

### ENFORCEABLE UNDERTAKING

Between

The Commonwealth of Australia

(as represented by the Office of the Fair Work Ombudsman)

and

Chryss Enterprises Pty Ltd (ABN: 12 095 085 368)

and

Jim Chryssidis

**Section 715 ENFORCEABLE UNDERTAKING**

**Parties**

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) by:

- (a) Chryss Enterprises Pty Ltd (ABN: 12 095 085 368) (**Chryss Enterprises**); and
- (b) Jim Chryssidis

for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

**Background**

2. Chryss Enterprises provides transport services for tourists, businesses and schools, including vehicle hire, wine tours, school and general transfers, and school bus runs.
3. Chryss Enterprises was incorporated on 21 November 2000. The Director of Chryss Enterprises is Sandra Chryssidis and its Manager is Jim Chryssidis. On 31 January 2014, the FWO advised of the commencement of an Inquiry, which included Chryss Enterprises, in relation the method of engagement of drivers in the minibus and bus industry in South Australia (**Inquiry**).
4. On 22 August 2014, Chryss Enterprises was issued with a Letter of Caution in relation to the findings of the Inquiry which outlined that it was likely that some drivers who were engaged as independent contractors should have been engaged as employees. The Letter of Caution recommended that Chryss Enterprises take corrective action by immediately seeking independent workplace relations advice to ensure that drivers were engaged correctly and to engage employees as employees and not as independent contractors.
5. Jim Chryssidis was a previous director of the Chryss Enterprises from 15 November 2000 to 12 December 2012. Jim Chryssidis' current role as Manager includes interviewing and hiring of workers, allocation of work, setting payment rates for workers and payment and entitlements queries from workers. Jim Chryssidis was aware that:
  - (a) drivers were engaged by Chryss Enterprises were likely to be employees and not independent contractors due to the previous Inquiry and the Letter of Caution;
  - (b) that there was an applicable modern award for the drivers as Chryss Enterprises also engaged drivers as employees.
6. On 4 December 2014, the FWO received requests for assistance concerning Chryss Enterprises from five drivers, four who were engaged as independent contractors and one who was engaged as an employee (**Workers**). The requests for assistance raised a range of allegations including:
  - (a) engagement as independent contractors when they should have been employees;
  - (b) underpayment of wages;
  - (c) non-payment for time worked;
  - (d) not paid penalty rates

- (e) not paid overtime;
  - (f) non-provision of pay slips;
  - (g) vehicle accident excess was unlawfully deducted from pay;
  - (h) tax not paid;
  - (i) superannuation not paid;
  - (j) pay slip not containing correct detail;
  - (k) not being aware of status of employment as either part-time or casual.
7. On 9 December 2014 the FWO commenced an investigation into the allegations made by the Workers.
8. The Workers periods of engagement and status during their engagement periods are set out in **Attachment E**.
9. The Workers were paid by various methods depending on the type of work being performed (eg. school runs or tours) namely; hourly rate, 40% of the total value of the job (both comprising and not comprising the GST in the 40%), commission of 40% based on the total value of the job, or capped figure for the job for the day (ie \$200 for the whole day).
10. As a result of its investigation the FWO formed the view that the four Workers who were engaged as purported independent contractors should have been engaged as employees, on the basis that each:
- (a) performed work for Chryss Enterprises which they obtained from Chryss Enterprises;
  - (b) performed work when Chryss Enterprises required the work to be done and did not have a high degree of control as to how the work was to be performed;
  - (c) did not promote or generate goodwill for themselves or their own business in performance of work for Chryss Enterprises;
  - (d) did not bear any risk in Chryss Enterprises making a profit or loss;
  - (e) did not provide their own vehicles and only used Chryss Enterprise vehicles to do the work for Chryss Enterprises;
  - (f) did not have to provide invoices to receive payment for work performed for Chryss Enterprises;
  - (g) had a reasonable expectation of ongoing work; and
  - (h) could not delegate or subcontract the work being performed for Chryss Enterprises.
11. At all relevant times, the Workers terms and conditions of employment were governed by the *Passenger Vehicle Transportation Award 2010* [MA000063] (**Award**). For the purposes of the transitional provisions of Schedule A of the Award, the applicable transitional instrument is the *Transport Workers (Passenger Vehicles) Award* [AN150163].
12. The FWO determined that Workers 4 and 5 were part time employees and Workers 1, 2 and 3 were casual and that each of the Workers were classified at Grade 2 level as per the Award.

