

ENFORCEABLE UNDERTAKING

This undertaking is **given** by the University of Sydney and **accepted** by the Fair Work Ombudsman pursuant to section 715 of the *Fair Work Act 2009*

ENFORCEABLE UNDERTAKING

PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (**FW Act**) by the University of Sydney (ABN 15 211 513 464) (**USYD**).

COMMENCEMENT

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

BACKGROUND

3. USYD is a public university incorporated by the *University of Sydney Act 1989* (NSW). USYD has 5 Faculties and 3 University Schools. Within those Faculties and University Schools, there are 38 schools. As at 18 April 2024, USYD employed approximately 16,000 employees (academic and professional), with approximately 6,080 of those engaged on a casual basis.
4. USYD is a registered charity under the *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) and is a higher education provider subject to the governance and accountability obligations under the *Higher Education Support Act 2003* (Cth), the *Tertiary Education Quality and Standards Agency Act 2011* (Cth), and the *Higher Education Standards Framework (Threshold Standards) 2021* (Cth).
5. On 13 August 2020, USYD notified the FWO of potential non-compliance with its obligations (**self-report**) under the *University of Sydney Enterprise Agreement 2013-2017* (**2013 Agreement**) and the *University of Sydney Enterprise Agreement 2018-2021* (**2018 Agreement**) (collectively, the **Agreements**) in relation to its employees. USYD first identified this potential non-compliance based on a small sample payroll review conducted by PwC Australia (**PwC**) which formed part of a more general review of

employee entitlements.

6. Following the self-report, USYD arranged for PwC to conduct a detailed analysis of payroll data of the last six years to quantify any underpayments and overpayments to all current and former employees covered by the Agreements and calculate remediation payments for all affected current and former employees.

Review of employee payments and payroll data

Employee Payments Review 1 and 2

7. USYD's first review of its compliance with the Agreements – the Employee Payments Review 1 – analysed all payments made to employees covered by the Agreements for the period from 10 January 2014 to 19 November 2020 (**EPR1**). EPR1 identified that USYD had underpaid 12,766 employees a total of \$12,568,114.84 for the period from 10 January 2014 to 19 November 2020 (**EPR1 Wage Underpayment**), comprising of:
 - a) \$10,425,285.19 to 10,369 casual professional employees;
 - b) \$1,821,364.44 to 1,951 permanent professional employees;
 - c) \$240,725.72 to 266 permanent academic employees; and
 - d) \$80,739.49 to 180 casual academic employees.
8. The majority of employees identified as affected by an EPR1 Wage Underpayment were casual professional employees. The key sources of underpayments to those employees related to:
 - a) non-payment of minimum engagement periods;
 - b) non-payment of overtime entitlements;
 - c) non-payment of allowances, including meal allowance;
 - d) non-payment of public holiday penalty rates; and
 - e) underpayment of contracted hours.
9. Following the completion of EPR1, USYD addressed deficiencies in its record keeping and operational controls including in relation to its casual professional employees which had led to the underpayments identified in EPR1. Once USYD was satisfied that the necessary

controls were in place, including to ensure casual professional employees were being correctly paid, in August 2022 it engaged PwC to review employee payments and payroll data for employees covered by the 2018 Agreement for the period 20 November 2020 to 30 June 2022 (the Employee Payments Review 2, **EPR2**).

10. EPR2 identified that USYD had underpaid 1,508 employees a total of \$3,212,400.41 for the period from 20 November 2020 to 30 June 2022 (**EPR2 Wage Underpayment**). The key sources of underpayments identified by EPR2 were the same as those identified in EPR1.
11. The non-compliance identified in EPR1 and EPR2 was the result of a number of deficiencies in USYD's governance, record keeping and operational controls.
12. EPR1 and EPR2 were conducted as payroll data reviews and did not include a comprehensive review of the work allocation, supervision and payment arrangements for USYD's casual academic employees covered by the Agreements.

Provision of EPR1 and EPR2 methodology to the FWO

13. Before making remediation payments for EPR1 and EPR2, USYD provided the FWO with the methodologies, interpretations and assumptions USYD had applied when instructing PwC for the purpose of identifying and calculating employee underpayments for those reviews.
14. The FWO raised concerns with USYD's interpretation of the Agreements regarding the calculation of the overtime entitlements to a cohort of casual professional shift workers working in USYD's Veterinary Clinics and Teaching Hospitals covered by the Agreements (**Casual Veterinary Employees**).
15. USYD has agreed to recalculate the EPR1 and EPR2 overtime entitlements of Casual Veterinary Employees in accordance with the FWO's interpretation of the relevant provisions of the Agreements.

Faculty of Science - School of Mathematics and Statistics and the School of Psychology

16. Following correspondence with the FWO in relation to systemic sector-wide issues concerning casual academic employees, USYD began to make the relevant enquiries into the work allocation, supervision and payment practices of casual academic employees

covered by the Agreements.

17. In March 2022, USYD notified the FWO that it had identified potential non-compliance with the Agreements through the underpayment of casual academic employees in the School of Mathematics and Statistics (**SoMS**) in the Faculty of Science, arising from the use of the repeat tutorial rates for all tutorials. This identified non-compliance covers the period from 10 January 2014 to 20 November 2020 and is referred to in this Undertaking as the **SoMS Practice**.
18. In August 2022, USYD notified the FWO that it had identified potential non-compliance with the Agreements through the underpayment of casual academic employees in the School of Psychology (**SoP**) in the Faculty of Science, by failing to fully pay employees in relation to time for marking. This identified non-compliance covers the period from 10 January 2014 to 14 December 2021 and is referred to in this Undertaking as the **SoP Practice**.
19. As at 16 April 2024, USYD has identified that it has underpaid 162 SoMS employees \$1,300,618.65 for the period from 10 January 2014 to 20 November 2020, and 255 SoP employees \$492,858.07 for the period from 10 January 2014 to 14 December 2021 (**SoMS and SoP Wage Underpayment**).

Conservatorium of Music – TOIL

20. In August 2022, USYD notified the FWO that it had become aware of the non-compliant administration of time off in lieu (**TOIL**) of overtime for professional employees in the Conservatorium of Music, with the result that overtime entitlements were not correctly calculated for professional employees in the Conservatorium of Music as part of EPR1 and EPR2. This identified non-compliance covers the period from 10 January 2014 to 30 June 2022 and is referred to in this Undertaking as the **Conservatorium of Music TOIL Practice**.
21. As at 15 August 2024, USYD has identified that it has underpaid 36 Conservatorium of Music employees \$1,453,689.09 for the period from 10 January 2014 to 30 June 2022 (**Conservatorium of Music TOIL Underpayment**).

Casual Academic Review

22. Following correspondence with the FWO, the identification of underpayments to SoMS

and SoP employees and a complaint from the National Tertiary Education Union, in August 2022, USYD commenced a comprehensive review of the work allocation, supervision and payment practices for all casual academic employees covered by the Agreements for the period from 6 March 2017 to 15 June 2024 (**Casual Academic Review**).

