



Getting Wage Compliance Right: Lessons from the Front Line



Skye Rose

Practice Leader



Agenda

1

Fair Work Ombudsman compliance action – recent updates

2

Annualised salaries and underpayments – key risks for schools

3

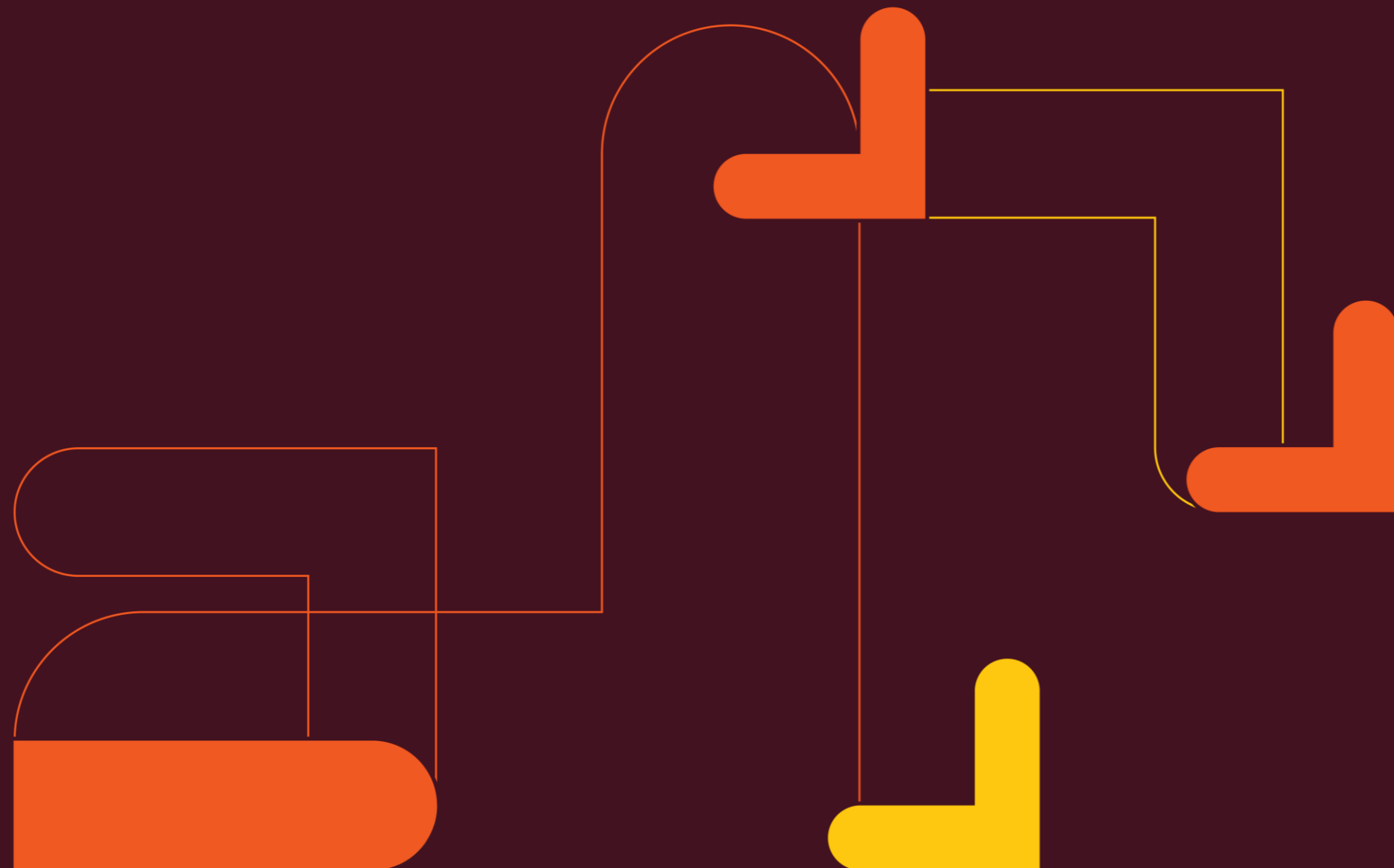
Record keeping - Employer obligations


4

Case studies



Fair Work Ombudsman compliance action – recent updates





The Woolworths and Coles decision

Background

- Combined judgement of four separate claims
- Alleged underpayment of store-based management positions covered by the General Retail Industry Award 2020, employed on annualised salary arrangements.