13. As a result of the investigation, the FWO determined that Chryss Enterprises contravened provisions of the Award and the FW Act. In particular, the FWO found Chryss Enterprises had:
- (a) underpaid Worker 4 a total of **\$7,577.98** for annual leave and annual leave loading payable upon termination; and
  - (b) underpaid all Workers a combined total of **\$2,605.38** based on one week **sample periods** of between two to thirteen weeks throughout the Workers' engagements. This does not reflect the total potential underpayments for the Workers' full periods of engagement, which range between 9 months and 4 years 9 months. Refer to **Attachment A** for details of the sample underpayments for each Worker.

#### Contraventions

14. The FWO has determined, and Chryss Enterprises admits, that Chryss Enterprises has contravened:
- (a) Section 357(1) of the FW Act by representing to Workers 1, 2, 3 and 4 that the contract of employment under which each worker was employed was a contract for services for work as an independent contractor;
  - (b) Section 45 of the FW Act by failing to comply with the following provisions of the Award:
    - (i) clause 10.4(g) by failing to pay the applicable minimum rates of pay to each part time employee;
    - (ii) clause 10.4(g) by failing to make the minimum 3 hour payment for each day engaged for each part time employee;
    - (iii) clause 10.5(c) by failing to pay the applicable minimum rates of pay to each casual employee;
    - (iv) clause 10.5(d) by failing to make the minimum 3 hour payment for each shift for casual employees being Workers 2 and 3;
    - (v) clause 23.1 by failing to pay overtime rates to Workers 1 and 3;
    - (vi) clause 23.2 by failing to pay Saturday penalty rates for Workers 1, 3 and 4 and Sunday penalty rates for Workers 1, 2 and 3;
    - (vii) clause 23.4 by failing to pay public holiday rates to Workers 1, 3 and 4;
    - (viii) clause 23.5 by failing to pay before 6 am or after 7 pm penalty rate to Workers 1 and 3;
    - (ix) clause 24.3 by failing to pay **\$1,128.64 gross** of annual leave loading owed to Worker 4;
  - (c) Section 44 of the FW Act by contravening section 90(2) of the National Employment Standards by failing to pay to Worker 4 at the cessation of employment an amount for accrued annual leave at the rate that he would have been paid had he taken the annual leave. Specifically by:
    - (i) failing to pay **\$6,449.35 gross** to Worker 4, in accordance with clause 24.1 of the Award for accrued annual leave entitlements;

- (d) Section 323 of the FW Act by failing to pay the full amounts payable to the Workers in relation to the performance of work by not complying with the correct application of permitted deductions as per Section 324 of the FW Act as follows:
- (i) \$42 deduction on 15 August 2013, \$50 deduction on eleven occasions between 22 August 2013 and 14 November 2013, and \$44.50 on 27 February 2014 from Worker 1, totalling \$636.50; \$600 of which was for vehicle accident excess, the remainder of the deductions were made for reasons unknown to Worker 1;
  - (ii) \$25 deduction on 27 February 2014 and 6 March 2014 as a weekly charge for personal use of the vehicle and taking the vehicle home, \$50 deduction on seven occasions between 22 August 2013 and 14 November 2013 from the pay of Worker 2 for vehicle accident excess, totalling \$400;
  - (iii) \$40 deduction on 6 February 2014 from the pay of Worker 3 for reasons unknown to Worker 3;
  - (iv) \$30 deduction on 20 February 2014 from the pay of Worker 5 for reasons unknown to Worker 5;
- (e) Section 536(1) of the FW Act by not giving pay slips as follows:
- (i) to Worker 1 within one working day of payment of wages for pay periods 8 July 2013 to 14 July 2013 and 15 July 2013 to 21 July 2013 and throughout his whole period of employment;
  - (ii) to Worker 2 within one working day of payment of wages for the pay periods from 31 August 2013 to 6 December 2013 and throughout his whole period of employment;
  - (iii) to Workers 3 and 4 within one working day of payment of wages throughout their periods of employment;
- (f) Section 536(2)(b) of the FW Act by failing to issue pay slips to Worker 1 for the pay periods 30 June 2014 to 6 July 2014 and 28 July 2014 to 3 August 2014 and to Worker 5 which contain all of the detail as prescribed by the *Fair Work Regulations 2009 (FW Regulations)* as follows:
- (i) Regulation 3.46(3)(a) by failing to include the rate of pay for the ordinary hours in pay slips provided;
  - (ii) Regulation 3.46(3)(b) by failing to specify the number of hours worked in the pay slip provided;
- (g) Section 535(1) of the FW Act by failing to keep employee records of a kind prescribed by the FW Regulations as follows:
- (i) Regulation 3.36(1)(b) by not keeping a record of the annual leave balances for Workers 4 and 5;
  - (ii) Regulation 3.33(2) by not keeping a record of the hours worked by Workers 1, 2, 3 and 4; and
  - (iii) Regulation 3.33(3)(d) by not keeping a record of the detail of the penalty rate payments for Workers 1, 2, 3 and 4;
- (h) Section 712(3) of the FW Act by failing to comply with the Notice to Produce Records of Documents dated 16 January 2015 (NTP) by producing records for Workers 4 and