23. The Casual Academic Review involves the following:
- a) reviewing, on a School-by-School basis, in consultation with relevant School employees (including School managers or unit of study coordinators), the allocation of pay codes for casual academic work activities in a specific period, to verify that the *University of Sydney Enterprise Agreement 2023-2026 (2023 Agreement)* is being correctly applied. USYD will consider the application of the 2023 Agreement by reference to the *USYD Work Classification and Paycode Guidelines for Casual Academic Staff (Guidelines)*, which are intended to align with the pay codes and definitions in the 2023 Agreement;
 - b) investigating (through data and document reviews, and interviews with relevant persons) past practices to determine:
 - i) whether pay codes for casual academic work have been incorrectly applied (and, if so, the extent and scope of that incorrect application), with particular focus on sessional versus hourly pay codes;
 - ii) whether required work was correctly allocated, including academic activities such as preparation, marking, attendance at lectures and meetings, and student consultation; and
 - iii) to the extent any pay codes were incorrectly allocated, whether that resulted in underpayments to any casual academic employees; and
 - c) if it is identified that any underpayments have occurred, undertaking a remediation process to quantify the underpayments and identify the employees affected. PwC has been engaged to calculate any remediation payments.
24. As at the Commencement Date, USYD is conducting the Casual Academic Review in the following Schools as a priority:
- a) all Schools in the Faculty of Engineering;

- b) in the Faculty of Science:
 - i) the School of Life and Environmental Sciences; and
 - ii) the School of Veterinary Science;
- c) in the Faculty of Arts and Social Sciences:
 - i) the School of Education and Social Work;
- d) in the Faculty of Medicine and Health:
 - i) the School of Pharmacy; and
 - ii) the School of Medical Sciences;
- e) the Sydney School of Architecture, Design and Planning; and
- f) the Sydney Conservatorium of Music,

Practices identified to date.

25. As at the Commencement Date, USYD has completed, or substantially completed, its review of past practices in:
 - a) the School of Aerospace, Mechanical and Mechatronic Engineering (**AMME**), in the Faculty of Engineering;
 - b) the School of Biomedical Engineering (**BME**), in the Faculty of Engineering;
 - c) the School of Electrical and Computer Engineering (**ECE**), in the Faculty of Engineering;
 - d) the School of Project Management (**PM**), in the Faculty of Engineering; and
 - e) the School of Chemical and Biomolecular Engineering (**CBE**) in the Faculty of Engineering;
 - f) the Sydney School of Education and Social Work (**SSESW**) in the Faculty of Arts and Social Sciences; and
 - g) the School of Computer Science (**CS**) in the Faculty of Engineering.
26. As at the Commencement Date, the Casual Academic Review has identified approximately 2,534 currently affected employees that have been underpaid a total of approximately

\$12.6 million. The Casual Academic Review has identified one or more of the following non-compliant practices resulted in underpayments to affected employees:

- a) the allocation of a standard tutorial paycode only to the first hour of the first standard tutorial in a week and allocating a repeat tutorial paycode to additional hour(s) of the first standard tutorial as well as to all hours of any additional standard tutorials delivered in the week (**First Casual Academic Review Practice**);
- b) the allocation of the "other required academic activity" paycode (the **A0 paycode**) for the teaching of tutorials (standard and repeat) instead of the tutorial paycode (**Second Casual Academic Review Practice**);
- c) the routine allocation of one hour of "associated working time" (included in the sessional tutorial rates) from each tutorial unit to non-contemporaneous marking instead of allocating the applicable M0 paycode for all required non-contemporaneous marking (**Third Casual Academic Review Practice**);
- d) where employees were allocated sessional paycodes (eg for tutoring or lecturing), incorrectly treating additional specified duties as "associated working time" rather than allocating the A0 paycode for each additional hour of 'other required academic activity' (**Fourth Casual Academic Review Practice**); and
- e) where casual academic unit coordinators, who were entitled to higher rates of pay because their role involved full subject coordination, were allocated a lower paycode (**Fifth Casual Academic Review Practice**).

27. USYD is committed to identifying all practices which may have led to underpayments to casual academic employees and remediating those underpayments as soon as possible. USYD has provided updates to the FWO on the progress and outcomes of the Casual Academic Review and is committed to continuing to do so.

Remediation to date

28. As at the Commencement Date, USYD has identified the underpayment, interest and superannuation amounts set out in columns 3, 4 and 5 respectively in the table below as payable to employees in relation to the EPR1 Wage Underpayment, EPR2 Wage Underpayment, the SoMS and SoP Wage Underpayment and the Conservatorium of Music

TOIL Underpayment, and has remediated the amounts set out in column 6:

Review	No of EEs affected	Quantum of underpayments	Interest	Superannuation Amount	Remediated as at 1 November 2024
EPR1	12,766	\$12,568,114.84	\$2,250,643.51	\$530,745.95	\$13,785,984.87
EPR2	1,508	\$3,212,400.41	\$474,979.59	\$212,408.07	\$3,128,866.57
SoMS Practice	162	\$1,300,618.65	\$304,654.74	\$136,564.93	\$1,505,810.91
SoP Practice	255	\$492,858.53	\$119,667.00	\$67,377.75	\$530,335.02
Conservatorium of Music TOIL Practice	36	\$1,453,689.09	\$88,669.52	Nil	\$1,540,586.39
Total	14,727	\$19,027,681.52	\$3,238,614.36	\$947,096.70	\$20,491,583.76

29. As at the Commencement Date, USYD is in the process of remediating any underpayments identified by the Casual Academic Review.
30. The FWO acknowledges USYD's engagement with the FWO following the self-report, the notification of the SoMS Practice and the SoP Practice, and its provision of regular updates and documents including calculations and methodology relating to EPR1, EPR2 and the Casual Academic Review.
31. The FWO further acknowledges USYD's commitment to establish and implement systems/processes across USYD to avoid similar contraventions recurring under the 2023 Agreement, as detailed in the Undertakings from clause 36 below.
32. In consideration of these matters, the FWO accepts this Undertaking, the terms of which are set out below.

ADMISSIONS

33. The FWO has a reasonable belief, and USYD admits, that during the Relevant Period, USYD has contravened:

a) section 50 of the FW Act as set out in **Attachment A**, by failing to pay each of the employees affected by the:

- i) EPR1 Wage Underpayment;
- ii) EPR2 Wage Underpayment;
- iii) SoMS Practice;
- iv) SoP Practice; and
- v) the Conservatorium of Music TOIL Practice,

(together, the **Affected Employees**) the amount or amounts to which that employee was entitled under the Agreements;

b) section 535(1) of the FW Act as set out in **Attachment A**, by failing to make and keep records in accordance with the *Fair Work Regulations 2009* (Cth) (**FW Regulations**) for each of the Affected Employees, for the respective periods of time set out in **Attachment A**.

