

From: [JOCUMSEN, Katrina](#)
To: s 47F
Subject: 1. FW: Fair Work Ombudsman Compliance Notice - Payments to Communication Services Staff [SEC=OFFICIAL]
Date: Wednesday, 23 June 2021 9:13:06 AM
Attachments: [AHL6MFD1_2021-06-22_16-16-27-375.pdf](#)

FYI

Katrina Jocumsen MAHRI

Branch Manager
People Services
Department of Social Services

P: s 47E(d), s 47F | **E:** katrina.jocumsen@dss.gov.au | **M:** s 47E(d), s 47F

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

From: BAUMGART, Richard <Richard.BAUMGART@dss.gov.au>
Sent: Tuesday, 22 June 2021 7:23 PM
To: JOCUMSEN, Katrina <Katrina.JOCUMSEN@dss.gov.au>; s 47F
s 47E(d), s 47F @dss.gov.au
Cc: Corporate Group <CorporateGroup@dss.gov.au>
Subject: FW: Fair Work Ombudsman Compliance Notice - Payments to Communication Services Staff [SEC=OFFICIAL]

FYI

Richard Baumgart
A/g Group Manager
Corporate Group
Department of Social Services
P: s 47E(d), s 47F | **M:** s 47E(d), s 47F | **E:** richard.baumgart@dss.gov.au

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

From: Secretarys Office <Secretarys.Office@dss.gov.au>
Sent: Tuesday, 22 June 2021 4:19 PM
To: HUDSON, Adrian <Adrian.HUDSON@dss.gov.au>
Cc: COO <COO@dss.gov.au>; BAUMGART, Richard <Richard.BAUMGART@dss.gov.au>; Secretarys Office <Secretarys.Office@dss.gov.au>

Subject: RE: Fair Work Ombudsman Compliance Notice - Payments to Communication Services Staff [SEC=OFFICIAL]

Adrian

The Secretary has noted this email.

Kind regards, s 47F

s 47F

Executive Assistant | Office of the Secretary
Department of Social Services
P: s 47E(d), s 47F | **E:** s 47E(d), s 47F @dss.gov.au

From: HUDSON, Adrian <Adrian.HUDSON@dss.gov.au>
Sent: Monday, 21 June 2021 8:08 PM
To: Secretarys Office <Secretarys.Office@dss.gov.au>
Cc: COO <COO@dss.gov.au>; BAUMGART, Richard <Richard.BAUMGART@dss.gov.au>
Subject: Fair Work Ombudsman Compliance Notice - Payments to Communication Services Staff [SEC=OFFICIAL]

Secretary,

Action Requested:

- That you **note** the Fair Work Ombudsman has issued the department with a Compliance Notice under the *Fair Work Act 2009* concerning the self-disclosure of underpayments to employees in the Communication Services Branch between 2 October 2015 and 2 February 2020.
- That you **note** that s47F those monies will be transferred to the Fair Work Ombudsman to hold, consistent with their advice to the department.
- That you **note** the Fair Work Ombudsman will consider this matter closed on completion of the final step above.

Background:

- As noted by you on 5 March 2021 (**attached**), the department self-reported the underpayment of allowances to 68 (current and former) Communications Services Branch staff to the Fair Work Ombudsman.
- Following a review by the Fair Work Ombudsman Enforcement Board, the department has been issued with a Compliance Notice.
- A Compliance Notice is a non-punitive mechanism for the Fair Work Ombudsman to address the contraventions and provide specific actions for the department to complete that will remedy them (most of which have already

occurred) by 23 July 2021.

- A Compliance Notice is at the 'lower-end' of remedy actions available, and is based on the actions already undertaken by the department prior to the notification.
- **S47F** [REDACTED]
S47F [REDACTED]
- The Fair Work Ombudsman has advised that any outstanding funds should be transferred via the Consolidated Revenue fund to the Fair Work Ombudsman to hold by 23 July 2021.
- Following completion of this action, the department will be relieved of its obligations to contact and make payment, and the Fair Work Ombudsman will consider the matter closed.

Kind regards,

Adrian Hudson

Chief Operating Officer

Department of Social Services

P: **s 47E(d), s 47F** [REDACTED] **E:** adrian.hudson@dss.gov.au **M:** **s 47E(d), s 47F** [REDACTED]

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

s 47E(d), s 47F

S47F

From: HUDSON, Adrian
Sent: Monday, 21 June 2021 8:08 PM
To: Secretarys Office
Cc: COO; BAUMGART, Richard
Subject: Fair Work Ombudsman Compliance Notice - Payments to Communication Services Staff [SEC=OFFICIAL]
Attachments: EC20-001982 Secretary Signed Front Page - Communications On-call Actions.pdf; 10.06.21 - Compliance Notice - DSS.pdf

Secretary,

Action Requested:

- That you **note** the Fair Work Ombudsman has issued the department with a Compliance Notice under the *Fair Work Act 2009* concerning the self-disclosure of underpayments to employees in the Communication Services Branch between 2 October 2015 and 2 February 2020.
- That you **note** that S47F those monies will be transferred to the Fair Work Ombudsman to hold, consistent with their advice to the department.
- That you **note** the Fair Work Ombudsman will consider this matter closed on completion of the final step above.

