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## **Victorian Wage Theft Act operative from 1 July – Implications of developments regarding the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill***

### **SUMMARY**

The original version of the Government’s *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill* contained a provision that would have clarified that the *Wage Theft Act 2020 (Vic)* (**Victorian Wage Theft Act**) does not apply to alleged underpayments under the *Fair Work Act 2009 (FW Act)* or to awards and enterprise agreements made under the Act. The FW Act contains comprehensive provisions which deal with underpayments and other compliance and enforcement matters.

Ultimately, the version of the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Act 2021* that was passed by the Commonwealth Parliament only deals with casual employment matters (see Employer Advice [NAT 043/21](#)), leaving doubt about whether or not the Victorian Wage Theft Act applies to alleged underpayments under the FW Act.

The Victorian Wage Theft Act is operative from 1 July 2021.

The position of the Victorian Government is that the Victorian Wage Theft Act applies to all employers and employees in Victoria. The Act contains terms of imprisonment of up to 10 years for employers, directors and managers who deliberately underpay employees. Maximum penalties of around \$1 million apply to companies.

Employers should ensure that they have the systems in place to ensure compliance with relevant workplace laws, regulations, awards, and enterprise agreements.

### **Victorian Wage Theft Act**

The Wage Theft Act was passed by the Victorian Parliament last year and is operative from **1 July 2021**.

From 1 July 2021, it will be a crime for an employer in Victoria to:

- deliberately underpay employees;
- dishonestly withhold wages or other employee entitlements;
- falsify employee entitlement records to gain a financial advantage; or
- avoid keeping employee entitlement records to gain a financial advantage.

Honest mistakes made by employers who exercise due diligence when paying their employees are not covered by the criminal offences.

### **What maximum penalties apply under the Victorian Wage Theft Act?**

The legislation includes maximum penalties for individuals of around \$200,000 or imprisonment for up to 10 years. Maximum penalties for companies are around \$1 million.

Directors and managers can be liable for underpayments by a company. The legislation includes a defence for employers, directors and managers who can prove that they exercised due diligence when paying employees.

### **What is the role of Wage Inspectorate Victoria?**

Wage Inspectorate Victoria has been established to promote and enforce the Victorian Wage Theft Act and some other Victorian workplace laws.

The legislation gives Inspectors powers to:

- enter premises;
- obtain information and documents;
- seize evidence;
- require a person to give evidence or answer questions under oath or affirmation; and
- apply for and execute search warrants.

If Wage Inspectorate Victoria believes that a wage theft offence has been committed, the Inspectorate can:

- issue a formal written warning;
- accept an enforceable undertaking;
- pursue criminal proceedings; or
- refer indictable matters to the Office of Public Prosecutions for advice and criminal prosecution.

### **The importance of ensuring compliance with workplace laws and industrial instruments**

It is very important that employers implement and maintain rigorous systems to ensure compliance with workplace laws, regulations, awards, and enterprise agreements, including by:

- ensuring that the correct award or enterprise agreement is applied to each employee;
- ensuring that all relevant provisions in workplace laws, regulations, awards, and enterprise agreements are applied correctly;

- reviewing the rules in their payroll systems to ensure that the correct payments are made to employees; and
- ensuring that record-keeping obligations are complied with.

Many recent underpayments have resulted from employers failing to comply with the overtime provisions in relevant awards. Therefore, this is an area that employers should pay particular attention to.

Another common mistake that many employers have made is assuming that so long as an employee is paid above the relevant award rate, the individual provisions in the award do not need to be complied with. The inclusion of an appropriate 'set-off' clause in an employee's employment contract can be very beneficial in this area but many employers have not included such a clause or have included an inadequately drafted clause.

### **Do you require assistance or further advice?**

For assistance or further advice, please contact Ai Group. Ai Group has set up a [special section on our website](#) to provide access to Ai Group advice and assistance relating to the COVID-19 pandemic and the recovery from the pandemic.

A handwritten signature in black ink, appearing to read 'S. Smith'.

**Stephen Smith**  
**HEAD OF NATIONAL WORKPLACE RELATIONS POLICY**