5 after the stated due date of the NTP of 13 February 2015 without a reasonable excuse.

(collectively the **Contraventions**).

15. The FWO has determined, and Jim Chryssidis admits, that by reasons of the matters set out in paragraph 6 above, he was involved in the Contraventions pursuant to section 550(2)(c) of the FW Act.

#### **Commencement of Undertaking**

16. This Undertaking comes into effect when:
- (a) the Undertaking is executed by Chryss Enterprises and Jim Chryssidis; and
  - (b) the FWO accepts the Undertaking so executed.
17. Upon the commencement of this Undertaking, Chryss Enterprises and Jim Chryssidis undertake to assume the obligations set out below.

#### **Undertakings**

18. For the purposes of section 715 of the FW Act, Chryss Enterprises and Jim Chryssidis give the following undertakings:

##### ***Rectify Workers wages and entitlements***

- (a) pay to the Workers **\$10,183.36 gross** arising from underpayments identified in **Attachment A** according to the payment instalment plan in **Attachment D**;
- (b) within 7 days of payments being made as per paragraph 18(a) provide evidence to the FWO that these payments have been made;
- (c) within 28 days of the execution of this Undertaking conduct a self-audit to identify any wages and entitlements owing to the Workers as a result of the Contraventions from 18 August 2014 to the cessation of their employment and provide to the FWO the calculations and method of the calculations for FWO approval;
- (d) pay to the Workers by 31 January 2016 the wages and entitlements owing as calculated in line with the Award and FW Act as per paragraph 18(c);
- (e) within 7 days of the payments being made as per paragraph 18(d), provide evidence to the FWO that these payments have been made;

##### ***Changes to labour engagement practices***

- (f) within 60 days of the execution of this undertaking, Chryss Enterprises will change their operations so that all individuals who perform work as drivers will be employed by Chryss Enterprises as employees and not engaged as independent contractors, and will be paid pursuant to the Award and/or any certified enterprise agreement;
- (g) provide to the FWO written confirmation that the changes in paragraph 18(f) have been completed within 7 days after the completion of the changes occurring;

##### ***Future workplace relations compliance***

- (h) take all reasonable steps to ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the Award and FW Act;

- (i) implement systems and processes to ensure ongoing compliance with the obligations referred to in paragraph 18(h);
- (j) provide the FWO within 28 days of the execution of the Undertaking written details of the systems and processes implemented in satisfaction of the Undertaking in paragraph 18(i);

***Future reporting to the FWO***

- (k) cause to have performed by an accounting professional (eg. Certified Practising Accountant) at Chryss Enterprises expense, audits of Chryss Enterprises' compliance with all applicable Commonwealth workplace relations laws including but not limited to the Award and the FW Act, relating to pay and conditions of employees of Chryss Enterprises, for the following period (**Audit**):
  - (i) the Audit for 2015-2016 financial year is to be finalised by 31 August 2016;
- (l) provide to the FWO, at least 14 days prior to the commencement of an Audit being undertaken, the methodology to be used for the Audit for approval by the FWO;
- (m) provide to the FWO, within 14 days of each finalised Audit, details the outcomes of the Audit;
- (n) in the event an Audit discloses contraventions of any applicable Commonwealth workplace relations laws, rectify all such contraventions within 14 days of the finalised Audit including rectification of any and all underpayments to employees;
- (o) provide evidence of rectification in relation to paragraph 18(n) to the FWO within 14 days of the finalised Audit;

