

HARMERS CLIENT ALERT:

FAIR WORK OMBUDSMAN TARGETING SMES

In the last few years, the Fair Work Ombudsman (“FWO”) has become increasingly vigilant in pursuing small to medium employers (“SMEs”) who are not compliant in their obligations in relation to employee entitlements, in particular the payment of wages.

Indeed, the FWO is increasingly willing to take Court action against employers who are failing to comply with their obligations arising under the *Fair Work Act 2009* (Cth) and any applicable awards. This trend is reflected in the FWO 2014-15 Annual Report, which indicates that the use of compliance tools, such as infringement notices and prosecutions by the FWO, has increased by more than double between June 2014 and June 2015.

Following on from those FWO prosecutions, recent judgments from the Federal Courts show a preparedness by Judges to hand down orders for large penalties where there have been serious contraventions.

For example, in March, April and June this year, penalties were imposed by Federal Courts as a result of FWO prosecutions of: \$188,100 for the underpayment of trolley pushers¹; \$160,000 for the sham contracting and underpayment of IT workers²; and \$408,000 for the underpayment of 7-Eleven workers³. These penalty orders were made in addition to orders that the underpaid workers be paid their outstanding entitlements.

In more than 50% of prosecutions commenced by the FWO against employers in the financial year ending in 30 June 2015, the FWO also sought penalties against individuals involved in the employer’s contravention, such as human resource managers, operations managers and directors.

For example, in *Fair Work Ombudsman v Al Hilfi* [2016] FCA 193, the operations manager responsible for negotiating employee pay rates was penalised \$44,550 for his involvement in the Starlink Group’s underpayment of wages. Similarly, in *Fair Work Ombudsman v Step Ahead Security Services Pty Ltd & Anor* [2016] FCCA 1482, the sole director of an insolvent company was personally fined \$51,400. The



fact that individuals may be held personally liable for wage and entitlement contraventions provides a further incentive for company officers to take the precautions necessary to ensure their employer is complying with workplace laws.

Given the increasing vigilance in this area of employee entitlements, employers and their directors and managers are strongly encouraged to conduct regular compliance audits and staff training to avoid exposing themselves to civil penalties and back payment orders. The prompt implementation of corrective measures is a mitigating factor that a Court may take into account when determining whether it is appropriate to impose a penalty and what the quantum of the penalty should be⁴.

Harmers Workplace Lawyers (“Harmers”) has extensive experience representing employers in conducting compliance audits and defending enforcement proceedings commenced by the FWO.

Further, Harmers can assist businesses in being proactive about compliance obligations by providing tailored and commercially relevant training, to help employees and their directors and managers understand their respective obligations under workplace laws. Harmers can also assist by conducting comprehensive “business health checks” to confirm that there are no major compliance issues that businesses need to rectify.

If you would like more information regarding Harmers, or would like to discuss any aspect of this article, please contact one of our experienced professionals.

1 *Fair Work Ombudsman v Al Hilfi* [2016] FCA 193.

2 *Fair Work Ombudsman v Quality Food World Pty Ltd* [2016] FCCA 207.

3 *Fair Work Ombudsman v Mai Pty Ltd & Anor* [2016] FCCA 1481.

4 *Kelly v Fitzpatrick* [2007] FCA 1080.

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