



Australian Government

# Fair Work OMBUDSMAN

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## **ENFORCEABLE UNDERTAKING**

Dated: 26 June 2012

Given by

**Sebastion Pty Ltd**

ACN: 140 270 819

to

**The Commonwealth of Australia**

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

concerning contraventions of the *Fair Work Act 2009* (Cth)

## PART ONE: DETAILS

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Parties	FWO and Sebastion Pty Ltd	
FWO	Name	Commonwealth of Australia (as represented by the Office of the Fair Work Ombudsman)
	ABN	43 884 188 232
	Address	The Fair Work Ombudsman GPO Box 9887 Perth WA 6001
	Telephone	03 9954 2998
	Fax	02 6123 6802
	Attention	Greg Robertson, Acting Executive Director, Complex Investigations and Innovation, Fair Work Ombudsman

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Sebastion Pty Ltd	Name	Sebastion Pty Ltd trading as Hair Liasion
	ACN	140 270 819
	Address	Sebastion Pty Ltd C/- Market City Commercial Centre (MP24), Unit 6, 280 Bannister Road, Canning Vale, WA 6155
	Telephone	08 9332 1633
	Fax	Not Applicable
	Attention	Julia Nicole Turner

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- Recitals**
- A** On 8 April 2011 the Fair Work Ombudsman (FWO) commenced an investigation into allegations that Sebastion Pty Ltd trading as Hair Liaison (**Sebastion**) had breached the *Fair Work Act 2009* (Cth) (**FW Act**).
- B** By reason of the matters set out in Attachment "A" (**Background**), the FWO has determined,

and Sebastian acknowledges, that Sebastian contravened the FW Act in relation to an employee, [REDACTED]

- C The parties have agreed to resolve the contraventions without the need to resort to civil penalty litigation by way of this Enforceable Undertaking (EU), which is made pursuant to section 715 of the FW Act.

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**Governing Law**      Federal

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**Date of agreement**      See signing page

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## **PART TWO: GENERAL TERMS**

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### **1 Admission and contraventions**

By reason of the matters described in the Background to this EU, which are admitted without demur by Sebastian, Sebastian admits that Sebastian contravened the FW Act as set out in Attachment "B" (**Contraventions**).

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### **2 Limit of Admission**

2.1 The FWO acknowledges that the terms of this EU:

- (a) are solely for the purposes of resolving the FWO investigation into the Contraventions; and
- (b) must not be interpreted as an admission by Sebastian of liability for any matter other than as expressly provided in this EU.

2.2 No assertion or matter in this EU may be relied upon as an admission by any person to support a cause of action in any other civil penalty proceeding.

2.3 However, this term does not prevent any matter in this EU being relied upon in future proceedings in order to inform a relevant Court of tribunal of the details of the conduct that was the evidentiary foundation for Sebastian entering into this EU.

2.4 This means that the FWO reserves the right to rely on the terms of this EU and the admissions in respect of any future proceedings brought by the FWO against Sebastian in relation to any future contraventions of Commonwealth workplace laws.

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### 3 Enforceable undertakings

Sebastion **NOW UNDERTAKES** that, in consideration of the FWO agreeing not to apply for any orders under Division 2 of Part 4-1 of the FW Act in relation to the Contraventions (as evidenced by the FWO's acceptance of this EU endorsed below); Sebastion must do and perform the agreed matters set out in Attachment "C" (**Enforceable Undertakings**).

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### 4 Commencement of enforceable undertaking

This EU comes into effect when:

- (a) this document is executed by Sebastion; and
  - (b) the FWO accepts the EU executed by Sebastion (as evidenced by the FWO's acceptance of this EU endorsed below).
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### 5 Acknowledgements

#### 5.1 Sebastion acknowledges that:

- (a) the undertakings it has given in this EU are reasonable in the circumstances;
- (b) this EU is given to and accepted by the FWO pursuant to section 715 of the FW Act;
- (c) the FWO may:
  - i. make this EU (and any of the Attachments) available for public inspection, including by posting it on the FWO internet site at [www.fwo.gov.au](http://www.fwo.gov.au) (subject to the FWO taking any necessary steps to the redaction of the names of any person affected by the contraventions);
  - ii. release a copy of this EU (and any of the Attachments) pursuant to any relevant request under the *Freedom of Information Act 1982* (Cth);
  - iii. issue a media release in relation to this EU;
  - iv. from time to time, publicly refer to this EU (and any of the Attachments) and its terms; and
  - v. rely upon the admissions made by Sebastion in clause 1 above in respect of any decision about enforcement action to be taken in respect of any future non-compliance by Sebastion with Commonwealth workplace relations obligations.
- (d) consistent with the Note to section 715(4) of the FW Act, this EU in no way derogates from the rights and remedies available to any other person arising from the conduct set out in this EU; and
- (e) if Sebastion contravenes any of the terms of this EU:

- i. 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;
- ii. this EU may be provided to the Court as evidence of the admissions made by Sebastian in clause 1 above, and also in respect of the question of costs; and
- iii. this EU is taken as having been withdrawn from by Sebastian for the purposes of section 715(3) of the FW Act if the FWO gives its written consent (in which case the FWO may apply for orders against Sebastian under Division 2 of Part 4-1 of the FW Act).

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**6 No Inconsistent Statements**

Sebastian:

- (a) must not; and
- (b) must ensure that each of its officers, employees or agents, do not, make any statement, orally or in writing, or otherwise which conveys or implies or reasonably conveys or implies anything inconsistent with the admissions or acknowledgements contained in this EU.

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**7 Termination by the FWO**

At any time, the FWO may, by notice in writing, terminate this EU (that is, immediately and without further notice), if Sebastian commits, in the opinion of the FWO, a serious or persistent contravention or non-observance of a term or terms of this EU.

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**8 Withdrawal from or variation to this EU**

Consistent with section 715(3) of the FW Act, Sebastian may withdraw from or vary this EU at any time, but only with the consent of the FWO.

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**9 Continuing obligations**

**9.1 General survival**

Any provision of this EU remaining to be performed or observed by Sebastian or having effect after the cessation of this EU for whatever reason (including termination by the FWO or withdrawal by Sebastian) remains in full force and effect and is binding on Sebastian after this EU ends.

**9.2 Survival**

Without limiting the generality of clause 9.1 above, the following clauses survive termination of this EU for whatever reason (including termination by the FWO or withdrawal by Sebastian):

- (a) clause 1 (Admissions and contraventions); and

(b) clause 6 (No inconsistent statements).

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**10 Legally binding agreement**

The terms of this document are intended to have immediate effect on all parties upon acceptance by the FWO of this EU (as evidenced by the FWO's acceptance of this EU endorsed below).

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**11 Entire agreement**

11.1 This EU constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

11.2 No oral explanation or information provided by either party to the other:

- (a) affects the meaning or interpretation of this EU; or
- (b) constitutes any collateral agreement, warranty of understanding between the FWO and Sebastian.

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**12 No representations or warranties**

Sebastian and the FWO acknowledge that in entering into this EU they have not relied on any representations or warranties about the subject matter of this EU except as provided in this EU.

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**13 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this EU or any part of it.

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**14 Costs**

The parties must pay their own legal and other costs and expenses in connection with the preparation, execution and completion of this EU and other related documentation.

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**15 Severance**

If the whole or any part of a provision of this EU is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this EU has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this EU or is contrary to public policy.

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**16 Competency**

Sebastian acknowledges that:

- (a) before executing this EU, Sebastian was given the opportunity to

- seek independent legal and other advice of their choice;
- (b) in the light of any advice provided to Sebastian, Sebastian considered its position;
  - (c) if Sebastian has been advised by its solicitors, Sebastian has been advised by them as to the terms of this EU; and
  - (d) Sebastian fully understands the effect of this EU.

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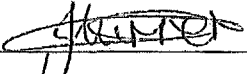
17 **Governing Law**

This EU is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts in that place.

**Signing Page**

Dated: .....26 JUNE.....2012

**EXECUTED** by **SEBASTION PTY LTD** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

  
\_\_\_\_\_  
(Signature of Secretary/Director)

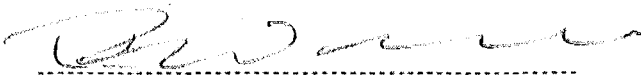
\_\_\_\_\_  
(Signature of Director)

Julia Nicole Turner  
\_\_\_\_\_  
(Name of Secretary/Director in Full)

\_\_\_\_\_  
(Name of Director in Full)

**ACCEPTED** by the **FAIR WORK OMBUDSMAN**

Dated: .....2<sup>nd</sup> June.....2012

  
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**NICHOLAS PAUL WILSON**  
**FAIR WORK OMBUDSMAN**  
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or by his Delegate subject to the instrument of delegation made pursuant to section 683 of the FW Act and executed by Nicholas Paul Wilson on 2 July 2009.



