

Fair Work Act 2009

Section 715 ENFORCEABLE UNDERTAKING

Parties

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

All Occasion Cruises Pty Ltd (ABN 79 100 782 787) (**All Occasion Cruises**) for the purposes of section 715 of the *Fair Work Act 2009* (**FW Act**).

Background

2. All Occasion Cruises is a family owned and operated charter business, with over 10 years experience providing marine tourism and charter vessel hire within Sydney Harbour.
3. All Occasion Cruises was incorporated on 3 June 2002. Since incorporation, Joe Elias has been the sole Director.
4. All Occasion Cruises employs approximately 41 workers engaged primarily as casuals in the positions of Deckhands, Waiters, Bar Attendants and Kitchen Hands.
5. On 13 August 2014, the FWO commenced an audit of All Occasion Cruises following intelligence received from within the industry relating to companies providing marine tourism and charter vessel hire within Sydney Harbour.
6. On 13 August 2014, Fair Work Inspectors conducted an unannounced site visit at 100 Pymont Bridge Road, Pymont NSW.
7. On 18 September 2014 and 9 October 2014, the FWO issued a Notice to Produce documents pursuant to Section 712 of the FW Act to All Occasion Cruises, requesting time and wages records for the month of August 2014 (**relevant period**).
8. All Occasion Cruises produced time and wage records on 3 October 2014 and 21 October 2014.
9. The terms and conditions of All Occasion Cruises employees are governed by the *Marine Tourism and Charter Vessels Award 2010* (MA000093) and the *Clerks Private Sector Award 2010* (MA000002).
10. An assessment of the time and wage records provided for the relevant period highlighted a number of contraventions of the FW Act, the *Marine Tourism and Charter Vessels Award 2010* and the *Clerks Private Sector Award 2010* in relation to All Occasion Cruises' employees.

Contraventions

11. The FWO has determined, and All Occasion Cruises admits, that All Occasion Cruises contravened section 45 of the FW Act by failing to comply with the following provisions of the *Marine Tourism and Charter Vessels Award 2010*:
 - (a) Clause 10.3 (a) (ii) engaging casual 'Non-overnight Charter Employees' for shifts exceeding of 12 hours;
 - (b) Clause 10.3 (b) by failing to provide casual employees on engagement the likely time periods or trips the employee will be required to work;
 - (c) Clause 10.4 (a) failing to provide written notice to the person to whom an offer of employment is addressed stating whether the person is to be: engaged as an Overnight



Charter Employee or a Non-overnight Charter Employee; whether the person is to be engaged on a full-time, part-time or casual basis; their classification level; and rate of pay the employee will receive;

- (d) Clause 13.2 (a) by failing to pay the applicable minimum wages for full-time and part-time employees;
 - (e) Clause 13.2 (b) by failing to pay the applicable casual loading; and
 - (f) Clause 22.1 by failing to pay the applicable overtime rates for hours in excess of 12 hours per day; or the average ordinary hours per week.
12. The FWO has determined, and All Occasion Cruises admits, that All Occasion Cruises contravened section 45 of the FW Act by failing to comply with the following provisions of the *Clerks Private Sector Award 2010*:
- (a) Clause 16.1 by failing to pay the applicable minimum wages for full-time employees;
 - (b) Clause 12.2 by failing to pay the applicable casual loading; and
 - (c) Clause 27.1 (a) by failing to pay overtime rates for hours worked in excess of an average of 38 hours.
13. The FWO has determined, and All Occasion Cruises admits, that All Occasion Cruises contravened the following sections of the FW Act and the *Fair Work Regulations 2009 (FW Regs)*:
- (a) Section 535 (1) of the FW Act by failing to keep correct content of records as prescribed by Regulation 3.34. Specifically, All Occasion Cruises failed to maintain records relating to the number of overtime hours worked by employees; and
 - (b) Section 536 (2) of the FW Act by failing to issue pay slips in the form prescribed by Regulation 3.46 (1) and Regulation 3.46 (5). Specifically, failing to separately identify overtime and the name of the superannuation fund on pay slips.

