to in this Undertaking as the **Independent Expert**.

1. Within 14 days of the FWO having approved the Independent Expert under clause 50, the ABC must, at its cost, engage the Independent Expert to conduct an independent assessment (**Independent Assessment**) which:
   1. assesses the methodology and outcomes of:
      1. the Compliance Review described at clause 8(d) above;
      2. the Classification Review described at clause 10(b) above;
      3. the calculation of the Flat Rate Underpayments described at clause (18)(b), taking into account the ABC’s undertakings at clauses 25 and 26;
      4. the calculation of the Pay-point Adjustment Payments under clause (36)(a);
      5. the determination of the required superannuation contributions, under clause 37;
      6. the calculation of the Technologist Underpayments under clause 39; and
      7. the calculation of the Underpaid Breakfast Shift Producer Underpayments under clause 42; and
   2. confirms whether the ABC has now paid each of the Affected Employees, Underpaid Technologists and Underpaid Breakfast Shift Producers any amounts payable to them under clauses 31, 33, 36, 37, 40 and 43.
2. The ABC must ensure that the Independent Expert provides a report (**Expert Report**) of its Independent Assessment, to and for the benefit of the FWO, setting out its findings and recommendations, and the facts and circumstances supporting its findings by no later than six months after the FWO has approved in writing the Independent Expert. The ABC must ensure the Independent Expert does not provide the Expert Report, or a copy of the same, to the ABC without the FWO’s approval.
3. The ABC must ensure that the Expert Report contains the following declarations from the Independent Expert:
   1. the Independent Expert has no actual, potential or perceived conflict of interest in providing the Expert Report on the ABC to the FWO;
   2. notwithstanding that the Independent Expert is retained by the ABC, the Independent Expert undertakes that it has acted independently, impartially, objectively and without influence from the ABC in preparing the Expert Report;
   3. the Expert Report is provided in accordance with applicable professional standards (which will be listed in the Expert Report); and
   4. the Expert Report is provided to the FWO for its benefit and the FWO can rely on the Expert Report.
4. The FWO will provide a copy of the Expert Report to the ABC within 14 days of receiving the Expert Report.
5. If the Independent Assessment identifies that any Affected Employees or Underpaid Technologists or Underpaid Breakfast Shift Producers are owed amounts additional to those calculated and paid by the ABC, the ABC will pay those additional amounts to the current and former employees, including interest on the additional amounts calculated using an interest rate of 5.25%, and any superannuation payments relating to the additional amounts which may be required by law, and provide evidence of such payment to the FWO, within 60 days of the FWO providing the Expert Report to the ABC.
6. If any of the Affected Employees or Underpaid Technologists or Underpaid Breakfast Shift Producers identified in the Expert Report as being owed amounts additional to the underpayments calculated by the ABC cannot be located and paid within 60 days of the FWO providing the Expert Report to the ABC, the ABC will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. The ABC will complete the required documents supplied by the FWO for this purpose.
7. If the Independent Assessment identifies that any Affected Employees have been incorrectly classified:
   1. the ABC will notify the relevant employees of the assessment, and provide the employees with an opportunity to comment on the assessment;
   2. the ABC will notify the Independent Expert of:
      1. any comments by the employees;
      2. whether the views of the Independent Expert are likely to affect 5 or more employees in the same or similar role; and
      3. any comments from the ABC;
   3. following review of any further information from the employee or the ABC, the Independent Expert remains of the view that an employee was incorrectly classified, the Independent Expert may recommend either that:
      1. the ABC notify the employee of their corrected classification and make any required payments in accordance with clauses 55 or 56 above; or
      2. the ABC and relevant employees resolve the matter in accordance with dispute resolution procedures under the 2019 EA or any other workplace instruments applying to the ABC and its employees.
8. The FWO acknowledges that the ABC does not contravene this Undertaking in the event that the Independent Expert makes a finding in relation to coverage, classification and/or additional amounts to be rectified under the ABC EAs that is contrary to any determinations previously made by the ABC, provided the ABC pays any additional amounts owing to current and former employees in accordance with clauses 55 above no later than 60 days after receiving the Expert Report, or to the Commonwealth of Australia in accordance with clause 56 above. For the avoidance of doubt, the ABC acknowledges that this Undertaking does not relate to any contraventions that may be identified by the Independent Expert which are not identified in clause 19 and Schedules 1 to 4.

