

Wage theft criminalised in Victoria

Consider the related financial, reputational and compliance risks for your business

On 16 June 2020, legislation was passed making wage theft a crime in Victoria.

The Wage Theft Bill 2020 creates new employee entitlement offences, comprising wage theft offences and new record keeping offences. It is designed to capture employers who falsify or fail to keep records for the purposes of concealing wage theft.

The key objective of the Bill is to ensure that employers who withhold employee entitlements dishonestly are held to account and protect vulnerable employees from exploitation.

The new law which comes into effect mid-2021, states that employers who dishonestly withhold wages, superannuation or other employee entitlements could be fined up to \$198,264 for individuals, \$991,320 for companies and be sentenced to up to 10 years' jail.

As a director, you have a legal responsibility to ensure your company meets its Pay As You Go (PAYG) withholding and Superannuation Guarantee Charge (SGC) obligations. If the company does not meet these obligations, you may become personally liable for a penalty equal to these amounts

Payroll health check

In light of these new laws and given the number of organisations that have been publically identified to have underpaid employees we urge all businesses to undertake a payroll health check. The health check will ensure that all entitlements, including superannuation, are accurately determined and paid in compliance with the current ATO requirements to avoid any penalties.

From a number of reviews we have conducted recently, we have identified risks associated with:

- Underpayments to casual and permanent staff for ordinary pay, overtime and leave loading;
- Inconsistencies and incorrect interpretation and payment of payroll entitlements under various Awards; and
- Underpayment of Superannuation entitlements.

Superannuation Amnesty

The Superannuation Amnesty that was announced in the 2018 Budget is also now in force. The Amnesty period includes all Superannuation shortfalls from 1 July 1992 through to 31 March 2018.

Employers have until **7 September 2020** to disclose any Superannuation shortfalls to the ATO without incurring significant penalties.

What is the impact?

Financial risks

- Underpayment to employees
- Payroll tax underpayment
- Superannuation underpayment
- WorkCover underpayment
- Annual leave loading underpayment
- Penalties arising from underpayments

Reputational risks

- Staff morale
- Community expectations
- Adverse media attention
- Criminal prosecution

Opportunity

- Self report to avoid potential financial and/or criminal actions
- Be able to claim a corporate tax deduction for the payment of underpaid superannuation during the amnesty period
- Receive a full reduction of potential penalties that can be up to 200% of the total underpaid superannuation



Get in touch

Through the use of sophisticated data analytics and a review of your current payroll processes, ShineWing Australia can assist you to manage your organisation's payroll and superannuation risks efficiently, as well as identifying potential savings opportunities.

We use our customised data analytics tool to review your payroll records to identify any shortfalls or disclosure concerns.

Rest assured that whilst the Government's social distancing guidelines are in force, we are able to assist you remotely during this period and are able to provide the full benefits of these services.

Reach out to one of our ShineWing Australia experts below to discuss how we can support you.

Action required – how we can help

1. Review current payroll processes to ascertain compliance with the relevant awards and identify if there are any underpayments.
2. Through the use of data analytics, quantify the underpayment in addition to the superannuation, annual leave, WorkCover and leave loading liabilities within the required timeframes
3. Review historical superannuation guarantee payments to ensure that any shortfalls are rectified during the amnesty period.
4. Check that payroll codes are correctly categorised as ordinary times earnings and any awards applied correctly to ensure that employers are meeting their SG obligations going forward to avoid penalties.
5. Maintain auditable records for any external review
6. Liaise with legal advisors re ramifications of underpayments on tax and superannuation liabilities and any provisions required
7. Work with HR to identify root causes of the issues and identification of all costs requiring quantification
8. Disclose any underreporting to the ATO through Superannuation Guarantee Amnesty.



Jonathan Thomas
Partner, Assurance & Advisory
T +61 3 8635 1972
E jthomas@shinewing.com.au



Pallavi Khanna
Associate Director, Assurance & Advisory
T +61 3 8779 6554
E pkhanna@shinewing.com.au



Stephen O'Flynn
Partner, Tax
T +61 3 8635 1986
E soflynn@shinewing.com.au



Justin Batticciotto
Associate Director, Tax
T +61 3 8635 1946
E jbatticciotto@shinewing.com.au

The material contained in this publication is in the nature of general comment and information only and is not advice. The material should not be relied upon. ShineWing Australia, and related entity, or any of its offices, employees or representatives, will not be liable for any loss or damage arising out of or in connection with the material contained in the publication.