Commencement of Undertaking

14. This Undertaking comes into effect when:
- (a) the Undertaking is executed by All Occasion Cruises; and
 - (b) the FWO accepts the Undertaking so executed.
15. Upon the commencement of this Undertaking, All Occasion Cruises undertakes to assume the obligations set out below.

Undertakings

16. For the purposes of section 715 of the FW Act, All Occasion Cruises undertakes to:

Rectify the underpayments

- (a) Conduct a self-audit to identify relevant employee classifications under the *Marine Tourism and Charter Vessels Award 2010* (MA000093) and / or the *Clerks Private Sector Award 2010* (MA000002), and within twenty-eight days of the execution of this Undertaking, provide a copy of employee classifications to the FWO;
- (b) Within fifty-six days of the execution of this Undertaking, conduct a self-audit to identify all contraventions of relevant Commonwealth workplace laws for the employees currently and previously employed by All Occasion Cruises from the pay period commencing 1 August 2014 to 31 December 2014 (the **Affected Employees**) including; entitlements to minimum rates of pay, casual loadings and overtime rates;
- (c) Pay to the Affected Employees, referred to in (b), within eighty-four days of the execution of this Undertaking, the outstanding amounts as calculated using the



compliant minimum rates of pay from the period commencing 1 August 2014 to 31 December 2014;

- (d) Within seven days of each payment being made to an Affected Employee as per paragraph (b), provide the methodology of the calculations and reasonable evidence to the FWO that these Payment/s have been made;
- (e) If an Affected Employee cannot be located, within one month of the payment falling due, pay any outstanding amount into the consolidated revenue of the Commonwealth of Australia (through the FWO), in accordance with section 559 of the FW Act, to be held on trust for the relevant Employee;

Apology

- (f) Prepare a letter apologising for the Contraventions to all Affected Employees in the form of Attachment A to this Undertaking (**Apology Letter**) and attach a copy of the Apology Letter to each Affected Employee's pay slip within forty-two days of the execution of this Undertaking;
- (g) Within seven days of distribution of the Apology Letters, submit a sample copy of an Apology Letter to the FWO and written details of when each Apology Letter was provided to each Affected Employee;

Recordkeeping

- (h) Amend current employment letters provided to employees by All Occasion Cruises on commencement to include, at a minimum, the correct rates of pay, the applicable instrument (for example, Modern Award), the relevant classification, status of employment and the likely time periods or trips the employee will be required to work. Alternatively, utilise the resources from the FWO's website and customise the "Letters of Engagement" templates (ensuring these are compliant with the applicable instrument);
- (i) Within thirty-five days of the execution of this Undertaking provide the FWO with a copy of the amended "Letter of Engagement" (or alternative Letter);
- (j) Within thirty-five days provide to the FWO copies of time and wage records and pay slips that comply with Commonwealth workplace laws;

Future workplace relations compliance

- (k) Ensure compliance at all times and in all respects with applicable Commonwealth workplace laws and instruments, including but not limited to the *Marine Tourism and Charter Vessels Award 2010*, the *Clerks Private Sector Award 2010* and the FW Act by developing systems and processes to ensure ongoing compliance with those requirements;
- (l) Provide to the FWO, within fifty-six days of the execution of this Undertaking, written detail of the systems and processes implemented in satisfaction of the undertaking in paragraph (k) above designed to ensure such ongoing compliance;

Workplace relations training

- (m) Within three months of the execution of this Undertaking, organise and ensure training for all persons engaged by All Occasion Cruises who have managerial responsibility for human resources, recruitment/termination or payroll functions (**Training**);
- (n) Within three months of the execution of this Undertaking, provide the FWO with written details of Training undertaken including names of the courses, dates Training was undertaken, and names of participants;
- (o) Ensure the Training relates to compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the rights and responsibilities of employers under the FW Act, the *Marine Tourism and Charter Vessels Award 2010* and the *Clerks Private Sector Award 2010*;



- (p) In addition to any external Training, within three months of the execution of this Undertaking ensure persons referred to in paragraph (m) review relevant education material available on the FWO website and as a minimum, complete educational activities as set out in Attachment C and ensure a copy of each Attachment C completed is provided to the FWO, along with requested supplementary documentation;
- (q) Ensure within twenty-eight days of the execution of this Undertaking, All Occasion Cruises has actioned the following activities with the FWO website:
- i. Register for "My Account"
 - ii. subscribe to the bi-monthly employer newsletter
 - iii. subscribe to the pay rate update alert RSS feed for the *Marine Tourism and Charter Vessels Award 2010* and the *Clerks Private Sector Award 2010*; and
- (r) Complete the written form provided in Attachment D, and provide the signed, completed form to the FWO within seven days of completion of the activities outlined in paragraph (q) above.