The decision

- The set-off clauses relied on by Woolworths and Coles **could not lawfully operate across multiple pay periods**; they could only operate within one pay period by virtue of section 323(1) of the *Fair Work Act 2009* (Cth).
- **Record-keeping obligations were not displaced by an annualised salary arrangement** in satisfaction of all entitlements; the requirement to record details was enlivened by the employee's entitlements (i.e. overtime) under the Award.
- Combining 'clock-in, clock-out' data with employee rosters was insufficient to meet the requirement that **employment records be 'readily accessible'** under the *Fair Work Regulations 2009* (Cth).
- Coles and Woolworths failed to maintain the required records and have the burden of disproving any underpayment claims.



In the News

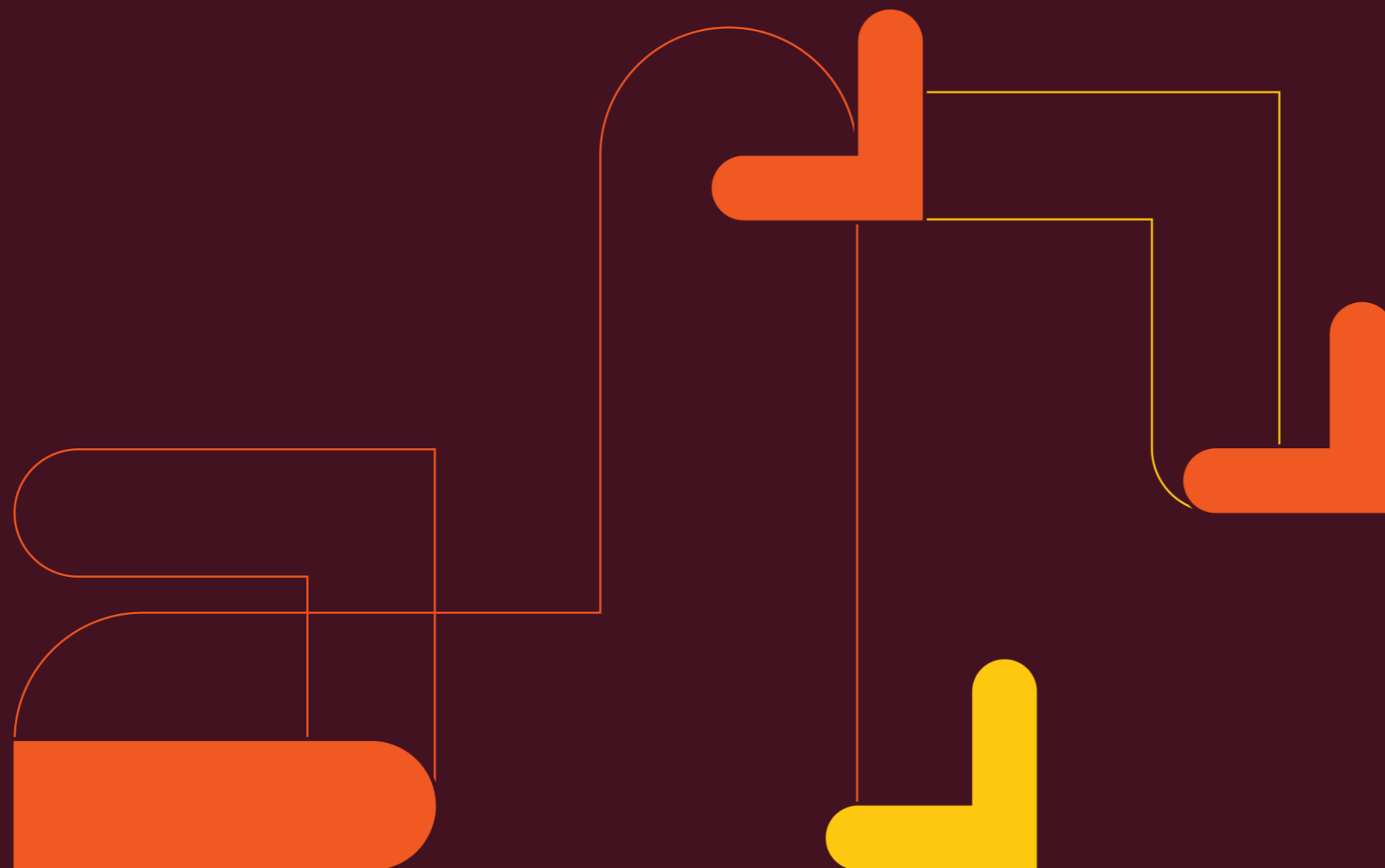
Enforceable Undertakings in the education sector

- **University of Tasmania:** approximately \$21.4 million in underpayments, interest, and superannuation, plus a contrition payment of \$175,000.
- **Monash University:** more than \$20.7 million in underpayments, interest, and superannuation, plus a contrition payment of \$350,000.
- **University of Sydney:** more than \$23 million in underpayments, interest, and superannuation, plus a contrition payment of \$500,000

Key issues and lessons

- Governance failures including inadequate oversight and systems to identify non-compliance
- Insufficient investment in payroll and time-recording systems may contribute to systemic underpayments
- Poor record-keeping contributes to employer liability
- Incorrect application of enterprise agreements is a key area of risk
- Inadequate training a gap in ensuring payroll compliance

Annualised Salaries – Key risks for Schools





Which staff cohorts are most at risk?

