

A VISION IN THE WORKPLACE

Our July edition of Vision includes:

- Welcome to our new senior solicitor, Peter Hindeleh;
- A record \$2.8 million general protections payout; and
- Fair Work Ombudsman secures large penalty for wage underpayment.



Welcome to our New Senior Solicitor, Peter Hindeleh

This month we extend a warm welcome to our new Senior Solicitor, Peter Hindeleh.

Bringing over 5 years' experience spanning multiple areas of law, including litigation and dispute resolution in all NSW Courts, we look forward to having Peter's contributions and expertise here at Stevens & Associates Lawyers.

Peter completed a Bachelor of Law and Commerce at Macquarie University and has been admitted as a solicitor in the Supreme Court of NSW.

Upon being admitted, Peter has largely focused on employment law, specialising in the interpretation and application of modern Awards, and the Fair Work Act 2009 (Cth). Peter prides himself on providing expert and practical advice to employers and proactively preventing legal problems from arising.

Prior to joining our firm, Peter gained extensive experience working at an employer association advising corporations of all sizes throughout the civil construction industry on all aspects of employment law. In this role, Peter was a fierce defendant of employer rights and provided support in person, over the phone, and in writing. Peter also travelled across New South Wales giving presentations and his expert advice on many and various topics of employment law. One of his specialties was personally assisting employers with understanding how the Modern Awards apply to their business, and what they can do to ensure compliance and best practice. A topic of particular importance to employers with the increasing

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prosecution of wage underpayment matters targeted by the Fair Work Ombudsman.

As a senior solicitor for the firm, Peter plays a critical role in the provision of legal services for employees, employers, and independent contractors. Peter has a particular interest in unfair dismissal matters, Award compliance, and supporting employees and employers alike in discrimination matters.

Outside of work, Peter enjoys playing basketball and can be found playing on courts around Sydney.



Record General Protections Claim

In one of the biggest compensation payments for a general protection claims to date, the Hawkesbury Race Club ("**the Club**") has been ordered to make a \$2.8 million dollar payout to a long-serving manager Vivienne Leggett ("**Mrs Leggett**"), who had her life

"*effectively destroyed*" by a new CEO, Greg Rudolf ("**Mr Rudolf**").

Background

In May 2016, Mr Rudolf was appointed as CEO and from the outset demonstrated an "*overbearing micromanagement style*", in which he "*interrogated* Mrs Leggett's professional decisions, publicly belittled her, and took offence to the fact that she was earning the same remuneration as him.

Confrontations persisted until she complained in writing to Mr Rudolph on 9 October 2016 about the situation. In response, Mr Rudolph replied the following day with, "*Please meet me in my office...to discuss your work performance*". Mr Rudolph's reply made Mrs Leggett feel even more distressed and she commenced taking sick leave.

While Mrs Leggett was on sick leave, the Club did not display any concern for her welfare, and they made the decision to withhold her commissions. As a result, she terminated her employment in March 2017 by accepting the club's repudiation of her contract by way of its failure to perform its obligations under her contract of employment in not paying her commissions.

Proceedings

Proceedings commenced in the Federal Court of Australia in 2019 [for compensation under the Fair Work Act 2009 \(Cth\)](#) and the [Workers](#)

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[Compensation Act 1987](#) (NSW), in which she asserted that:

- Mr Rudolph issuing the 10 October Email and causing the club to withhold her entitlements constituted adverse action under the FW Act ("**the General Protection: Claims**").
- She was entitled to damages for the Club's breach of contract in repudiating the employment agreement ("**the Breach of Contract claim**"); and
- The Club had been negligent in failing to protect her from the risk of psychiatric injury ("**the Negligence Claim**").

The Outcome

In December of 2020, Justice Rares ("**Rares J**") of the Federal Court of Australia found that the Club was liable to Ms Leggett for ongoing bullying and harassment, resulting in a significant depressive disorder which left her unable to work.

General Protections Claims

Rares J found that the Club failed to prove that Mr Rudolph had engaged in the adverse action for any reason other than that Mrs Leggett had exercised her workplace rights, being the right to make a complaint with respect to her employment and the right to take sick leave.

Breach of Contract Claim

Rares J agreed that, in withholding Mrs Leggett's commissions with no reason other than providing that they would be "*sorted out in due course*", the Club evinced a clear intention to not be bound by the contract, which constituted a repudiation of the contract.