Background:

- As noted by you on 5 March 2021 (**attached**), the department self-reported the underpayment of allowances to 68 (current and former) Communications Services Branch staff to the Fair Work Ombudsman.
- Following a review by the Fair Work Ombudsman Enforcement Board, the department has been issued with a Compliance Notice.
- A Compliance Notice is a non-punitive mechanism for the Fair Work Ombudsman to address the contraventions and provide specific actions for the department to complete that will remedy them (most of which have already occurred) by 23 July 2021.
- A Compliance Notice is at the 'lower-end' of remedy actions available, and is based on the actions already undertaken by the department prior to the notification.
- S47F S47F
- The Fair Work Ombudsman has advised that any outstanding funds should be transferred via the Consolidated Revenue fund to the Fair Work Ombudsman to hold by 23 July 2021.
- Following completion of this action, the department will be relieved of its obligations to contact and make payment, and the Fair Work Ombudsman will consider the matter closed.

Kind regards,

Adrian Hudson

Chief Operating Officer

Department of Social Services

P: s 47E(d), s 47F **E:** adrian.hudson@dss.gov.au **M:** s 47E(d), s 47F

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From: [JOCUMSEN, Katrina](#)
To: s 47F
Cc: [Workplace Relations](#)
Subject: 2. FW: MO Request for Further Information on QoN SQ21-000475 - Fair Work Ombudsman [SEC=OFFICIAL]
Date: Thursday, 12 August 2021 9:55:20 AM

FYI

Katrina Jocumsen MAHRI

Branch Manager

People Services

Department of Social Services

P: s 47E(d), s 47F **E:** katrina.jocumsen@dss.gov.au **M:** s 47E(d), s 47F

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

From: BAUMGART, Richard <Richard.BAUMGART@dss.gov.au>

Sent: Thursday, 12 August 2021 9:52 AM

To: HUDSON, Adrian <Adrian.HUDSON@dss.gov.au>

Cc: Corporate Group <CorporateGroup@dss.gov.au>; COO <COO@dss.gov.au>; JOCUMSEN, Katrina <Katrina.JOCUMSEN@dss.gov.au>

Subject: MO Request for Further Information on QoN SQ21-000475 - Fair Work Ombudsman [SEC=OFFICIAL]

Adrian

The MO has asked for additional information relating to QoN SQ21-000475 – Fair Work Ombudsman. Our proposed response is below for your review.

s 47E (d)

regards

Richard Baumgart
A/g Group Manager
Corporate Group

Department of Social Services

P: s 47E(d), s [REDACTED] | **M:** s 47E(d), s [REDACTED] | **E:** richard.baumgart@dss.gov.au

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

From: DLOs <DLOs@dss.gov.au>

Sent: Monday, 9 August 2021 4:15 PM

To: Senate.Estimates <senate.estimated@dss.gov.au>

Cc: COO <COO@dss.gov.au>; DLOs <DLOs@dss.gov.au>

Subject: re: MO request for further information two QoNs [SEC=OFFICIAL]

Importance: High

Hi s 47F [REDACTED]

As discussed, the MO has cleared **SQ21-000475** (Fair Work Ombudsman) and s 22 [REDACTED] s 22 [REDACTED] (**attached**). However, prior to tabling, the MO has requested some further information/context regarding the responses.

For **SQ21-000475**, the MO would like some further information around the one reference made to the Fair Work Ombudsman as there were no references in the previous reporting periods. The MO is happy to receive this additional information via email. Once the information has been reviewed by the MO, we will progress the cleared QoNs back to the department ready for tabling. Please call if you have any questions.

Thanks,

s 47F [REDACTED] | Departmental Liaison Officer

Office of Senator the Hon Anne Ruston

Minister for Families and Social Services

Minister for Women's Safety

P: s 47E(d), s 47F [REDACTED] | **M:** s 47E(d), s 47F [REDACTED] | **E:** DLOs@dss.gov.au

DSS acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them and their cultures, and to elders both past and present.



Ref: EC20-001982

MINUTE

SECRETARY

Through: s47F
Emily Canning 3/3/2021
Acting Chief Operating Officer

Cc:
Andrew Harvey, Chief Finance Officer, Finance
Charmaine Sims, Acting Chief Counsel, Legal Services

SUBJECT: COMMUNICATION SERVICES BRANCH MEDIA ON-CALL
MANAGEMENT

Critical Date: 5 March 2021

Reason: To enable payments on Thursday 18 March

Recommendations:

- That you **note** the approach to managing overtime for Communication Services Branch media on-call shifts between October 2015 and February 2020 was inconsistent with the *Enterprise Agreements 2015-18 and 2018-21*.

NOTED / ~~PLEASE DISCUSS~~

- That you **note** this inconsistency has resulted in underpayments to 67 current and former staff totalling \$398,213.42.

NOTED / ~~PLEASE DISCUSS~~

- That you **note** an external consulting firm s 47E(d), s 47F was engaged to review and confirm the total underpayments.

