

Jail term imposed in Fair Work Ombudsman's first contempt of court case

NOTE (5/8/2019): Following the Full Federal Court judgment on 8 July 2019, the Fair Work Ombudsman has determined that it would not be in the public interest to proceed with the retrial, and has now discontinued its contempt-of-court action against Leigh Alan Jorgensen.

NOTE (8/7/2019): On 8 July 2019 the Full Federal Court allowed in part the appeal by Mr Jorgensen against his conviction. The declarations made by the Federal Circuit Court in respect of the conviction for contempt and the sentence imposed on Mr Jorgensen were set aside, and the matter has been remitted to the Federal Circuit Court for re-trial. In addition, the Fair Work Ombudsman's cross-appeal on costs was dismissed. As this matter is now back before the Federal Circuit Court the Fair Work Ombudsman has no further comment.

14 May 2018

A Northern Queensland business operator has been jailed – and then released pending the outcome of his appeal – as a result of the Fair Work Ombudsman's first contempt-of-court action.

On Thursday May 10, the Federal Circuit Court sentenced Leigh Alan Jorgensen - the owner-operator of a Cairns company trading as Trek North Tours – to a 12-month jail term and fined him \$84,956 for committing contempt of court by contravening a freezing order that applied to funds in his company's accounts.

The Court ordered that Jorgensen's jail term be suspended after he had spent 10 days in jail on the condition of payment of the fine.

Jorgensen sought an urgent stay of the orders in the Federal Court and lodged an appeal against his conviction and sentence. In accordance with her model litigant obligations, the Fair Work Ombudsman agreed to the stay on conditions. On May 11, the Federal Court ordered that his sentence be stayed and Jorgensen be released from jail on conditions, pending the outcome of his appeal.

A Court date has not yet been set for the appeal hearing but an order has been made that it be expedited.

The matter is the first time the Fair Work Ombudsman has commenced a contempt of court action and the first time a jail term has been imposed as a result of the Agency's actions.

Judge Salvatore Vasta imposed the jail term after finding Jorgensen had committed contempt of court when he contravened a freezing order the Fair Work Ombudsman secured against his company in 2015.

Freezing orders were imposed in the Federal Circuit Court in 2015 preventing any dispersion of Jorgensen's and his company's assets until such time as they complied with penalty and back-payment orders resulting from the Fair Work Ombudsman taking legal action against them for underpaying five back-packers on 417 working holiday visas in 2013 and 2014.

The relevant orders from that legal action, imposed by the Federal Circuit Court in June 2015, were for Jorgensen to pay a \$12,000 penalty and his company to pay a \$55,000 penalty and back-pay the backpackers in full, all by 17 July, 2015.

The Fair Work Ombudsman took the step of securing freezing orders against both Jorgensen and his company after both failed to pay the amounts owed by the due date and receiving information that gave rise to concerns that Jorgensen would divert company assets to avoid payment of the penalties and back-pay.

At the time, Jorgensen's communications with the Fair Work Ombudsman suggested he was prepared to 'bankrupt' his company to avoid paying the penalties and back-pay order.

Jorgensen had also previously told Fair Work inspectors investigating the underpayments that the backpackers 'would not get a cent' in back-pay.

After the freezing orders were imposed, Jorgensen paid the penalty imposed on him personally into Court, resulting in the freezing order against him being lifted.

However, Jorgensen's company failed to pay its penalty and failed to back-pay the workers, resulting in the freezing order against his company remaining in place.

The Fair Work Ombudsman commenced legal action against Jorgensen for contempt of Court last year, alleging that Jorgensen committed the offence of contempt of court in August 2015 when he contravened the freezing order against his company by transferring a total of \$41,035 from two frozen accounts into his family trust account.

Judge Vasta found that the Fair Work Ombudsman had presented evidence to prove, beyond a reasonable doubt, that Jorgensen committed the offence.

Pending the outcome of his appeal, the Federal Court has released Jorgensen on conditions including that he surrender his passport, remain in Queensland and report to Police twice a week.

Fair Work Ombudsman Natalie James says that the commencement of these proceedings demonstrates that her Agency is prepared to use every tool at its disposal to ensure justice is served.

"We will use every lever open to us to ensure the integrity of the administration of justice and compliance with court orders imposed under the Fair Work Act 2009.

"This includes taking unprecedented new actions available to us across the legal framework such as this one."

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

Information on the website includes the Fair Work Ombudsman's [compliance and enforcement policy \(https://www.fairwork.gov.au/about-us/our-vision/compliance-and-enforcement-policy\)](https://www.fairwork.gov.au/about-us/our-vision/compliance-and-enforcement-policy) .

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

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