***Apology***

- (p) within 28 days of the execution of this Undertaking, send an apology to the Workers (**Apology Letters**) in the terms set out in **Attachment B**;
- (q) within 7 days of the distribution of the Apology Letters to the Workers provide copies of the Apology Letters to the FWO;

***Future complaints***

- (r) where contacted by current or former workers, not being the Workers, alleging that their lawful entitlements have not been met, Chryss Enterprises agrees to:
  - (i) notify the FWO within seven days of receiving the allegation/s;
  - (ii) within 28 days of receiving the allegation/s take all reasonable steps to ascertain whether a contravention/s of the FW Act has occurred, and where such contravention/s are found rectify the contravention/s;
  - (iii) within seven days of resolving the allegation/s, provide the FWO with evidence that any identified underpayments have been paid to the worker and evidence that other issues identified have been resolved;
  - (iv) should a decision be made not to rectify an issue raised by an allegation, notify the FWO within 7 days of this decision the reasons for not rectifying;

***Public Notice***

- (s) Within 28 days of the Fair Work Ombudsman publishing a Media Release in respect of this EU on its website, place a public notice in the Saturday edition of *The*

*Advertiser* (Public Notice) in the terms set out in Attachment C;

- (t) provide a copy of the Public Notice to the FWO within 7 days of publication;

**Workplace notice**

- (u) place a notice within the workplace which is accessible to all employees (**Workplace Notice**) within 28 days of the execution of this Undertaking in the terms set out in Attachment C;
- (v) ensure the letter is printed in at least A3 size and clearly displayed at the business premises for a period of at least 30 days:
  - (i) in a location to which all staff at the business premises have access, and
  - (ii) in a manner which is reasonably capable of drawing the letter to the general attention of all staff (eg, by placement on a staff noticeboard);
  - (iii) provide a copy of the Workplace Notice to the FWO and written details of how the Workplace Notice has been displayed within 7 days of display of the notice;

**Workplace relations training**

- (w) within 90 days of the executing of the Undertaking, organise and ensure that the Director, owner and all managers of Chryss Enterprises attend a training course which deals with the rights and responsibilities of an employer under the FW Act (**Training Course**);
- (x) ensure the Training Course is conducted by an accredited workplace trainer (not being anyone who has advised Chryss Enterprises or Jim Chryssidis in relation to the subject matter of the Contraventions in this Undertaking) who is approved by the FWO and paid for by Chryss Enterprises;
- (y) provide the training materials used in the training course to the FWO no later than 14 days before the training is to be conducted and the training materials must be approved by the FWO;
- (z) provide evidence of attendance and payment for the Training Course to the FWO within 7 days of the training being provided;

**FWO My Account Registration**

- (aa) within 7 days of the execution of this Undertaking, register with the FWO 'my Account' portal at [www.fairwork.gov.au](http://www.fairwork.gov.au) and complete the profile, minimum pay rates and award options;
- (bb) within 14 days of the execution of the Undertaking provide to the FWO the 'My Account' registration number;

**Broader community workplace relations compliance education**

- (cc) within 60 days of the Undertaking being executed fund a not for profit organisation being the Northern Community Legal Services Inc (**NCLSI**) by making a payment of \$1,000 to NCLSI and within 7 days of the payment provide proof of the payment to the FWO.




## Acknowledgements

19. Chryss Enterprises and Jim Chryssidis acknowledges that:
- (a) the FWO may make this Undertaking (including any attachments) available for public inspection, including by posting it to its website at [www.fairwork.gov.au](http://www.fairwork.gov.au) (subject to the FWO taking any necessary steps to redact the names of individuals not party to the Undertaking);
  - (b) the FWO may release a copy of this Undertaking pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
  - (c) the FWO may issue a media release in relation to this Undertaking and from time to time, publicly refer to the Undertaking and its terms;
  - (d) the admissions made in the Undertaking may be relied upon by the FWO in respect of any future decision about enforcement action to be taken in relation to any future non-compliance with Commonwealth workplace relations obligations by Chryss Enterprises and Jim Chryssidis;
  - (e) consistent with the Note to section 715(4) of the FW Act, this Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this Undertaking;
  - (f) if the FWO considers that Chryss Enterprises and/or Jim Chryssidis has contravened any of the terms of this Undertaking the FWO may apply to any of the Courts set out in section 715(6) of the FW Act, for orders under section 715(7) of the FW Act;
  - (g) consistent with section 715(3) of the FW Act, Chryss Enterprises and/or Jim Chryssidis may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.