## Attachment "A" Background

- 1 In September 2007, ██████ commenced work as a full time senior hair stylist with the business known as Hair Liaison. Following this, ██████ went on to become an assistant manager as well as continuing to be a senior hair stylist.
- 2 During late 2009, ██████ was diagnosed with the physical disability multiple sclerosis (MS), after suffering her first "episode" in which she was hospitalised for approximately two weeks and had time off work.
- 3 On or about 1 January 2010, Turner purchased the Hair Liaison business.
- 4 Between approximately July 2010 to August 2010, ██████ suffered another MS related "episode" and was hospitalised. She was unable to attend work for approximately two weeks.
- 5 Following this "episode", there was an informal discussion initiated by Turner with ██████, about changing the employment status of ██████ from full time to casual. However, this change did not eventuate at that time, as ██████ expressed her concerns over the proposal.
- 6 Around this time, on or about 31 August 2010, and notwithstanding the concerns expressed by ██████, Turner prepared a letter ("**the 31 August 2010 letter**") notifying ██████ of a change in her employment status from full time to casual, working four days a week. However, the 31 August 2010 letter was never given to ██████.
- 7 On and from February 2011, ██████ took a number of sick days and was unable to attend for work. Turner noted that ██████ took a total of 12 sick days during the period 2 February 2011 to 6 April 2011.
- 8 ██████ provided a Medical Certificate stating that she was "unfit for work" during the period 31 March 2011 to 1 April 2011 on the basis that her absence was related to her MS.
- 9 On 1 April 2011, ██████ initiated a discussion with Turner in person to inform her that she was pregnant, following which Turner replied at the time with words to the effect: "*well I was thinking about putting you casual.*"
- 10 On the same day, Turner prepared a letter ("**the Letter**") notifying ██████ that her employment status would change from full time to casual, working three days per week. The Letter also informed that the hourly rate received by ██████ would be reduced from \$25.00 per hour to \$23.66 per hour, in accordance with the Hair and Beauty Industry Award 2010. The Letter further stated that ██████ would no longer be the assistant manager when she changed to being casual.
- 11 As at 21 April 2011, when ██████ full time employment came to an end, ██████ was paid out her annual leave entitlements.
- 12 ██████ was then sick for approximately one month because of her pregnancy, and was unable to attend for work.
- 13 ██████ provided a medical certificate to Turner stating that she was unfit for work during the period 2 May 2011 to 13 May 2011, due to her suffering

from "severe hyperemesis associated with her pregnancy." (hyperemesis being unrelenting, excessive pregnancy-related nausea).

- 14 In or around May 2011, Sebastion employed another casual employee hairdresser.
- 15 On or about 13 May 2011, Turner telephoned [REDACTED] and at the time [REDACTED] informed that she was "still sick for another two weeks with morning sickness".
- 16 On or about 31 May 2011, [REDACTED] telephoned Turner to inform her she was fit to attend work, however, Turner informed her that there was no work available for her and that it was time for [REDACTED] to look for work elsewhere. At this time and afterwards, Sebastion was providing the new casual employee engaged in May with hairdressing work. [REDACTED] did not return to work for Sebastion.
- 17 After being informed of the complaint by [REDACTED] to the FWO, Sebastion has cooperated with the FWO in relation to the FWO's investigation into this matter.

#### The Contraventions

- 18 Sebastion admits that it contravened section 351(1) Discrimination of the FW Act by taking adverse action against [REDACTED] (within the meaning of section 342(1) items 1(b), (c), and (d) of the FW Act) in particular by:
- (a) changing her employment status from full time to casual because of her physical disability and pregnancy;
  - (b) reducing her hours because of her physical disability and pregnancy; and
  - (c) discriminating between [REDACTED] and other employees, in particular, by giving hairdressing work to the new casual employee instead of [REDACTED], because of her physical disability.
- 19 Sebastion further acknowledges that by taking adverse action against [REDACTED], as outlined above, because of her physical disability and pregnancy, [REDACTED] sustained economic and non-economic loss:
- (a) the economic loss consisted of lost wages and other salary package entitlements from the time [REDACTED] employment status changed from full time to casual and her hours were reduced; and
  - (b) the non-economic loss consisted of stress, hurt, humiliation, embarrassment and injury to feelings.