Teachers

The *Educational Services (Teachers) Award* expressly provides for an annualised salary arrangement

Working hours and annualised salary account for non-term time

Lower risk profile

General Staff

The *Educational Services (Schools) General Staff Award* provides that only a limited group of employees may be employed on annualised arrangements

Check your EA (if applicable) to see if annualised salaries are expressly permitted.

Non-term time not automatically accounted for in working hours and minimum rates of pay

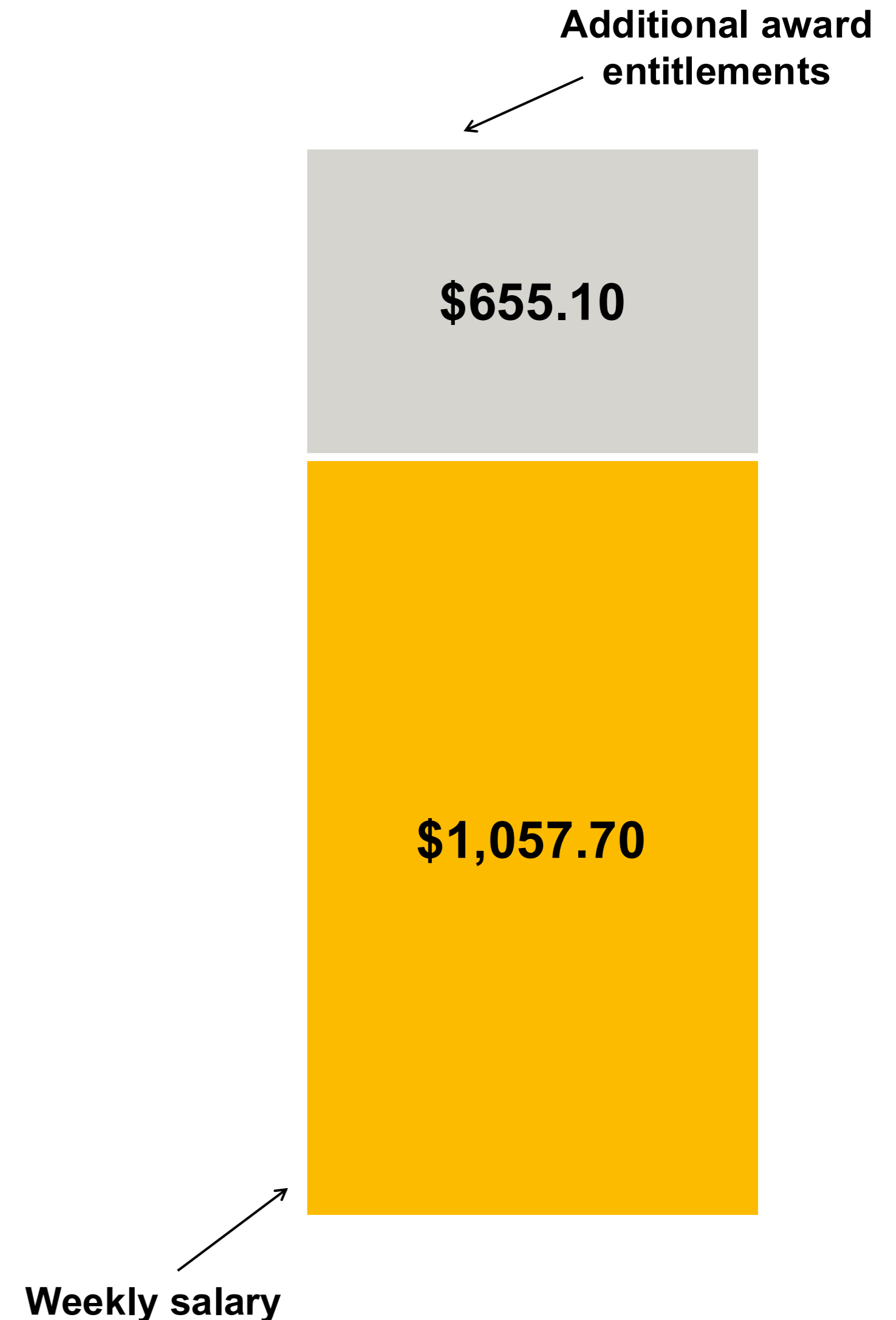
Higher risk profile, particularly in busy periods (e.g. camps and competitions).

