

## ENFORCEABLE UNDERTAKING

This undertaking is **given** by Emirates Leisure Retail (Australia) Pty Ltd (ACN 131 473 679) (hereafter "**ELRA**") and **accepted** by the Fair Work Ombudsman pursuant to s 715(2) of the *Fair Work Act 2009* in relation to the contraventions described in clause 12 of this undertaking.

## ENFORCEABLE UNDERTAKING

### PARTIES

1. This enforceable undertaking (**Undertaking**) is given to the Fair Work Ombudsman (**FWO**) pursuant to section 715 of the *Fair Work Act 2009* (Cth) (**FW Act**) by ELRA, Level 2, 187 Todd Road Port Melbourne VIC 3207.

### COMMENCEMENT

2. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by ELRA; and
  - (b) the FWO accepts the Undertaking so executed (**Commencement Date**).

### BACKGROUND

3. ELRA is an Australian private company that is a subsidiary of the Emirates Group. ELRA operates 39 outlets (consisting of restaurants, cafes and bars) in Australia, 30 of which are in airports, under a variety of trading names including Hudson's Coffee, The Bistro by Wolfgang Puck, Coopers Alehouse, Glasshouse Bar and Aviation Pier Cafe & Bar. As at October 2019, ELRA employed a total of 646 employees (148 full time, 59 part time and 439 casual). As at August 2021, ELRA employed a total of 189 employees (82 full time, 13 part time and 94 casuals).

### IDENTIFIED ISSUES

4. In October 2019, ELRA self-reported to the FWO that:
  - (a) in August 2019, following a claim made by an individual employee with respect to underpaid overtime, ELRA commissioned an internal review of entitlements under the *Emirates Leisure Retail (Australia) Pty Ltd Enterprise Agreement 2010* (the **Agreement**);
  - (b) as a result of that review, ELRA identified that it had misapplied the Agreement with respect to:
    - (i) overtime loadings for particular additional hours of work; and
    - (ii) undertakings in the Agreement regarding night time and weekend work, (the **Identified Issues**);
  - (c) in September 2019, ELRA engaged Ernst & Young (**EY**) to assess the scale of the Identified Issues and undertake a further comprehensive payroll analysis which was ongoing;

- (d) ELRA had implemented changes to its payroll system with effect from 14 October 2019 that ensured that all employees were paid correct loadings and penalty rates;
  - (e) the Identified Issues did not affect any related entities or franchisees of ELRA.
5. On 21 July 2020, ELRA provided the FWO with the complete and unredacted Payroll Compliance Analysis report prepared by EY and annexures setting out and quantifying underpayments for each of the affected employees and the data analysis methodology behind EY's report.

#### **ADDITIONAL IDENTIFIED ISSUES**

6. Following enquiries from employees regarding their underpayment calculations and back pay, ELRA identified and notified the FWO of the following additional identified issues, relating to ELRA applying the incorrect classification levels to employees engaged to serve liquor at licensed venues, specifically:
- (a) junior employees required to serve alcohol had been incorrectly classified as Food and Beverage Attendant Grade 1 level, when they were more appropriately classified as Food and Beverage Attendant Grade 2 level under the Agreement (due to serving alcohol at licensed venues);
  - (b) adult employees engaged to serve alcohol at the Launceston Hudson's Coffee site had been incorrectly classified at the Food and Beverage Attendant Grade 1 level, when they were more appropriately classified as Food and Beverage Attendant Grade 2 under the Agreement,
- (the Additional Identified Issues).**
7. Consequently, ELRA instructed EY to update the payroll analysis referred to at clause 5. ELRA provided FWO with the final updated back-payment figures on 1 September 2021.

#### **ENTERPRISE AGREEMENT TERMINATED**

8. On 22 September 2020, following an application by ELRA, the Agreement was terminated by the Fair Work Commission, meaning that the *Restaurant Industry Award 2020 (the Award)* now covers and applies to ELRA employees formerly covered by the Agreement.