No reductions based on Independent Assessment

1. If the Independent Assessment identifies any overpayment of entitlements to the Affected Employees or the Underpaid Technologists or Underpaid Breakfast Shift Producers, the ABC will not seek to recover any amounts already paid.
2. The ABC will not reduce any employees in classification or pay point based on the Independent Assessment.

Implement Recommendations of the Expert Report

1. The ABC is to implement all recommendations of the Expert Report within six months of receipt of the Expert Report, unless otherwise agreed by the FWO.

**Systems and Processes Review**

1. Within 60 days of the Commencement Date, the ABC must propose to the FWO an appropriately qualified, experienced, external and independent expert being either an:
   1. accounting professional (Certified Practising Accountant, Chartered Accountant); or
   2. lawyer (admitted, practising lawyer and employment law specialist).
2. The FWO may in its sole discretion approve the ABC’s proposed external reviewer or otherwise require the ABC to propose other external reviewers until the FWO has approved in writing an external reviewer. The ABC must not engage the external reviewer prior to the FWO approving the external reviewer in writing. The external reviewer approved by the FWO in accordance with this clause is referred to in this Undertaking as the **External Reviewer**.
3. Within 14 days of the FWO approving the External Reviewer under clause 63, the ABC will at its own cost engage the External Reviewer to undertake a review that:
   1. assesses whether the ABC’s payroll and record keeping systems and processes are compliant with the FW Act in respect of employees to whom the 2019 EA (or any future agreement that replaces the 2019 EA) applies, and if not, set out any non-compliance found;
   2. assesses whether the ABC has complied with Schedule D to the 2013 EA, the 2016 EA and the 2019 EA in relation to each employee those instruments apply or applied to;
   3. investigates and identifies the deficiencies in the ABC’s employee relations and payroll processes that led to the contraventions set out in clause 19, above;
   4. makes recommendations to ensure high standards in approaches to employee relations and payroll processes by the ABC; and
   5. assesses whether the creation of a centralised payroll and employee relations team in the ABC would be an appropriate and effective way to prevent future non-compliance and either:
      1. makes recommendations on how such a team should be established and structured; or
      2. makes recommendations of any alternative methods of implementing improvements in the governance of payroll and HR functions which would prevent future non-compliance.
4. The ABC must ensure that the External Reviewer provides a report (**External Review Report**) to and for the benefit of the FWO, setting out its findings and recommendations, and the facts and circumstances supporting its findings by no later than six months after the Commencement Date. The ABC must ensure that the External Reviewer does not provide the External Review Report, or a copy of the same, to the ABC without the FWO’s approval.
5. The ABC must ensure that the External Review Report contains the following declarations:
   1. the External Reviewer has no actual, potential or perceived conflict of interest in providing the Independent Report on the ABC to the FWO;
   2. notwithstanding that the External Reviewer is retained by the ABC, the External Reviewer undertakes that it has acted independently, impartially, objectively and without influence from the ABC in preparing the Independent Report;
   3. the External Review Report is provided in accordance with applicable professional standards (which will be listed in the Independent Report); and
   4. the External Review Report is provided to the FWO for its benefit and the FWO can rely on the Independent Report.
6. The FWO will provide a copy of the External Review Report to the ABC within 14 days of receiving the External Review Report.

Implement Recommendations of the External Review Report

1. The ABC is to implement all reasonable recommendations of the External Review Report within six months of receipt of the External Review Report, unless otherwise agreed by the FWO.

# Improvements to Employee Relations Systems and Compliance

1. The ABC shall take all appropriate and necessary steps to ensure that it is upholding the standard set out in section 33 of the *Australian Broadcasting Corporation Act 1983*, including but not limited to the requirements of clause 68 above, and clauses 70 to 77, below.

# Engagement Letters

1. On and from the Commencement Date, the ABC must ensure that any offer of employment made to a current or prospective employee to whom the 2019 EA (or any replacement instrument) would apply specifies:
   1. the classification, schedule, band and pay point at which the employee will be engaged; and
   2. the hourly rate or annual salary the employee will receive.

# Electronic Record Keeping System

1. The ABC must implement an electronic record keeping system (**System**) within 24 months of the Commencement Date such that:
   1. all casual employees will be notified of their roster through the System;
   2. all casual employees will confirm their actual hours worked in the System;
   3. direct supervisors of casual employees will approve records of actual hours worked in the System; and
   4. the System will provide the records of actual hours worked to the Payroll Services Team, who will process pay based on these records of actual hours worked.
2. Within 30 days of the Commencement Date, the ABC will notify all casual employees who have a current casual contract with the ABC that the ABC is taking steps to implement the System and that employees can contact the Payroll Services Team with any queries in relation to their pay and conditions while the System is being implemented.
3. The ABC will select a vendor to provide the System by 31 August 2020.
4. The ABC will complete systems integration, configuration, and rollout of a pilot of the System by 30 June 2021.
5. Within 14 days of the implementation of the System, the ABC must provide the FWO with confirmation that the System has been established in accordance with clause 71.

