

\$900k in underpayments, discrimination & coercion alleged in new action against massage parlour

29 June 2018

NOTE: On 9 August 2019, the Fair Work Ombudsman filed an Amended Application and Amended Statement of Claim. The Fair Work Ombudsman's amended claim alleges that the total underpayment amount is \$813,235.76 and the amount outstanding is \$668,352.58. The amended claim alleges individual underpayment amounts outstanding ranging from \$85,208.72 to \$108,169.83.

The Fair Work Ombudsman has commenced civil legal proceedings against the former operators of a Canberra massage parlour, alleging they exploited seven Filipino workers, underpaying them a total of more than \$900,000 and threatening to have their families in the Philippines killed if they complained to the department responsible for immigration.

Facing the Federal Court is Canberra man Colin Kenneth Elvin, who formerly owned and operated the 'foot&thai' massage parlour in Belconnen.

Also facing Court is a company formerly operated by Mr Elvin, Foot & Thai Massage Pty Ltd, and the massage parlour's then supervisor, Filipino man Jun Millard Puerto, who was sponsored by Mr Elvin's company on a 457 skilled worker visa.

In a Statement of Claim lodged in the Federal Court, the Fair Work Ombudsman alleges that Mr Elvin and his company, with the assistance of Mr Puerto, systematically exploited seven Filipino workers at the 'foot&thai' massage parlour in Belconnen between June 2012 and February 2016.

They allegedly underpaid the workers – six women and one man aged in their 20s and 30s who spoke limited English - a total of \$912,809 and subjected them to coercion, discrimination and adverse action.

Alleged underpayments of individual workers range from \$111,263 to \$149,557.

The Fair Work Ombudsman commenced an investigation into the matter in 2016 after receiving a referral from the Australian Federal Police, which investigated the matter but did not lay any criminal charges.

It is alleged Fair Work inspectors found that Mr Elvin and Mr Puerto had travelled to the Philippines in 2012 and 2013 to recruit the seven massage therapists, promising them annual salaries of \$52,000.

It is alleged that Mr Elvin's company sponsored the workers on 457 visas and arranged for them to travel to Australia, with Mr Puerto accompanying them on flights.

It is alleged that in Australia, the seven workers were required to work an average of 65 to 68 hours per week – generally working from 9.45 am to 10/10.30 pm six days per week - but were generally paid for only 38 hours per week.

It is alleged that six of the employees were also required to pay \$800 per fortnight of their wages back over a nine-month period when Mr Elvin deemed the shop was not getting enough income and customers.

It is alleged that the workers were provided with accommodation at a house in the suburb of Higgins, where the gates were locked overnight in an attempt to curtail their movement outside work hours.

They were allegedly transported from the Higgins property to the massage parlour and back in a van each working day.

Each of the workers had financially dependent family members - including three with children - in the Philippines and routinely transferred part of the wages they earned to their families.

It is also alleged that Mr Elvin and Mr Puerto threatened to send the workers back to the Philippines if they told anyone about their working conditions and that they directly or indirectly threatened the workers that Mr Elvin would arrange to kill their families in the Philippines if they reported Mr Elvin or his company to the Department of Home Affairs (formerly the Department of Immigration and Border Protection).

The Fair Work Ombudsman alleges the conduct of Mr Elvin, Mr Puerto and Foot & Thai Massage Pty Ltd breached the provisions of

the Fair Work Act that make it unlawful to coerce employees or take adverse action against them to prevent them from making a complaint about their employment.

Their conduct allegedly also amounted to workplace discrimination against each of the employees because of their race and/or national extraction and/or social origin.

Wage-related contraventions alleged by the Fair Work Ombudsman include underpayment of ordinary hourly rates, public holiday rates and overtime rates the workers were entitled to under the Health Professionals and Support Services Award 2010.

Laws relating to unauthorised deductions, unreasonable requirements to spend wages, requiring workers to work unreasonable additional hours and providing employees with a Fair Work Information Statement were allegedly also breached.

Foot & Thai Massage Pty Ltd allegedly also breached laws relating to payment of annual leave entitlements, issuing pay slips and record-keeping, including by knowingly keeping false or misleading records and knowingly providing them to the Fair Work Ombudsman during its investigation.