## RECTIFICATION

9. Prior to the execution of this Undertaking, ELRA notified the FWO that it had:
  - (a) identified underpayments to a total of 2,381 current and former employees;
  - (b) quantified the total underpayment to be \$5,421,193.58 inclusive of:
    - (i) amounts related to the Identified Issues and Additional Identified Issues totalling \$4,722,350.08 (**Underpayments**). The Underpayments comprise amounts owed to each of the employees referred to in column A of the Schedule to this Undertaking (**Schedule Employees**) in the sum referred to in column B of the Schedule;
    - (ii) superannuation on the Underpayments as required by law totalling \$450,119.16 (**Superannuation Underpayments**). The Superannuation Underpayments comprise amounts for the benefit of each of the Schedule Employees in the sum referred to in column F of the Schedule; and
    - (iii) interest applied to the Underpayments at a rate of 5.25%, totalling \$248,724.34 (**Interest Payments**). The Interest Payments comprise amounts in respect of each of the Schedule Employees in the sum referred to in column D of the Schedule.
10. The Underpayments referred to in clause 9(b)(i) comprise amounts:
  - (a) each employee was entitled to be paid under the Agreement in respect of overtime for particular additional hours of work; and/or
  - (b) each employee was entitled to under the Agreement and National Employment Standards in respect of their appropriate classification; and/or
  - (c) of compensation in consideration for each employee rostered in breach of undertaking 2 and 3 of the Agreement calculated by reference to the weekend or night time penalty rates that would have been payable for such hours of work under the applicable Award.
11. As at the date of the execution of this Undertaking, ELRA has:
  - (a) save to the extent set out in column C of the Schedule, rectified the Underpayments by paying the relevant underpayment amount to each of the Schedule Employees;
  - (b) rectified the Superannuation Underpayments to each of the Schedule Employees by paying the required amount to the chosen superannuation fund of the employee;

- (c) save to the extent set out in column E of the Schedule, paid the Interest Payments to each of the Schedule Employees; and
- (d) rectified a total of \$5,016,474.38 (inclusive of interest and superannuation) to 1,566 of the Schedule Employees.

## ADMISSIONS

12. The FWO has a reasonable belief, and ELRA admits, that from 27 June 2014 to 14 October 2019 (**Relevant Period**) ELRA contravened:

(a) section 50 of the FW Act, by contravening the following terms of the Agreement in respect of the Schedule Employees:

- (i) clause 12.2(a) which required ELRA to pay overtime to full time employees who worked in excess of 38 hours per week;
- (ii) clause 14.1 which required ELRA to pay employees, as a minimum, the wage rate for their job classification as set out in Schedule A and Schedule B of the Agreement, by incorrectly classifying and paying:

(A) junior employees who were required to serve alcohol; and

(B) adult employees engaged to serve alcohol at the Launceston Hudson's Coffee site,

at the Food and Beverage Attendant Grade 1 level when they were more appropriately classified as Food and Beverage Attendant Grade 2 under the Agreement,

- (iii) undertaking 2 in which ELRA undertook to not roster employees solely on weekends, or on weekends in such a way that the employee's fortnightly rate of pay would be less than the applicable Award; and
- (iv) undertaking 3 in which ELRA undertook to not roster employees to work on nights in such a manner that the employee's fortnightly pay would be less than the applicable Award;

(b) section 44(1) of the FW Act, by contravening the following terms of the National Employment Standards:

- (i) section 90(1) of the FW Act, by underpaying annual leave entitlements to employees who were under-classified by reason of the matters set out in clause 12(a)(ii) above;



- (ii) section 99 of the FW Act, by underpaying paid personal leave entitlements to employees who were under-classified by reason of the matters set out in clause 12(a)(ii) above.
- 13. The contraventions identified in clause 12 of this Undertaking do not include:
  - (a) any contraventions which relate to or arise as a consequence of ELRA failing to correctly apply the Agreement to any employee not listed in the Schedule to this Undertaking (**Non-schedule Employees**) or ELRA failing to correctly apply the Agreement to the Schedule Employees in any way but as set out in clause 12. For the avoidance of doubt this Undertaking is not given in respect of any Non-schedule Employees who were underpaid as a result of ELRA failing to correctly apply the Agreement and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any contravention because of any such underpayment; or
  - (b) any contraventions which have not yet occurred at the date that this Undertaking is offered by ELRA (whether or not those contraventions are identified in the Independent Audits described at clause 18 below). For the avoidance of doubt this Undertaking is not given in respect of any contravention which has not occurred on the date which it is offered by ELRA and the FWO's acceptance of this Undertaking is not based on any reasonable belief about the existence of any such contravention.

## **UNDERTAKINGS**

- 14. ELRA will take the actions set out at clauses 15 to 66 below.

