

## Court imposes hefty penalty to deter employers from exploiting overseas backpackers

11 November 2015

A Federal Circuit Court judge has fined the former operators of a Darwin café tens of thousands of dollars for underpaying two Taiwanese backpackers, and issued a strong warning to other rogue employers who seek to exploit vulnerable workers and tarnish Australia's reputation overseas.

"In my view, backpackers and the like are particularly susceptible to being exploited by unscrupulous operators in the hospitality industry," Judge Stewart Brown said when imposing a \$73,000 penalty against Darwin couple Peter and Moya Buckley and their company.

"The Court has a responsibility to set penalties which will deter others from engaging in conduct which may tarnish Australia's reputation as a satisfactory place for visitors and tourists to undertake a working holiday," Judge Brown says in a 33-page decision handed down this week.

Legal action against Mr and Mrs Buckley – the former owner-operators of the Java Spice Café Emporium on Mitchell Street, Darwin – followed an investigation by the Fair Work Ombudsman which found the business had short-changed two Taiwanese backpackers in their 20s who were in Australia on 417 working holiday visas.

Earlier this year, Judge Brown ordered the company to reimburse its former employees \$5805 and \$1605 respectively, but the Court Order was not complied with.

Judge Brown noted that in her complaint to the Fair Work Ombudsman, one of the visa-holders said she wanted to be in a position before leaving Australia to tell other backpackers that their workplace rights would be protected.

"Backpackers are often keen to augment their savings through casual employment. The turnover of workers in the hospitality industry, particularly in tourist areas such as Darwin, is likely to be high," he says.

"Such potential workers are likely to be informally recruited and be unaware of their workplace rights because of their unfamiliarity with the Australian employment context.

"This is a case concerning compliance with minimum employment standards applicable to two highly vulnerable employees.

"In all these circumstances, in my view, the Court needs to send a strong message to the general employer community that such conduct will be subject to significant penalty"

Judge Brown says: "Employers in the hospitality industry need to know that they cannot exploit backpackers or other itinerant employees and expect that their behaviour, if detected by authorities, will not attract a significant penalty."

The Court found that the conduct of Java Spice was "exacerbated by its lack of co-operation" with and "disregard" for the Fair Work Ombudsman.

It was also significant that the company had not taken heed of directions and advice provided to it by the Fair Work Ombudsman in the past.

Judge Brown noted that Mr and Mrs Buckley had not apologised to the workers or shown any contrition for their behaviour. They did not participate in the Court proceedings.

Fair Work Ombudsman Natalie James says inspectors made repeated efforts to try to resolve the matter before commencing Court action, but were unable to secure sufficient co-operation.

She says the legal action followed four previous complaints against the company which had resulted in underpayments being rectified and Mr and Mrs Buckley being educated about the need to comply with their workplace obligations.

Ms James says the Agency treats the exploitation of overseas workers very seriously and the Court penalty should serve as a warning to others that there will be financial consequences for unlawful behaviour.

The Fair Work Ombudsman is currently conducting a national review of the wages and conditions of overseas workers in Australia on the 417 working holiday visa.

The Director of the Fair Work Ombudsman's Overseas Workers' Team, Ms Carey Trundle, met with key stakeholders in Darwin and Alice Springs as part of the review to gain local intelligence.

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

Information to assist people from culturally and linguistically diverse backgrounds has been translated into 27 languages.

Overseas workers can call 13 14 50 if they need interpreter services.

The Fair Work Ombudsman has fact sheets tailored to overseas workers and international students on its website.

The Agency has also produced videos in 14 languages and posted them on YouTube to assist overseas workers understand their workplace rights in Australia.

Formal allegations of non-compliance from overseas workers have increased steadily in recent years to more than 2100 last financial year.

Of these, 930 related to subclass 417 working holiday visas, 315 to 457 temporary skilled work visa-holders and 181 to international students.

Allegations received from overseas workers were highest in Queensland (28 per cent); NSW (25 per cent) and Victoria (22 per cent).

A total of \$1.6 million was recovered for visa-holders in 2014-15, up from \$1.1 million the previous financial year.

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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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