34. In addition to the matters set out in clause 33, the FWO and USYD agree that it is the intention of the parties that they enter into a written addendum to this Undertaking from USYD in relation to any further contraventions arising from the Casual Academic Review, in the circumstances set out in **Attachment D** to this Undertaking (**Addendum**). Where such an Addendum is accepted, from the date of execution:

- a) the Addendum will operate as a variation to this Undertaking agreed to by the FWO with the meaning of section 715(3) of the FW Act;
- b) the FWO agrees that this Undertaking is given for any further contraventions specified in an Addendum, within the meaning of sections 715(2) and 715(4) of the FW Act;
- c) any further contraventions specified in the Addendum is taken to be part of the contraventions set out in clause 33 and Attachment A; and

- d) any employee affected by a contravention specified in the Addendum is taken to be an “Affected Employee” within the meaning of clause 33.

35. For the avoidance of doubt, this Undertaking is not given in relation to:

- a) any contraventions which relate to or arise as a consequence of USYD failing to correctly apply the Agreements to, or make and keep records in accordance with the FW Regulations in relation to, any employee who is not an Affected Employee;
- b) any contraventions which relate to or arise because of any failure by USYD to correctly apply the Agreements to, or make and keep records in accordance with the FW Regulations in relation to, an Affected Employee other than those set out in clause 33 above;
- c) any contraventions affecting an Affected Employee which are not a contravention of section 50 of the FW Act in relation to a clause of one of the Agreements, or a contravention of section 535(1) of the FW Act;
- d) any contraventions which relate to or arise as a consequence of USYD failing to correctly apply the Agreements to, or make and keep records in accordance with the FW Regulations in relation to, any Affected Employee which:
 - i) occurred other than in the employee’s capacity as an Affected Employee; or
 - ii) occurred outside the periods covered by EPR1 (from 10 January 2014 to 19 November 2020), EPR2 (from 20 November 2020 to 30 June 2022), the SoMS Practice review (from 10 January 2014 to 20 November 2020), the SoP Practice review (from 10 January 2014 to 14 December 2021), the Conservatorium of Music TOIL Practice review (from 10 January 2014 to 30 June 2022) or the Casual Academic Review (from 6 March 2017 to 15 June 2024) as relevant to the Affected Employee; or
- e) any contraventions which have not yet occurred as at the Commencement Date.

UNDERTAKINGS

36. Upon commencement of this Undertaking, USYD will take the actions set out at clauses 37 to 83 (inclusive) below.

Schedule

37. Within 7 days from the Commencement Date, USYD will give the FWO a schedule list of employees identified in the Casual Academic Review as being affected by an underpayment (**Review Covered Employees**). Within 7 days of the Commencement Date, USYD will also give the FWO a schedule list of employees identified in each of the EPR1, EPR2, SoMS, SoP and Conservatorium of Music TOIL Underpayment reviews as being affected by an underpayment (together, the **Schedule**). USYD will give the FWO an updated Schedule every 90 days, until employees covered by the Casual Academic Review have been remediated and/or their underpayment amounts have been paid to the Commonwealth of Australia in accordance with section 559 of the FW Act.
38. The Schedule will:
- a) list in Column A of the Schedule the last and first names of Review Covered Employees;
 - b) list in Column B of the Schedule the amount of money owed to each Review Covered Employee;
 - c) list in Column C of the Schedule the amount of superannuation payable on the underpayment (including the Interest Amount (as defined in the Dictionary) on that superannuation payment) to each Review Covered Employee;
 - d) list in Column D of the Schedule the Interest Amount payable on the underpayment to each Review Covered Employee;
 - e) mark with a 'yes' in Column E of the Schedule any Review Covered Employee who has received a remediation payment of the underpayment amount and Interest Amount referred to in clause 38(b) and (d) above;
 - f) mark with a 'yes' in Column F of the Schedule any Review Covered Employees who has received a remediation payment of the superannuation amount (with the Interest Amount) referred to in clause 38(c) above;
 - g) ensure any additions or changes to the Schedule are clearly highlighted by USYD

Remediation of outstanding identified underpayments

39. If requested by the FWO, by 5 February 2025 USYD will (subject to clauses 40 and 42) provide to the FWO Reasonable Evidence of:

- a) all payments made to employees affected by:
 - i) the EPR1 Wage Underpayment,
 - ii) the EPR2 Wage Underpayment,
 - iii) the SoMS Practice,
 - iv) the SoP Practice, and
 - v) the Conservatorium of Music TOIL Underpayment,(together, the **Remediation Payment Employees**), including the underpayment amount, interest amount and superannuation amount, and
 - b) the Reasonable Steps taken by USYD to locate and pay any uncontactable Remediation Payment Employees.
40. If any of the Remediation Payment Employees cannot be located within six months of the Commencement Date, USYD will pay the underpayment amounts owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act within a further two months. USYD will complete the required documents supplied by the FWO for this purpose.
41. In the event that the FWO is able to locate and contact a Remediation Payment Employee, the FWO will (in addition to its obligations under s 559 of the FW Act) notify USYD in writing of the name and contact details of the affected Remediation Payment Employee. Within 14 days of receiving any such notice USYD will:
- a) pay to the relevant Remediation Payment Employee the Interest Amount on the amount already paid by USYD to the Commonwealth of Australia in respect of that employee; and
 - b) pay to the relevant Remediation Payment Employee's nominated superannuation fund an amount equal to the amount that would have been required by law, had USYD paid the underpayment amount directly to the relevant Remediation Payment Employee.

Remediation of outstanding identified underpayments pursuant to the Casual Veterinary Employees' Overtime Review

42. By 5 February 2025, USYD will:

- a) complete the re-calculation of overtime entitlements for Casual Veterinary Employees in accordance with the FWO's view provided to USYD on 11 October 2022, as referred to in clauses 14 and 15 above;
- b) rectify any underpayments identified to current and former employees (along with an Interest Amount and any applicable Superannuation Amount); and
- c) provide to the FWO evidence of such rectification.

43. Following the completion of the re-calculation:

- a) if any former Veterinary Employee identified as having underpayments owing to them cannot be located within six months of the re-calculation, USYD is to pay the underpayment amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act within a further 60 days. USYD will complete the required documents supplied by the FWO for this purpose; and
- b) in the event that the FWO is able to locate and contact any former Veterinary Employee to whom underpayments are owed and who has had payments made by USYD under section 559 in accordance with clause 43(a) above, with the consent of the former Veterinary Employee, the FWO will (in addition to its obligations under section 559 of the FW Act) notify USYD in writing of the name and contact details of the affected former Veterinary Employee. Within 28 days of receiving any such notice USYD will:
 - i) pay to the former Veterinary Employee the Interest Amount on the amount already paid by USYD to the Commonwealth of Australia in respect of that employee; and
 - ii) pay to the former Veterinary Employee's nominated superannuation fund an amount equal to the amount that would have been required by law, had USYD paid the underpayment amount directly to the relevant Veterinary Employee.

Completion of Casual Academic Review

44. Within 28 days of the Commencement Date, USYD will provide to the FWO a detailed description of the methodologies, assumptions or interpretations applying to the Casual Academic Review and associated documents or evidence adopted by USYD in determining the SoMS and SoP Wage Underpayment and the AMME Wage Underpayment.
45. USYD will no less than monthly, report to the FWO on the progress of the Casual Academic Review, including any changes to assumptions, methodology or interpretations.
46. USYD agrees:
 - a) that the FWO may request, and USYD will provide within such reasonable period specified by the FWO, such information or evidence as is required for the FWO to assess the accuracy of any part of the Casual Academic Review;
 - b) that the FWO may make recommendations to USYD on the methodologies, assumptions, or interpretations, relevant to the Casual Academic Review; and
 - c) to consider and take into account the FWO's recommendation made under clause 46(b) above.