## **REVIEW AND RECTIFICATION OF UNDERPAYMENTS**

- 15. Within 60 days of the Commencement Date, and subject to clause 16, ELRA will:
  - (a) pay to each of the relevant Schedule Employees the outstanding Underpayments and Interest Payments set out in columns C and E of the Schedule, respectively.
  - (b) provide the FWO evidence of all payments made to the Schedule Employees pursuant to clause 15(a) above.
- 16. If any of the Schedule Employees to whom Underpayments are owed cannot be located within 60 days of the Commencement Date, within a further 14 days, ELRA will pay the underpayment amounts owing to those employees to the Commonwealth of Australia in accordance with section 559 of the FW Act. ELRA will complete the required documents

supplied by the FWO for this purpose.

17. In the event that the FWO is able to locate and contact any current or former ELRA employees to whom Underpayments are owed, the FWO will (in addition to its obligations under s559 of the FW Act) notify ELRA in writing of the name and contact details of the current or former employee. Within 14 days of receiving any such notice, ELRA will pay the current or former employee:
  - (a) Interest on the amount already paid by ELRA to the Commonwealth of Australia in respect of that employee, pursuant to clause 16 above, using an interest rate of 5.25%.

#### INDEPENDENT AUDITS

18. ELRA must, at its cost, engage an appropriately qualified, experienced, external and independent accounting professional or an employment law specialist (Independent Auditor) to conduct three audits of ELRA's compliance with the FW Act, the Award, any replacement instruments, and any future agreements that apply in place of or in addition to the Award (Audits).
19. ELRA will notify the FWO of its proposed Independent Auditor by no later than 30 November 2021. The FWO may in its sole discretion approve the Independent Auditor in writing or otherwise require ELRA to propose other Independent Auditors until the FWO has approved in writing an Independent Auditor. The Independent Auditor must be approved by the FWO in writing prior to being engaged by ELRA.
20. ELRA must ensure that each of the Audits conducted by the Independent Auditor includes:
  - (a) a random sample of at least 30 employees (**Sampled Employees**), comprised of a range of classifications, locations and employment types (full time, part time and casual employment);
  - (b) an assessment of whether the Award (or replacement instruments) applies to the Sampled Employees;
  - (c) an assessment of whether the Sampled Employees to whom the Award (or replacement instruments) applies have been correctly classified by ELRA;
  - (d) an assessment of whether the pay and conditions of the Sampled Employees to whom the Award (or replacement instruments) applies during the relevant audit period is in compliance with the FW Act and the Award (or replacement instruments);

- (e) direct contact with Sampled Employees to whom the Award (or replacement instruments) applies by way of telephone contact to at least 8 of the Sampled Employees, to ensure accuracy of hours worked;
- (f) the production of a written report on each of the Audits setting out the Independent Auditor's findings, and the facts and circumstances surrounding them, to the FWO; and
- (g) that each of the written reports referred to in (f) above contains the following declarations from the Independent Auditor:
  - (i) the Independent Auditor has no actual, potential or perceived conflict of interest in providing the report to the FWO;
  - (ii) notwithstanding that the Independent Auditor is retained by ELRA, the Independent Auditor undertakes that it has acted independently, impartially, objectively and without influence from ELRA in preparing the report;
  - (iii) the report is provided in accordance with applicable professional standards (which will be listed in the report); and
  - (iv) the report is provided to the FWO for its benefit and the FWO can rely on the report.

#### The First Audit

- 21. ELRA must ensure the Independent Auditor commences the first of the Audits by no later than 1 February 2022 (**First Audit**).
- 22. For the First Audit, the relevant pre-audit period to assess Sampled Employees is 1 November 2020 – 31 October 2021.
- 23. The relevant audit period for the First Audit must be at least 2 full pay periods including at least one public holiday, falling within the period 1 November 2021 – 31 January 2022. The audit period and process for annualised salaried employees is to be agreed with the FWO prior to the First Audit commencing.
- 24. By 15 December 2021, ELRA will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the First Audit.
- 25. ELRA will use its best endeavours to ensure the Independent Auditor provides a draft written report of the First Audit directly to the FWO by 1 May 2022, setting out the draft First Audit findings, and the facts and circumstances supporting the First Audit findings. ELRA will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to ELRA without the FWO's approval.



