

ACTUS WORKPLACE LAWYERS

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Government's 'proposed 'wage theft' laws and increases in civil penalties

The Federal Government is developing 'wage theft' legislation that it intends to implement later this year, including penalties of imprisonment for directors and managers responsible for serious underpayments of employees. Managers and directors could be held criminally liable due to 'recklessness' if they do not do enough to prevent breaches of workplace laws.

Many major corporations with large human resource departments have recently publicly disclosed multi-million dollar underpayments, resulting in major back-pay costs, litigation, hefty 'contrition' payments, and damage to their reputation and brands. Also, plaintiff law firms, in partnership with litigation funding firms, are pursuing several class actions against businesses. Medium-sized businesses face even greater challenges in ensuring compliance.

It is a very risky time for businesses, directors and senior managers, and devoting sufficient resources to ensuring compliance is critical.

Given the complexity of Australia's workplace laws and awards, few businesses would be brave enough to proclaim they are fully compliant with all legislative and award requirements.

Currently, businesses that breach civil penalty provisions in the *Fair Work Act* face maximum penalties of \$875,000 per breach, but a recently released Government consultation paper proposes at least a five-fold increase in civil penalties. The maximum civil penalty would become \$4,125,000 or three times the amount of the underpayment, whichever is greater.

Under the accessorial liability provisions in section 550 of the *Fair Work Act*, directors and managers can be held liable for the actions of a corporation if they have been in any way, by act or omission, directly or indirectly, knowingly concerned in the contravention.

In a further development, new legislation will come into operation from 1 July this year increasing the cap on the amount that can be awarded through small claims proceedings relating to wage underpayments, from \$20,000 to \$100,000.

For confidential and privileged advice on workplace relations compliance matters please contact **Stephen Smith, Principal of Actus Workplace Lawyers** on telephone 0418 461 183 or email stephen.smith@actuslawyers.com.au.