Annualised Salaries Post-Coles/Woolies

Jenny is a music tutor at Education College. She ordinarily works 25 hours per week and is classified as a Level 5.1 employee under the Educational Services (Schools) General Award. (Level 5.1 \$32.20 per hour). Jenny's ordinary span of working hours are four hours per day on a Tuesday, Wednesday and Friday, five hours on a Thursday, and eight hours on a Saturday. Jenny is employed above award-rate, on a salary of \$55,000 per year and receives a payment of \$1,057.70 per week.

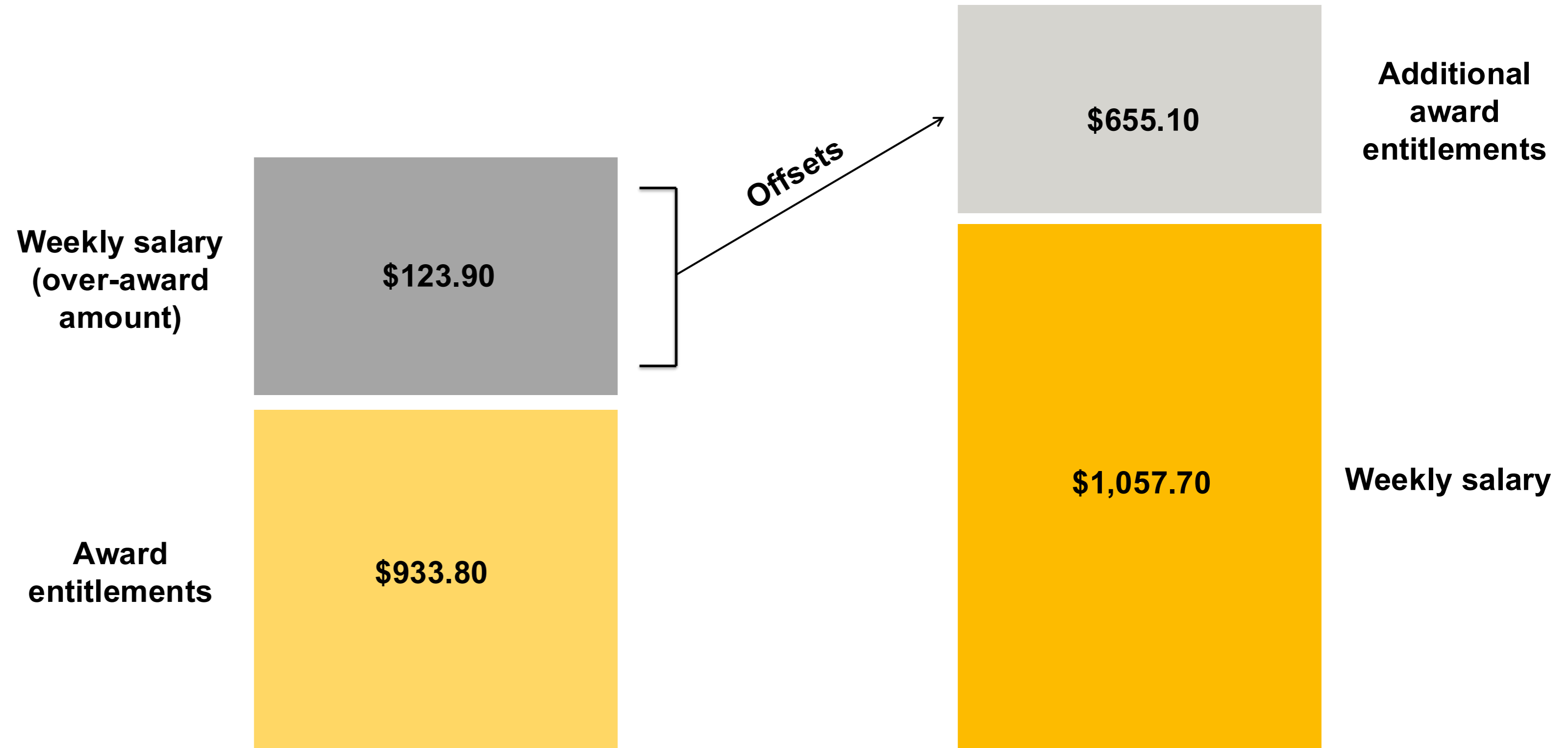
In the week of 23 February 2026, Jenny travels interstate for a music tournament, Battle of the Bands. The team leaves on Monday morning and returns the following Saturday, meaning that Jenny works 40 hours, including 5 hours on a Saturday.

