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## Recent documented WA cases of unlawful under-payments

### **Cleaning company overhauls workplace practices**

**3 December 2018**

A Western Australian commercial cleaning company that underpaid its workforce more than \$447,000 has signed up to ongoing scrutiny of its workplace arrangements under an Enforceable Undertaking with the Fair Work Ombudsman. Delron Cleaning Pty Ltd, which provides cleaning services at sites in Sydney, Perth and regional Western Australia, commissioned an external audit of its employees' entitlements after identifying errors in its payroll system. The external audit, conducted by PwC, covered the period from March 2015 to March 2017 and involved 1,188 current and former employees. The audit found Delron had underpaid 1,174 cleaners a total of \$447,717, with a majority of workers being both underpaid and overpaid at various times. The company alerted the Fair Work Ombudsman to the errors and worked cooperatively with the regulator in rectifying the breaches. All underpaid workers were back-paid prior to the signing of the Enforceable Undertaking. Underpayments related to failures to pay correct overtime and shift work penalties, and part time and broken shift allowances, as required under the *Cleaning Services Award 2010*. Individual underpayments ranged from one cent to \$12,100 for a cleaner in Perth. The Fair Work Ombudsman also identified record keeping breaches by Delron pertaining to its casual and part-time employees.

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/december-2018/20181203-delron-cleaning-eu-media-release>

### **Sushi supplier to back-pay a Chinese worker**

**18 July 2018**

A Perth wholesale sushi supplier will back-pay a worker more than \$13,000 and overhaul its workplace practices under a new Enforceable Undertaking (EU) signed with the Fair Work Ombudsman. Prime Enterprise Holdings Pty Ltd operates a wholesale sushi preparation factory, catering services, and ten Asian fast food outlets and restaurants across Western Australia.

The former worker, a Chinese national working in Australia on a 457 spousal visa, was employed as a part-time sushi-maker at the company's wholesale food preparation factory located in O'Connor. The worker was underpaid \$13,047.88 over 11 months. The worker lodged a request for assistance with the Fair Work Ombudsman following concerns that she was not being paid the correct rate for nightshift work. A Fair Work Ombudsman investigation found that the worker was paid flat rates of between \$12 and \$18.29 per hour. In fact, she was entitled to significantly higher casual rates under the *Food, Beverage and Tobacco Manufacturing Industry Award 2010*. According to the Award, she should have been paid hourly base rates of up to

\$23.51. She should have also received up to \$47.02 per hour for Sunday shift work and up to an additional \$7.05 per hour for night shift allowances.

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/july-2018/20180718-prime-enterprise-holdings-eu>

## **Perth labour supply business faces Court for alleged building site underpayments**

**4 July 2018**

The Fair Work Ombudsman has commenced legal action against a labour supply company in Perth, alleging it misclassified young labourers as independent contractors, when they were in fact employees, and underpaid them thousands of dollars. Facing the Federal Court is Personnel Contracting Pty Ltd, which trades as Construct Contractor Solutions and provides labour to the operators of construction sites in Perth, including those operated by building company Hanssen Pty Ltd.

The Fair Work Ombudsman alleges Personnel Contracting underpaid five labourers aged between 16 and 21 a total of \$19,111 for work performed over a four-month period in 2016 at a construction site operated by Hanssen Pty Ltd at 189 Adelaide Terrace, East Perth.

Fair Work Ombudsman inspectors commenced a self-initiated investigation into compliance with workplace relations laws at the site after concerns were raised about general compliance issues following a fatal workplace accident at the site in 2016.

The Fair Work Ombudsman's investigation focused on whether employees at the site had received their full lawful wages and entitlements (the Fair Work Ombudsman does not have jurisdiction to investigate occupational health and safety matters). In documents lodged in the Federal Court, the Fair Work Ombudsman alleges inspectors found that Personnel Contracting Pty Ltd had purported to engage five workers as 'self-employed contractors' - but that under workplace laws, the workers were actually employees of Personnel Contracting.

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/july-2018/20180704-personnel-contracting-litigation>

## **WA workers back-paid almost \$390,000 and three businesses penalised in court following FWO campaigns**

**10 April 2018**

Two Fair Work Ombudsman campaigns conducted in Western Australia have resulted in \$388,261 being back-paid to local workers, including more than \$300,000 recovered following court actions commenced by the regulator. The results are included in the Fair Work Ombudsman's report on proactive education and compliance campaigns in the Southern Perth and Albany-Manjimup regions of Western Australia, released today. Fair Work inspectors assessed the time and wages records of 148 businesses in Armadale, Kwinana and Rockingham in Southern Perth, as well as 147 businesses across Albany, Denmark, Manjimup and their surrounding regions. Of the 148 businesses audited in Southern Perth, 39 per cent were found to be not complying with their obligations under Australian workplace laws. The campaign found that 26 per cent of these businesses were not paying their workers correctly, and 19 per cent were not complying with pay slip and record-keeping obligations. Inspectors uncovered a total of 92 individual breaches across 57 businesses. A total of \$40,391 was recovered for 73 workers in the region during the campaign

activity. An additional \$300,491 was recovered after the agency brought proceedings before the courts in respect of three businesses audited during the campaign.

