



Australian Government

# Fair Work

OMBUDSMAN

## ENFORCEABLE UNDERTAKING

This undertaking is **given** by the National Library of Australia (ABN 28346858075) 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 clause 7 of 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 National Library of Australia (ABN 28 346 858 075), Parkes Place West, Canberra ACT 2600 (**Library**).

### COMMENCEMENT

2. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by the Library; and
  - (b) the FWO accepts the Undertaking so executed, by providing to the Library a copy of the Undertaking executed by the FWO (**Commencement Date**).

### BACKGROUND

3. The Library is a Corporate Commonwealth Entity within the Department of Infrastructure, Transport, Regional Development and Communications portfolio. The Library's role, as defined by the *National Library Act 1960*, is to ensure documentary resources of national significance are collected, preserved and made accessible to the Australian public.
4. In March 2020, the Library notified the FWO that it had identified non-compliance with industrial instruments. The Library subsequently detailed the non-compliance as follows:
  - (a) it had identified non-compliance with the following provisions of the following industrial instruments (collectively referred to as **the relevant instruments**) involving non-payment of weekend and public holiday shift penalties to casual employees:
    - (i) National Library of Australia Collective Agreement 2007-2010 clause C4;
    - (ii) National Library of Australia Enterprise Agreement 2010-2011 clause B5;
    - (iii) National Library of Australia Enterprise Agreement 2011-2014 clause B3.1;
    - (iv) National Library of Australia Enterprise Agreement 2017-2020 (**the enterprise agreement**) clause B3.1; and
    - (v) *Australian Public Service Award 1998* clause 26; and

- (b) the non-compliance affected 106 current and former employees who were underpaid a total of \$245,359.30 (consisting of \$212,616.38 in salary and \$32,742.92 in superannuation).
5. Prior to the execution of this Undertaking, the Library notified the FWO that it had:
- (a) updated the payroll system so that weekend and public holiday shift penalties apply to all casual shifts post 15 April 2020;
  - (b) notified 246 current and former casual employees of the issues identified and put them on notice that they may be entitled to back payments following the audit;
  - (c) engaged with the Community and Public Sector Union through formal correspondence and regular ongoing meetings;
  - (d) engaged Synergy, a professional services firm, to conduct a review of penalty rates paid to casuals since 1 January 2000 which identified that the terms and conditions on which the Library employed the relevant employees did not satisfy the minimum terms and conditions in the relevant instruments, resulting in:
    - (i) underpayments to the employees listed in Schedule A (**Schedule A Employees**) between 1 July 2009 and 15 April 2020; and
    - (ii) underpayments to the employees listed in Schedule B (**Schedule B Employees**) between 1 January 2000 and 30 June 2009; and
  - (e) made part-rectification payments to current employees totalling \$169,374.22 with \$27,062.98 in superannuation underpayments, plus interest as set out below at clause 10(c).
6. The FWO acknowledges that while the contraventions and underpayments listed in Schedule B fall outside the scope of this Undertaking, the Library has committed to rectifying these underpayments in the same manner as the Schedule A underpayments as set out below at clause 10.

## ADMISSIONS

7. The FWO has a reasonable belief, and the Library admits, that the Library contravened:
- Item 2(2) of Schedule 16 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* between 1 July 2009 and 17 June 2010; and
  - section 50 of the FW Act, contravening a term of an Enterprise Agreement between 18 June 2010 and 15 April 2020,
- by failing to pay each of the Schedule A Employees in the manner set out at clause 4(a)

above and detailed in Schedule A the amount or amounts to which that employee was entitled under the relevant instruments.

8. The contraventions identified in clause 7 of this Undertaking do not include:
- (a) any contraventions which relate to or arise as a consequence of the Library failing to correctly apply the relevant instruments to any current or former employee not listed in Schedule A 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 Library failing to correctly apply the relevant instruments 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
  - (b) any contraventions which have not yet occurred at the date that this Undertaking is offered by the Library (whether or not those contraventions are identified in the Audit described at clause 13 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 Library and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## **UNDERTAKINGS**

9. The Library will take the actions set out at clauses 10 to 45 below.

### **Rectification of underpayments**

10. The Library will, within 90 days of the execution of this Undertaking, pay each of the Schedule A Employees to whom underpayments relate:
- (a) the underpayment amounts owed to them;
  - (b) any superannuation payments on those underpayments at a rate of 15.4%, by making payment to their chosen superannuation fund; and
  - (c) pay interest calculated at a flat rate of 4.75% of the total underpayment amounts owed to them.

