

## **Fijian workers allegedly underpaid \$25,000 whilst working at Port Adelaide docks**

25 July 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.

Two Fijian men worked eight hours a day, seven days a week at the Port Adelaide docks for a living-away-from-home allowance of \$100 a day, the Fair Work Ombudsman alleges.

The two were allegedly underpaid more than \$25,000 by Sydney-based Devine Marine Group Pty Ltd, which provides shipping and marine salvage services.

The Fair Work Ombudsman has launched legal action against the company in the Federal Magistrates court in Adelaide, alleging it engaged the men under an unlawful unpaid training arrangement.

Also facing Court is Devine Marine Group sole director and majority-owner Captain Brett Barry Devine, of Sydney, and Adelaide Nautical College principal Arthur Boucaut-Jones, of Largs Bay in Adelaide.

Devine Marine Group allegedly recruited the two workers from Fiji, assisted them with accommodation, airfares and obtaining sub-class 456 Short Stay Business Visas and paid them a 'living-away allowance' of \$100 a day.

The two workers allegedly performed three months and six months of work respectively, with duties including painting, welding and labouring.

However, the Fair Work Ombudsman alleges they were not paid any wages or superannuation under the premise that the work was part of purported unpaid-training being provided to them by the Adelaide Nautical College, in conjunction with Devine Marine Group.

Court documents allege that it was not lawful for the work to be classed as unpaid-training.

The Fair Work Ombudsman says the Adelaide Nautical College is not a registered training provider and the work was not part of any formal vocational placement, course or program.

In its Statement of Claim lodged with the Court, the Fair Work Ombudsman alleges that the workers should have been classified as casual employees and should have been paid more than \$19 an hour on weekdays and up to \$39 an hour on weekends.

It says the living-away allowance was a separate entitlement and did not reduce the wages the workers' were entitled to be paid.

The workers were allegedly underpaid \$14,869 and \$10,144 respectively.

The Fair Work Ombudsman discovered the alleged underpayments when it investigated a referral from a South Australian Government agency.

Acting Fair Work Ombudsman Mark Scully says a decision to prosecute was made because of the significant amount involved for two vulnerable, foreign workers and the employer's failure to rectify the matter.

The Fair Work Ombudsman alleges Captain Devine and Mr Boucaut-Jones were involved in Devine Marine Group committing several under-payment related breaches of workplace laws.

It is alleged that Devine Marine Group and Captain Devine also breached workplace laws by failing to comply with a Notice to Produce employment records.

Captain Devine and Mr Boucaut-Jones face penalties of up to \$6600 per breach and Devine Marine Group faces penalties of up to \$33,000 per breach.

The Fair Work Ombudsman is also seeking a Court Order that the company rectifies the alleged underpayments.

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).

Information on workplace laws relating to internships, vocational placements and unpaid work is available for free download on the website.

Follow the Fair Work Ombudsman on [Twitter @fairwork\\_gov\\_au](https://twitter.com/fairwork_gov_au) (http://twitter.com/fairwork\_gov\_au) or find us on [Facebook](https://www.facebook.com/fairwork.gov.au) (https://www.facebook.com/fairwork.gov.au) .

Foreign workers have the same rights as any other worker in Australia. Information on the Fair Work Ombudsman website is translated into 27 languages and a free interpreter service is available on 13 14 50.

There is also a series of Online videos to assist foreign workers to understand their workplace rights and entitlements which you can find via the [New in-language videos to help foreign workers understand their rights media release \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2011-media-releases/july-2011/20110711-youtube-videos\)](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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## Contact us

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Fair Work Infoline: 13 13 94

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

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

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.