Jenny receives a payment of \$1,057.70 for her work in the week of 23 February. However, when all her overtime and weekend work is taken into account, Jenny is entitled to \$1,722.8 under the Award.



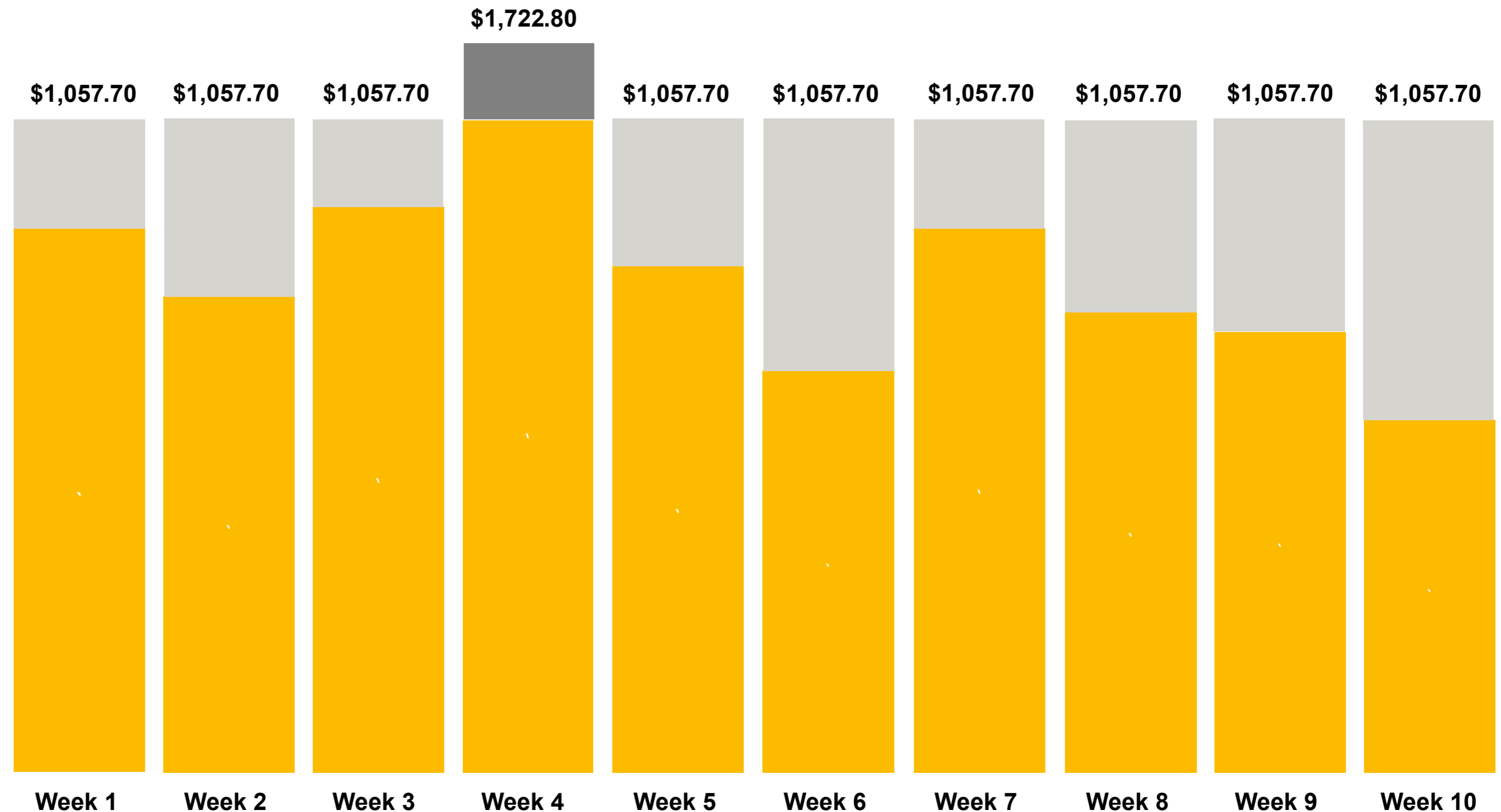
Annualised Salaries Post-Coles/Woolies

Education College knows that Jenny's salary payments are above the award minimum and assumes that the additional amounts payable throughout the year are enough to cover the additional amounts payable in February over time.