### **Rectification of Underpayments to employees who cannot be located**

11. If any of the Schedule A Employees to whom underpayments are owed cannot be located within 90 days of the execution of this Undertaking, the Library will pay the underpayment amounts owing to those employees (excluding interest) to the Commonwealth of Australia in accordance with section 559 of the FW Act. The Library will complete the required documents supplied by the FWO for this purpose.
12. In the event that the FWO is able to locate and contact any current or former employees



of the Library to whom underpayments are owed, the FWO will (in addition to its obligations under s 559 of the FW Act) notify the Library in writing of the name and contact details of the current or former employee. Within 28 days of receiving any such notice the Library will pay the current or former employee interest on the amount already paid by the Library to the Commonwealth of Australia in respect of that employee, using a flat interest rate of 4.75% to the total underpayment amounts owed to them.

### **Independent Audit**

13. The Library must, at its own cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**Independent Auditor**) to conduct an audit of the Library's compliance with the FW Act, and the enterprise agreement with regard to employee entitlements (**Audit**).
14. The Library will notify the FWO of its proposed Independent Auditor within 14 days of the execution of the Undertaking. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require the Library 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 Library.
15. The Library must ensure that the Audit includes:
  - (a) an assessment of whether the Library has correctly calculated employee entitlements in accordance with the FW Act and the enterprise agreement with regard to a sample of employees of the Library, that sample being 10% of the Library's employees (**Sampled Employees**);
  - (b) the production of a written report setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
  - (c) that the report referred to in (b) above contains the following declarations from the Independent Auditor:
    - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
    - (ii) notwithstanding that the Independent Auditor is retained by the Library, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from the Library in preparing the report;
    - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and

- (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

#### The Audit

16. The Library must ensure the Independent Auditor commences the Audit by no later than 1 February 2021.
17. The relevant audit period for the Audit must be at least two full pay periods for the Sampled Employees falling within the period 1 July 2020 to 31 December 2020.
18. By 1 December 2020, the Library will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Audit.
19. The Library will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Audit directly to the FWO by 15 April 2021, setting out the draft Audit findings, and the facts and circumstances supporting the Audit findings.
20. The Library will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to the Library before the draft written report is provided to the FWO.
21. The Library will use its best endeavours to ensure the Independent Auditor finalises the Audit and provides a written report of the Audit (**Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. The Library will ensure the Independent Auditor does not provide the Audit Report, or a copy of the same, to the Library before the Audit Report is provided to the FWO.

#### Outcome of Audit

22. If the Audit identifies underpayments to any current or former employees, the Library will conduct a reconciliation of the amounts paid to those employees during the period 16 April 2020 to 1 February 2021 and rectify any underpayments that are identified.
23. The Library will provide to the FWO evidence of such rectification within three months of being informed by the FWO of the requirement to undertake the reconciliation.
24. If any employees identified in the Audit as having underpayments owing to them cannot be located within 60 days of the conclusion of the Audit, the Library will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. The Library will complete the required documents supplied by the FWO for this purpose.
25. If the Audit identifies an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audit



are also likely to have been underpaid, the Library will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its casual employees (or any other cohort of employees), as determined by the FWO (**Additional Audit**). Any Additional Audit must be paid for by the Library.

26. If requested by the FWO, the Library 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.

#### **Provision of information about systems and processes**

27. The Library will, within 120 days of the date of execution of this Undertaking, provide the FWO details of standard operation procedures to ensure compliance between enterprise agreement entitlements and the configuration and payments generated through the Human Resource Management System (**HRMS**) including penalty and overtime rates and allowances.
28. The Library will, within 120 days of the date of execution of this Undertaking, provide the FWO details of comprehensive guidance documents for managers and staff on the engagement, entitlements and use of casuals employed by the Library.
29. The Library will, within 30 days of the date of execution of this Undertaking, provide the FWO evidence that the penalty rates for casuals working weekend and public holiday shifts have been correctly applied in the HRMS.