Negligence Claim

Rares J held that the Club was liable in negligence and in breach of its obligation to take reasonable care to prevent its employee from suffering a reasonably foreseeable risk of psychiatric injury.

As a result, the \$2.8 million dollar figure awarded to Mrs Leggett was made up of: \$1,770,510 in compensation including \$214,250 for pain and suffering, \$1,169,048 for past economic loss, \$78,980 in interest on past economic loss, \$869,745 in future economic loss, plus penalties and costs.

Takeaway

This case serves as a cautionary tale for employers, that when faced with allegations of bullying, you must take these matters seriously. Furthermore employers must be proactively monitoring and responding to the risks to mental health to which bullying can expose its employees. The consequences of failing to do so are clear in this

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matter with a substantial \$2.8 million penalty imposed against the Club.

If you have received complaints of bullying in your workplace and want to know how to proceed or think that you have experienced bullying against yourself personally in the workplace, please do not hesitate to contact [Nick Stevens](#), [Peter Hindeleh](#), [Daphne Klianis](#) or [Josh Hoggett](#).

Leggett v Hawkesbury Race Club Limited (No 3) [2021] FCA 1658 and *Leggett v Hawkesbury Race Club Limited (No 4)* [2022] FCA 622



Large Penalty for Wage Underpayment

A sushi restaurant was ordered to pay \$355,000 in penalties after the Fair Work Ombudsman (“**FWO**”) brought a case against them for underpaying employees and falsifying records.

Summary

The case brought against Delishco Pty Ltd (“**the Company**”), which operates as ‘Moga Izakaya & Sushi’ in Brisbane, was heard in the Federal Circuit and Family Court. A \$305,000 penalty was ordered against the Company, while the remaining \$50,000 penalty was personally against the Company’s director, Yinan Yang, who manages the restaurant. The total penalty is one of the highest the FWO has ever obtained.

The Facts

The FWO formally cautioned the Company in 2019 when it was found they had underpaid their employees a total of \$75,716 between December 2018 and March 2019.

Fair Work inspectors inspected the Company after one of the Company’s workers came forward to the FWO, alleging he was being paid only \$16 per hour. The inspection found that 34 employees of the Company were underpaid minimum wage rates, casual loadings, overtime, split-shift allowances, and penalty rates for weekend, public holiday and night work under the Restaurant Industry Award 2010 and National Employment Standards.

Moreover, it was found that the Company knowingly provided the Fair Work inspectors with falsified payslips and records in order to conceal their illegal conduct.

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Most of the employees affected were casual and their individual underpayments ranged from \$92 to \$9588.

Even after the formal caution, the Company refused to backpay staff until the FWO commenced legal proceedings.

The Decision

The court found that the underpayment was indeed deliberate and was a part of a systemic pattern of conduct. As such, the court was satisfied that the underpayment contraventions were to be considered 'serious contraventions' under the Protecting Vulnerable Workers laws in the *Fair Work Act 2009* (Cth), therefore making the Company subject to harsher penalties. Furthermore, most of the employees were Chinese, Japanese, Korean or Thai visa holders and many of which were young workers aged between 19 and 21.

This resulted in a \$305,000 penalty for the Company and a personal penalty of \$50,000 for the Company's manager was the primary person responsible for the illegal conduct of the Company.

The FWO, Sandra Parker, noted that the large penalty in this case highlights that employer conduct that deliberately exploits migrant workers "will not be tolerated". Judge Salvatore Vasta of the Federal Circuit and Family Court added that

there was a need to impose harsh penalties in order to deter any similar conduct in the future.

Takeaway

Employers should be aware of the following takeaways from this case:

1. Notices from the FWO are serious, we strongly advise that you contact our firm if you receive a notice. This allows you to make an informed response after obtaining legal advice;
2. It is very important to comply with directions from the FWO;
3. Our firm offers Modern Award audits to ensure compliance, conducting a review proactively is encouraged to avoid underpayment prosecution by the FWO. It is important to note that even if you pay your employees above award rates, this does not guarantee that the engagement is award compliant.

If you have any questions about wage underpayment or award compliance generally, please do not hesitate to contact [Nick Stevens](#), [Peter Hindeleh](#), [Daphne Klianis](#) or [Josh Hoggett](#).

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