**Executed as an undertaking**

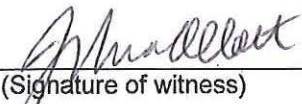
EXECUTED by Chryss Enterprises Pty Ltd (ABN: 12 095 085 368) and Jim Chryssidis in accordance with section 127(1) of the Corporations Act 2001:

  
\_\_\_\_\_  
(Signature of director)


Sandra Chryssidis  
\_\_\_\_\_  
(Name of director)

7/7/2015  
\_\_\_\_\_  
(Date)

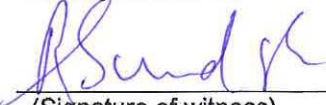
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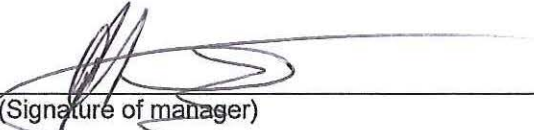
  
\_\_\_\_\_  
(Signature of witness)

JOSHUA ABBOTT  
\_\_\_\_\_  
(Name of witness)

  
\_\_\_\_\_  
Steven Ronson  
Acting Executive Director  
Delegate for the FAIR WORK OMBUDSMAN

in the presence of:

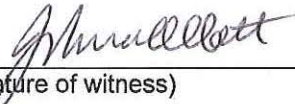
  
\_\_\_\_\_  
(Signature of witness)

  
\_\_\_\_\_  
(Signature of manager)

Jim Chryssidis  
\_\_\_\_\_  
(Name of manager)

7/7/2015  
\_\_\_\_\_  
(Date)

in the presence of:

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

JOSHUA ABBOTT  
\_\_\_\_\_  
(Name of witness)

9/7/2015  
\_\_\_\_\_  
(Date)

SUNDAR RAJAGOPALAN  
\_\_\_\_\_  
(Name of Witness)

## **Attachment A – Sample underpayments and amounts owing of the Workers entitlements**

### Worker 1 - \$408.28 gross in wages, which includes \$50.00 for an unpermitted deduction:

- 3 September 2013 to 9 September 2013 - ordinary hours, Saturday hours, overtime hours worked and an unpermitted deduction = \$334.01 gross owing
- 28 July 2014 to 3 August 2014 – ordinary hours worked = \$74.27 gross owing;

### Worker 2 - \$1,123.81 gross in wages, which includes \$284.03 for unpermitted deductions:

- 31 July 2013 to 6 August 2013 – ordinary hours and Sunday hours worked = \$158.34 gross owing
- 14 August 2013 to 20 August 2013 – ordinary hours, Saturday hours worked and an unpermitted deduction = \$60.63 gross owing
- 21 August 2013 to 27 August 2013 – ordinary hours worked and unpermitted deduction = \$44.72 gross owing
- 23 September 2013 to 29 September 2013 – ordinary hours and Sunday hours worked and unpermitted deduction = \$41.24
- 14 October 2013 to 20 October 2013 – ordinary hours, Saturday and Sunday hours worked and an unpermitted deduction = \$4.45
- 28 October 2013 to 3 November 2013 – ordinary hours, Saturday and Sunday hours worked and unpermitted deduction = \$43.62 gross owing
- 4 November 2013 to 10 November 2013 – ordinary hours and Sunday hours worked and an unpermitted deduction = \$54.89
- 2 December 2013 to 8 December 2013 – ordinary hours and Saturday hours worked = \$179.33 gross owing
- 9 December 2013 to 15 December 2013 – ordinary hours and Saturday hours worked = \$108.03 gross owing
- 30 December 2013 to 5 January 2014 – ordinary hours, public holiday hours worked = \$154.71 gross owing;
- 17 February 2014 to 23 February 2014 – ordinary hours worked and an unpermitted deduction = \$87.51
- 24 February 2014 to 2 March 2014 – ordinary hours and Saturday hours worked and an unpermitted deduction = \$186.34