NOTED / ~~PLEASE DISCUSS~~

- ~~That you **agree** to advise and pay the affected current and former employees.~~
That you agree the affected current & former employees are advised & paid

AGREED / ~~NOT AGREED~~

- That you **note** the proposal to notify the Fair Work Ombudsman once rectified, as per legal advice. *Please ensure the AFSC is advised ASAP*

NOTED / ~~PLEASE DISCUSS~~

s47F
Secretary:..... *mk* /2021

Issues:

1. The Communication Services Branch (CSB) is required to monitor media after-hours to ensure urgent enquiries are managed. This work is undertaken by Public Affairs Officer 2s (PAO2/APS6) and Public Affairs Officer 3s (PAO3/EL1).
2. In 2015, the then CSB Branch Manager implemented a branch policy that determined how overtime and restriction allowances were to be paid to staff for this work. In February 2020, it was identified this policy had been inconsistently applied and was inconsistent with the *Department of Social Services Enterprise Agreements (EA) 2015-18* and 2018-21.
3. After seeking external legal advice and reviewing the hours worked during the affected period against the provisions in the EA, it was determined s 47E(d)
s 47E(d)
4. External legal advice is that s 42
(Attachment A).
5. The practice of paying restrictive allowance instead of overtime has ceased. The current approach has been through the engagement of two part-time contractors specifically engaged to undertake the work out of ordinary business hours. Should we return to utilising APS employees they will be paid in accordance with the Enterprise Agreement.
6. An external organisation, s 47E(d), s 47F was engaged to undertake a review of the department's long service leave balances. This contract was leveraged to undertake this independent review of records and confirm the total of the underpayments.
7. The review found 37 current and 30 former employees are eligible for overtime and meal allowances totalling \$398,213.42. The report is at Attachment B.
8. To correct the underpayments, a lump sum back payment for each individual will be processed in the payroll system and taxed in accordance with the Australian Taxation Office's delayed income tax offset provisions. These provisions apply to prevent the tax spike that would otherwise arise on a lump sum received in one year comprising amounts attributable to earlier tax years.
9. Prior to processing back payments, People Services Branch will advise those affected and encourage them to seek independent financial advice should they require further assistance to understand any potential impact on their individual situation.
10. Australian Public Service Commission circular 2020/2 reiterates Commonwealth employers have obligations under the *Fair Work Act (2009)* to ensure employees are paid correctly and in the event of underpayment, make corrections as soon as possible. Serious or significant errors should be reported to the Fair Work Ombudsman with smaller underpayments dealt with internally.
11. Given this issue is not wage related (i.e. confined to allowances), affects a small number of current staff and former staff, and is confined to one business area, the department's s 47E(d), s 47F advice is to s 42
(Attachment C refers).

Background:

12. CSB has managed after-hours media, in addition to standard hours worked, through the following rostered shifts.
 - a. From January 2015 until April 2019
 - i. Monday - Friday: 6:00pm-9:00pm
 - ii. Weekend and public holidays: 8:30am-5:00pm.
 - b. From May 2019 to September 2020
 - i. Monday - Friday: 7:00am-8:30am and 6:00pm-9:00pm
 - ii. Weekend and public holidays: 8:00am-5:00pm.
13. During each shift, staff are required to monitor the media inbox every 15 minutes, requiring them to log on via their laptop or the department's media mobile phone.
14. Under the branch policy they were paid restriction allowance but not sufficient overtime, based on the assumption checking the media inbox every 15 minutes was not active work.
15. However, external legal advice s 42

s 42

Financial Implications:

16. Back payments totalling \$398,213.42 will be expensed to the Corporate Group in this financial year. A further s 47E(d) was expensed to Corporate Group to engage s 47E(d), s 47F

Deregulation Impacts:

17. There are no regulatory impacts.

Consultation:

18. Chief Finance Officer, People Services Branch, Legal Services Branch, Financial Services Branch, s 47E(d), s 47F Legals, s 47E(d), s 47F and SAP Technical (Services Australia)

Summary of Attachments:

- A – s 47E(d), s 47F Legal Advice
- B – s 47E(d), s 47F final report – DSS Overtime Review
- C – Department of Social Services s 47E(d), s 47F advice

S47F

Richard Baumgart
Acting Group Manager
Corporate

3 March 2021

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S 47E (d)

S 47E (d)

s 42

From: BAUMGART, Richard
Sent: Monday, 21 June 2021 3:07 PM
To: HUDSON, Adrian
Cc: COO; Corporate Group; JOCUMSEN, Katrina
Subject: FWO Compliance Notice [SEC=OFFICIAL]
Attachments: EC20-001982 Secretary Signed Front Page - Communications On-call Actions.pdf; 10.06.21 - Compliance Notice - DSS.pdf

Adrian

Action

- That you **note** following notification to the Fair Work Ombudsman (FWO) on 10 March 2021 of the underpayments of overtime rates and meal allowances made to Communications Branch on-call staff, the FWO has conducted a review and issued the department with a Compliance Notice.
- That you **approve** the draft email below to the Secretary.

Background

- As noted by the Secretary on 5 March 2021 (attached), the department self-reported the underpayment of 68 (current and former) Communications Services Branch staff allowances to the Fair Work Ombudsman (the FWO).
- Following a review by the FWO Enforcement Board, the department was issued with a Compliance Notice – a non-punitive mechanism for the FWO to address the contraventions and provide specific actions for the department to complete that will remedy them.
- A Compliance Notice is at the ‘lower-end’ of remedy actions available, and is based on the remedy actions already undertaken by the department prior to the notification.
- The department has until 23 July 2021 to calculate and rectify the underpayments, including:
 - the provision of proof the outstanding payments have been made
 - evidence of the steps taken by the department to contact any employees in attempts to rectify any outstanding payments
 - make any outstanding payments to the Commonwealth Consolidated Revenue Fund (CRF).
- As at 16 June 2021, payments have been made to 66 staff with outstanding payments for s47F .
 - s47F
- Following completion of these actions, the Department is relieved of all obligations on contacting and making payments.
- Once these actions have been completed, the FWO will consider the matter closed.