Fair Work Ombudsman Natalie James says the matter involves some of the most shocking allegations of exploitation her Agency had ever encountered.

“We allege that these seven workers were deliberately targeted because of their vulnerability and exploited for profit,” Ms James said.

“We allege that the threats made to these employees were ongoing while they were in Australia and designed to conceal the way they were being callously exploited.

“This type of conduct has no place in Australia and it deserves utter condemnation and appropriate sanctioning.”

The Fair Work Ombudsman is seeking penalties of up to \$54,000 per contravention for Foot & Thai Massage Pty Ltd and up to \$10,800 per contravention against Mr Elvin and Mr Puerto for multiple alleged contraventions of workplace laws.

The Fair Work Ombudsman is also seeking Court Orders requiring Mr Elvin and his company to back-pay the workers in full and to pay additional compensation to the employees for the loss or damage they allegedly suffered as a result of some of the alleged breaches.

Orders requiring the company to display a workplace notice detailing employees’ rights and to place a newspaper notice setting out the Court’s findings in this matter are also being sought.

The matter is listed for a case management hearing in the Federal Court in Canberra on August 21.

After going into voluntary administration, Foot & Thai Massage Pty Ltd entered into a Deed of Company Arrangement in 2016 - and in 2017 the workers were each back-paid a fraction of their entitlements. However, they are allegedly still owed a total of \$767,926, with individual amounts outstanding ranging from \$92,136 to \$125,669.

The Deed of Company Arrangement was terminated last year because it had been effectuated and Foot & Thai Massage Pty Ltd is now no longer under administration and continues to trade under a new directorship and ownership. The Fair Work Ombudsman makes no allegations against the new directorship and ownership of the company.

Ms James says any business operator tempted to try to exploit workers for profit should be aware that the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 has introduced significantly higher penalties for a range of contraventions, including serious exploitation of workers.

Penalties of up to \$630,000 per contravention for a company and \$126,000 per contravention for an individual now apply in relation to some serious contraventions.

The new laws and penalties apply to conduct that has occurred since the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017 came into effect in September 2017.

Employers and employees seeking assistance can visit www.fairwork.gov.au or call the Fair Work Infoline on 13 13 94. An interpreter service is available on 13 14 50.

Information on the website can be translated into 40 languages, complementing a suite of professionally translated resources available at www.fairwork.gov.au/languages (www.fairwork.gov.au/languages) .

The Fair Work Ombudsman’s [Pay and Conditions Tool \(PACT\)](http://calculate.fairwork.gov.au/) (<http://calculate.fairwork.gov.au/>) provides advice about pay, shift, leave and redundancy entitlements.

Employers and employees can also sign up to remain informed and receive tailored information by registering for a free Fair Work Ombudsman My Account (www.fairwork.gov.au/my-account/registerpage.aspx?utm_source=webchat&utm_medium=SB-Myacct-sign-up&utm_campaign=MyaccountLP) .

The Fair Work Ombudsman's popular [Anonymous Report function \(www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/2017-media-releases/july-2017/20170731-migrant-worker-anon-report-tool) , available in 16 languages other than English, allows visa-holders to report workplace concerns anonymously to the agency in their own language.

Ms James says visa-holders should also be aware that in line with an agreement between the Fair Work Ombudsman and the Department of Home Affairs, they can seek assistance from the Fair Work Ombudsman without fear of their visa being cancelled. More information is on our [Visa holders and migrants page \(www.fairwork.gov.au/find-help-for/visa-holders-and-migrants\)](http://www.fairwork.gov.au/find-help-for/visa-holders-and-migrants) .

The Fair Work Ombudsman last year released the 'Record My Hours' smartphone app (www.fairwork.gov.au/how-we-will-help/how-we-help-you/record-my-hours-app) , which uses geofencing technology to provide workers with a record of time they spend at their workplace. The app can be downloaded from the App Store and Google Play.

Follow Fair Work Ombudsman Natalie James on Twitter [@NatJamesFWO](http://twitter.com/NatJamesFWO) (http://twitter.com/NatJamesFWO) , the Fair Work Ombudsman [@fairwork_gov_au](http://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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Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

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Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

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