#### **Workplace relations training and educational activities**

##### *Library managers and supervisors*

30. Within 180 days of the execution of this Undertaking, organise and ensure industrial relations face-to-face training is provided to managers and supervisors who administer work rosters.
31. Ensure that this training relates to compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers and entitlements of employees under the FW Act and the enterprise agreement.

##### *Library HR managers and administrators*

32. Within 180 days of the execution of this Undertaking, organise and ensure industrial relations face-to-face training is provided to Library HR managers and staff with responsibility for HR operations, HRMS administration, payroll processing and recruitment.

33. Ensure that this training relates to compliance with applicable Commonwealth of Australia workplace laws and instruments, including but not limited to the rights and responsibilities of employers and entitlements of employees under the FW Act and the enterprise agreement.

#### *Casual Employees*

34. Within 60 days of the execution of this Undertaking ensure that all current casual employees complete, during paid work hours, the FWO online learning centre courses for new employees 'starting a new job' <https://www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre/starting-a-new-job> and 'difficult conversations in the workplace' <https://www.fairwork.gov.au/how-we-will-help/online-training/online-learning-centre/difficult-conversations-in-the-workplace-employee-course>
35. Provide all new casual employees with the FWO fact sheets for 'starting a new job' and 'difficult conversations in the workplace' within 30 days of commencement.

#### *Training Assurance and Reporting*

36. The Library will ensure that all face to face training is conducted by a FWO approved workplace trainer with expertise in workplace relations. The training will be paid for by the Library.
37. Within 14 days of completion of all the training sessions, the Library will provide to the FWO, in writing, the date on which the training was completed, the details of the delivery and content of the training and the names and positions of all individuals who participated in the training (as outlined in clauses 30 to 35 above).
38. Within 30 days of the execution of this Undertaking the Library will create an information page on the Library's intranet with the FWO learning centre courses listed and promote these resources to all Library staff.
39. Within 14 days of creating the information page on the Library's intranet, the Library will provide to the FWO, in writing, evidence of its creation.

#### **Website notice**

40. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, the Library will place a notice on its website, accessible through a hyperlink on the front page of [www.nla.gov.au](http://www.nla.gov.au) (**Website Notice**).
41. The Website Notice must:
- (a) be in the form of the Website Notice set out at Attachment A;
  - (b) be displayed in at least size 10 font; and



- (c) remain on the website for a period of one month.
- 42. Within 7 days of placing the Website Notice on its website, the Library will provide to the FWO evidence of its placement.

#### **Reimbursement of costs of independent financial advice**

- 43. The Library undertakes to reimburse the cost associated with independent financial advice (to the value of \$200) for an employee who it owes an underpayment of over \$3,000.
- 44. The Library will reimburse any such employee within 30 days of receiving:
  - (a) a receipt from the employee for the financial service provided; and
  - (b) the employee's banking details (for former employees).
- 45. The Library will provide evidence of any such reimbursement to the FWO within 14 days of making a payment to an employee. The evidence will include the name of the employee and the amount paid to them.

#### **No Inconsistent Statements**

- 46. The Library 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**

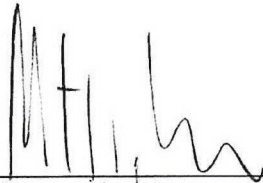
- 47. The Library acknowledges that:
  - (a) the FWO may;
    - (i) make this Undertaking (including any of the Attachments) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
    - (ii) release a copy of this Undertaking (including any of the Attachments) 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 (including any of the Attachments hereto) and its terms; and
    - (v) rely upon the admissions made by the Library set out in clause 7 above and the Schedule in respect of decisions taken regarding enforcement action in the event that the Library is found to have failed to comply with its workplace

relations obligations in the future, including but not limited to any failure by the Library to comply with its obligations under this Undertaking;

- (b) consistent with the note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
- (c) consistent with section 715(3) of the FW Act, the Library may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- (d) if the Library contravenes any of the terms of this Undertaking:
  - (i) the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act; and
  - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by the Library in clause 7 above, and also in respect of the question of costs.