Completion of the remainder of the Casual Academic Review

47. By no later than 18 months from the Commencement Date, USYD will complete the Casual Academic Review.
48. Within 90 days of the commencement of this Undertaking, USYD will provide the FWO with a Draft Project Framework (as defined in the Dictionary) for the completion of the Casual Academic Review. USYD:
 - a) will provide the USYD Senate People and Culture Committee (**Senate PCC**) with the Draft Project Framework prior to providing the Draft Project Framework to the FWO;
 - b) will provide the FWO with a Letter of Assurance from the Chair of the Senate PCC stating that the Senate PCC has approved the Draft Project Framework prior to providing the Draft Project Framework to the FWO;
 - c) agrees that the FWO may make recommendations to USYD on the Draft Project

Framework;

- d) agrees to consider and take into account the FWO's recommendations made under clause 48(c) above; and
 - e) will comply with any request by the FWO for any further information on the Draft Project Framework, within 28 days of the FWO's request.
49. USYD will regularly, and no less than monthly, report to the FWO on the progress of the Casual Academic Review, including any significant changes to assumptions, methodology or interpretations.
50. If during and/or at the completion of the Casual Academic Review there is identified any underpayments to any current or former employees, USYD will:
- a) rectify any underpayments identified (along with an Interest Amount and any applicable superannuation amount) and provide to the FWO evidence of such rectification within 60 days of becoming aware of the underpayments;
 - b) if any former employees identified in the Casual Academic Review as having underpayments owing to them cannot be located within six months of USYD identifying the underpayment, pay the underpayment amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act within a further 60 days. USYD will complete the required documents supplied by the FWO for this purpose; and
 - c) in the event that the FWO is able to locate and contact any former employee to whom underpayments are owed and who has had payments made by USYD under section 559 in accordance with clause 50(b) above, with the consent of the former employee, the FWO will (in addition to its obligations under section 559 of the FW Act) notify USYD in writing of the name and contact details of the former employee. Within 28 days of receiving any such notice USYD will:
 - i) pay to the former employee the Interest Amount on the amount already paid by USYD to the Commonwealth of Australia in respect of that employee; and
 - ii) pay to the former employee's nominated superannuation fund an amount equal to the amount that would have been required by law, had USYD paid the

underpayment amount directly to the relevant employee.

Systems improvements and training

51. Within 28 days of the Commencement Date, USYD will have commenced or completed (as the case may be) the implementation of the following systems improvements and/or training to ensure future compliance with workplace laws and will:

Systems and Process Improvements

- a) provide evidence to the FWO of any planned and/or completed system and process improvements including implementing, reconfiguring or updating payroll and record keeping systems as they relate to wage and entitlement payments to ensure compliance with, and consistency of application and interpretation of, the FW Act, and the 2023 Agreement;
- b) plan and implement appropriate compliance monitoring activities to confirm the correct application of and compliance with the 2023 Agreement; and

Training

- c) over the duration of this Undertaking, develop and deliver training for all persons responsible for the management of employees, human resources, recruitment and payroll (including but not limited to managers of casual employees and employees who approve hours of work) on the application of the 2023 Agreement (or any subsequent industrial instrument), including but not limited to training on the different entitlements for day and shift workers, and different entitlements for ordinary hours and overtime. The training will be delivered by qualified internal or external HR or employment law professionals as either face to face or online training modules.
52. USYD will provide to the FWO Reasonable Evidence of USYD's compliance with clause 51 every six months from the Commencement Date until the completion of the Casual Academic Review. In relation to clause 51, USYD will additionally provide to the FWO Reasonable Evidence of the following:
- a) dates on which the Training was, or will be, provided;
 - b) the frequency at which future training will be provided;

- c) position titles of employees who have completed, or will complete, the training;
 - d) total number of employees who have completed, or will complete, the training; and
 - e) the timeframe within which new employees responsible for the management of employees will be provided with the training.
53. If, during the duration of this Undertaking, USYD and its employees enter into another industrial instrument that supersedes the 2023 Agreement, USYD agrees to undertake the processes in paragraphs 51(a), 51(b) and 52 in relation to that instrument within 120 days of that industrial instrument coming into effect.

Complaints and review mechanism

54. USYD will continue to maintain its employee payments complaints and review mechanism (**Mechanism**) for employees until at least three months after the completion of the Casual Academic Review.
55. The existence of the Mechanism will be promoted to Affected Employees and all casual academic employees via USYD's external internet and internal intranet sites.
56. USYD will issue written guidance to all decision makers under the terms of the Mechanism detailing USYD's approach to assumptions and expectations in regard to resolving the disputes. Where there is a lack of records to determine an employee's entitlements, or ambiguity as to the interpretation of the Agreements to be applied and a lack of clear university policy as to the interpretation to be applied, the University will, where reasonably practicable, apply employee-favourable assumptions to resolve any ambiguity or uncertainty.
57. USYD will notify the FWO quarterly of any complaints or review requests covered by the Mechanism which relate to matters that are the subject of this Undertaking.
58. USYD will establish and maintain, via the USYD Human Resources Team, centralised oversight of any complaint covered by clause 54 to ensure consistent management and outcomes.
59. Where appropriate, the FWO will notify USYD within 14 days of any request for assistance being received by the FWO where the FWO identifies that the Mechanism has not first been applied. Where appropriate, the FWO will take no further action in relation to such

a request for assistance until the Mechanism has been followed.

60. In the same quarter following the initial notification to the FWO of a complaint, USYD will provide to the FWO information regarding the progress and/or outcome of any complaint and/or review made under the Mechanism. USYD will also provide, within a reasonable period specified by the FWO, any such further Reasonable Evidence requested to satisfy itself that USYD has met its obligations with respect to employees who raised the complaint under the Mechanism and/or the FW Act.
61. USYD undertakes to cooperate fully in relation to any request for assistance received by the FWO in relation to an employee where the employee does not consider the complaint has been addressed through the Mechanism.

Communications to Employees about Enforceable Undertaking

62. Within 14 days of the Commencement Date, but not before the FWO publishes a media release on its website in respect of this Undertaking, USYD will:
 - a) Place a notice on the home page of its Intranet (at <http://https://intranet.sydney.edu.au/>) notifying employees of the existence and commencement of this Undertaking in a form of **Attachment B (Intranet Notice)**; and
 - b) issue an all-staff email in a form of **Attachment C**, notifying employees of the existence and commencement of this Undertaking.
63. USYD must ensure the Intranet Notice remains on the home page of its intranet site for a period of 28 continuous days.
64. USYD will, within 28 days of the FWO publishing a media release on its website in respect of this Undertaking, take Reasonable Steps to contact former casual academic employees, notifying them of the commencement of the Undertaking, in the terms set out in the Intranet Notice.
65. If requested by the FWO, USYD will provide to the FWO Reasonable Evidence of USYD's compliance with clauses 62 to 64.