# Training

1. The ABC must:
   1. within 90 days of the Commencement Date, ensure that members of the ABC People & Culture team who have responsibility for recruitment, rostering and/or payroll functions and are advising supervisors and managers in relation to those matters; and
   2. within 12 months of the Commencement Date, take all reasonable steps to ensure that employees with responsibility for rostering and hiring functions including relevant supervisors and managers;

undertake workplace training that:

* 1. has been developed with the advice of, and reviewed by, an external employee relations specialist; and
  2. covers the *Fair Work Act 2009* (Cth), the *Fair Work Regulations 2009* (Cth) and any amendments made by the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.

1. Within 14 days of the completion of the training, the ABC must provide to the FWO:
   1. details of the external employee relations specialist, the individuals delivering the training, and content of the training course;
   2. the names and positions of each employee who undertook the training; and
   3. the names and positions of each employee in the positions referenced above who did not complete the training in the required timeframe, the reason this did not occur (for example, long term leave), and a plan for rectifying this, as applicable.

# Independent Audits

1. The ABC must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct three annual audits of the ABC’s compliance with the FW Act and FW Regulations, in relation to the 2019 EA, and any future agreements that replace the 2019 EA (**Audits**).
2. By no later than 1 August 2020, the ABC will notify the FWO of its proposed Independent Auditor. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require the ABC 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 the ABC.
3. The ABC must ensure that each of the Audits conducted by the Independent Auditor include:
   1. an assessment of whether a sample of 4% of all employees covered by the 2019 EA (or replacement instrument) during the relevant audit period (**Sampled Employees**) have been correctly classified by the ABC. The Sampled Employees must:
      1. include a range of classifications and employment types (full-time, part- time and casual employees); and
      2. include employees from a range of business units within the ABC;
   2. an assessment of whether the pay and conditions of the Sampled Employees during the relevant audit period is in compliance with the FW Act and the 2019 EA (or replacement instruments);
   3. direct contact with Sampled Employees by way of telephone discussions to at least five different sites, to ensure accuracy of hours worked;
   4. the production to the FWO of a written report on each of the Audits setting out the Independent Auditor’s findings, and the facts and circumstances surrounding them (**Audit Report**); and
   5. the following declarations from the Independent Auditor:
      1. the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
      2. notwithstanding that the Independent Auditor is retained by the ABC, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from the ABC in preparing the report;
      3. the Audit Report is provided in accordance with applicable professional standards (which will be listed in the report); and
      4. the Audit Report is provided to the FWO for its benefit and the FWO can rely on the report.

The First Audit

1. The ABC must ensure the Independent Auditor commences the first of the Audits by no later than 30 September 2020 (**First Audit**).
2. For the First Audit, the relevant pre-audit period to assess Sampled Employees is 1 June 2019 to 1 June 2020.
3. The relevant audit period for the First Audit must be at least two full pay periods commencing within the period 1 June 2020 to 30 June 2020.
4. By 1 September 2020, the ABC will provide for the FWO’s approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
5. The ABC will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 13 November 2020, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. The ABC will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to the ABC without the FWO’s approval. The FWO will provide the ABC with the draft written report of the First Audit within 14 days of receiving it.
6. The ABC 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. The ABC will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to the ABC without the FWO’s approval. The FWO will provide the ABC with the First Audit Report within 14 days of receiving it.

The Second Audit

1. The ABC must ensure the Independent Auditor commences the second of the Audits by no later than 30 September 2021 (**Second Audit**).
2. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 1 June 2020 to 1 June 2021.
3. The relevant audit period for the Second Audit must be at least two full pay periods commencing within the period 1 July 2021 to 31 July 2021.
4. By 1 September 2021, the ABC will provide for the FWO’s approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
5. The ABC will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 12 November 2021, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. The ABC will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to the ABC without the FWO’s approval. The FWO will provide the ABC with the draft written report of the Second Audit within 14 days of receiving it.
6. The ABC 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. The ABC will ensure the Independent Auditor does not provide the written report, or a copy of the same, to the ABC without the FWO’s approval. The FWO will provide the ABC with the Second Audit Report within 14 days of receiving it.

