

ACTUS WORKPLACE LAWYERS

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'Wage theft' laws to be introduced this year

The Government has committed to introducing a Bill into Parliament this year to criminalise 'wage theft'. There are many important issues of detail that employers should be concerned about.

Few would argue that employers who deliberately underpay employees should not be subjected to harsh penalties. However, some legislative reform proposals that have been put forward to criminalise 'wage theft' do not just target deliberate conduct but include, for example, concepts of recklessness. An employer may not have deliberately underpaid an employee but may have recklessly not devoted enough resources to ensuing compliance. Australia's extremely complex workplace relations system presents many challenges for employers in this regard.

Another important issue of detail relates to the manner in which the legislation will enable managers and directors to be held criminally responsible for the actions of corporations. If criminal law concepts of conspiracy are adopted, a high bar will apply before directors and managers can be held liable. However, some parties have proposed that the legislation include provisions similar to the accessorial liability provisions in section 550 of the Fair Work Act. These provisions are very broad and would enable directors and managers to 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.

The previous Coalition Government introduced legislation into Parliament to criminalise 'wage theft' as part of its IR Omnibus Bill but the relevant provisions were not passed despite the Labor Party's strong support for the provisions. The Bill would have:

- Introduced a criminal offence for an employer who 'dishonestly engages in a systematic pattern of underpaying one or more employees', with maximum penalties for an individual of imprisonment for 4 years or \$1.11 million, and penalties for a body corporate of up to \$5.55 million;
- Increased the civil penalties for remuneration-related contraventions and sham arrangements by 50 per cent (i.e. up to \$999,000 for a serious contravention by a body corporate and up to \$199,800 for an individual); and
- Introduced a new penalty for remuneration-related contraventions by bodies corporate (other than 'small business employers') based on a multiple of the 'value of the benefit' of the contravention to the employer.

Directors and managers would be very unwise to delay any further in ensuring that their businesses are fully compliant with workplace laws, awards and any enterprise agreements.

Actus Workplace Lawyers can assist employers with confidential and privileged legal advice on compliance matters including award coverage, award classifications, award

entitlements, the National Employment Standards, long service leave laws, record-keeping obligations and common law set-off clauses in employment contracts. Other relevant services include reviewing payroll rules, conducting payroll audits, liaising with the FWO and other regulators and representing employers in court proceedings.

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