The legal proceedings related to [two Han's café franchisees](#) - Phua and Foo Pty Ltd, who operate a franchise in Armadale, and Tac Pham Pty Ltd, who operate a franchise in Rockingham – as well as Rockingham-based security company [Sureguard Security](#). The three businesses were penalised a total of \$161,270 as a result of the court actions. In the Albany-Manjimup region, 52 per cent of businesses were found to be non-compliant, with a total of 106 individual breaches identified across 76 businesses. Thirty-four per cent of businesses audited in the region were not paying their employees correctly, while 28 per cent had record-keeping and payslip breaches. Back-payments totalling \$47,379 were recovered for 147 local workers from 28 businesses.

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/april-2018/20180410-wa-regional-campaign-report-mr>

### **\$200,000 in penalties after overseas worker exploited and sacked by text message**

**27 March 2018**

The former owner-operator of an Indian restaurant in Perth has been penalised more than \$200,000 after paying an overseas cook nothing for almost four months' work then sacking him by text message for taking a day of sick leave.

Simon Peter Mackenzie, who owned and ran The Curry Tree restaurant in **Nedlands** before it burnt down in 2014, has been penalised \$34,815 – and his company, Siner Enterprises Pty Ltd, has been penalised an additional \$174,075.

The penalties, imposed in the Federal Circuit Court, are the result of legal action by the Fair Work Ombudsman.

In addition to the penalties, the Court has ordered Mackenzie and his company to pay the exploited worker a total of \$32,661 in outstanding wages and compensation for the economic loss the worker suffered as a result of being sacked. The worker is an Indian national, who was aged 24 and in Australia on a bridging visa when he started work as a cook at The Curry Tree in 2012 after responding to a job ad on Gumtree. He was paid \$200 cash for his first few days of work but then worked six evenings per week for the next four months without receiving any pay. The worker was reluctant to complain because he had hoped Mackenzie's company would sponsor him on a work visa, which would allow him to remain in Australia. When the worker sent Mackenzie a text message saying he would not attend work because he was unwell and would provide a medical certificate the following day, Mackenzie responded with a series of text messages terminating his employment. Mackenzie initially texted the worker saying "*dont come back*".

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/march-2018/20180327-siner-enterprises-penalty-mr>

### **\$80,000 in penalties against two Han's Café franchisees after vulnerable workers underpaid**

**20 March 2018**

The Fair Work Ombudsman has secured a total of \$80,000 in penalties against the franchisees of two Han's Café outlets in **Perth** after vulnerable staff were underpaid almost \$100,000.

The penalties are the result of the Fair Work Ombudsman taking legal actions in response to 27 staff at the Han's outlet in **Armadale** being underpaid \$67,161 and 22 staff at the Han's outlet in **Rockingham** being underpaid \$27,920. Phua and Foo Pty Ltd has been penalised \$35,000 in relation to underpayments at the Armadale outlet and Tac Pham Pty Ltd has been penalised \$37,500 over the underpayments at the Rockingham outlet. In addition, the general manager of the Rockingham outlet, Cuc Thi Thu Pham, has been penalised \$7500 for her role in the non-compliance at that outlet. The penalties have been imposed in the Federal Court in Perth. Fair Work Ombudsman inspectors audited the Armadale outlet during a proactive auditing campaign in Perth's south – and a tip-off during the campaign led inspectors to audit the Rockingham outlet. The underpayments at the two outlets occurred at various times between December 2014 and December 2015. The underpaid employees at the Rockingham outlet included nine juniors aged between 17 and 19 and seven overseas workers, mostly international students, from Vietnam. Underpaid employees at the Armadale outlet included one junior aged 18-19. Most of the underpaid workers were employed as kitchen attendants, cooks and food-and-beverage attendants. Staff at both outlets were paid flat rates which were below the minimums in the Restaurant Industry Award 2010.

<https://www.fairwork.gov.au/about-us/news-and-media-releases/2018-media-releases/march-2018/20180320-hans-cafe-penalties>