

## Company fined \$24,000 over unpaid work scheme

29 January 2015

A Melbourne media company has been penalised \$24,000 for implementing an unpaid work arrangement that led to two young employees being underpaid thousands of dollars.

The Federal Circuit Court in Melbourne today handed down the penalty against Crocmedia Pty Ltd, which develops and sells radio and television programs, following legal action by the Fair Work Ombudsman.

It is the Fair Work Ombudsman's first legal action relating to the issue of unpaid work since the Agency released a major research report into the issue in 2013.

The report found that growing numbers of Australian employers are using unpaid work schemes as an alternative to hiring paid staff.

Imposing the penalty against Crocmedia today, Judge Grant Riethmuller said concerns expressed in the research report were "well founded" and warned that penalties for using exploitative unpaid work arrangements are likely to increase in future as public awareness about the unlawful conduct increases.

The underpayments at Crocmedia occurred after the two young people approached the company seeking work experience in the media industry.

One was a sports journalism student at university aged 20 to 21 at the time and the other was a recent graduate from a university journalism course aged 23 to 24 at the time.

After completing short periods of unpaid work experience at Crocmedia, the pair then performed six months and 12 months' work, respectively.

During this time, Crocmedia characterised the employees as 'volunteers' for much of the work they performed and made 'reimbursement-for-expenses' payments to them for each shift - but did not pay them any wages.

The workers routinely worked multiple shifts each week, mostly from midnight-to-6am, producing radio programs that were broadcast on the SEN network.

The two were underpaid a total of \$22,168.

One was entitled to be paid wages of \$5767 for work she performed between August, 2012 and February, 2013 – and the other was entitled to be paid \$16,401 for work he performed between June, 2011 and August, 2012.

The Fair Work Ombudsman investigated after the workers lodged complaints.

Fair Work inspectors told Crocmedia that because the two had performed productive work for the company that was not a formal part of their university studies, they were entitled to be paid the applicable minimum wages.

Crocmedia fully co-operated with the investigation and admitted inadvertently breaching workplace laws. The company back-paid the two workers fully in 2013 and has now replaced all unpaid work positions with paid employees.

The company also agreed to back-pay \$28,389 to a third worker who had been engaged as a 'volunteer' radio producer between May, 2009 and November, 2011.

However, the Fair Work Ombudsman initiated legal proceedings because of the strong public interest in deterring employers from significantly underpaying young workers' entitlements through unpaid work arrangements.

In his judgment, Judge Riethmuller found that Crocmedia had engaged in an arrangement that it believed avoided the consequences of the minimum wages requirements under the Fair Work Act.

"However, (Crocmedia) cannot avoid the proposition that it is, at best, dishonourable to profit from the work of volunteers, and at worst, exploitative," Judge Riethmuller said.

"I am not persuaded that (Crocmedia) engaged in a deliberate strategy to exploit the employees, although it is clear that (Crocmedia) was content to receive the benefits that flowed from the arrangement, and that the arrangement itself, when viewed objectively, was exploitative."

Judge Riethmuller said that profiting from 'volunteers' was not acceptable conduct within the industrial relations scheme applicable in Australia.

"There is little doubt that this case, and cases like it, will attract considerable media attention, which will have a positive effect in informing and educating employers generally," he said.

"For this reason there can also be little doubt that the penalties are likely to increase significantly over time as public exposure of the issues in the press will result in respondents not being in the position of being able to claim that a genuine error of categorisation was made."

Fair Work Ombudsman Natalie James says employers need to be aware that they are at risk of breaching workplace laws if they use unpaid work schemes as a source of free or cheap labour.

"When a worker moves beyond merely learning and observing and starts assisting with business outputs and productivity, workplace laws dictate that the worker must be paid minimum employee entitlements," Ms James said.

"We don't want to stifle genuine learning opportunities that help young people get a foot in the door but we also don't want to see young people being treated unfairly through unpaid work schemes.

"We want to educate employers and workers about what genuine learning opportunities look like."

The Fair Work Ombudsman has developed a range of resources – available at [www.fairwork.gov.au/unpaidwork](http://www.fairwork.gov.au/unpaidwork) - for employers, employees and higher education institutions to promote a clear understanding in the community about what constitutes legitimate unpaid arrangements and vocational arrangements under the Fair Work Act.

They include fact sheets on topics including unpaid internships and work experience, unpaid trials, and vocational (student) placements.

There is industry-specific information for print and broadcast media, legal and marketing, the hair and beauty sector and cafes, restaurants and accommodation.

The website also provides details of the major research report into unpaid work arrangements released by the Fair Work Ombudsman in 2013.

Employers and employees seeking assistance can also contact the Fair Work Infoline on 13 13 94. An interpreter service is available by calling 13 14 50.

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

Media inquiries:

Ryan Pedler, Assistant Media Director

Mobile: 0411 430 902

[ryan.pedler@fwo.gov.au](mailto:ryan.pedler@fwo.gov.au) (<mailto:ryan.pedler@fwo.gov.au>)

**Page reference No: 5190**

## Contact us

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

Fair Work Infoline: 13 13 94

Need language help?

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.