



OmbudsmanSA

STATEMENT ON FORMAL RESOLUTION

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Entitlements of former employees when an agency identifies that employees have been underpaid



Essential Insights

Government employers should be transparent in relation to employee entitlements, including acknowledging and promptly taking action to rectify known errors.

If a public sector agency identifies that it has underpaid its employees, the Ombudsman expects that the agency will notify all affected employees of their right to make a claim. This includes former employees who may be affected, as well as current employees.

REPORT UNDER THE PUBLIC INTEREST DISCLOSURE ACT 2018

The Ombudsman received several reports about Country Arts SA (**CASA**).

In mid-2022, CASA became aware that it had not been correctly paying its employees for overtime worked. CASA sought advice about the appropriate steps to take. Policy changes were implemented in 2023 but they did not result in employees being correctly paid. A back-pay project was initiated, to calculate the entitlements of current employees, including ongoing, contract and casual employees. By 1 February 2025, all current employees were being paid correctly.

CASA advised that all current staff had received their back-payment by September 2025.

However, CASA did not include former employees in the backpay project, having received advice from the Crown Solicitor's Office that they were not obliged to do so. This means

that employees who had previously worked for CASA, and had not been paid overtime correctly, had not been notified that they potentially could make a claim against CASA.

The Ombudsman formed the view that CASA's decision to exclude former employees was unreasonable and wrong. The underpayments identified for current employees were substantial and arose from systemic misapplication of overtime and casual loading entitlements. Noting that under the *Fair Work Act 1994* employees have 6 years in which to commence legal action to recover underpayments, delay or failure to notify employees that they may have a claim can serve to materially deny employees their legal rights.

The Ombudsman took into account the work that CASA had dedicated to the backpay project, the fact that CASA had established systems in place to review and calculate back-payments, and the fact that the Chief Executive had expressed willingness to include former employees if the Ombudsman considered that CASA had acted in error. The Ombudsman determined that this matter could be resolved by a formal resolution agreement.

KEY OUTCOMES FOLLOWING THE OMBUDSMAN'S ASSESSMENT

CASA agreed to the following actions:

- taking reasonable steps to find contact details for potentially affected former employees
- writing to all potentially affected former employees to explain the process for making a claim
- upon receipt of claims, calculating and paying the amounts owed to the former employees.