

ACTUS WORKPLACE LAWYERS

3 November 2023

High Court wage theft case

The High Court of Australia is considering a Constitutional challenge to the validity of the Victorian *Wage Theft Act 2020*. There are credible arguments that the legislation is invalid for employers and employees covered by the *Fair Work Act 2009*, because the federal legislation comprehensively deals with wage underpayment matters for employers and employees covered by the federal legislation.

The arguments in [Rehmat & Mehar Pty Ltd & Anor v. Hortle](#) revolve around section 109 of the Australian Constitution which states:

109. Inconsistency of laws

When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.

Wage Inspectorate Victoria has filed charges against Rehmat & Mehar Pty Ltd, which operated a restaurant known as the Macedon Lounge in regional Victoria, alleging that the company underpaid employees covered by the *Restaurant Industry Award 2020*. On behalf of the company, barristers Justin Burke KC and Mr Leigh Howard, are arguing that the *Wage Theft Act 2020* is both directly and indirectly inconsistent with the *Fair Work Act* and therefore that the charges are invalid.

In addition to determining whether the *Wage Theft Act 2020* is inconsistent with various current provisions in the *Fair Work Act*, the High Court's decision will have relevance for the scope of the Federal Government's proposed federal wage theft laws. The proposed new laws are included in the Government's [Closing Loopholes Bill](#) which is currently before Parliament. The Bill includes penalties of up to 10 years' imprisonment for individuals.

To discuss any wage compliance or underpayment issues, or to arrange payroll auditing assistance, please contact Justine Smith, Lawyer of Actus Workplace Lawyers, on 0414 947 651 or Email: justine.smith@actuslawyers.com.au.