Annualised Salaries Post-Coles/Woolies

However, in the Coles and Woolworths case, the Federal Court determined that this type of off set is not lawful, as pay must be fully made in the pay period that it is due. Jenny must be paid the additional \$700 in the week of 23 February, as the off-set clause contained in her contract of employment, can only lawfully operate within a single pay period



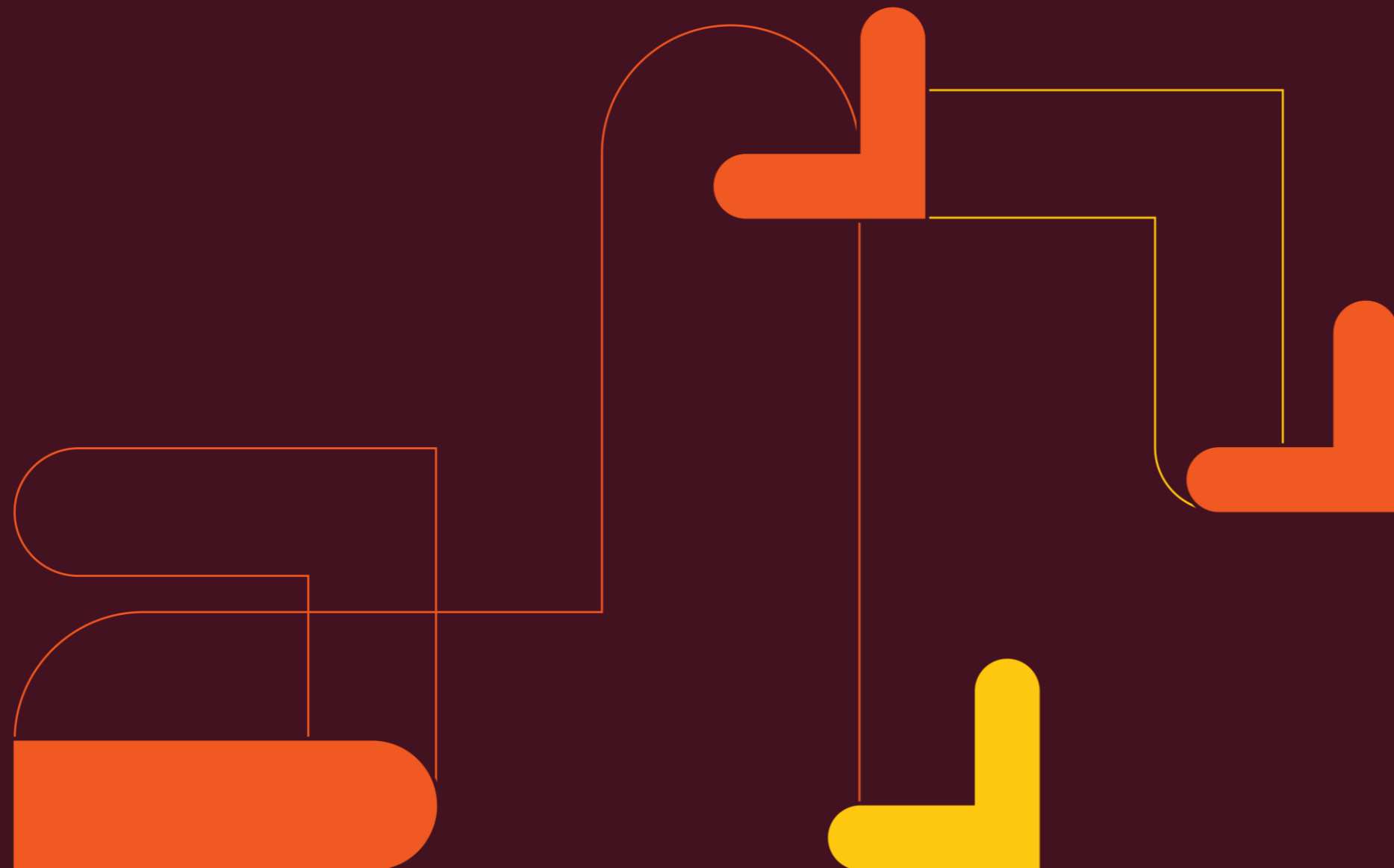


What are some potential solutions?