## Attachment "B" Contraventions

- 20 On or about 22 April 2011, Sebastian contravened section 351(1) Discrimination of the *Fair Work Act 2009* (Cth) (**FW Act**) by taking the following adverse action against [REDACTED]:
- (a) injuring [REDACTED] in her employment (section 342(1) item 1(b) of the FW Act) by:
    - i. changing [REDACTED] employment status from full time to casual, and reducing her hours, because of her physical disability; and
    - ii. changing [REDACTED] employment status from full time to casual, and reducing her hours, because of her pregnancy.
  - (b) altering the position of [REDACTED] to her prejudice (section 342(1) item 1(c) of the FW Act) by:
    - i. changing [REDACTED] employment status from full time to casual, and reducing her hours, because of her physical disability; and
    - ii. changing [REDACTED] employment status from full time to casual, and reducing her hours, because of her pregnancy.
  - (c) discriminating between [REDACTED] and other employees of Sebastian (section 342(2) item 1(d) of the FW Act), in particular, by giving hairdressing work to the new casual employee instead of to [REDACTED], because of her physical disability.

## Attachment "C" Enforceable Undertakings

Sebastion Pty Ltd undertakes to:

**1 Ensure future workplace relations compliance**

- (a) Ensure that it complies at all times and in all respects with the FW Act and the Hair and Beauty Industry Award 2010 by developing and implementing policies and processes, including issues of discrimination, to ensure ongoing compliance with Commonwealth workplace laws.

**2 Commitment to the procurement of broader industry workplace relations advice and attendance at workplace relations training**

- (a) Each year, for a total period of three years, spend a total of \$500.00 gross per annum in ensuring the Director/s of Sebastion seek and obtain industry specific workplace relations advice (legal advice or otherwise) and/or attend training courses (**training course**) in relation to;
- i. the rights and responsibilities of employers under the FW Act in relation to the employment and termination of employment of employees; and
  - ii. adverse action under the FW Act, in particular, under section 351 – Discrimination of the FW Act.
- (b) Ensure that any training course is conducted by an accredited workplace trainer who is approved by the FWO and paid for by Sebastion.
- (c) Provide the training course materials used in any training courses attended by the Director/s of Sebastion to the FWO no later than 14 days before the training is to be conducted, and the training course materials must be approved by the FWO.
- (d) Provide evidence of attendance at (and payment of) any training courses so attended by the Director/s of Sebastion to the FWO, within 7 days of the training being provided.
- (e) Provide evidence of the procurement of any industry or legal advice to the FWO within 7 days of such advice being supplied to the Director/s of Sebastion.

**3 Advise ████████ of EU**

Send to ████████, a letter advising her of this EU.

**4 Apology**

Write and send to ████████, within 14 days of executing this EU, a letter of apology in the form of Attachment "D" to this EU, signed by the Director/s of Sebastion.

**5 Place Workplace notices**

- (a) Provide to all its employees within 28 days of executing this EU, the notice in the form of Attachment "E" (**Workplace Notice**) signed by the Director/s of Sebastion.
- (b) Ensure the Workplace Notice is printed in at least A3 size and clearly displayed along with a copy of this EU at the business premises of Sebastion 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 Workplace Notice and this EU to the general attention of all staff (for example, by placement on a staff noticeboard).

**6 Public Notice**

- (a) Within 28 days of executing this document (or so soon afterwards as is available) cause notices to be placed in the Melville Times Community Newspaper and Hair Biz magazine.
- (b) The notice must:
  - i. bear the company name of Sebastion;
  - ii. bear the company logo (if any) of Sebastion;
  - iii. appear on either of pages 3, 5 or 7 of the relevant edition;
  - iv. measure at least 15 cm high x 7.4 cm wide; and
  - v. be in the form of Attachment "F" to this EU.