External Independent Compliance Audit

66. USYD undertakes to engage, at its cost, an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (**External Independent Auditor**) to conduct up to two independent audits of USYD's compliance with the FW Act, the FW Regulations and the 2023 Agreement and/or any other enterprise agreement that may be in place over the duration of this Undertaking (**Compliance Audits**).
67. USYD must consider and advise the FWO that it has considered the following factors before engaging the External Independent Auditor:
- a) whether the External Independent Auditor has adequate resources to perform the necessary work;
 - b) the External Independent Auditor's qualifications and technical expertise;
 - c) the External Independent Auditor's experience and any actual, perceived or potential conflicts of interest, and whether the External Independent Auditor has appropriate arrangements to manage these.
68. USYD agrees that it will obtain the FWO's approval in writing before engaging the External Independent Auditor, and the FWO may request that USYD use a different External Independent Auditor than one nominated by USYD.
69. USYD agrees that:
- a) the **first** Compliance Audit will examine two full pay periods falling within the period spanning eighteen (18) to twenty one (21) months of the Commencement Date of this Undertaking;
 - b) the **second** Compliance Audit, which will be undertaken only where the FWO identifies from the first Compliance Audit Report any Systemic Contravention, will examine two full pay periods falling within the period spanning thirty (30) to thirty three (33) months of the Commencement Date of this Undertaking;
 - c) both the first and second Compliance Audits:
 - i) will assess 5% of all employees to whom the 2023 Agreement (or any other

enterprise agreement applying to employees of USYD that is in force during the period of the respective Compliance Audit) applies, across a range of classifications, locations, faculties and schools, employment types (full time, part time and casual employment), and types of both academic and professional employees, during the relevant audit period (**Sampled Employees**) in respect of their employment by USYD;

- ii) will assess whether the pay and conditions of the Sampled Employees during the relevant audit period are compliant with the FW Act and 2023 Agreement (or any other enterprise agreement that may be in place during the duration of this Undertaking) and that pay slip and record keeping requirements are compliant with the FW Act and the FW Regulations.
- d) it will use its best endeavours to ensure that the External Independent Auditor:
- i) within four months of the Compliance Audit start date, produces a draft written report on the Compliance Audit, setting out the External Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO. USYD will direct the External Independent Auditor to not provide the draft report, or a copy of the same, to USYD without the FWO's approval;
 - ii) within one month of the FWO providing any comments on the draft report to the External Independent Auditor, finalises the Compliance Audit and provides a written report of the Compliance Audit (**Compliance Audit Report**) directly to the FWO. USYD will direct the External Independent Auditor to not provide the Compliance Audit Report, or a copy of the same, to USYD without the FWO's approval. USYD will be provided with a copy of the Compliance Audit Report following FWO's receipt of it; and
 - iii) includes in the Compliance Audit Report the following declarations from the External Independent Auditor:
 - (1) the External Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
 - (2) an undertaking that, notwithstanding that the External Independent Auditor is retained by USYD, it has acted independently, impartially,

- objectively and without influence from USYD in preparing the report;
- (3) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
 - (4) the report is provided to the FWO for its benefit and the FWO can rely on the report.
70. If the Compliance Audit Report identifies any underpayments to any current or former employees, USYD will:
- a) rectify any underpayments identified in the relevant audit period, and provide to the FWO evidence of such rectification within 60 days of USYD's receipt of the Compliance Audit Report;
 - b) if any former employees identified in the Compliance Audit as having underpayments owing to them cannot be located within six months of the Compliance Audit Report, pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act within a further 60 days. USYD will complete the required documents supplied by the FWO for this purpose; and
 - c) cause a separate review into whether any current or former employees not identified in the Compliance Audit would also have underpayments owing to them of the kind identified in the Compliance Audit Report, and, if so, undertake the rectification steps at clauses 70 (a) and (b) above.
71. If requested by the FWO, USYD will provide the FWO with all records and documents used to conduct the Compliance Audit within 30 days of such a request.

Governance Obligations

72. The Senate People and Culture Committee, a sub-committee of the USYD Senate, is responsible for monitoring and advising the Senate on effective risk management in relation to employee matters, including USYD's compliance with the FW Act, FW Regulations and 2023 Agreement (or any other industrial instruments which apply during the duration of this Undertaking), and this Undertaking. The Senate PCC reports regularly to the Senate.
73. The Chair of the Senate PCC is a member of the Senate. The Chancellor (or Deputy

Chancellor as delegate) and Vice-Chancellor are ex-officio members of the Senate PCC.

74. USYD will:

- a) ensure that the Senate and Senate PCC are notified of this Undertaking and any future Systemic Contraventions of workplace laws identified during the duration of this Undertaking. Any Systemic Contraventions of workplace laws identified during the duration of this Undertaking and reported to the Senate and Senate PCC will include information on how and when the contravention has been or will be rectified;
- b) include a standing agenda item for all Senate PCC meetings to discuss and address (where identified) compliance with USYD's obligations pursuant to this Undertaking. This includes reporting on the implementation and accuracy of any process (however described) pursuant to this Undertaking;
- c) include a standing agenda item for all Senate PCC meetings to discuss compliance with USYD's obligations pursuant to the FW Act, FW Regulations, the 2023 Agreement and/or any replacement instrument that may apply in the future;
- d) include a standing agenda item for all Senate PCC meetings to discuss and address (where identified) any disputes arising in relation to USYD's obligations (however described) including but not limited to anything arising pursuant to this Undertaking;
- e) include a standing agenda item for all Senate PCC meetings to discuss and address any matter arising in relation to USYD's obligations (however described) including but not limited to anything arising pursuant to this Undertaking that was raised in the Joint Consultative Committee; and
- f) include a standing agenda item for the Senate to receive reports from the Senate PCC on the matters raised in clauses 74 (b) to (e) above; and
- g) ensure that each Compliance Audit Report referred to in clause 69.d)ii) above is tabled before the Senate and Senate PCC, and where issues are identified, those issues are rectified in a timely manner, with the actions taken to address those issues being subsequently reported to and considered by the Senate and Senate PCC.

75. If requested by the FWO, USYD will provide to the FWO any documents held by the Senate

or Senate PCC relating to its monitoring of USYD's compliance with workplace laws, including but not limited to reports prepared for the Senate or Senate PCC and copies of Senate or Senate PCC minutes.

76. USYD will also ensure that any Systemic Contraventions of workplace laws identified during the duration of this Undertaking are reported to and considered by the Joint Consultative Committee convened under clause 530 of the 2023 Agreement.
77. If requested by the FWO, USYD will provide Reasonable Evidence of contraventions reported to the Senate PCC, the Joint Consultative Committee, under clause 74(e) above and the scope and outcomes of the Joint Consultative Committee's considerations of the reported contraventions.

Contribution Payment

78. Within 28 days of the Commencement Date, USYD will make a contribution payment of \$500,000 to the Consolidated Revenue Fund.
79. USYD will provide evidence to the FWO of the contribution payments being paid within 14 days of making the payments to the Consolidated Revenue Fund.