1. Regularly monitor hours worked by general staff to ensure compliance, which may require top-up payments in busy periods.
2. Conduct an assessment to identify high risk groups and periods when excessive additional hours might be worked
3. Consider whether additional lump-sum payments can or should be made, or casual staff engaged, during high-risk periods.
4. Assess how many additional hours an employee can work within a particular pay period under their current salary arrangement and issue directions accordingly.
5. Consider the benefit of moving to a longer pay cycle (as far as is permitted by the relevant Award or Enterprise Agreement).
6. Consider the benefit of moving general staff off annualised salary arrangements and pay strictly in accordance with the relevant Award or Enterprise Agreement.
7. Consider the use of Individual Flexibility Arrangements



3. Record Keeping– Risks for Schools



Record Keeping Obligations

Teachers

- Record keeping obligations in respect of a penalty rate or loading for overtime worked only appears to apply to **Early childhood services employees** (FW Regulation 3.34).
- However, your EA may provide more beneficial entitlements to Teachers (not just Early childhood services employees), which give rise to additional record keeping obligations.
- Employers must also keep a record of the hours worked by casuals or irregular part-time employees who are guaranteed a rate of pay by reference to a period of time worked (FW Regulation 3.33(2)).
- Pay records must identify **annual leave loading & any allowances payable** (i.e. a leadership allowance).

General Staff

- Required to record overtime hours worked (FW Regulation 3.34).
- Required to set out the details of payments for any incentive, bonus, loading, penalty rate, or entitlement in pay records (FW Regulation 3.33).
- Records must be readily accessible in a legible form.
- See the FWO [Timesheet Template](#) and [Weekly Time and Wages Record](#) for further guidance on records.



Inadequate records – What are the risks?

- Where an employee alleges an underpayment, and the employer was required to keep a record of the type contemplated by the regulations, and the employer failed to comply with that requirement, then the employer has the burden of disproving the time alleged to have been worked by the employee (s557C – The Reverse Onus).
- Consider the example of the swimming coach who has been working more than their contracted hours without the employers' awareness or approval. Without time records, how can the school disprove the hours claimed to have been worked?
- **Risk of Civil Penalties.** A failure to keep records in the form prescribed by the regulations may attract civil penalties.



What are some potential solutions?

- Paying ‘all-inclusive’ amounts does not remove the obligation to comply with record keeping requirements.
- Whilst administratively burdensome, the most straightforward way to ensure compliance is to record all employee hours worked.
- However, many employers are concerned that asking their averaged/annualised salary employees to record time will undermine the flexibility and successful ways of working they have established.
- Given the risks, and the fact the Coles/Woolies decision may be appealed, employers are considering the following as alternatives to recording every hour worked by employees:
 - Issuing Directions to Staff – Overtime hours must be recorded OR Overtime is not authorised without prior manager approval.
 - Identifying high risk periods and recording time for those.
 - Consulting with staff and changing contractual arrangements to allow for payment of base rate with limits, with top up payments in busier periods when limits are exceeded.
- These alternatives will not guarantee compliance, however. The best approach will be guided by your school’s risk appetite.