The Third Audit

1. Subject to clause 99, below, the ABC must ensure the Independent Auditor commences the third of the Audits by no later than 30 September 2022 (**Third Audit**).
2. For the Third Audit, the relevant pre-audit period to assess Sampled Employees is 1 June 2021 to 1 June 2022.
3. The relevant audit period for the Third Audit must be at least two full pay periods commencing within 1 August to 31 August 2022.
4. By 1 September 2022, the ABC will provide for the FWO’s approval, details of the methodology to be used by the Independent Auditor to conduct the Third Audit.
5. The ABC will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Third Audit directly to the FWO by 11 November 2022, setting out the draft Third Audit findings, and the facts and circumstances supporting the Third Audit findings. The ABC will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to the ABC without the FWO’s approval. The FWO will provide the ABC with the draft written report of the Third Audit within 14 days of receiving it.
6. The ABC will use its best endeavours to ensure the Independent Auditor finalises the Third Audit and provides a written report of the Third Audit (**Third Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. The ABC will ensure the Independent Auditor does not provide the written report, or a copy of the same, to the ABC without the FWO’s approval. The FWO will provide the ABC with the Third Audit Report within 14 days of receiving it.
7. The FWO may, in its absolute discretion, determine that the ABC does not need to conduct the Third Audit. Where the FWO determines this is the case, the FWO shall advise the ABC in writing by 15 September 2022.

Outcome of Audits

1. If any of the Audits identify underpayments to any current or former employees, the ABC will conduct a reconciliation of the amounts paid to those employees during the relevant pre-audit period and rectify any underpayments that are identified, including interest on the underpayments, calculated using an interest rate of 5.25%, and any superannuation payments relating to the underpayments which may be required by law. 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. Unless otherwise agreed with the FWO, the ABC will provide to the FWO evidence of such rectification within 28 days 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 each respective Audit, the ABC will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. The ABC will complete the required documents supplied by the FWO for this purpose.
4. If a reconciliation referred to in clause 100 identifies further underpayments, the FWO may request that the ABC engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of an additional sample of employees to be determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by the ABC.
5. If requested by the FWO, the ABC will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within seven days of such a request.

# Notices – Internal and External

Media Release

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

Intranet Notice

1. Within 30 days of, but not prior to, the Commencement Date the ABC will place a notice on its internal intranet (**Intranet Notice**).
2. The Intranet Notice must:
   1. be accessible from the home page of the ABC intranet;
   2. be in the form of the notice set out at Attachment A;
   3. be presented in an easily readable size and format consistent with the rest of the internal intranet; and
   4. remain on the ABC intranet for a period of one month.
3. Within seven days of publishing the Intranet Notice, the ABC will provide to the FWO evidence of its placement.

Website Notice

1. Within 30 days of, but not prior to, the Commencement Date the ABC will place a notice on its website (**Website Notice**).
2. The Website Notice must:
   1. be accessible from the home page of <https://about.abc.net.au/>;
   2. be in the form of the notice set out at Attachment B;
   3. be presented in an easily readable size and format consistent with the rest of <https://about.abc.net.au/>; and
   4. remain on the website for a period of one month.
3. Within seven days of publishing the Website Notice, the ABC will provide to the FWO evidence of its placement.

Social Media Notice

1. Within 30 days of, but not prior to, the Commencement Date the ABC will place a post on its LinkedIn page and ABC Communications Twitter page (**Social Media Notice**).
2. The Social Media Notice must be in the form of the notice set out at Attachment B and remain accessible for a period of one month.
3. Within seven days of publishing the Social Media Notice, the ABC will provide to the FWO evidence of the post.

# Cooperation on Future Complaints

1. Where the FWO receives a request for assistance from an employee or former employee regarding non-compliance with the 2019 EA (or replacement instrument) or a legislative requirement, the FWO may, at its discretion, notify the ABC and its officers and provide relevant details.
2. Where a matter is notified to the ABC, it will undertake to fully co-operate with the FWO to ensure compliance. This includes:
   1. determining an appropriate outcome for the matter within 45 days of notification, unless otherwise agreed with the FWO; and
   2. advising the FWO of the determination and actions in relation to the matter including:
      1. the reasons for the determination and any compliance issues identified;
      2. the details of any underpayments and amounts rectified;
      3. steps taken to address compliance issues identified, including for any similarly affected employees; and
      4. if any matter remains unresolved, the steps taken by the ABC to facilitate the resolution of any such matter.

