

**Senate Standing Committee on Education Employment and Workplace  
Relations**

**QUESTIONS ON NOTICE  
Supplementary Budget Estimates 2012-2013**

**Agency - Fair Work Ombudsman**

**DEEWR Question No. EW0612\_13**

**Senator Abetz asked on 17 October 2012, Hansard page 37**

**Question**

**FWO - Media releases published in respect of unsuccessful litigations**

Senator ABETZ: In criminal matters as well; but can I make a brief observation from the dark days when I used to practice. I had somebody up on a criminal charge and the police got everybody there at the court with photograph taken, and, when they finally got to the criminal court and acknowledged that they did not have any feathers to fly with, no public statement was made, no alert was given to the media that the matter was going to be dropped and there was no publicity. Sure, the police probably thought it was a good case to prosecute at the beginning, but do you give equal publicity when you raise the white flag and say 'in fairness we should not have taken this matter to court'? Indeed, have you ever lost a case in court and then issued a media release with the same sort of vim and fervour as would have been issued at the time when you announced prosecution? Mr Wilson: Yes, I will take on notice which ones that has been. The vim and fervour of our media releases is not dissimilar whether it is before the litigation is run or after the court has made its pronouncement. The point I make to the committee is that we use the process that is used by all Commonwealth agencies which litigate in this area. If it is being put to me that we use a process which is not appropriate, then I think that should be put to all such other agencies. If it is accepted by the Commonwealth this is not to be done, then of course we will follow this practice; but, if it is a circumstance where other litigation agencies—civil and criminal—issue media releases as a matter of record, then that is what we are doing as well.

**Answer**

The Fair Work Ombudsman (FWO) has issued media releases in relation to unsuccessful litigations.

All media releases issued by FWO are available on the FWO website at [www.fairwork.gov.au](http://www.fairwork.gov.au). Media releases which have been issued following unsuccessful litigations are as follows:

# ***Media release***

**14 December 2011**

## **Aviation services company penalised almost \$100,000 for underpaying pilots**

A national aviation services company has been penalised \$96,030 for underpaying 33 pilots, following a prosecution by the Fair Work Ombudsman.

The Federal Magistrates Court in Perth has imposed the penalty against National Jet Systems Pty Ltd, which operates a fleet of jets offering freight and passenger services throughout Australia.

Federal Magistrate Toni Lucev found the company had breached workplace laws by underpaying 33 pilots a total of \$123,423 in 2006-2007.

The underpayments were the result of National Jet Systems failing to provide the pilots with wage increases they were entitled to under their workplace agreements.

Federal Magistrate Lucev said there was a need to impose a penalty “to demonstrate to others the seriousness with which the Court views contravention of industrial instruments, with a view to deterring others from committing such contraventions.”

National Jet Systems rectified the underpayments after the Fair Work Ombudsman commenced legal proceedings.

The biggest underpayment of an individual pilot was \$7337.

The Fair Work Ombudsman also alleged that National Jet Systems had breached workplace laws by applying duress to two pilots in an effort to pressure them into signing workplace agreements.

However, Magistrate Lucev dismissed this allegation, finding that while National Jet Systems had applied pressure to the two pilots, it did not amount to unlawful duress.

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.

Follow the Fair Work Ombudsman on [Twitter @fairwork\\_gov\\_au](https://twitter.com/fairwork_gov_au) .

# **Media release**

## **Court dismisses appeal on duress claims**

**16 March 2012**

The Federal Court has upheld an earlier finding that a national aviation services company did not breach the duress provisions of workplace laws when offering workplace agreements to two employees.

In 2007, the Fair Work Ombudsman commenced litigation in the Federal Magistrates Court alleging that National Jet Systems breached workplace laws by applying duress to two pilots it employed in an effort to pressure them into signing workplace agreements.

Federal Magistrate Toni Lucev dismissed the allegation in 2010, finding that the conduct of National Jet Systems did not amount to unlawful duress.

The Fair Work Ombudsman appealed against Federal Magistrate Lucev's finding, but the Federal Court has today dismissed the appeal.

The penalty Federal Magistrate Lucev imposed on National Jet Systems last year for breaching workplace laws by underpaying 33 pilots is not affected by today's Federal Court ruling.

# Media release

## Findings against Cairns insurance business operators overturned on appeal

29 June 2012

Findings against the operators of a Cairns insurance business have been overturned on appeal.

Last year, the Federal Magistrates Court found that Queensland Marine and General Insurance Management Pty Ltd, Queensland Marine and General Insurance Brokers Pty Ltd and Brinsmead man Peter Ralph Martinuzzi - a director of the companies - had breached workplace laws in relation to underpayments of two workers.

It imposed penalties and issued back-payment orders.

On appeal, the Federal Court has now dismissed all allegations made by the Fair Work Ombudsman in this matter and overturned all of the Federal Magistrates Court's findings against the two companies and Mr Martinuzzi.

The Fair Work Ombudsman submitted that the *Insurance Industry Award 1998*, a pre-Modern Award, applied but the Federal Court ruled that it did not.

The Federal Court overturned all penalties and back-payment orders.