

# MEDIA STATEMENT

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## Employees, not independent contractors, in a win by JobWatch

JobWatch has today secured over \$22,000 in total compensation for eight international students who were alleged by the employer to have been independent contractors but were found by the Federal Circuit and Family Court of Australia to be employees.

In the decision of *Alvarez Nino v Kuksal (No 4) [2023] FedCFamC2G 1051*, Judge Forbes accepted the argument that ‘it is “intuitively unsound” to conclude that a largely unskilled worker is “running their own enterprise” when simply providing nothing but his or her labour’.

This decision, in the context of the High Court decision in *ZG Operations & Anor v Jamsek & Ors [2022] HCA 2* relating to the importance of a contract when discerning whether a worker is an employee or an independent contractor, gives hope to all workers subject to underpayments of entitlements due to sham contracting.

This decision was aided by the absence of written contracts between the students and the employer, with most of the employment relationships characterised by oral contracts. These circumstances meant that as described by Judge Forbes, ‘the true legal character of the parties’ relationship, in the absence of a comprehensive written contract, only emerged after work commenced and was performed’.

“In light of the proposed legislative definition of employment by using a multi-factorial test, this Federal Circuit and Family Court decision reiterates how important it is that all facets of the employment relationship be examined when determining whether a worker is an employee or an independent contractor,” says JobWatch Principal Lawyer Gabrielle Marchetti.

“Unfortunately, we see too often at JobWatch that employers will purposely do unlawful things to avoid their obligations to their employees. Every court decision that allows us to re-emphasise rights of workers in situations such as these is a step in the right direction.”

“It has taken over six years from the time of my employment, for this official recognition that I was deliberately lied to, treated badly and underpaid by an Australian employer. I know that it was done purposely, thinking that as an international student, I was more vulnerable and that they could get away with it,” says Nicolas, one of the students in this case. “I’m so grateful to JobWatch for sticking with this case for so long, and ensuring that we get the justice we deserve.”

This final order is further to [a landmark procedural decision of May 2022](#) in the same case, which now allows workers across Australia to ask the court for orders against third parties who were knowingly involved in the underpayments in small claims proceedings. Without this previous procedural decision, JobWatch would not have been able to secure this win against the employer.

### Available for interview

- Gabrielle Marchetti, Principal Lawyer, JobWatch

### Contact

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