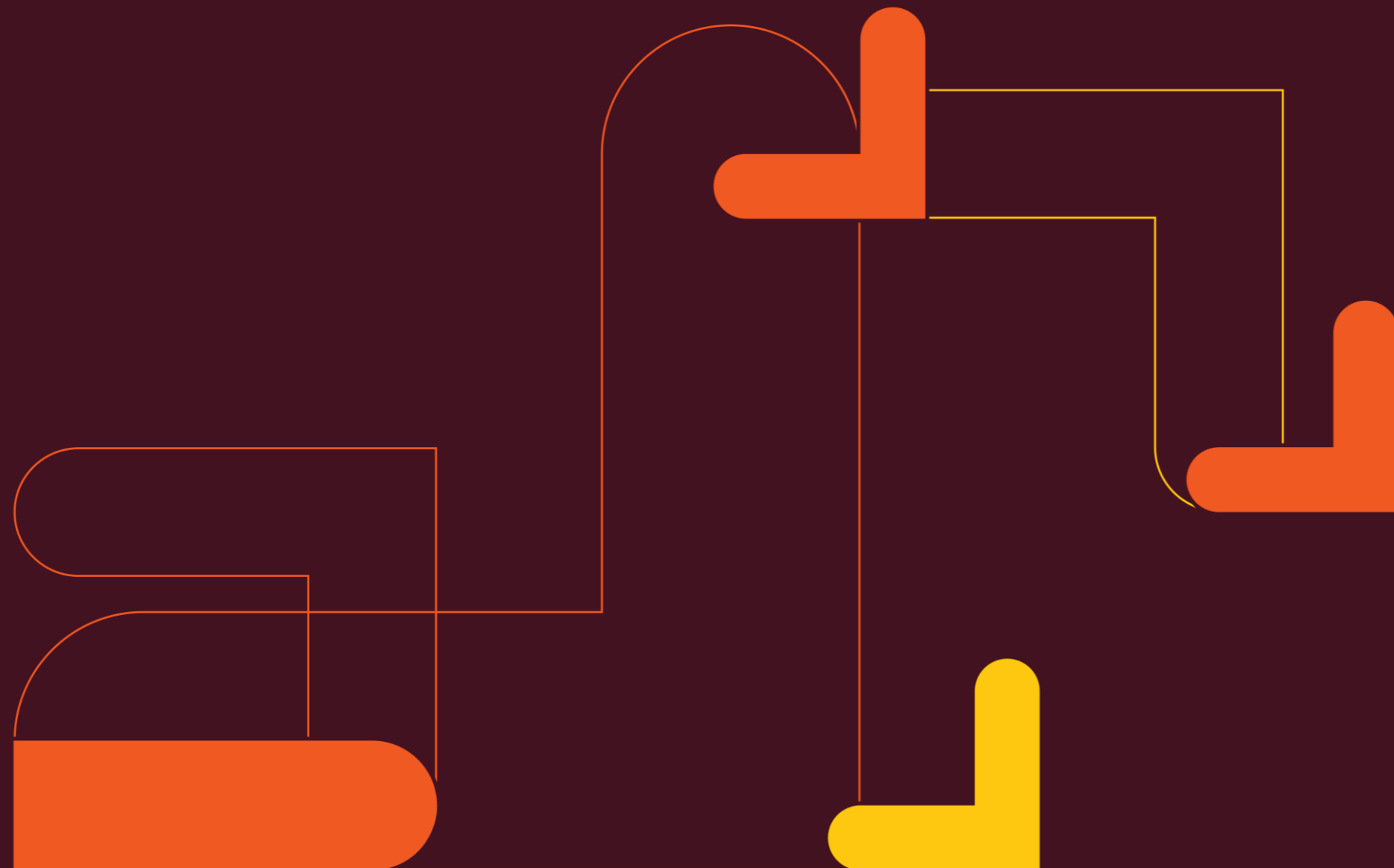


Other opportunities to strengthen record keeping and payroll

- What other opportunities exist to strengthen your record keeping and payroll practices?
- **Training for Managers.** Managers are in a unique position to identify timesheet anomalies. They have a good understanding of employee work patterns and high-risk periods. Ensure you clearly communicate expectations for review and approval of timesheets.
- **Audit your payroll and record keeping practices.** Identify any gaps so they can be promptly addressed.
- **Investment in payroll software.** Greater likelihood of accurate and consistent records c.f. manual records.
- **Reconciliations.** Annual reconciliations of sample populations can uncover where the rate paid falls short of what should have been paid under the applicable industrial instrument.
- **Oversight.** Reduce instances of employees performing unauthorised additional hours.



3. Case Studies





Case Study: Spot the Error

Scenario: Billy is a library assistant at Reading Grammar. Billy is engaged at Level 2 of the General Staff Award. He is contracted part-time to work a minimum of 20 hours per week. His pattern of work is Monday to Thursday, 7AM – 12.30PM Billy is paid by the hour and not paid an annualised salary. The below is an example of one of Billy’s weekly timesheets which he submits for payment.

Note: This is not an example of a ‘best practice’ timesheet but is used to illustrate some of the common record keeping errors we see employees make on timesheets.

Employee Name: Billy Book

Position: Library Assistant

Pay period: (09/02/2026)

Day / date	Start time	Start time of unpaid break	Restart Time	Finish time	Total
30/01/2026	07:00	09:30	10:00	12.30	5
09/02/2026	07:00			09.30	2.5
09/02/2026	09:30			12.30	2.5
10/02/2026	7:00	9:30	10:00	12.30	5
11/02/2026	07:00	09:30	10:00	15:00	7.5
12/02/2026	07:00	09:00	12:00	15:00	5
				Total	27.5



Case Study: The Busy Groundskeeper

- Gary is a Groundskeeper at Lawn College.
- He is FT. He is classified at Level 3.2.
- He receives \$30 per hour. The Award minimum rate is \$28.64.
- He is paid monthly.
- The College does not keep time records for its general staff on averaged salaries.
- The school has an open day coming up. Gary puts in extra effort to get the school looking prim and proper.
- Instead of working his usual 38 hours he works 45 hours per week for two weeks.
- When Gary gets his salary for the month, he wonders why he has not been paid more given the work he put in.
- Gary picks up the phone to the FWO.





Case Study: The Busy Groundskeeper – Questions

- Is Gary's monthly salary sufficient to cover the work he has done?
- Can the College use overpayments in one month, to offset against underpayments in another?
- Can the College disprove the time Gary has allegedly worked?
- Gary has a roster – is this a sufficient record?
- What could the College have done differently to avoid this situation?





Questions?



Skye Rose

Practice Leader

srose@moores.com.au

03 9843 0427