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**The Australian HR Institute
Submission to the Department of Employment
and Workplace Relations**

Wage Theft

July 2023

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The Australian HR Institute

The Australian HR Institute (AHRI) is the professional body for Human Resources in Australia, with approximately 16,500 members from Australia and across the globe. AHRI members have a professional responsibility to act ethically, and support employers and employees fairly and objectively.

AHRI members are usually those within organisations advising on the implementation of the workplace and employment regulatory framework, and they have a clear understanding of what works in practice.

Their role includes managing the organisation's response to changes in workplace and employment legislation, educating and influencing management, and actively partnering with others in the organisation, including leaders and line managers, to ensure compliance.

HR professionals often also manage an organisation's relationships with third parties.

It is this unique position that provides AHRI members with a valuable perspective on changes to workplace and employment legislation and to be able to meaningfully contribute to proposed changes.

Underpayment and non-payment of wages

AHRI agrees with the Government's policy objective of tackling underpayment and non-payment of wages in Australian workplaces.

Australia's industrial relations landscape is much more complex than in other countries, due in large part to its complicated and outdated awards system. As a result, its application through payroll systems can be challenging for employers, particularly small businesses. The risk of making an honest mistake is much greater in Australia where over 97% of businesses are 'small businesses'.

AHRI therefore considers the tiered approach (Option 3) set out in the consultation paper would be the most effective vehicle for introducing criminal offences for wage underpayment.

AHRI believes that prosecution is only appropriate where employers could reasonably be considered to be deliberately or persistently non-compliant in terms of both the underpayment of wages and record keeping misconduct.

Striking a better balance between enforcement and financial penalties

Evidence suggests that financial penalties in Australia for non-compliance are already very high by international standards (see Figure 1).

In contrast, Australia's active enforcement of underpayment is lower than many of our international counterparts. According to International Labour Organisation (ILO) figures (see Figure 2), the Fair Work Ombudsman (FWO) completes around 5,000 investigations each year, which equates to less than 0.05 per cent of businesses being investigated each year. This leaves Australia ranking 28th out of 33 comparable OECD countries.

AHRI therefore believes that the government should be prioritising increasing funding for enforcement and education activity. This would include both an increase in the number of FWO inspectors and the development of a more comprehensive program for educating employers (including company directors) about existing employment legislation.

This could include a campaign that is specifically targeted at sectors where less secure forms of employment and underpayment are widespread. **AHRI proposes that such a campaign should precede any introduction of harsher penalties for non-compliance.**

AHRI also proposes funding for employer organisations, professional bodies and trade unions to help educate their members about employment regulation. The cost of these activities could be offset to some extent by any additional revenues raised by penalties for non-compliance through the higher incidence of inspections.

***Prepared by:
Australian HR Institute
June 2023***

A handwritten signature in black ink, appearing to read 'Sarah McCann-Bartlett', written in a cursive style.

**Sarah McCann-Bartlett
Chief Executive**

Figure 1: Potential financial penalties for minimum wage underpayment



NOTES: The horizontal axis uses a log scale to better display the range of effective multipliers. This chart estimates the penalty multiplier for a firm underpaying a single employee the equivalent of £1,000; multipliers vary with the amount of arrears (except for the UK) and, in some cases, by the number of employees to whom the arrears relate.
SOURCE: RF analysis of data in Annex 2.

Figure 2: Number of labour inspectors per 10,000 employed persons, by OECD country: 2019-21



NOTES: Data points cover the latest available data in each country, ranging from 2019 to 2022. Bars highlighted are the case study countries commissioned for the report. All figures come from the ILO database, except for Australia and the Netherlands (for which data is not available from the ILO) which we draw from our partner-commissioned work. In these latter two cases, however, we note that the figures may not be perfectly comparable: for example, the figure for Australia does not include smaller numbers of inspectors operating at the state, rather than federal, level.
SOURCE: ILO, Inspectors per 10,000 employed persons; reports from RF-commissioned international partners.