26. ELRA will use its best endeavours to ensure the Independent Auditor finalises the First Audit and provides a written report of the First Audit (First Audit Report) directly to the FWO within one month of the FWO providing any comments on the draft report to the Independent Auditor. ELRA will ensure the Independent Auditor does not provide the First Audit Report, or a copy of the same, to ELRA without the FWO's approval.

#### The Second Audit

27. ELRA must ensure the Independent Auditor commences the second of the Audits by no later than 1 February 2023 (**Second Audit**).
28. For the Second Audit, the relevant pre-audit period to assess Sampled Employees is 1 November 2021 – 31 October 2022.
29. The relevant audit period for the Second Audit must be at least 2 full pay periods, falling within the period 1 November 2022 – 31 January 2023. The audit period and process for annualised salaried employees is to be agreed with the FWO prior to the Second Audit commencing.
30. By 15 December 2022, ELRA will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Second Audit.
31. ELRA will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Second Audit directly to the FWO by 1 May 2023, setting out the draft Second Audit findings, and the facts and circumstances supporting the Second Audit findings. ELRA will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to ELRA without the FWO's approval.
32. ELRA will use its best endeavours to ensure the Independent Auditor finalises the Second Audit and provides a written report of the Second Audit (**Second Audit Report**) directly to the FWO within one month of the FWO providing any comments on the draft report to the Independent Auditor. ELRA will ensure the Independent Auditor does not provide the written report, or a copy of the same, to ELRA without the FWO's approval.

#### The Third Audit

33. ELRA must ensure the Independent Auditor commences the third of the Audits by no later than 1 February 2024 (**Third Audit**).
34. For the Third Audit, the relevant pre-audit period to assess Sampled Employees is 1 November 2022 – 31 October 2023
35. The relevant audit period for the Third Audit must be at least 2 full pay periods, falling within the period 1 November 2023 – 31 January 2024. The audit period and process

for annualised salaried employees is to be agreed with the FWO prior to the Third Audit commencing.

36. By 15 December 2023, ELRA will provide for the FWO's approval, details of the methodology to be used by the Independent Auditor to conduct the Third Audit.
37. ELRA will use its best endeavours to ensure the Independent Auditor provides a draft written report of the Third Audit directly to the FWO by 1 May 2024, setting out the draft Third Audit findings, and the facts and circumstances supporting the Third Audit findings. ELRA will ensure the Independent Auditor does not provide the draft written report, or a copy of the same, to ELRA without the FWO's approval.
38. ELRA will use its best endeavours to ensure the Independent Auditor finalises the Third Audit and provides a written report of the Third Audit (**Third Audit Report**) directly to the FWO within one month of FWO providing any comments on the draft report to the Independent Auditor. ELRA will ensure the Independent Auditor does not provide the written report, or a copy of the same, to ELRA without the FWO's approval.

#### **OUTCOME OF AUDITS**

39. If any of the Audits identify underpayments to any current or former employees, ELRA will conduct a reconciliation of the amounts paid to those employees during the relevant pre-audit period and rectify any underpayments that are identified. The reconciliation period for each identified employee will be from the start of the relevant pre-audit period to the end of the relevant audit period.
40. ELRA will provide to the FWO evidence of such rectification within 60 days of being informed by the FWO of the requirement to undertake the reconciliation.
41. If any employees identified in the Audits as having underpayments owing to them cannot be located within 60 days of the conclusion of each of the Audits, ELRA will pay those amounts to the Commonwealth of Australia (through the FWO) in accordance with section 559 of the FW Act. ELRA will complete the required documents supplied by the FWO for this purpose.
42. If any of the Audits identify an underpayment of minimum entitlements to one or more employees, and the FWO reasonably believes that employees not included in the Audits are also likely to have been underpaid, ELRA will engage an accounting professional or an employment law specialist approved by the FWO to conduct a further audit of all its employees to whom the Agreement (or replacement instrument) applies (or a particular cohort of employees within this group, to be determined by the FWO) (Additional Audit). The exact terms and requirements of any Additional Audit(s) will be determined by the

FWO but will not be materially different to the requirements in relation to the requirements set out for the First, Second or Third Audit. Any Additional Audit must be paid for by ELRA.

43. If requested by the FWO, ELRA will provide the FWO with all records and documents used to conduct any or all of the Audits (including any Additional Audit), within 7 days of such a request.

