

Transport company signs pact after ongoing workplace contraventions identified

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An Adelaide transport services company formally cautioned 12 months ago about its workplace practices now faces enforcement action for ongoing breaches of workplace laws.

The Fair Work Ombudsman found the company was continuing to misclassify drivers as sub-contractors instead of employees, underpaying five of them more than \$10,000.

Chryss Enterprises Pty Ltd first came to the Fair Work Ombudsman's attention as part of an Inquiry last year into allegations of sham contracting among transport operators engaged by the South Australian Government to transport special needs school students. See [Media release: State education department cautioned over lack of corporate governance on transport contracts. \(www.fair-work.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/december-2014/20141209-decd-inquiry-presser\)](http://www.fair-work.gov.au/about-us/news-and-media-releases/archived-media-releases/2014-media-releases/december-2014/20141209-decd-inquiry-presser)

Chryss was one of nine mini-bus operators to receive a Letter of caution in relation to unlawful independent contracting arrangements.

The company provides transport services for tourists, businesses and schools, including vehicle hire, wine tours, school and general transfers and school bus runs.

Fair Work Ombudsman Natalie James says that despite advice and assistance provided to the company, and a warning about the need for future compliance, the Agency continued to receive requests for assistance from Chryss drivers.

Ms James says follow-up investigations revealed that four drivers engaged as independent contractors should have been classified as employees.

The misclassification resulted in the drivers being short-changed more than \$10,000 between February, 2012 and August, 2014.

The male drivers, aged between 51 and 66, were paid as little as \$14.40 an hour but should have received up to \$22.24 for normal hours worked.

One driver was paid \$24.24 an hour on a public holiday but should have received \$51.25.

Individual underpayments ranged from \$408 to \$7707.

Chryss also made unlawful deductions from the drivers' wages, providing no explanation for some of the withdrawals.

Fair Work inspectors also found that annual leave and leave loading was not paid in one instance and that adequate employment records were not maintained.

Ms James says the failure of the company to comply with the Fair Work Ombudsman's earlier requests now means enforcement action is necessary.

Chryss has been asked to sign an Enforceable Undertaking (EU) to ensure behavioural change.

Enforceable Undertakings were introduced by legislation in 2009 and the Fair Work Ombudsman has been using them to achieve strong outcomes against companies that breach workplace laws without the need for civil court proceedings.

"We use Enforceable Undertakings where we have formed a view that a breach of the law has occurred, but where the employer has acknowledged this and accepted responsibility and agreed to co-operate and fix the problem," Ms James said.

The EU requires Chryss Enterprises and its manager Jim Chryssidis to:

- Reimburse a total of \$10,183 to five employees by January, 2016,
- Conduct a self-audit of driver entitlements from August, 2014,
- Engage all drivers as employees and pay them appropriately,
- Place a Public Notice in The Advertiser newspaper explaining the workplace contraventions and action taken to remedy them,
- Place a similar notice at the business premises on Marion Road, Plympton,
- Send a written apology to each of the affected employees,

- Register with the Fair Work Ombudsman's online tool My Account,
- Implement systems and processes to ensure future compliance with workplace laws,
- Engage an external accounting professional to audit workplace practices for the 2015-2016 financial year,
- Implement a training program for the director, owner and managers to educate them on the rights and responsibilities of employers,
- Donate \$1000 to the not for profit organisation Northern Community Legal Services Inc.

Ms James encouraged employers who had any uncertainty about whether their workplace practices were appropriate to visit www.fairwork.gov.au or call the Small Business Helpline for advice on 13 13 94.

A free interpreter service is also available on 13 14 50, and information on the website is translated into 27 languages.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](https://twitter.com/NatJamesFWO) (<http://twitter.com/NatJamesFWO>), the Fair Work Ombudsman [@fairwork_gov_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork_gov_au) or find us on Facebook www.facebook.com/fairwork.gov.au (<http://www.facebook.com/fairwork.gov.au>).

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