Future audits

- (s) Cause to have performed by an accounting professional (for example, a Certified Practising Accountant) or an employment law specialist, at All Occasion Cruises' expense, audits of All Occasion Cruises' compliance with all applicable Commonwealth workplace laws and instruments, including but not limited to the *Marine Tourism and Charter Vessels Award 2010*, the *Cleaning Services Award 2010* and the FW Act, relating to pay and conditions of at least 30% of all employees of All Occasion Cruises (**Audit**), for each year in a three year period as follows:
- i. The Audit for the calendar year 2015 is to be finalised by 29 February 2016;
 - ii. The Audit for the calendar year 2016 is to be finalised by 28 February 2017; and
 - iii. The Audit for the calendar year 2017 is to be finalised by 28 February 2018.
- (t) Provide to the FWO, at least fourteen days prior to the commencement of an Audit being undertaken, the methodology to be used for the purpose of the Audit for approval by the FWO;
- (u) Provide to the FWO, within fourteen days of each finalised Audit, details of the methodology used to conduct the Audit and the outcomes of the Audit;
- (v) In the event an Audit discloses contraventions of any applicable Commonwealth workplace laws and instruments, rectify all such contraventions within fourteen days of the finalised Audit including rectification of any and all underpayments to employees;
- (w) Provide evidence of rectification in relation to paragraph (v) above to the FWO within fourteen days of the finalised Audit:

Future complaints

- (x) In instances where All Occasion Cruises is contacted by current or former employees, not covered by this Undertaking, who allege that their lawful entitlements have not been met, All Occasion Cruises agree to:
- i. notify the FWO within seven days of receiving the allegation;
 - ii. take all reasonable steps to ascertain whether a contravention/s of the FW Act has occurred, and where such contravention/s have been found and take immediate steps to rectify the contravention/s;
 - iii. within seven days of resolving the allegation, provide the FWO with evidence that any identified underpayments have been paid and evidence that other



issues identified have been resolved; and

- iv. should a decision be made not to rectify an issue raised by an allegation (as referred to in paragraph (x) above), notify the FWO within seven days of this decision and the reasons for not rectifying.

Acknowledgements

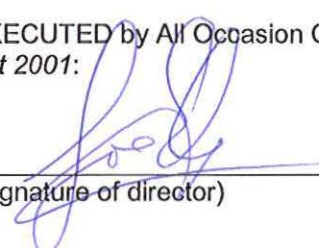
All Occasion Cruises acknowledges that:

- (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 (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 All Occasion Cruises;
- (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 All Occasion Cruises 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; and
- (g) Consistent with section 715(3) of the FW Act, All Occasion Cruises may withdraw from or vary this Undertaking at any time, but only with the consent of the FWO.



Executed as an undertaking

EXECUTED by All Occasion Cruises Pty Ltd in accordance with section 127(1) of the *Corporations Act 2001*:



(Signature of director)

(Signature of director/company secretary)

JOE ELIAS

(Name of director)

(Name of director/company secretary)

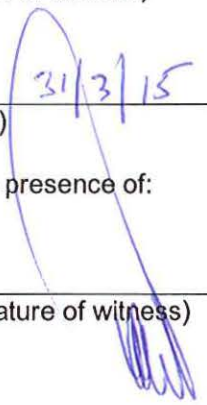
31/3/15

(Date)

(Date)

in the presence of:

in the presence of:



(Signature of witness)

(Signature of witness)

(Name of witness)

PATRICK AGOSTINO
Solicitor

(Name of witness)


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


pro FAIR WORK OMBUDSMAN

2 APRIL 2015

(Date)

in the presence of:



(Signature of witness)

PIA MORGAN

(Name of Witness)