#### **EMPLOYEE HOTLINE**

44. Prior to the Commencement Date, at its own expense, ELRA has engaged an independent organisation to operate a dedicated telephone number and email address for all current and former employees to whom the Agreement applies, or had applied, to make enquiries in relation to their entitlements, underpayments or related employment concerns (**Employee Hotline**). Employees will have the option of making enquiries on a confidential basis.
45. The FWO has approved ELRA's nomination of an independent organisation to operate the Employee Hotline.
46. ELRA will:
- (a) ensure the Employee Hotline remains operational for a period of 12 months;
  - (b) ensure that the telephone number and email address are included on a communication to employees to whom the Agreement applies, the public notice (see clauses 50 to 52);
  - (c) communicate the existence and purpose of the Employee Hotline by way of letter to the last known address of all current and former employees to whom the Agreement applies, or had applied, known as at the Commencement Date and dating back to 27 June 2014. ELRA will:
    - (i) ensure the letter is in the form of Attachment A to this Undertaking; and
    - (ii) ELRA will provide evidence to the FWO that the letter has been mailed to all required current and former employees by 15 November 2021;
  - (d) take steps to respond to each telephone and email enquiry and seek to resolve any issues within 30 days and notify the FWO of any issues that are not resolved within 60 days; and
  - (e) provide a de-identified list of enquiries received by the Employee Hotline to the FWO every three months from the establishment of the Employee Hotline.

## **NOTICES – INTERNAL AND EXTERNAL**

### Media Release

47. Upon acceptance of the Undertaking, the FWO will publish a media release on its website in respect of this Undertaking.

### Apology to Employees

48. Within 28 days of the publication of the FWO's media release, ELRA will send a letter of apology (**Apology Letter**) to all the Schedule Employees. The Apology Letter will be in the form of Attachment A to this Undertaking.
49. ELRA will provide evidence to the FWO that the Apology Letter has been sent to all Schedule Employees within 7 days of the Apology Letter being sent.

### Public Notice

50. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of this Undertaking, ELRA will place a notice in the digital publication of Weekend Australian (**Public Notice**).
51. The Public Notice must:
- (a) bear the name and logo of ELRA;
  - (b) appear within the first five pages;
  - (c) be at least 10 cm x 8 cm; and
  - (d) contain wording in the form of Attachment B.
52. ELRA will inform the FWO when the Public Notice will be published and provide a copy to the FWO within seven days of its publication.

### Workplace Notice

53. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of this Undertaking, ELRA will cause to be displayed within each workplace where the Schedule Employees work, or worked, a notice in the form of Attachment B to this Undertaking (**Workplace Notice**).
54. ELRA must ensure the Workplace Notice is:
- (a) at least A3 size;
  - (b) clearly displayed in a location to which all employees have access (for example, by placement on a staff noticeboard); and
  - (c) displayed for a period of 28 days.

55. Within 7 days of first displaying the Workplace Notice, ELRA will provide photographic evidence to the FWO of the display and location of the Workplace Notice in each of its worksites.
56. At the end of the display period referred to in clause 54 above, ELRA will provide confirmation to the FWO that the Workplace Notice has been continuously displayed at each location for the required period.

#### Website Notice

57. Within 28 days of, but not prior to, the FWO publishing a media release on its website in respect of the Undertaking, ELRA will place a notice on its website, accessible through a clearly visible hyperlink on the homepage of ELRA's website, [www.emiratesleisureretail.com/australia](http://www.emiratesleisureretail.com/australia) (**Website Notice**).
58. The Website Notice must:
  - (a) be in the form of the Website Notice set out at Attachment B;
  - (b) be displayed in at least size 10 font; and
  - (c) remain on the website for a period of 28 days
59. Within 7 days of placing the Website Notice on its website, ELRA will provide to the FWO evidence of its placement.