New Steps

- Provide the update below to the Secretary.

Richard Baumgart

A/g Group Manager

Corporate Group

Department of Social Services

P: s 47E(d), s 47F | M: s 47E(d), s 47F | E: richard.baumgart@dss.gov.au

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S 47E (d)

Kind regards,

Adrian



Ref: EC20-001982

MINUTE

SECRETARY

Through: S47F
Emily Canning 3/3/2021
Acting Chief Operating Officer

Cc:
Andrew Harvey, Chief Finance Officer, Finance
Charmaine Sims, Acting Chief Counsel, Legal Services

SUBJECT: COMMUNICATION SERVICES BRANCH MEDIA ON-CALL
MANAGEMENT

Critical Date: 5 March 2021

Reason: To enable payments on Thursday 18 March

Recommendations:

- That you **note** the approach to managing overtime for Communication Services Branch media on-call shifts between October 2015 and February 2020 was inconsistent with the *Enterprise Agreements 2015-18 and 2018-21*.

NOTED / ~~PLEASE DISCUSS~~

- That you **note** this inconsistency has resulted in underpayments to 67 current and former staff totalling \$398,213.42.

NOTED / ~~PLEASE DISCUSS~~

- That you **note** an external consulting firm s 47E(d), s 47F was engaged to review and confirm the total underpayments.

NOTED / ~~PLEASE DISCUSS~~

- That you **agree** to advise and pay the affected current and former employees.
That you agree the affected current & former employees see advised & paid

AGREED / ~~NOT AGREED~~

- That you **note** the proposal to notify the Fair Work Ombudsman once rectified, as per legal advice.
Please ensure the AFSC is advised ASAP

NOTED / ~~PLEASE DISCUSS~~

S47F
Secretary:..... *EMC* /2021

e-m@iled
via POMIS
- 5 MAR 2020



10 June 2021

s 47F

s 47E(d)

DEPARTMENT OF SOCIAL SERVICES
Enid Lyons Building, 71 Athllon Drive
Greenway ACT 2900

Copy by email – [s 47E\(d\), s 47F@dss.gov.au](mailto:s 47E(d), s 47F@dss.gov.au)

Reference number: MAT-14605-Q1T5

COMPLIANCE NOTICE ISSUED TO DEPARTMENT OF SOCIAL SERVICES

Dear Ms

s 47E(d), s 47F

I refer to the investigation undertaken by the Fair Work Ombudsman (FWO) into the Department of Social Services (DSS) concerning the self-disclosure of underpayments to Employees of DSS between 2 October 2015 to 2 February 2020.

The FWO is an independent agency responsible for ensuring compliance with the *Fair Work Act 2009* (FW Act) and other relevant Commonwealth workplace laws.

BACKGROUND

An investigation was conducted to establish whether DSS had complied with the FW Act.

As a result of that investigation, I reasonably believe that DSS has contravened terms of the *DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS ENTERPRISE AGREEMENT 2012 – 2014* (2012-2014 Agreement), *DEPARTMENT OF SOCIAL SERVICES ENTERPRISE AGREEMENT 2015 TO 2018* (2015-2018 Agreement) and *DEPARTMENT OF SOCIAL SERVICES AGREEMENT 2018 TO 2021* (2018-2021 Agreement), (together, Agreements), as set out in the attached compliance notice dated 10 June 2021 (Compliance Notice).

To date, the underpayments arising as a result of these contraventions have not been rectified for s47F employees.

On this basis, I have determined that the appropriate enforcement measure in this instance is to issue DSS with the Compliance Notice under s 716 of the FW Act.

ACTION REQUIRED

The Compliance Notice provides DSS with a further opportunity to rectify the contravention(s).

The Compliance Notice sets out a number of actions that DSS is required to take on or before **23 July 2021**. Please consider the actions specified in the Notice carefully.

Complying with the Compliance Notice is not an admission (nor does it constitute a finding) that DSS has contravened the Agreements.

Unclaimed monies

We refer to paragraph 9, Step 1 of the Compliance Notice. In the event DSS is unable to locate and make payment to any of the employees identified as being underpaid, it can make a payment of the amount(s) owing to the Commonwealth Consolidated Revenue Fund. This will discharge DSS from its obligation to pay the employee the monies owed.

Prior to making any such payment, DSS must:

1. complete a Payment Request Form and Declaration (**attached**);
2. show evidence of the searches that have been made to locate the former employee/s by providing any supporting documentation as indicated in the checklist; and
3. provide the employment and last known contact details held for the employee/s.

Please return the completed form and supporting documents to me at **s 47F** [@fwo.gov.au](mailto:s47f@fwo.gov.au).

OBLIGATIONS UNDER THE COMPLIANCE NOTICE

If DSS fails to comply with the Compliance Notice by 23 July 2021 it may contravene section 716(5) of the FW Act (unless it has a reasonable excuse).