**7 Monetary Compensation**

Within 21 days of the execution of this EU, Sebastion will pay to [REDACTED] the amount of \$2,000.00 gross, being compensation for economic and non-economic loss suffered by [REDACTED].

## Attachment "D" Letter of Apology

[To go on Sebastian letterhead]

[Date]

[Name and Address]

Dear Ms. [                    ],

### **Discrimination complaint**

We refer to your complaint to the Fair Work Ombudsman (FWO) in April 2011, concerning the decisions of Sebastian Pty Ltd (trading as Hair Liaison) (**Hair Liaison**) to change your employment status from full time to casual, and to reduce your hours, as a result of your physical disability and pregnancy and the decision not to give you casual work when you were fit to return to work because of your physical disability.

As you may be aware, the FWO has now finalised its investigation into your complaint. As a result of that investigation, Hair Liaison has formally admitted that it contravened the anti-discrimination provisions of the *Fair Work Act 2009 (Cth)* (FW Act) by:

- (a) changing your employment status from full time to casual because of your physical disability and pregnancy;
- (b) reducing your hours because of your physical disability and pregnancy; and
- (c) discriminating between you and other employees, in particular, by giving hairdressing work to the new casual employee instead of to you, because of your physical disability.

Hair Liaison is also in the process of entering into an enforceable undertaking with the FWO reflecting these admissions and a copy of the final undertaking will be provided to you or can otherwise be accessed at [www.fwo.gov.au](http://www.fwo.gov.au). Hair Liaison appreciates that its contraventions of the discrimination provisions of the FW Act caused you unnecessary confusion, stress and inconvenience. Hair Liaison sincerely regrets and apologises for this. Furthermore, I have given a commitment to the FWO on behalf of Hair Liaison that the prescribed conduct will not occur again.

Yours sincerely,

Julia Nicole Turner

Director

Sebastian Pty Ltd

## Attachment "E" Workplace Notice

The Office of the Fair Work Ombudsman (FWO) recently investigated allegations that Sebastian Pty Ltd (trading as Hair Liaison) (Hair Liaison) contravened Commonwealth workplace laws in April 2011. The allegations were that Hair Liaison contravened the anti-discrimination provisions, specifically section 351(1), of the *Fair Work Act 2009* (Cth) (FW Act) by taking adverse action against a former employee, in particular by:

- (a) changing the former employee's employment status from full time to casual because of her physical disability and pregnancy;
- (b) reducing the former employee's hours because of her physical disability and pregnancy; and
- (c) discriminating between the former employee and other employees, in particular, by giving hairdressing work to the new casual employee instead of to her, because of her physical disability.

Hair Liaison has formally admitted to the FWO that it did in fact contravene Commonwealth workplace laws as set out above.

An Enforceable Undertaking has been given by Hair Liaison to the FWO to reflect these formal admissions (available at [www.fwo.gov.au](http://www.fwo.gov.au)).

Hair Liaison expresses its sincere regret and apologises for any inconvenience this action has caused. Furthermore, Hair Liaison gives its commitment that such conduct will not occur again and that it will comply with Commonwealth workplace relations laws in the future.

## Attachment "F" Public Notice

The Office of the Fair Work Ombudsman (FWO) recently investigated allegations that Sebastian Pty Ltd (trading as Hair Liaison) (Hair Liaison) contravened Commonwealth workplace laws in April 2011. The allegations were that Hair Liaison contravened section 351(1) Discrimination of the *Fair Work Act 2009* (Cth) (FW Act) by taking adverse action against a former employee, specifically by:

- (d) changing the former employee's employment status from full time to casual because of her physical disability and pregnancy;
- (e) reducing the former employee's hours because of her physical disability and pregnancy; and
- (f) discriminating between the former employee and other employees, in particular, by giving hairdressing work to the new casual employee instead of to her, because of her physical disability.

Hair Liaison has formally admitted to the FWO that it did in fact contravene Commonwealth workplace laws, as outlined above.

An Enforceable Undertaking has been given by Hair Liaison to the FWO to reflect these formal admissions (that Enforceable Undertaking available at [www.fwo.gov.au](http://www.fwo.gov.au)).

Hair Liaison expresses its sincere regret and apologises for any hurt or inconvenience its actions have caused. Furthermore, Hair Liaison gives its commitment that such conduct will not occur again and that it will comply with Commonwealth workplace relations laws in the future.