Extensions on times for completion

80. USYD may request of the FWO an extension on a time specified for completion of an obligation under this Undertaking. The FWO will not unreasonably withhold agreement on a request for an extension of time.
81. Where a time specified for undertaking an obligation under this Undertaking is contingent on or follows from the time specified for the completion of another obligation under this Undertaking, and that time for completion has been extended by the FWO, the time specified for completion of the later obligation is correspondingly extended by the same period.

No Inconsistent Statements

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

No waiver of privilege

83. The parties agree that nothing in this Undertaking requires USYD to produce a document that is or may be subject to a claim of legal professional privilege. USYD agrees that it will not claim legal professional privilege over any documentation relating to methodology, assumptions or interpretations which is to be provided to the FWO pursuant to an obligation in this Undertaking.

ACKNOWLEDGEMENTS

84. USYD acknowledges that:

- a) the FWO may;
 - i) make this Undertaking available on the FWO internet site at www.fairwork.gov.au
 - ii) release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
 - iii) issue a media release in relation to this Undertaking;
 - iv) from time to time, publicly refer to the Undertaking and its terms; and
 - v) rely upon the admissions made by USYD set out in clause 33 above in respect of decisions taken regarding enforcement action in the event that USYD is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by USYD to comply with its obligations under this Undertaking;
- b) consistent with the legislative note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out herein;
- c) consistent with subsection 715(3) of the FW Act, USYD may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
- d) if USYD contravenes any of the terms of this Undertaking:
 - i) the FWO may apply to any of the Courts set out in subsection 715(6) of the FW Act, for orders under subsection 715(7) of the FW Act; and
 - ii) this Undertaking may be provided to the Court as evidence of the admissions made by USYD in clause 33 above, and also in respect of the question of costs.

DICTIONARY

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

The following defined terms are adopted in this Undertaking:

- **Draft Project Framework** means a project framework (including, but not limited to, the project scope, any methodology, assumptions or interpretations, projected timeframes and actions and the project governance and reporting systems, regarding each individual faculty and school identified as part of the Casual Academic Review) to;
 - calculate employee entitlements (“what was paid” versus “what should have been paid”) in relation to the identification of areas of non-compliance for Casual Academic staff covered under the Agreements and the 2023 Agreement; and
 - where non-compliance is identified, calculate underpayments per pay period, and quantify the total underpayment liability inclusive of superannuation and a compensatory Interest Amount for Casual Academic staff over a seven-year period.
- **Interest Amount** means interest on any underpayments or any Superannuation Amount (as applicable) and is calculated at 4.25% using simple interest method.
- **Reasonable Evidence** means such evidence as the FWO may reasonably require, and which could reasonably be expected to satisfy a court of:
 - a) the truth of any fact asserted by USYD or by any of its servants or agents; and/or
 - b) the accuracy and correctness of any information provided by USYD, or by any of its servants or agents; and/or
 - c) compliance by USYD with any term of this Undertaking
- **Reasonable Steps** will include, but are not limited to, repeated and multi-channel attempts to contact an Affected Employee, Veterinary Employee or employee found

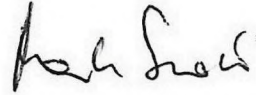
to be underpaid as part of the Casual Academic Review through:

- a) last known details from employee files including email, mobile telephone for direct calls and SMS and last known address for post; and
 - b) utilisation of assistance by the Head of Department or relevant manager of the former employee as appropriate.
- **Relevant Period** in clause 33 means the periods covered by the EPR1 Wage Underpayment, EPR2 Wage Underpayment, SoMS and SoP Wage Underpayment.
 - **Superannuation Amount** means the amount reported to the FWO as detailed at clause 28 plus any additional outstanding amounts identified as an underpayment of superannuation as a result of admissions set out at clause 33.
 - **Systemic Contravention** means a contravention of a workplace law which arises from the adoption of a practice, policy, interpretation or error by the University and which:
 - a) affects employees across multiple work areas, schools or classifications; or
 - b) has occurred over multiple pay periods.
 - **Workplace law** is as defined in section 12 of the *Fair Work Act 2009* other than any law dealing with occupational health and safety matters.

Executed as an undertaking

EXECUTED by an authorised person of the University of Sydney (ABN 15 211 513 464) in the presence of:

PROFESSOR MARK SCOTT
VICE-CHANCELLOR AND PRESIDENT

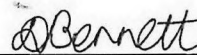


(Name and position of authorised signatory)

(Signature of authorised signatory)

in the presence of:

Donna Bennett



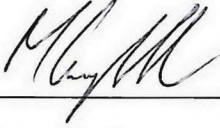
(Name of witness)

(Signature of witness)

9.12.24

(Date)

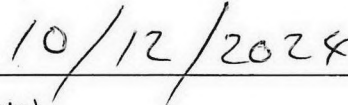
ACCEPTED BY THE FAIR WORK OMBUDSMAN PURSUANT TO SECTION 715(2) OF THE FAIR WORK ACT 2009 ON:



Michael Campbell

Group Manager – Operations

Delegate for the FAIR WORK OMBUDSMAN



(Date)

in the presence of:



(Signature of witness)



(Name of Witness)

ATTACHMENT A

Contravention	Entitlement	Reference	Contravention Start Date	Contravention End Date
Failure to comply with section 50 of the <i>Fair Work Act 2009</i> by failing to comply with the 2013 Agreement	Minimum engagement periods for casual professional employees	Clause 48	10 January 2014	27 April 2018
	Overtime for casual professional employees	Clauses 26, 29 and 32 of Schedule 4	10 January 2014	27 April 2018
	Overtime for permanent professional employees	Clauses 26 and 29 of Schedule 4	10 January 2014	27 April 2018
	Time in lieu of overtime for professional employees	Clauses 28, 29 and 31 of Schedule 4	10 January 2014	27 April 2018
	Public holiday penalty rates for casual professional employees	Clause 163	10 January 2014	27 April 2018

	Public holiday penalty rates for permanent professional employees	Clause 163	10 January 2014	27 April 2018
	Shift loadings for permanent professional employees	Clause 17 of Schedule 4	10 January 2014	27 April 2018
	Shift loadings for casual professional employees	Clause 17 of Schedule 4	10 January 2014	27 April 2018
	Minimum rates of pay for casual professional employees (failing to pay the correct rate of pay)	Schedule 1	10 January 2014	27 April 2018

	Minimum rates of pay for permanent professional employees (failing to pay the correct rate of pay)	Schedule 1	10 January 2014	27 April 2018
	Minimum rates of pay for permanent professional employees (failing to pay for all contracted hours)	Schedule 1	10 January 2014	27 April 2018
	Minimum rates of pay for permanent academic employees (failing to pay the correct rate of pay)	Schedule 1	10 January 2014	27 April 2018

	Minimum rates of pay for permanent academic employees (failing to pay for all contracted hours)	Schedule 1	10 January 2014	27 April 2018
	Meal allowances during overtime for casual professional employees	Schedule 3 and clause 10 of Schedule 4	10 January 2014	27 April 2018
	Meal allowance during overtime for permanent professional employees	Schedule 3 and clause 10 of Schedule 4	10 January 2014	27 April 2018
	Annual leave loading for permanent professional employees	Clause 176	10 January 2014	27 April 2018