# No Inconsistent Statements

1. The ABC 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

1. The ABC acknowledges that:
   1. the FWO may;
      1. make this Undertaking (and any of the Attachments and Schedules hereto) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au/);
      2. release a copy of this Undertaking (and any of the Attachments hereto) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
      3. issue a media release in relation to this Undertaking;
      4. from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
      5. rely upon the admissions made by the ABC set out in clause 19, above, in respect of decisions taken regarding enforcement action in the event that the ABC is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by the ABC to comply with its obligations under this Undertaking;
   2. 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;
   3. consistent with section 715(3) of the FW Act, the ABC may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
   4. if the ABC contravenes any of the terms of this Undertaking:
      1. 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;
      2. this Undertaking may be provided to the Court as evidence of the admissions made by the ABC in clauses 19 above, and also in respect of the question of costs; and

(e) nothing in this Undertaking affects or is intended to affect the operation of the dispute resolution clause under the 2019 EA, or any other workplace instrument applying to the ABC and its employees

# Executed as an Undertaking

EXECUTED by the ABC in accordance with the *Australian Broadcasting Corporation Act 1983*:

(Signature of Managing Director)

(Name of Managing Director)

(Date)

in the presence of:

(Signature of witness)

(Name of witness)

|  |  |  |
| --- | --- | --- |
| ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the  *Fair Work Act 2009* on: | | |
| FAIR WORK OMBUDSMAN |  | (Date) |
| in the presence of: |  |  |
| (Signature of witness) |  | (Name of Witness) |

# Attachment A – Intranet Notice

I am writing to apologise on behalf of the Australian Broadcasting Corporation (**ABC**) for non-compliance with Commonwealth workplace laws. A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the ABC contravened the *Fair Work Act 2009* by contravening the *ABC Enterprise Agreement 2016-2019*, *ABC Enterprise Agreement 2013-2016* and the *ABC Enterprise Agreement 2010* (the **ABC EAs**).

The underpayments were as a result of the ABC’s practice of paying casual employees flat rates of pay designed to offset penalty rates and overtime provided for by the ABC EAs. However, some flat rates were insufficient and resulted in some casual employees being paid less than they were entitled to.

The ABC has formally admitted to the FWO that it did not comply with its obligations under Commonwealth workplace laws and has entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au/).

To rectify the underpayments and to ensure the conduct does not occur again, the ABC has agreed to implement a number of remedial and proactive measures, including:

* Provisioning an independent audit to identify past and current impacted staff, with the audit methodology subject to independent review;
* Ongoing monthly engagement with the FWO regarding the progress of the audit;
* Rectification of all underpayments to past and current employees, and the provision of reimbursement of costs associated with seeking independent financial advice for employees owed $15,000 and above;
* Implementation of an electronic record keeping system to accurately record rosters and actual time worked for all staff;
* Ensuring that all future offers of employment will include an anticipated classification level, schedule, band, pay point, and an hourly rate or salary range, as applicable;
* Provision of training to responsible individuals regarding the rights and responsibilities of employers under relevant Commonwealth workplace laws and instruments; and
* Provisioning annual audits conducted by an independent expert to confirm ongoing compliance with Commonwealth workplace laws.
* Issuing a public apology available on the ABC’s corporate website, LinkedIn page and ABC Communication’s Twitter account.

For all queries relating to your employment, please contact [peopleandculture@abc.net.au](mailto:peopleandculture@abc.net.au)

The ABC gives a commitment that the offending conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

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

Should you have any questions, please contact [peopleandculture@abc.net.au](mailto:peopleandculture@abc.net.au).

Yours sincerely

# Attachment B – Website and Social Media Notice

**<Date>**

A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that the Australian Broadcasting Corporation (**ABC**) had contravened the *Fair Work Act 2009* by contravening the *ABC Enterprise Agreement 2016-2019*, *ABC Enterprise Agreement 2013-2016* and the *ABC Enterprise Agreement 2010* (the **ABC EAs**) by underpaying casual staff.

The underpayments as a result of the ABC’s practice of paying casual employees flat rates of pay designed to offset penalty rates and overtime provided for by the ABC EAs. However, some flat pay rates were insufficient and resulted in some casual employees being paid less than they were entitled to.

The ABC sincerely apologises for non-compliance with Commonwealth Workplace relations laws.

The ABC is taking steps to remedy the contraventions, including rectification of the underpayment to the affected staff which has already taken place.