### Worker 3 - \$814.62 gross in wages:

- 22 February 2012 to 28 February 2012 –ordinary hours, Saturday hours and Sunday hours worked = \$170.08 gross owing
- 19 March 2012 to 25 March 2012 – ordinary hours, Saturday and Sunday hours worked = \$55.94 gross owing
- 30 July 2012 to 5 August 2012 – ordinary hours, Saturday and Sunday hours worked = \$125.52 gross owing
- 20 August 2012 to 26 August 2012 – ordinary hours and Saturday hours worked = \$29.84 gross owing
- 4 June 2013 to 10 June 2013 – ordinary hours, Saturday hours, Sunday hours and overtime hours worked = \$249.13 gross owing
- 27 August 2013 to 2 September 2013 – ordinary hours and Saturday hours worked = \$46.07 gross owing
- 6 August 2014 to 12 August 2014 – ordinary hours and after 7 pm hours worked = \$72.34 gross owing
- 13 August 2014 to 19 August 2014 – ordinary hours, Saturday hours and after 7 pm hours worked = \$0.37 gross owing
- 20 August 2014 to 26 August 2014 – ordinary hours, Saturday hours and after 7 pm hours worked = \$9.26 gross owing
- 27 August 2014 to 2 September 2014 – ordinary hours and after 7 pm hours worked = \$56.07 gross owing;

Worker 4 - \$7,707.02 gross, which comprises \$129.04 for wages and \$7,577.98 for annual leave and leave loading:

- 6 August 2012 to 12 August 2012 – ordinary hours worked = \$3.10 gross owing
- 13 August 2012 to 19 August 2012 – ordinary hours worked = \$3.10 gross owing
- 20 August 2012 to 26 August 2012 – ordinary hours worked = \$3.10 gross owing
- 27 August 2012 to 2 September 2012 – ordinary hours worked = \$3.10 gross owing
- 15 October 2012 to 21 October 2012 – ordinary hours worked = \$24.44 gross owing
- 5 August 2013 to 11 August 2013 – ordinary hours worked = \$3.65 gross owing
- 12 August 2013 to 18 August 2013 – ordinary hours worked = \$3.65 gross owing
- 19 August 2013 to 25 August 2013 – ordinary hours worked = \$3.65 gross owing
- 26 August 2013 to 1 September 2013 – ordinary hours worked = \$3.65 gross owing
- 4 August 2014 to 10 August 2014 – ordinary hours worked = \$19.40 gross owing
- 11 August 2014 to 17 August 2014 – ordinary hours worked = \$19.40 gross owing
- 18 August 2014 to 24 August 2014 – ordinary hours worked = \$19.40 gross owing
- 25 August 2014 to 31 August 2014 – ordinary hours worked = \$19.40 gross owing;

Worker 5 - \$129.63 gross including \$30 for an unpermitted deduction:

- 27 August 2012 to 2 September 2012 – ordinary hours worked = \$12.03 gross owing
- 19 August 2013 to 25 August 2013 – ordinary hours worked = \$21.33 gross owing
- 10 February 2014 to 16 February 2014 – ordinary hours worked and an unpermitted deduction = \$51.33
- 4 August 2014 to 10 August 2014 – ordinary hours worked = \$4.37 gross owing
- 11 August 2014 to 17 August 2014 – ordinary hours worked = \$4.37 gross owing
- 18 August 2014 to 24 August 2014 – ordinary hours worked = \$4.37 gross owing
- 25 August 2014 to 31 August 2014 – ordinary hours worked = \$31.83 gross owing.

## Attachment B – Letter of Apology

<Date>

<Name>

<Employee Address>

Dear <Name>

I am writing to apologise on behalf of Chryss Enterprises Pty Ltd trading as JC Mini Buses & Taxis for non-compliance with Commonwealth workplace relations laws.

On 22 August 2014, Chryss Enterprises was issued with a Letter of Caution in relation to the findings of an inquiry (which included Chryss Enterprises, in relation to the method of engagement of drivers in the minibus and bus industry in South Australia) which outlined that it was likely that some drivers who were engaged as independent contractors should have been engaged as employees. The Letter of Caution recommended that Chryss Enterprises take corrective action by immediately seeking independent workplace relations advice to ensure that drivers were engaged correctly and to engage employees as employees and not as independent contractors.