	Annual leave loading for permanent academic employees	Clause 176	10 January 2014	27 April 2018
	Other required academic activity rate A01 for casual academic employees	Clause 3 of Schedule 1	6 March 2017	27 April 2018
	Higher duties allowance for permanent professional employees	Clause 137	10 January 2014	27 April 2018
	Special leave for permanent academic employees (study leave)	Clause 247	10 January 2014	27 April 2018
	Superannuation	Clauses 144 and 145	10 January 2014	27 April 2018
	Marking for casual academic employees in the SoP	Clause 4 of Schedule 1	10 January 2014	27 April 2018

	Tutoring rates for casual academic employees	Clause 2 of Schedule 1	10 January 2014	27 April 2018
Failure to comply with section 50 of the <i>Fair Work Act 2009</i> by failing to comply with the 2018 Agreement	Minimum engagement period	Clause 53	28 April 2018	30 June 2022
	Overtime for casual professional employees	Clauses 21, 24 and 27 of Schedule 4	28 April 2018	30 June 2022
	Overtime for permanent professional employees	Clauses 21 and 24 of Schedule 4	28 April 2018	30 June 2022
	Time in lieu of overtime for professional employees	Clauses 23, 24 and 26 of Schedule 4	28 April 2018	30 June 2022
	Public holiday penalty rates for casual professional employees	Clause 190	28 April 2018	30 June 2022

	Public holiday penalty rates for permanent professional employees	Clause 190	28 April 2018	30 June 2022
	Shift loadings for permanent professional employees	Clause 12 of Schedule 4	28 April 2018	30 June 2022
	Shift loadings for casual professional employees	Clause 12 of Schedule 4	28 April 2018	30 June 2022
	Minimum rates of pay for casual professional employees (failing to pay the correct rate of pay)	Schedule 1	28 April 2018	30 June 2022

	Minimum rates of pay for permanent professional employees (failing to pay the correct rate of pay)	Schedule 1	28 April 2018	30 June 2022
	Minimum rates of pay for permanent professional employees (failing to pay for all contracted hours)	Schedule 1	28 April 2018	30 June 2022
	Minimum rates of pay for permanent academic employees (failing to pay the correct rate of pay)	Schedule 1	28 April 2018	30 June 2022

	Minimum rates of pay for permanent academic employees (failing to pay for all contracted hours)	Schedule 1	28 April 2018	30 June 2022
	Meal allowance during overtime for casual professional employees	Schedule 3 and clause 10 of Schedule 4	28 April 2018	30 June 2022
	Meal allowance during overtime for permanent professional employees	Schedule 3 and clause 10 of Schedule 4	28 April 2018	30 June 2022
	Annual leave loading for permanent professional employees	Clause 203	28 April 2018	30 June 2022

	Annual leave loading for permanent academic employees	Clause 203	28 April 2018	30 June 2022
	Higher duties allowance for permanent professional employees	Clause 156	28 April 2018	30 June 2022
	Special leave for permanent academic employees (study leave)	Clause 302	28 April 2018	30 June 2022
	Superannuation	Clause 165	28 April 2018	30 June 2022
	Tutoring rates casual academic employees	Clause 1 of Schedule 1	28 April 2018	15 June 2024
	Other required academic activity rate for casual academic employees	Clause 2 of Schedule 1	28 April 2018	15 June 2024

	Marking for casual academic employees in the SoP	Clause 3 of Schedule 1	28 April 2018	14 December 2021
Failure to comply with section 535(1) of the <i>Fair Work Act 2009</i> by failing to make and keep for 7 years employee records prescribed by the <i>Fair Work Regulations 2009</i>		Regulation 3.33(1) - Failure to make and keep a record that specifies the rate of remuneration paid to an employee	10 January 2014	30 June 2022
		Regulation 3.33(2) - Failure to make and keep a record of all hours worked by casual or irregular part time employees	10 January 2014	30 June 2022

		Regulation 3.33(3) - Failure to make and keep a record of allowances, penalty rates or loadings paid to employees	10 January 2014	30 June 2022
		Regulation 3.34 - Failure to make and keep a records of the number of hours of overtime worked by employees	10 January 2014	30 June 2022

ATTACHMENT B – ALL STAFF INTRANET NOTICE

In 2020, the University of Sydney commenced a review of its compliance with the *University of Sydney Enterprise Agreement 2013-2017* and the *University of Sydney Enterprise Agreement 2018-2021*. As a result of this review, the University determined that it had contravened the agreements and the *Fair Work Act 2009* (Cth) by underpaying employees their entitlements. The majority of employees identified as affected by an underpayment were casual professional employees, and the underpayments related to the employees' entitlements to minimum engagement periods, overtime, allowances, public holiday penalty rates and contracted hours. The University also identified that it had failed to make and keep required employee records.

Following identification of these underpayments, the University commenced a broad review of the work allocation, supervision and payment practices for all casual academic employees (**Casual Academic Review**). The Casual Academic Review is ongoing but to date has revealed underpayments to casual academic employees in the School of Mathematics and Statistics and the School of Psychology in the Faculty of Science, a number of Schools in the Faculty of Engineering, and the Sydney School of Education and Social Work in the Faculty of Arts and Social Sciences. These underpayments generally relate to failing to apply correct sessional and tutorial rates and failing to pay for all time spent marking.

As part of the review process, the University voluntarily disclosed the contraventions to the Fair Work Ombudsman (**FWO**).

The University has personally notified its impacted current and former employees of the contraventions and the underpayments owed. The University apologises unreservedly for the contraventions, and we are taking all necessary steps to remedy the contraventions, including by continuing to undertake the Casual Academic Review in remaining priority Schools and Faculties.

The University has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws. The University will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance, including finalising the Casual Academic Review and commissioning an audit of

employee entitlements.

If you have queries or questions relating to your employment, please contact <insert email address or phone number for employees to contact>.

Alternatively, anyone can contact the FWO via www.fairwork.gov.au or 13 13 94.

ATTACHMENT C – LETTER TO EMPLOYEES

Dear <insert name>

As you have already been made aware, on 13 August 2020, the University of Sydney voluntarily disclosed contraventions of the *Fair Work Act 2009* (Cth) (**FW Act**) to the Fair Work Ombudsman (**FWO**).

The contraventions identified related to underpayments to employees under the *University of Sydney Enterprise Agreement 2013-2017* and the *University of Sydney Enterprise Agreement 2018-2021* (**Enterprise Agreements**), with varying impacts for individuals. The University also identified a number of record-keeping contraventions.

Following this disclosure, the University commenced a review of its compliance with the Enterprise Agreements in relation to casual academic employees (**Casual Academic Review**). The Casual Academic Review is ongoing but to date has identified underpayments to casual academic employees in the School of Mathematics and Statistics and the School of Psychology in the Faculty of Science, a number of Schools in the Faculty of Engineering, and the Sydney School of Education and Social Work in the Faculty of Arts and Social Sciences.

The University has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws. The University will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance, including finalising its Casual Academic Review and commissioning an independent audit of employee entitlements.