The ABC has formally admitted to the FWO that the ABC did not comply with its obligations under Commonwealth workplace laws and has entered into an Enforceable Undertaking with the FWO, a copy of which will be available from the FWO website at [www.fairwork.gov.au](http://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, including:

* + Provisioning an independent audit to identify past and current impacted staff, with the audit methodology subject to independent review;
  + Ongoing monthly engagement with the FWO regarding the progress of the audit;
  + Rectification of all underpayments to past and current employees, and the provision of reimbursement of costs associated with seeking independent financial advice for employees owed $15,000 and above;
  + Implementation of an electronic record keeping system to accurately record rosters and actual time worked for all staff;
  + Ensuring that all future offers of employment will include an anticipated classification level, schedule, band, pay point, and an hourly rate or salary range, as applicable;
  + Provision of training to responsible individuals regarding the rights and responsibilities of employers under relevant Commonwealth workplace laws and instruments; and
  + Provisioning annual audits conducted by an independent expert to confirm ongoing compliance with Commonwealth workplace laws.

If you worked for the ABC and have queries or questions relating to your employment, please contact [peopleandculture@abc.net.au](mailto:peopleandculture@abc.net.au).

Should you have any questions in relation to the above, please contact Nick Leys, Head of Communications at the address XXXXXXXXXXXXXXX.



*Fair Work Act 2009*

**Section 715 Enforceable Undertaking – Variation**

1. On 17 June 2020, the Fair Work Ombudsman (**FWO**) accepted an enforceable undertaking (**Undertaking**) from the Australian Broadcasting Corporation (ABN: 52 429 278 345) (**ABC**).
2. This variation to Undertaking (**Variation**)is made by the ABC, and is accepted by the FWO, pursuant to section 715(3) of the *Fair Work Act 2009* (Cth) (**the Act**).
3. As part of the Undertaking, the ABC relevantly committed to
   1. having three annual Independent Audits conducted in relation to its compliance with the Act and relevant industrial instruments with audit reports due to the FWO on 13 November 2020, 12 November 2021 and 11 November 2022 (if the FWO determines a third audit is required)
   2. implementing an electronic record keeping system by 17 June 2022
4. The ABC has advised the FWO that a pilot of the electronic record keeping system was completed by June 2021 and that implementation will be completed by 17 June 2022.
5. In light of the impending full implementation of the electronic record keeping system, the ABC has requested, and the FWO consents, to variations of the listed clauses of the Undertaking in the terms set out below:
   1. Clause 3(a): replace ‘three years from the Commencement Date’ with ‘16 August 2023’
   2. Clause 87: replace ‘30 September 2021’ with ’30 June 2022’
   3. Clause 88: replace ‘1 June 2020 to 1 June 2021’ with ‘1 March 2021 to 1 March 2022’
   4. Clause 89: replace ‘1 July 2021 to 31 July 2021’ with ‘1 April 2022 to 30 April 2022’
   5. Clause 90: replace ‘1 September 2021’ with ‘1 June 2022’
   6. Clause 91: replace ‘12 November 2021’ with 12 August 2022’
   7. Clause 93: replace ‘30 September 2022’ with ‘30 June 2023’
   8. Clause 94: replace ‘1 June 2021 to 1 June 2022’ with ‘1 March 2022 to 1 March 2023’
   9. Clause 95: replace ‘1 August to 31 August 2022’ with ‘1 May 2023 to 30 May 2023’
   10. Clause 96: replace ‘1 September 2022’ with ‘1 June 2023’
   11. Clause 97: replace ‘11 November 2022’ with ‘11 August 2023’
   12. Clause 99: replace ‘15 September 2022’ with ‘15 June 2023’
6. All other terms of the Undertaking remain unchanged.
7. ABC agrees and acknowledges that a copy of this Variation may be made available for public inspection by the FWO, including by posting a copy to the FWO’s website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

EXECUTED by the Australian Broadcasting Corporation (ABN: 52 429 278 345) in accordance with the Australian Broadcasting Corporation Act 1983

|  |  |
| --- | --- |
|  |  |
| (Signature of Managing Director) |  |
|  |  |

(Name of Managing Director)

|  |
| --- |
|  |

(Date)

in the presence of:

|  |
| --- |
|  |
| (Signature of witness) |
|  |

(Name of witness)

|  |  |  |
| --- | --- | --- |
| 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 and Enforcement  Delegate for the FAIR WORK OMBUDSMAN |  | (Date) |
| in the presence of: |  |  |
| (Signature of witness) |  | (Name of Witness) |