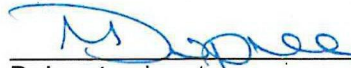
**Executed as an undertaking**

EXECUTED by the National Library of Australia in accordance with *the National Library Act 1960*

  
\_\_\_\_\_  
Witness signature

MARK DAVID STRAUHAAR  
Print name


23/10/20  
Date

  
\_\_\_\_\_  
Delegate signature

MAUREEN DUPREE, COO  
Print name and title of Delegate

23 Oct 2020  
Date


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

  
Mark Scully  
Deputy FWO - Compliance & Enforcement

\_\_\_\_\_  
Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

29/10/20  
Date

  
\_\_\_\_\_  
(Signature of witness)

TOM O'SHEA  
\_\_\_\_\_  
(Name of Witness)

29-10-20

**SCHEDULE A – Schedule A Employees – underpayments between 1 July 2009 and 15 April 2020**

Employee		Total Underpayment (Exc. Super)		Interest on Total Underpayment		Superannuation		Interest on Superannuation	
Employee Number	Employee Name	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing
		14,346.79		681.47		2,209.41		104.95	
		1,585.45		75.31		244.16		11.60	
			542.29		25.76		83.51		3.97
		147.90		7.03		22.78		1.08	
		1,331.08		63.23		204.99		9.74	
		372.29		17.68		57.33		2.72	
		104.76		4.98		16.13		0.77	
		2,069.92		98.32		318.77		15.14	
			94.72		4.50		14.59		0.69
			179.49		8.53		27.64		1.31
		2,354.92		111.86		362.66		17.23	
			263.15		12.50		40.53		1.92
		1,641.19		77.96		252.74		12.01	
			213.71		10.15		32.91		1.56
		83.16		3.95		12.81		0.61	
			540.63		25.68		83.26		3.95
		382.55		18.17		58.91		2.80	
		357.41		16.98		55.04		2.61	
		165.04		7.84		25.42		1.21	
		24.58		1.17		3.79		0.18	
		822.24		39.06		126.63		6.01	
		1,395.48		66.29		214.90		10.21	



Employee		Total Underpayment (Exc. Super)		1,395.48		Superannuation		Interest on Superannuation	
Employee Number	Employee Name	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing
		1,879.53		89.28		289.45		13.75	
		363.57		17.27		55.99		2.66	
		95.73		4.55		14.74		0.70	
			195.90		9.31		30.17		1.43
		57.65		2.74		8.88		0.42	
		1,644.35		78.11		253.23		12.03	
		3,411.44		162.04		525.36		24.95	
		6,609.16		313.94		1,017.81		48.35	
		97.94		4.65		15.08		0.72	
		17,038.45		809.33		2,623.92		124.64	
		437.53		20.78		67.38		3.20	
		72.44		3.44		11.16		0.53	
		3,665.45		174.11		564.48		26.81	
			531.09		25.23		81.79		3.88
		2,744.38		130.36		422.63		20.08	
		2,156.84		102.45		332.15		15.78	
			1,278.69		60.74		196.92		9.35
		90.56		4.30		13.95		0.66	
			788.29		37.44		121.40		5.77
		3,621.85		172.04		557.77		26.49	
		16,828.28		799.34		2,591.55		123.10	
		330.24		15.69		50.86		2.42	
		508.40		24.15		78.29		3.72	
		228.06		10.83		35.12		1.67	