If you have queries or questions relating to your employment, please contact the University on <insert phone number>.

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

Yours sincerely

<Employer name>

ATTACHMENT D – ADDENDA FOR ADDITIONAL CONTRAVENTIONS ARISING DURING THE CASUAL ACADEMIC REVIEWS

D.1 This Attachment D is intended to set out an agreed process by which the FWO and USYD may enter into an Addendum to this Undertaking, as set out in clause 34.

Addendum Requests by USYD

D.2 At any time during the duration of this Undertaking, USYD may make a request in writing to the FWO under clause D.3 to discuss making an Addendum (**Addendum Request**), if:

- (a) in the course of the Casual Academic Review, USYD has identified an additional contravention of section 50 or section 535(1) of the FW Act (**Proposed Additional Contravention**);
- (b) the Proposed Additional Contravention arose from USYD failing to pay an amount or amounts to which an employee was entitled under the Agreements, or failing to make and keep records in accordance with the FW Regulations in relation to an employee, and is not already covered in clause 33 and Attachment A; and
- (c) USYD wishes for the Proposed Additional Contravention to be added to the contraventions the subject of this Undertaking, as listed in clause 33.

D.3 An Addendum Request:

- (a) is to be made by or on behalf of USYD to an officer of the FWO nominated at the time of commencement of this Undertaking (or varied by the FWO in writing at any time);
- (b) must include the following information, to ensure that the FWO is able to form a reasonable belief as to whether a contravention has occurred, within the meaning of section 715(1) of the FW Act:
 - (i) details of the Proposed Additional Contravention, including the relevant clause of the Agreement or the regulation of the FW Regulations;
 - (ii) all assumptions, methodology or interpretations adopted by USYD in determining that there has been a contravention of the clause of the Agreement and thereby section 50 or section 535(1) of the FW Act;
 - (iii) the number of employees affected by the Proposed Additional Contravention;
 - (iv) the quantum of underpayment (if any) resulting from the Proposed Additional Contravention;

- (c) must be accompanied by documentary evidence to support the matters set out in clause D.3(b), including:
- (i) any calculations performed by USYD in relation to the Proposed Additional Contravention;
 - (ii) any communications with affected employees (whether individually or in a group) about the Proposed Additional Contravention, including in relation to the assumptions, methodology or interpretations used in determining that the Proposed Additional Contravention has occurred; and
 - (iii) employee records for:
 - (1) a sample of 5% of employees affected by the Proposed Additional Contravention, with a minimum sample size of 5 employees; or
 - (2) all affected employees if the Proposed Additional Contravention affects fewer than 5 employees;
- (d) must include a statement that USYD admits the Proposed Additional Contravention.

FWO response to an Addendum Request and further actions by USYD

D.4 Within 60 days of receiving an Addendum Request, the FWO will provide a response to USYD in writing, which will take the form of one of the four responses set out in column 2 of table below and, where applicable, will require a response by USYD set out in column 3 of the table below:

Response Name	FWO conclusion based on the information provided to the FWO in accordance with clause D.3	Action required by USYD
Acceptance	<ul style="list-style-type: none"> • The FWO has sufficient information to form a reasonable belief that the Proposed Additional Contravention has occurred, is satisfied with the assumptions, methodology and interpretations adopted by USYD in relation to the Proposed Additional Contravention, and is willing to enter into discussions to make an Addendum for the purpose of clause 34 and Attachment D. 	None – the FWO will take the step set out in clause D.8.

Methodology Concern	<ul style="list-style-type: none"> • The FWO considers that the assumptions, methodology or interpretations adopted by USYD in relation to the Proposed Additional Contravention are not compliant with the FW Act or the relevant Agreement. • The response will set out the reasons for the FWO's views. • However, if USYD agrees to amend its assumptions, methodology or interpretations in a way that will be set out in the response (and, if applicable, conduct any further remediation of underpayments in accordance with those views), the FWO would be willing to enter into discussions to make an Addendum for the purpose of clause 34 and Attachment D. 	USYD is to inform the FWO in writing within a further 28 days whether or not it will agree to adopt the FWO's views on assumptions, methodology or interpretation and, if applicable, conduct any further remediation of underpayments in accordance with those views.
Information Request	<ul style="list-style-type: none"> • The FWO does not have sufficient information to properly respond to the Addendum Request. • The response will set out any further information or documents the FWO may reasonably require. 	USYD is to provide to the FWO, within a further 28 days any information or documents requested.
Other refusal	<ul style="list-style-type: none"> • The FWO cannot agree to the Addendum Request for a reason other than a Methodology Concern or Information Request (for example, because it does not fall within the scope of clause D.2 or satisfy the requirements in clause D.3). • The response will set out the reasons for the FWO's views. 	<i>None – the Addendum Request will lapse</i>

D.5 If USYD provides the requested information or documents to the FWO in response to an Information Request response, the FWO agrees to reconsider the material as if it were a fresh Addendum Request and provide another response as set out in clause D.4.

D.6 Where the FWO provides a Methodology Concern response to USYD, but USYD does not wish to adopt the FWO's views on the assumptions, methodology or interpretations of the Proposed Additional Contravention:

(a) USYD may, as part of providing the response set out in column 3 of the table in clause

- D.4, provide the FWO with further material to explain its position. The FWO agrees to reasonably consider that material, but is not obliged to amend its position;
- (b) the FWO and USYD may agree to (but are not obliged to) hold discussions or exchange correspondence at any time about the assumptions, methodology or interpretations of the Proposed Additional Contravention;
 - (c) if, following any further consideration, discussions or correspondence set out in clauses D.6(a) or D.6(b), the FWO and USYD jointly agree to adopt a position that is different from the Methodology Concern, the FWO will send USYD an Acceptance in writing that reflects the agreement reached;
 - (d) at any time after USYD provides the response set out in column 3 of the table in clause D.4, either the FWO or USYD may inform the other party in writing that they no longer wish to pursue an Addendum Request in response to that Proposed Additional Contravention.

D.7 For the avoidance of doubt, the extension of time procedure in clauses 80 and 81 of this Undertaking applies to the procedure set out in this Attachment D.

Provision and content of an Addendum

D.8 Within 28 days of the FWO providing USYD with an Acceptance or receiving an agreement by USYD to adopt the FWO's views and (if applicable) conduct further remediation in response to a Methodology Concern, the FWO will provide USYD with a draft Addendum concerning the Proposed Additional Contravention. The FWO and USYD agree to hold discussions to finalise the Addendum as soon as possible.

D.9 An Addendum may include the following material:

- (a) recitals relating to the Proposed Additional Contravention, including reference to (but not copies of) any exchange of correspondence between USYD and the FWO about the assumptions, methodology or interpretations;
- (b) the FWO's reasonable belief, and USYD's admission, of the Proposed Additional Contravention; and
- (c) if the Addendum is to be entered into following a Methodology Concern, any mechanism for further remediation of the Proposed Additional Contravention to affected employees.

No Addendum except as agreed in writing

D.10 The parties agree that no Addendum is entered into unless a document is executed by both parties following the procedure set out in this Attachment D.