In those circumstances, the FWO may (without further notice) commence legal action against DSS and/or individuals involved in DSS's failure to comply with the Compliance Notice. A Court may impose penalties of up to \$6,660 in respect of an individual or \$33,300 in respect of a body corporate for each failure to comply with a Compliance Notice.

Alternatively, DSS may apply to the Federal Court, Federal Circuit Court or an eligible State or Territory Court for a review of this Compliance Notice on either or both of the following grounds:

- (a) DSS did not commit the contravention(s) set out in this Compliance Notice
- (b) the Compliance Notice does not comply with sections 716(2) or 716(3) of the FW Act.

For further general information about Compliance Notices, please refer to our Compliance and Enforcement Policy, which can be found on our website.

Finally, we note that you may be liable to a civil penalty or other civil remedy under the FW Act if you give false or misleading information, or produce false or misleading documents, to the FWO. You may also be liable for a criminal offence under the *Criminal Code* (Cth) if you do so.

Should you wish to discuss this letter, or clarify any of the issues raised in the Compliance Notice, please contact me on **s 47F** or at **s 47F** [@fwo.gov.au](mailto:s47f@fwo.gov.au).

Yours sincerely

s 47F

s 47F

**Fair Work Inspector
Fair Work Ombudsman**

COMPLIANCE NOTICE

(issued under section 716(2) of the *Fair Work Act 2009* (Cth))

Date of Issue: 10 June 2021

Name of Employer: DEPARTMENT OF SOCIAL SERVICES

ACN: 342 015 855

Employer Contact: s 47F

I, s 47F being a duly appointed Fair Work Inspector, reasonably believe that the DEPARTMENT OF SOCIAL SERVICES (**Employer**) has contravened terms of the *DEPARTMENT OF FAMILIES, HOUSING, COMMUNITY SERVICES AND INDIGENOUS AFFAIRS ENTERPRISE AGREEMENT 2012 – 2014 (2012-2014 Agreement)*, *DEPARTMENT OF SOCIAL SERVICES ENTERPRISE AGREEMENT 2015 TO 2018 (2015-2018 Agreement)* and *DEPARTMENT OF SOCIAL SERVICES AGREEMENT 2018 TO 2021 (2018-2021 Agreement)*, (together, **Agreements**) as described below.

This Compliance Notice requires you to take steps to remedy the contraventions described below.

Rights and obligations under this Compliance Notice

1. Failure to comply with this Compliance Notice may contravene section 716(5) of the *Fair Work Act 2009* (Cth) (**FW Act**) and render you liable for a civil penalty (unless you have a reasonable excuse).
2. You may be liable to a civil remedy if you give false or misleading information or produce false or misleading documents. It is also a serious offence under the *Criminal Code* (Cth).
3. If you do not comply with this Compliance Notice, the Fair Work Ombudsman may, without further notice, commence legal action against you and/or individuals involved in your failure to comply with this Compliance Notice to recover any outstanding monies which this Compliance Notice requires you to pay and to seek civil penalties.
4. Complying with the Compliance Notice is not an admission that you contravened, or have been found to have contravened, the Agreements or the FW Act.
5. You may apply to the Federal Court, Federal Circuit Court or eligible State or Territory Court for a review of this Compliance Notice on either or both of the following grounds:
 - (a) you did not commit the contraventions set out in this Compliance Notice;
 - (b) this Compliance Notice does not comply with sections 716(2) or 716(3) of the FW Act.

Details of the contraventions

6. For the purposes of this Compliance Notice, **Employee** or **Employees** means individuals covered by any or all of the Agreements who, between 2 October 2015 and 2 February 2020, performed work monitoring and responding to media requests outside of ordinary hours and who were paid a restriction allowance for this work.
7. The Employer, between 2 October 2015 and 20 October 2015 (**Period 1**), contravened the clauses of the 2012-2014 Agreement as set out in Table 1 below.
8. The Employer, between 21 October 2015 and 20 January 2019 (**Period 2**), contravened the clauses of the 2015-2018 Agreement as set out in Table 2 below.
9. The Employer, between 21 January 2019 and 2 February 2020 (**Period 3**), contravened the clauses of the 2018 – 2021 Agreement as set out in Table 3 below.

Table 1 - 2012 – 2014 Agreement

No	Clause	Details of contraventions
(a)	Clause 6.55	<p>Overtime Contravention Failing to pay Employees at the rate of:</p> <ul style="list-style-type: none"> • time and a half for the first three hours of overtime worked Monday to Saturday, and • double time for overtime worked after three hours from Monday to Saturday and on a Sunday <p>(overtime entitlement)</p>
(b)	Clause 6.66	<p>Overtime Meal Allowance Contravention Failing to pay Employees an overtime meal allowance in addition to overtime, on occasions where the Employee worked approved overtime after the end of ordinary duty for the day, to the completion of or beyond a meal period without a break for a meal</p> <p>(overtime meal allowance entitlement)</p>

Table 2 – 2015 – 2018 Agreement

No	Clause	Details of contraventions
(a)	Clause 5.34	<p>Overtime Contravention Failing to pay Employees at the rate of:</p> <ul style="list-style-type: none"> • time and a half for the first three hours of overtime worked Monday to Saturday • double time for overtime worked after three hours from Monday to Saturday and Sunday <p>(overtime entitlement)</p>
(b)	Clause 5.45	<p>Overtime Meal Allowance Contravention Failing to pay an overtime meal allowance to Employees who worked approved overtime before or after ordinary hours, or for a period not</p>

