

## Penalty imposed over sham contracting

30 November 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 former operator of a Brisbane beauty and photography business has been penalised \$17,820 over his involvement in sham contracting activity and the underpayment of seven employees.

The Federal Magistrates Court in Brisbane imposed the penalty yesterday against Bryan Charles Bedington, who was the majority owner and sole director of Woolloongabba-based company New Image Beauty Salons Pty Ltd, now in liquidation.

Bedington admitted being involved in breaching sham contracting laws by misclassifying seven employees of the company as independent contractors. The employees were not paid a total of \$8288 in annual leave entitlements in 2011 as a result of the sham contracting.

Part of the penalty will go towards rectifying the underpayment of the employees - five photographers and two make-up artists, including three young workers aged 19, 20 and 21 and a visa-holder from Pakistan.

Delivering his judgment, Federal Magistrate Michael Jarrett said: "It is particularly important that the Court impose a penalty that demonstrates to employers of such workers the importance of complying with Commonwealth workplace laws."

"There is a need to send a message to the community at large, and small employers particularly, that the correct entitlements for employers must be paid and that steps must be taken by employers of all sizes to properly ascertain and comply with the Fair Work Act and its provisions relating to sham contracting and minimum entitlements," Federal Magistrate Jarrett said.

The breaches were discovered last year during the Fair Work Ombudsman's national auditing campaign focusing on sham contracting.

The seven affected workers should have been classified as employees, rather than contractors, for reasons including the high degree of control their employer had over their work and that they were not able to work for any other business.

Federal Magistrate Jarrett said Bedington's conduct "was at the very least reckless" because the Fair Work Ombudsman had formally cautioned him in 2010 about misclassifying employees as contractors.

New Image Beauty Salons Pty Ltd went into liquidation last year, preventing the Fair Work Ombudsman from taking legal action against it.

The Fair Work Ombudsman has a second prosecution against Bedington. Earlier this year, the Agency commenced legal proceedings alleging Bedington was involved in underpaying a worker more than \$19,000. A hearing is listed for March 26, 2013 - see: [Court action over alleged \\$19,000 underpayment of Brisbane employee \(www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/april-2012/20120418-new-image-photographics-prosecution\)](http://www.fairwork.gov.au/about-us/news-and-media-releases/archived-media-releases/2012-media-releases/april-2012/20120418-new-image-photographics-prosecution) .

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.

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## Contact us

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

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