#### **WORKPLACE RELATIONS TRAINING**

60. Within 90 days of the Commencement Date of this Undertaking, ELRA must organise and ensure training is provided to all employees with HR, payroll, rostering or recruitment responsibilities (**Training**). ELRA must:
  - (a) ensure the Training relates to compliance with applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act and the Award;
  - (b) ensure the Training is conducted by a workplace trainer, such person or organisation to be approved by the FWO and paid for by ELRA;
  - (c) provide the training materials to be used in the Training to the FWO no later than 14 days before the Training is to be conducted; and
  - (d) provide evidence of attendance at the Training to the FWO within 7 days of the Training being provided (including the name and position of all attendees and the date on which the training was attended).
61. For a period of 3 years from Commencement Date, ELRA must ensure that training, of



similar content to the Training is completed by any new or existing employees or contractors who, after the commencement of this Undertaking, acquire responsibilities for HR, payroll, rostering or recruitment. On a quarterly basis ELRA will provide evidence of the completion of the training to the FWO, including the names of attendees and the dates the Training was undertaken.

#### **MATTERS NOTIFIED TO THE FWO**

62. If contacted by the FWO in relation to any Requests for Assistance received by the FWO, ELRA undertakes to cooperate fully in any resulting investigation (if any).

#### **REPORTING RELEVANT MATTERS**

63. ELRA will notify the FWO within 7 days of becoming aware of any changes of circumstance that could affect ELRA's ability to comply with its obligations under this Undertaking.

#### **CONTRITION PAYMENT**

64. ELRA will make a contrition payment of \$150,000 to the Consolidated Revenue account of the FWO (**Consolidated Revenue Fund**).
65. ELRA will provide evidence to the FWO of the contrition payment within 7 days of making payment to the Consolidated Revenue Fund.

#### **NO INCONSISTENT STATEMENTS**

66. ELRA must not, and must use its best endeavours to ensure that its officers, employees or agents do not, make any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this Undertaking.

#### **ACKNOWLEDGEMENTS**

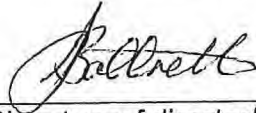
67. ELRA acknowledges that:
- (a) the FWO may;
    - (i) make this Undertaking (including any of the Attachments) available for public inspection, including by posting it on the FWO internet site at [www.fairwork.gov.au](http://www.fairwork.gov.au);
    - (ii) release a copy of this Undertaking (including 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 Undertaking;
  - (iv) from time to time, publicly refer to the Undertaking (and any of the Attachments hereto) and its terms; and
  - (v) rely upon the admissions made by ELRA set out in clause 12 above in respect of decisions taken regarding enforcement action in the event that ELRA is found to have failed to comply with its workplace relations obligations in the future, including but not limited to any failure by ELRA to comply with its obligations under this Undertaking;
- (b) 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 herein;
  - (c) consistent with section 715(3) of the FW Act, ELRA may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO; and
  - (d) if ELRA contravenes any of the terms of this Undertaking:
    - (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; and
    - (ii) this Undertaking may be provided to the Court as evidence of the admissions made by ELRA in clause 8 above, and also in respect of the question of costs.

**Executed as an undertaking**

EXECUTED by ELRA in accordance with section 127(1) of the *Corporations Act 2001*:

  
(Signature of director)

  
(Signature of director/company secretary)

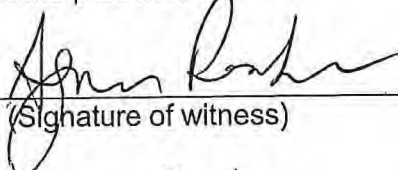
JUSTIN VILE SCOTTI  
(Name of director)

ASHLEY BOTTRELL  
(Name of director/company secretary)

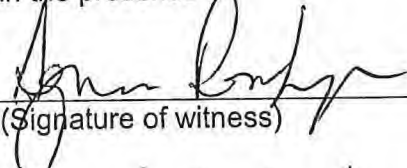
10<sup>th</sup> November 2021  
(Date)

10<sup>th</sup> November 2021  
(Date)

in the presence of:

  
(Signature of witness)


in the presence of:

  
(Signature of witness)

Agon Rexhepi  
(Name of witness)

Agon Rexhepi  
(Name of witness)


ACCEPTED by the FAIR WORK OMBUDSMAN pursuant to section 715(2) of the *Fair Work Act 2009* on:

  
Mark Scully, Deputy Fair Work  
Ombudsman – Compliance and  
Enforcement

17 November 2021  
(Date)

Delegate for the FAIR WORK  
OMBUDSMAN

in the presence of:

  
(Signature of witness)

Cheryl Tam  
(Name of Witness)

**SCHEDULE – Details of employee underpayments**

**See attached.**

## Attachment A – Letter of Apology

### FORM OF APOLOGY LETTER TO AFFECTED EMPLOYEES

<Date>

<Employee Name>

<Employee Address>

Dear <Employee Name>

I am writing to apologise on behalf of Emirates Leisure Retail (Australia) (ELRA) for non-compliance with Commonwealth workplace relations laws.