		<p>continuous with ordinary/regular hours of work/duty i.e on weekends or public holidays, or outside of their regular hours, to the completion of or beyond a meal period with a break for a meal and who were not entitled to payment for that break or without a break for a meal over the following meal periods: 7.00am to 9.00am; noon to 2.00pm, 6.00pm to 7.00pm and midnight to 1.00am.</p> <p>(overtime meal allowance entitlement)</p>
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Table 3 – 2018 -2021 Agreement

No	Clause	Details of contraventions
(a)	Clause 5.35	<p>Overtime Contravention Failing to pay employees at the rate of:</p> <ul style="list-style-type: none"> • time and a half for the first three hours of overtime worked Monday to Saturday • double time for overtime worked after three hours from Monday to Saturday and Sunday <p>(overtime entitlement)</p>
(b)	Clause 5.46	<p>Overtime Meal Allowance Contravention Failing to pay an overtime meal allowance to Employees who worked approved overtime before or after ordinary hours, or for a period not continuous with ordinary/regular hours of work/duty i.e on weekends or public holidays, or outside of their regular hours, to the completion of or beyond a meal period with a break for a meal and who were not entitled to payment for that break or without a break for a meal over the following meal periods: 7.00am to 9.00am; noon to 2.00pm, 6.00pm to 7.00pm and midnight to 1.00am</p> <p>(overtime meal allowance entitlement)</p>

Required action under this Compliance Notice

10. In accordance with section 716(2) of the FW Act, I require you by **23 July 2021** to:

calculate and rectify underpayments

- (a) In respect of the contravention referred to in row (a) of Table 1 above:
- (i) identify each Employee employed by the Employer who was not paid the overtime entitlement but was required to be paid
 - (ii) in respect of each such employee identified:
 - (1) identify the number of hours the Employee worked during Period 1 in respect of which the overtime entitlement was required to be paid;
 - (2) identify the amount the Employer paid to the Employee during Period 1 in respect of the overtime entitlement;

- (3) calculate the amount the Employer should have paid to the Employee during Period 1 in respect of the overtime Entitlement;
 - (4) make a payment to the employee of the difference between the amount referred to in (2) and the amount referred to in (3) immediately above
 - (5) for Employees unable to be contacted or located to make the payment referred to in (4) immediately above, make a payment to the Commonwealth Consolidated Revenue Fund of the difference between the amount referred to in (2) and the amount referred to in (3) immediately above;
 - (6) make a record of the information and amounts referred to in (1) to (3) and the amount of the payment referred to in (4) and (5) immediately above (**Underpayment Rectification Information**)
- (b) repeat the same process described in paragraph (a) above for each of the Overtime Contraventions referred to in row (a) of Table 2, and in row (a) of Table 3.
- (c) in respect of the contraventions identified at row (b) of Table 1 above
- (i) identify each employee who was entitled to but not paid an overtime meal allowance entitlement
 - (ii) in respect of each such Employee identified:
 - (1) identify the overtime meal allowance entitlement the Employee should have been paid during Period 1;
 - (2) identify the amount the Employer paid to the Employee during Period 1 in respect of the overtime meal allowance entitlement;
 - (3) calculate the amount the Employer should have paid to the Employee during Period 1 in respect of the overtime meal allowance entitlement;
 - (4) make a payment to the Employee of the difference between the amount referred to in (2) and the amount referred to in (3) immediately above;
 - (5) for Employees unable to be contacted or located to make the payment referred to in (4) immediately above, make a payment to the Commonwealth Consolidated Revenue Fund of the difference between the amount referred to in (2) and the amount referred to in (3) immediately above;
 - (6) make a record of the information and amounts referred to in (1) to (3) and the amount of the payment referred to in (4) immediately above (**Underpayment Rectification Information**); and
- (d) repeat the same process described in paragraph (c) above for the Meal Allowance Contravention referred to in row (b) of Table 2 , and in row (b) of Table 3 .

Reasonable evidence of steps taken to comply with this Compliance Notice

11. In accordance with section 716(2) of the FW Act, I require you to produce the following reasonable evidence of your compliance with the actions specified in paragraph 10 above:
- (a) a schedule that sets out:
 - (i) the full name of each Employee identified as not receiving a relevant entitlement (**Identified Employees**);
 - (ii) in relation to each identified Employee, and in respect of each contravention that concerns

the Employee, the Underpayment Rectification Information

- (b) proof that full payment has been made to each identified Employee of the payment(s) required to be made above, such as a bank transfer showing the transfer of funds to the Employee, or a copy of the employee's payroll records showing the payments.
 - (c) Proof that full payment has been made to the Commonwealth Consolidated Revenue Fund in respect to those identified Employees but who are unable to be located, or the payment(s) required to be made by above, such as a bank transfer showing the transfer of funds.
12. The evidence referred to above must be provided to the Fair Work Ombudsman by **30 July 2021** by email to **s 47F** @fwo.gov.au .
13. You may be liable to a civil penalty or other civil remedy under the FW Act if you give false or misleading information or produce false or misleading documents in response to this Compliance Notice. You may also be liable for a criminal offence under the *Criminal Code* (Cth) if you do so.

s 47F

s 47F

Fair Work Inspector
Fair Work Ombudsman



Fair Work
OMBUDSMAN

Unclaimed Monies Payment Request Employer Declaration

Employer Details:

Business/Entity Name:

Trading Name:

ABN:

Director/Delegate Name:

Position in Organisation:

Employer Address:

Address (1):

Address (2):

(Suburb)

(State)

(Pcode)

(Contact Number)

(Email)

Employer Declaration:

WARNING: Giving false or misleading information or documents is a serious offence, you could be charged and, if convicted, you could be fined or jailed or both.