Employee		Total Underpayment (Exc. Super)		Interest on Total Underpayment		Superannuation		Interest on Superannuation	
Employee Number	Employee Name	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing
			247.56		11.76		38.12		1.81
		3,820.64		181.48		588.38		27.95	
		916.93		43.55		141.21	141.21	6.71	6.71
			130.61		6.20		20.11		0.96
		97.94		4.65		15.08		0.72	
			104.65		4.97		16.12		0.77
		10,394.97		493.76		1,600.83		76.04	
			5,177.26		245.92		797.30		37.87
			97.96		4.65		15.09		0.72
		5,477.29		260.17		843.50		40.07	
		1,703.50		80.92		262.34		12.46	
		1,891.86		89.86		291.35		13.84	
		5,395.14		256.27		830.85		39.47	
		985.52		46.81		151.77		7.21	
		2,701.67		128.33		416.06		19.76	
		454.13		21.57		69.94		3.32	
			195.90		9.31		30.17		1.43
			936.69		44.49		144.25		6.85
			209.49		9.95		32.26		1.53
		412.60		19.60		63.54		3.02	
			2,995.11		142.27		461.25		21.91
			13.59		0.65		2.09		0.10
			1,375.15		65.32		211.77		10.06
		37.25		1.77		5.74		0.27	
		1,669.32		79.29		257.08		12.21	
			1,743.92		82.84		268.56		12.76

Employee		Total Underpayment (Exc. Super)		Interest on Total Underpayment		Superannuation		Interest on Superannuation	
Employee Number	Employee Name	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing
		19,997.23		949.87		3,079.57		146.28	
		97.96		4.65		15.09		0.72	
		1,948.11		92.54		300.01		14.25	
		1,177.00		55.91		181.26		8.61	
		533.05		25.32		82.09		3.90	
			209.50		9.95		32.26		1.53
		216.20		10.27		33.29		1.58	
		1,116.87		53.05		172.00		8.17	
			1,528.26		72.59		235.35		11.18
			117.55		5.58		18.10		0.86
		607.13		28.84		93.50		4.44	
			255.16		12.12		39.29		1.87
		5,881.87		279.39		905.81		43.03	
		7,276.79		345.65		1,120.63		53.23	
		4,413.38		209.64		679.66		32.28	
			97.96		4.65		15.09		0.72
		298.19		14.16		45.92		2.18	
		2,034.47		96.64		313.31		14.88	
			1,426.30		67.75		219.65		10.43
		3,247.96		154.28		500.19		23.76	

**SCHEDULE B – Schedule B Employees – underpayments between 1 January 2000 and 30 June 2009**

Employee		Total Underpayment (Exc. Super)		Interest on Total Underpayment		Superannuation		Interest on Superannuation	
Employee Number	Employee Name	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing	Payment Made	Payment Owing
			1,112.66		52.85		171.35		8.14
			174.77		8.30		26.92		1.28
			12.56		0.60		1.93		0.09
			170.81		8.11		26.30		1.25
		4,497.30		213.62		692.58		32.90	
		1,638.60		77.83		252.34		11.99	
		513.85		24.41		79.13		3.76	
			510.94		24.27		78.68		3.74
		150.94		7.17		23.24		1.10	
			1,239.06		58.86		190.82		9.06
			1,447.75		68.77		222.95		10.59
			257.44		12.23		39.65		1.88
			18.84		0.89		2.90		0.14
			33.09		1.57		5.10		0.24
		5,475.63		260.09		843.25		40.05	



## Attachment A –Website Notice

The National Library of Australia has entered into an Enforceable Undertaking with the Fair Work Ombudsman (**FWO**) to resolve a self-reported issue where it failed to pay casual employees weekend and public holiday shift penalties in accordance with the *National Library of Australia Enterprise Agreement*, its predecessor industrial instruments and the *Australian Public Service Award 1998*, contravening the *Fair Work Act 2009* (Cth). The underpayments span the period from 2000 to 2020.

A National Library of Australia spokesperson commented:

“This error should not have occurred, and the National Library of Australia sincerely apologises to any casual staff who were underpaid. Our systems and processes have been updated to ensure ongoing compliance with Fair Work regulations and steps taken to rectify the underpayments”.

The National Library of Australia will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance including improved workplace training and committing to an Independent Audit. The National Library of Australia gives a commitment that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for the National Library of Australia as a casual employee and have queries or questions relating to your employment, please contact [REDACTED] on [REDACTED]

Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.