

# NEWS ALERT: PARLIAMENT PASSES 'VULNERABLE WORKERS' AMENDMENTS TO THE FAIR WORK ACT

The Commonwealth Parliament has passed a range of amendments to the *Fair Work Act 2009* ("the **FW Act**") aimed specifically at protecting those employees the Government describes as Australia's 'vulnerable workers'.

These latest amendments to the FW Act have been made largely in response to the wage underpayment issues which have unfortunately impacted many Australian-based 7-Eleven franchises. According to that Company's own dedicated website, [www.wagerepaymentprogram.com.au](http://www.wagerepaymentprogram.com.au), more than \$150,000,000 in underpaid wages have been identified to date.

All employers – including those who genuinely believe they are fully-compliant with the FW Act – should have regard to the important changes these new amendments have made to the FW Act, including:

- significant increases in the maximum penalties which can be imposed for so-called 'serious contraventions' (i.e. conduct which was deliberate and which formed part of a systematic pattern relating to one or more people);
- new powers to hold 'responsible franchisor entities' and 'holding companies' responsible for particular breaches of the FW Act by businesses within their networks (such as franchisees over which the franchisor exercises a significant degree of influence or control) where they should reasonably have been aware of the contraventions and could reasonably have taken action to prevent them;
- expressly prohibiting employers from directly or indirectly requiring an employee to pay them (or any other person) an amount out of their pay where the requirement is unreasonable and the payment primarily benefits the employer (e.g. so-called 'cash-back' schemes whereby



unscrupulous employers paid employees their full entitlements but then demanded the return of some or all of the funds in order for the employee to keep their job);

- an expansion of the Fair Work Ombudsman's ("FWO") evidence-gathering powers; and
- an express prohibition against the giving of false or misleading documents or records - such as time and wages records and pay slips - to the FWO, an Inspector or other specified official, where the giver knows the records are false or misleading. Furthermore, employers who are accused of underpaying workers and who have failed to issue compliant payments will now bear the onus of proving that full entitlements were, in fact, paid.

While these new provisions are clearly designed to protect employees and encourage employer compliance with Australian employment laws, Harmers Workplace Lawyers nonetheless remains concerned that many employers may not understand their obligations. We encourage employers to review their current practices and obtain expert advice if they have any concerns regarding potential non-compliance.

For further information or assistance, please contact David Bates, Team Leader & Strategic Consultant, Harmers Workplace Lawyers on +612 9267 4322.

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