

## Court penalises former manager of Sydney car wash over staff underpayments

18 December 2012

Note: Reference to prosecution in this media release is a general reference to the FWO commencing proceedings for the imposition of civil penalties and should not be taken to be a reference to criminal proceedings.

The Federal Magistrates Court today described as grossly irresponsible and reckless the former manager of a Sydney car wash which underpaid dozens of young foreign workers almost \$100,000.

Federal Magistrate Matthew Smith imposed a penalty of \$9000 – 68 per cent of the maximum \$13,200 - against Sydney man Elliot Ban, who formerly managed the Crystal Car Wash and Café at Kingsford.

Initially, the Fair Work Ombudsman also launched legal proceedings against Kingsford Carwash Pty Ltd, but the action was unable to continue after the company went into voluntary liquidation earlier this year.

Releasing his 17-page judgment today, FM Smith found that Ban was involved in the underpayment of 62 casual workers a total of \$99,646.74 between December, 2009 and July, 2010.

Largely foreign students, most were paid a flat rate of \$10.84 when they should have been paid more than \$17 an hour - a differential that FM Smith described as “considerable”.

“This scale of exploitation involved a particularly vulnerable group of foreign students, who were probably struggling to support themselves under visa conditions limiting their permitted hours of work,” FM Smith said.

“In short, Kingsford conducted its car washing business based upon an egregious exploitation of a labour pool of very vulnerable foreign students.

“Looked at objectively, the nature and extent of the contraventions exhibits a very high degree of culpability.”

FM Smith said Ban’s conduct displayed “at least, gross irresponsibility as to one of the most important legal obligations on a substantial employer of unskilled labour.”

He continued: “Ban’s evidence of his protracted recklessness as to his obligations as an experienced manager of an employer of unskilled labour invites a substantial penalty, which will remind him in the future to make himself aware of wage rates required to be met by law.

“I consider that he will need this deterrent in the course of his future business career, even assuming that he has, indeed, abandoned all involvement in car washing businesses.

“The circumstances of the present case demonstrate that there is a need to remind all employers and their responsible managers that there has been a provision in commonwealth legislation since 2006 for a basic minimum rate of pay for unskilled work, whether permanent or casual, and whether part-time or full-time.

“No Australian business should be able to think that it can make its profits by disregarding the requirements of these laws.”

Fair Work inspectors discovered the alleged underpayments when they investigated a complaint from one of the employees.

In November, the Fair Work Ombudsman announced it was prosecuting Crystal Car Wash Café Pty Ltd ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/november-2012/20121122-crystal-carwash-cafe-prosecution](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/november-2012/20121122-crystal-carwash-cafe-prosecution)), alleging it underpaid hundreds of foreign workers a total of more than \$177,000.

The car washers were mostly young foreign workers from Asia who spoke little English and were in Australia on student and working holiday visas.

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit [www.fairwork.gov.au](http://www.fairwork.gov.au).

A free interpreter service is available on 13 14 50, and information on the website is translated into 27 languages.

The Fair Work Ombudsman has also launched 14 Online videos to assist foreign workers understand their workplace rights and entitlements ([www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/july-2011/20110711-youtube-videos](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/july-2011/20110711-youtube-videos)) .

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Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

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Contact the Translating and Interpreting Service (TIS) on 13 14 50

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Call through the National Relay Service (NRS):

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

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