I wish to make a s559 (Fair Work Act 2009) payment request to the Fair Work Ombudsman. I declare that:• this payment request relates to monies owed to former employees of the business named herein;• all searches described in this list have been undertaken;• despite reasonable efforts made to locate the former employees, whose particulars appear here, their present whereabouts are unknown;• the information I have given in this form is complete, correct and up-to-date;• I understand that I may be prosecuted if I give false or misleading information or bogus documents, or mislead or deceive an officer of the Fair Work Ombudsman.

Name of Declarant:

Date of Declaration:

Please ensure that Tab 1 - Employer Declaration, Tab 2 - Multiple Employee List and Tab 3 - Search Checklist. On completion of all action, please forward all documentation to:

BY EMAIL: s47f@fwo.gov.au
ATTN : Senior Settlement Officer (in the subject line)

Fair Work Ombudsman - OFFICE USE ONLY

Settlement of Unclaimed Monies (SUM) Team action:

I confirm that I have reviewed the checklist.

I am satisfied that the employer has made all reasonable attempts to locate and contact the employee. Unclaimed money payment request is accepted.

I am satisfied that the employer has made all reasonable attempts to locate and contact the employee. Unclaimed money payment request is accepted.

Senior Settlement Officer:	
Date:	
Collector of Public Monies	
Official Receipt Number:	
Date Receipt Issued:	
Collector of Public Monies:	
GL: 98002 CC 99900	

s 47F

From: BAUMGART, Richard
Sent: Wednesday, 24 March 2021 9:40 AM
To: s 47F
Cc: COO; Corporate Group; JOCUMSEN, Katrina
Subject: FW: Draft response to COO questions: Communication Services Branch Media On-Call Management Brief [SEC=OFFICIAL]

s 47F

Update as requested – I've removed names for privacy.

36 Current employees

s 47E(d), s 47F

31 Former employees (including one staff member who was re-engaged)

s 47E(d), s 47F

Richard Baumgart
A/g Group Manager
Corporate Group
Department of Social Services
P: s 47E(d), s 47F | **M:** s 47E(d), s 47F | **E:** richard.baumgart@dss.gov.au

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

s 22

s 22

s 22

s 22

s 47F

From: BAUMGART, Richard
Sent: Friday, 19 March 2021 6:33 PM
To: s 47F
Cc: COO
Subject: FW: Draft response to COO questions: Communication Services Branch Media On-Call Management Brief [SEC=OFFICIAL]
Attachments: EC20-001982 Secretary Signed Front Page - Communications On-call Actions.pdf; Notification - correction of underpayment of allowances March 2021.pdf
Importance: High

s 47F

An update on the Comms overtime backpayment is below, however, the most important point to note is that we have been contacted by the Branch Manager Enforcement (FWO) who has advised he wishes to meet to discuss. I intend to attend along with s 47F – it is scheduled for Tuesday.

1. Impacted staff and former staff have been contacted and paid:

36 Current employees

s 47E(d), s 47F

31 Former employees (including one staff member who was re-engaged)

s 47E(d), s 47F

2. APSC has been advised and date of advice:
Yes, 10 March 2021
3. Fair Work Ombudsman (FWO) has been advised and date of advice:
Yes, 10 March 2021

Richard Baumgart
A/g Group Manager
Corporate Group
Department of Social Services
P: s 47E(d), s 47F | **M:** s 47E(d), s 47F | **E:** richard.baumgart@dss.gov.au

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

From: COO <COO@dss.gov.au>
Sent: Tuesday, 16 March 2021 1:03 PM
To: Corporate Group <CorporateGroup@dss.gov.au>
Cc: BAUMGART, Richard <Richard.BAUMGART@dss.gov.au>
Subject: RE: Communication Services Branch Media On-Call Management Brief [SEC=OFFICIAL]

Hi **s 47F**
s 47F has asked for a written update on progress on this matter.

s 47F

s 47F
Executive Officer
Office of the A/g Chief Operating Officer | **s 47F**
Department of Social Services
P: **s 47E(d), s 47F** **E:** **s 47E(d), s 47F** [@DSS.GOV.AU](mailto:s47E(d),s47F@dss.gov.au) **M:** 0466 402 687

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

From: Corporate Group <CorporateGroup@dss.gov.au>
Sent: Tuesday, 16 March 2021 11:43 AM
To: COO <COO@dss.gov.au>
Cc: BAUMGART, Richard <Richard.BAUMGART@dss.gov.au>; Corporate Group <CorporateGroup@dss.gov.au>
Subject: RE: Communication Services Branch Media On-Call Management Brief [SEC=OFFICIAL]

Hi **s 47F**

As discussed, a verbal update has been provided addressing the below questions. If you require further clarification on any questions below, please let me know.

Additionally, please find attached a copy of the letter that was sent to the Fair Work Ombudsman.