ELRA has self-reported and formally admitted to the Fair Work Ombudsman (FWO) that it contravened the *Fair Work Act 2009* (Cth) by failing to act in accordance with the *Emirates Leisure Retail (Australia) Pty Ltd Enterprise Agreement 2010 (the Agreement)* and underpaying entitlements under the National Employment Standards.

The contraventions arose from ELRA misapplying the Agreement with respect to overtime entitlements and Undertakings given in relation to night time and weekend work, and from ELRA misclassifying certain employees engaged to serve alcohol.

Regrettably, it has been determined that you were affected by these contraventions.

ELRA has taken steps to remedy the contraventions.

You will have received this payment on [insert date] and will be provided with a payment advice regarding the payment.

ELRA has formally admitted to the FWO that ELRA 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 will be available at [www.fairwork.gov.au](http://www.fairwork.gov.au).

As part of the Enforceable Undertaking, ELRA has committed to a number of measures to ensure future compliance with Commonwealth workplace relations laws.

ELRA expresses its sincere regret and apologises to you for failing to comply with its lawful obligations.



Should you have any questions or concerns about this or any other employment matter, a hotline has been established and is being operated by Stopline, an independent party that can assist you with your enquiries, on a confidential basis if required. Stopline can be contacted by way of the following details:

- a) Telephone 1300 30 45 50 (Australia)
- b) Email [makeareport@stopline.com.au](mailto:makeareport@stopline.com.au)
- c) Online <https://emirateslr.stoplinereport.com>
- d) Mail Emirates Leisure Retail C/- Stopline, PO Box 403,  
Diamond Creek, VIC 3089
- e) App Smart phone App (free download from the Apple itunes  
Store or Google Play)
- f) QR Code The QR Code will be developed and provided to ELRA for  
the online reporting

Alternatively, anyone can contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.

Yours sincerely

Emirates Leisure Retail (Australia)

## Attachment B – Form of Public, Website and Workplace Notice

Emirates Leisure Retail (Australia) (**ELRA**) recently completed a review of its payroll systems and processes and determined that it contravened the *Fair Work Act 2009* (Cth) (**FW Act**).

ELRA has self-reported and formally admitted to the Fair Work Ombudsman (**FWO**) that it contravened the FW Act by failing to act in accordance with the *Emirates Leisure Retail (Australia) Pty Ltd Enterprise Agreement 2010* (**the Agreement**) and underpaying entitlements under the National Employment Standards.

The contraventions arose from ELRA misapplying the Agreement with respect to overtime entitlements and Undertakings given in relation to night time and weekend work, and from ELRA misclassifying certain employees engaged to serve alcohol.

Between October 2019 and September 2021, ELRA formally disclosed to the Fair Work Ombudsman (**FWO**) that contraventions of Agreements had occurred and consequently a number of employees had been underpaid.

ELRA has now entered into an Enforceable Undertaking with the FWO to ensure its ongoing compliance with Commonwealth workplace laws.

ELRA will, as a result of the Enforceable Undertaking, commit to undertake a number of activities to ensure its ongoing compliance such as, conducting three independent audits, formally apologising to affected employees and committing to workplace relations training for employees with certain duties.

ELRA expresses its sincerest regrets and apologises for these contraventions.

If you worked for ELRA during the period 27 June 2014 to 14 October 2019 and have queries or questions relating to your employment, please contact the hotline being operated by independent third party Stopline. Stopline can be on a confidential basis by way of the following details:

- a) Telephone 1300 30 45 50 (Australia)
- b) Email [makeareport@stopline.com.au](mailto:makeareport@stopline.com.au)
- c) Online <https://emirateslr.stoplinereport.com>
- d) Mail Emirates Leisure Retail C/- Stopline, PO Box 403,  
Diamond Creek, VIC 3089
- e) App Smart phone App (free download from the Apple itunes  
Store or Google Play)

- f) QR Code     The QR Code will be developed and provided to ELRA for the online reporting

Alternatively, anyone can contact the FWO via [www.fairwork.gov.au](http://www.fairwork.gov.au) or on 13 13 94.