

Businessman faces further legal action for allegedly underpaying staff \$1.8 million

NOTE:

The Fair Work Ombudsman filed legal proceedings in 2013 and 2014 in relation to the non-payment of wages and entitlements to 43 employees by five companies, and the alleged involvement of Kia Silverbrook (in relation to the five companies) and Janette Lee (in relation to only one of the companies).

The Federal Circuit Court has found that Priority Matters Pty Ltd, Superlattice Solar Pty Ltd, Geneasys Pty Ltd, Silverbrook Research Pty Ltd and Mpowa Pty Ltd contravened workplace laws. The Court ordered more than \$1.15 million in back-payments (plus interest), and imposed \$115,000 in penalties as follows:

- Priority Matters Pty Ltd was ordered to back-pay 15 employees a total of \$452,998 (plus interest) and penalised \$45,000.
- Superlattice Solar Pty Ltd was ordered to back-pay one employee \$55,969 (plus interest) and penalised \$5000.
- Mpowa Pty Ltd was ordered to back-pay 14 employees \$649,840 (plus interest) and penalised \$65,000.

The back-pay ordered has now been paid to the Fair Work Ombudsman, to be distributed to employees. Interest is also payable under the Court's orders.

Penalties and back-pay orders could not be obtained against Geneasys Pty Ltd and Silverbrook Research Pty Ltd because the companies have been placed into liquidation.

The Court has dismissed the Fair Work Ombudsman's allegations against Mr Silverbrook and Ms Lee. Although the Fair Work Ombudsman was successful against the corporate respondents, the Court also made a costs order against the Fair Work Ombudsman.

The Fair Work Ombudsman lodged appeals in the Federal Court against parts of the Federal Circuit Court's decisions on liability, penalty and costs. The Notices of Appeal lodged with the Court asserted that the Federal Circuit Court made a number of legal and factual errors in: dismissing the Fair Work Ombudsman's allegations against Mr Silverbrook and Ms Lee, determining the quantum of penalties to be imposed, and awarding costs against the Fair Work Ombudsman. The Fair Work Ombudsman's appeal was successful with the Federal Court setting aside: the findings that Mr Silverbrook and Ms Lee were not involved in the companies' contraventions, the costs order against the Fair Work Ombudsman, and the penalties imposed on Priority Matters Pty Ltd, Superlattice Solar Pty Ltd and Mpowa Pty Ltd. As a result, the matters were remitted to the Federal Circuit Court (differently constituted) to further hear matters of accessory liability and penalty. The matters are currently before the Federal Circuit Court.

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Sydney man Kia Silverbrook will face additional court proceedings alleging he was involved in underpaying 22 employees more than \$1.8 million.

Mr Silverbrook is already the subject of court action in which the Fair Work Ombudsman alleges 21 workers are owed more than \$870,000.

In five separate legal proceedings filed in the Federal Circuit Court in Sydney, the Fair Work Ombudsman alleges that:

- Priority Matters Pty Ltd, which processes patent applications for inventions, underpaid 15 employees a total of \$452,997,
- Geneasys Pty Ltd, a medical research and development company, underpaid five employees a total of \$362,973,
- Superlattice Solar Pty Ltd, a solar cell research company, underpaid one employee \$55,969,
- Mr Silverbrook and IT company Mpowa Pty Limited underpaid 17 employees a total of \$1.419 million, and
- Mr Silverbrook and Janette Lee – directors of an IT company that traded as Worldwide Specialty Property Services Pty Ltd and Silverbrook Research Pty Ltd before going into liquidation in April this year – were responsible for underpaying five employees a total of \$390,984.

Mr Silverbrook was allegedly responsible for the overall direction, management and supervision of operations at Priority Matters,

Geneasys and Superlattice Solar and is also a respondent to each of the proceedings.

Engineers, scientists, patent attorneys, patent assistants and patent design assistants are among those who were allegedly underpaid by Priority Matters, Geneasys and Superlattice Solar.

One employee is allegedly owed \$166,914.

In the last two matters filed in Court in June, IT professionals, engineers, clerical workers, an accountant and a marketing professional are among those who were allegedly underpaid.

Two employees are allegedly owed more than \$200,000.

The Fair work Ombudsman claims the \$1.8 million worth of underpayments are primarily the result of employees not being paid either their full wages or any wages at all for extended periods of work between February and December last year.

Employees were also variously underpaid amounts of public holiday pay, leave entitlements, termination entitlements and redundancy pay.

It is alleged that when some employees queried Mr Silverbrook about why their entitlements had not been paid, he told staff there were not sufficient funds to pay wages.

"Many of the employees continued to provide services based on expectations that cash flow problems would be solved and they would be paid," says Fair Work Ombudsman Natalie James.

"They continued to work without being paid for many months - notwithstanding the impact on their own financial position and requests for payment."

Ms James says the employers' alleged failure to rectify the non-payment of such a large wages bill, despite efforts by Fair Work inspectors, is a key factor in the two additional matters being placed before the court.

Mr Silverbrook and Ms Lee face maximum penalties of up to \$10,200 per contravention, while Mpowa Pty Limited faces penalties of up to \$51,000 per breach.

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

Online tools include PayCheck Plus and an Award Finder to assist business owners and employees determine the correct award and minimum wages for their industry, templates for pay slips and time-and-wages records and a range of fact sheets on workplace entitlements.

The website provides extra, specialised information for employers and employees in a range of industries, including retail, horticulture, road transport, accommodation and hospitality, cleaning, clerical, vehicle, electrical, fast food, building and construction, hair and beauty, joinery, metal manufacturing, social and community services, plumbing and security.

The 'Termination' section of the Fair Work Ombudsman's website outlines the entitlements payable in a worker's final pay and includes information on topics such as annual leave, long service leave and redundancy pay.

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

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Contact us

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Need language help?

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

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

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