A recent investigation conducted by the Office of the Fair Work Ombudsman (**FWO**) determined that Chryss Enterprises Pty Ltd has contravened:

- (a) Section 357(1) of the Fair Work Act (**FW Act**) by representing to four workers that the contract of employment under which each worker was employed was a contract for services for work as an independent contractor.
- (b) Section 45 of the FW Act by failing to comply with the following provisions of the *Passenger Vehicle Transportation Award 2010* [MA000063]:
  - (i) clause 10.4(g) by failing to pay the applicable minimum rates of pay to part time employees;
  - (ii) clause 10.4(g) by failing to make the minimum 3 hour payment for each day engaged for a part time employee;
  - (iii) clause 10.5(c) by failing to pay the applicable minimum rates of pay to casual employees;
  - (iv) clause 10.5(d) by failing to make the minimum 3 hour payment for each shift for casual employees;
  - (v) clause 23.1 by failing to pay overtime rates;
  - (vi) clause 23.2 by failing to pay Saturday penalty rates and Sunday penalty rates;
  - (vii) clause 23.4 by failing to pay public holiday rates;
  - (viii) clause 23.5 by failing to pay before 6 am or after 7 pm penalty rates;
  - (ix) clause 24.3 by failing to pay of annual leave loading to part time workers;
- (c) Section 44 of the FW Act by contravening section 90(2) of the National Employment Standards by failing to pay a part time worker at the cessation of employment their accrued annual leave entitlement;

- (d) Section 323 of the FW Act by failing to pay the full amounts payable to four workers in relation to the performance of work by not complying with the correct application of permitted deductions;
  - (e) Section 536(1) of the FW Act by not giving pay slips;
  - (f) Section 536(2)(b) of the FW Act by failing to issue pay slips which contain all of the detail as prescribed by the *Fair Work Regulations 2009* (**Regulations**);
  - (g) Section 535(1) of the FW Act by failing to keep employee records of a kind prescribed by the Regulations;
  - (h) Section 712(3) of the FW Act by failing to comply with the Notice to Produce Records or Documents without a reasonable excuse;
- (collectively the **Contraventions**).
- (i) further that Jim Chryssidis admits that he was involved in the Contraventions pursuant to section 550(2)(c) of the FW Act.

Regrettably, the investigation determined that you were affected by the above Contraventions.

Chryss Enterprises Pty Ltd is taking steps to remedy the Contraventions and will repay you any amounts identified as owing from 18 August 2014, on or about the time when Chryss Enterprises received the Letter of Caution. You will be provided with a payslip regarding any payments.

Chryss Enterprises Pty Ltd has formally admitted to the FWO that Chryss Enterprises Pty Ltd did not comply with its obligations under Commonwealth workplace relations laws and has entered into an Enforceable Undertaking with the FWO, a copy of which is available from the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au).

As part of the Enforceable Undertaking Chryss Enterprises Pty Ltd have committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

Chryss Enterprises Pty Ltd express their sincere regret and apologises to you for failing to comply with its lawful obligations.

Should you have any questions, please contact Jim Chryssidis.

Yours sincerely

Sandra Chryssidis  
Director

Jim Chryssidis  
Manager

## Attachment C – Form of Public and Workplace Notice

### Contravention of Fair Work Act 2009 by Chryss Enterprises Pty Ltd trading as JC Mini Buses & Taxis

The Office of the Fair Work Ombudsman (FWO) has completed an investigation into compliance of Chryss Enterprises Pty Ltd with the *Fair Work Act 2009 (FW Act)*. As a result of that investigation the FWO has determined that with respect to five workers over a period from July 2009 to December 2014 Chryss Enterprises Pty Ltd had contravened:

- (a) Section 357(1) of the FW Act by representing to four workers that the contract of employment under which each worker was employed was a contract for services for work as an independent contractor.
- (b) Section 45 of the FW Act by failing to comply with the following provisions of the *Passenger Vehicle Transportation Award 2010 [MA000063]*:
  - (i) clause 10.4(g) by failing to pay the applicable minimum rates of pay to part time employees;
  - (ii) clause 10.4(g) by failing to make the minimum 3 hour payment for each day engaged for a part time employee;
  - (iii) clause 10.5(c) by failing to pay the applicable minimum rates of pay to casual employees;
  - (iv) clause 10.5(d) by failing to make the minimum 3 hour payment for each shift for casual employees;
  - (v) clause 23.1 by failing to pay overtime rates;
  - (vi) clause 23.2 by failing to pay Saturday penalty rates and Sunday penalty rates;
  - (vii) clause 23.4 by failing to pay public holiday rates;
  - (viii) clause 23.5 by failing to pay before 6 am or after 7 pm penalty rates;
  - (ix) clause 24.3 by failing to pay of annual leave loading to part time employees;
- (c) Section 44 of the FW Act by contravening section 90(2) of the National Employment Standards by failing to pay a part time worker at the cessation of employment their accrued annual leave entitlement;
- (d) Section 323 of the FW Act by failing to pay the full amounts payable to four workers in relation to the performance of work by not complying with the correct application of permitted deductions;
- (e) Section 536(1) of the FW Act by not giving pay slips;
- (f) Section 536(2)(b) of the FW Act by failing to issue pay slips which contain all of the detail as prescribed by the *Fair Work Regulations 2009 (Regulations)*;
- (g) Section 535(1) of the FW Act by failing to keep employee records of a kind prescribed by the Regulations;
- (h) Section 712(3) of the FW Act by failing to comply with the Notice to Produce Records or Documents without a reasonable excuse;

(collectively the **Contraventions**).

- (i) further that Jim Chryssidis admits that he was involved in the Contraventions pursuant to section 550(2)(c) of the FW Act.

Chryss Enterprises Pty Ltd has formally admitted to FWO that these Contraventions occurred and has entered into an Enforceable Undertaking with the FWO (available at [www.fwo.gov.au](http://www.fwo.gov.au)) committing to a number of measures to remedy the Contraventions.

Chryss Enterprises Pty Ltd expresses its sincere regret and apologises for the conduct which resulted in the Contraventions. Furthermore, Chryss Enterprises Pty Ltd gives a commitment that such conduct will not occur again and that it will comply with all requirements of the Commonwealth workplace relations laws in the future.

If you worked for Chryss Enterprises Pty Ltd trading as JC Mini Buses & Taxis and have queries or questions relating to your employment, please contact Jim Chryssidis. Alternatively, anyone can contact the FWO via the website at [www.fairwork.gov.au](http://www.fairwork.gov.au) or the Infoline on 13 13 94.



**Attachment D – Payment Instalment Plan for paragraph 18(a)**

<b>Worker</b>	<b>6 month payment plan</b>					
	by 31 August 2015	by 30 September 2015	by 31 October 2015	by 30 November 2015	by 31 December 2015	by 31 January 2016
Worker 1	\$102.07	\$61.24	\$61.24	\$61.24	\$61.24	\$61.24
Worker 2	\$280.95	\$168.57	\$168.57	\$168.57	\$168.57	\$168.57
Worker 3	\$203.66	\$122.19	\$122.19	\$122.19	\$122.19	\$122.19
Worker 4	\$1,926.76	\$1,156.05	\$1,156.05	\$1,156.05	\$1,156.05	\$1,156.05
Worker 5	\$32.41	\$19.44	\$19.44	\$19.44	\$19.44	\$19.44

## Attachment E - Workers engagement periods as per paragraph 8

The Workers were engaged by Chryss Enterprises as follows:

[REDACTED] (Worker 1) was engaged as a driver from [REDACTED] to [REDACTED] as a purported independent contractor;

[REDACTED] (Worker 2) was engaged as a driver from [REDACTED] to [REDACTED] as a purported independent contractor, but for the period from [REDACTED] to [REDACTED] was engaged as an employee with Chryss Enterprises via a job search provider arrangement;

[REDACTED] (Worker 3) was engaged as a driver from [REDACTED] to [REDACTED] as a purported independent contractor;

[REDACTED] (Worker 4) was engaged as a driver from [REDACTED] to [REDACTED] as a purported independent contractor;

[REDACTED] (Worker 5) was engaged as a driver from [REDACTED] to on or about [REDACTED]. [REDACTED] was then re-engaged as a driver from on or about [REDACTED] to on or about [REDACTED] and again from on or about [REDACTED] to on or about [REDACTED]. [REDACTED] was employed as a part time driver for each period of employment.