Thanks,

s 47F
A/g Executive Officer to Richard Baumgart
A/g Group Manager, Corporate Group
Department of Social Services
P: **s 47E(d), s 47F** **E:** **s 47E(d), s 47F** [@dss.gov.au](mailto:s47E(d),s47F@dss.gov.au) **E:** CorporateGroup@dss.gov.au

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

From: COO <COO@dss.gov.au>
Sent: Tuesday, 16 March 2021 9:59 AM
To: Corporate Group <CorporateGroup@dss.gov.au>
Subject: FW: Communication Services Branch Media On-Call Management Brief [SEC=OFFICIAL]

Hi s 47F

Can you please provide an update on the items listed in the attached brief –

- Impacted staff and former staff have been contacted and paid
- APSC has been advised and date of advice
- Fair Work Ombudsman has been advised and date of advice

Thanks

s 47F

Executive Officer

Office of the A/g Chief Operating Officer | s 47F

Department of Social Services

P: s 47E(d), s 47F E: s 47E(d), s 47F @DSS.GOV.AU M: s 47E(d), s 47F

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.

s 47F

Executive Officer

Office of the A/g Chief Operating Officer | s 47F

Department of Social Services

P: s 47E(d), s 47F E: s 47E(d), s 47F @DSS.GOV.AU M: s 47E(d), s 47F

The Department of Social Services acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures, and to Elders both past and present.



Ref: EC20-001982

MINUTE

SECRETARY

Through: [redacted] s47F 3/3/2021
Emily Canning
Acting Chief Operating Officer

Cc:
Andrew Harvey, Chief Finance Officer, Finance
Charmaine Sims, Acting Chief Counsel, Legal Services

SUBJECT: COMMUNICATION SERVICES BRANCH MEDIA ON-CALL
MANAGEMENT

Critical Date: 5 March 2021

Reason: To enable payments on Thursday 18 March

Recommendations:

- That you **note** the approach to managing overtime for Communication Services Branch media on-call shifts between October 2015 and February 2020 was inconsistent with the *Enterprise Agreements 2015-18 and 2018-21*.

NOTED / ~~PLEASE DISCUSS~~

- That you **note** this inconsistency has resulted in underpayments to 67 current and former staff totalling \$398,213.42.

NOTED / ~~PLEASE DISCUSS~~

- That you **note** an external consulting firm [redacted] s47E(d), s 47F was engaged to review and confirm the total underpayments.

NOTED / ~~PLEASE DISCUSS~~

- That you **agree** to advise and pay the affected current and former employees.
That you agree the affected current & former employees see advised & paid

AGREED / ~~NOT AGREED~~

- That you **note** the proposal to notify the Fair Work Ombudsman once rectified, as per legal advice.
Please ensure the AFSC is advised ASAP

NOTED / ~~PLEASE DISCUSS~~

[redacted] s47F

Secretary:..... [signature] /2021

e-m@iled
via POMIS
- 5 MAR 2021



Australian Government
Department of Social Services

OFFICIAL: Sensitive

Corporate Assurance Team
Fair Work Ombudsman

via email: **s 47F** [@fwo.gov.au](mailto:s47F@fwo.gov.au)

Copy to: **s 47F** [@apsc.gov.au](mailto:s47F@apsc.gov.au)

To whom it may concern,

Notification regarding the correction of underpayment of allowances

I am writing to report about the underpayment of allowances to Department of Social Services (the department) employees and to provide detail on corrective action being undertaken.

Background

The department's payment of overtime for a small number of staff between October 2015 and February 2020 was inconsistent with the department's Enterprise Agreement 2015 to 2018 and the department's Enterprise Agreement 2018 to 2021 (the EAs).

Staff in the Communication Services Branch monitor media after-hours to ensure urgent enquiries are managed. In 2015, a branch policy was implemented that determined how overtime and restriction allowances were to be paid to staff for this work. It has been identified this policy was inconsistently applied and was inconsistent with employee entitlements to overtime and restriction allowance under the EAs.

As a result of an internal audit on how overtime and restriction allowance had been paid, it was found that certain employees were entitled to overtime and other associated payments (e.g. meal allowances), as opposed to the restriction allowance they had received.

Corrective action

The department has ceased the inconsistent payment practices. Communication Services Branch employees are correctly being paid overtime and restriction duty allowance.

An external accounting firm has undertaken an independent review to determine the total scope of the underpayments.

The review found 37 current and 30 former employees are eligible for overtime and meal allowances totalling approximately \$400,000.

To correct the underpayments, a lump sum back payment for each individual will be processed in the payroll system and taxed in accordance with the Australian Taxation Office's delayed income tax offset provisions. These provisions apply to prevent the tax spike that would otherwise arise on a lump sum received in one year comprising amounts attributable to earlier tax years.

Prior to processing back payments, affected staff will be advised of the underpayment and will be encouraged to seek independent financial advice should they require further assistance to understand any potential impact on their individual situation.

The department will be contacting affected individuals commencing 10 March 2021.

The department is working towards completion of this corrective action, and for payments to be made, by the end of April 2021.

Please contact me on [s 47E\(d\), s 47F](#) or via email at katrina.iocumsen@dss.gov.au if you would like to discuss, or require further information.

Regards



s 47F

Katrina Jocumsen
Branch Manager
People Services

10 March 2021