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Sen. Maria Kovacic
Chair
Senate Reference Committee On Education & Employment
PO Box 6100 – The Senate
Parliament House
CANBERRA ACT 2600

Dear Senator

RE: Wage Theft & The Fair Work Act 2009 (Cth)

The Auctioneers and Valuers Association of Australia (AVAA) welcomes the opportunity to provide this submission to the Parliamentary Inquiry examining the extent to which the wage theft framework under the *Fair Work Act 2009 (Cth)*, including subsection 327A(1), has contributed to a reduction in the incidence of wage underpayments.

AVAA is the national peak body representing auctioneers and valuers operating across diverse sectors including fine art, antiques, collectables, goods, vehicles, plant and equipment. The sector is characterised by a high proportion of small and medium-sized enterprises, many of which operate with limited administrative capacity and without dedicated human resources or industrial relations expertise. This practical reality is central to understanding how the wage theft framework operates in the sectors we represent.

Context And Operation Of The Framework —

The introduction of criminal sanctions for underpayments represented a significant shift in Australia's workplace relations framework. These provisions are intended to address circumstances in which an employer fails to pay employee entitlements in contravention of the Act, with liability, in certain circumstances, extending to individuals involved in that conduct.

While subsection 327A(1) introduces a criminal offence, it operates within a broader compliance framework in which most underpayments continue to be addressed through civil remedy provisions. The distinction between civil and criminal pathways is an important feature of the Act.

However, AVAA does not support the current framing and operation of subsection 327A(1) when considered in the context of the broader industrial relations system. The framework operates within an inherently complex system, particularly for small and medium-sized enterprises, which presents practical challenges in determining employee entitlements with precision.



There is no evidence available to AVAA that underpayment is a systemic issue within the auction and valuation sectors. Accordingly, it is not possible to draw any strong conclusions about the necessity or proportionality of the criminal provisions as they apply to these industries. From AVAA's perspective, the introduction of these measures was an unnecessary regulatory change, particularly when considered against a sector that is not characterised by deliberate or widespread non-compliance. While there may have been some uplift in overall awareness of compliance obligations, this does not alter the underlying position that the framework has been introduced in the absence of a clearly identified problem in our sector and without addressing the more fundamental issue of complexity in the modern award system.

Complexity Of The Modern Award System —

The most significant barrier to compliance for small businesses in the auction and valuation sectors is not a lack of intent, but the difficulty of correctly identifying and applying the relevant award.

Australia's modern award system is detailed and multi-layered. Determining award coverage requires an assessment of both the nature of the business and the duties performed by individual employees. In the auction and valuation sectors, this task is particularly complex. Businesses often operate across multiple service lines, and employees frequently perform hybrid roles that span administrative, operational, and specialist functions.

As a result, employers must navigate uncertainty in determining the correct award, the appropriate classification level, and the correct application of entitlements. This complexity poses a significant risk of inadvertent error, even when employers act in good faith and seek compliance.

Consistent with broader observations across the small business community, compliance with the industrial relations framework often requires engagement with a highly technical and resource-intensive system without the benefit of dedicated expertise. In such circumstances, errors are an inevitable consequence of complexity rather than an indicator of misconduct.

Nature Of Underpayments In Practice —

In the sectors represented by AVAA, there is no evidence of systemic underpayment. However, to the extent that underpayments may occur, they are far more likely to arise from misinterpretation of award provisions, incorrect classification of employees, changes to award rates, or administrative and payroll errors, rather than from deliberate or dishonest conduct.

This distinction is important. Subsection 327A(1) introduced a criminal offence that incorporates fault elements and is intended to apply to conduct involving intentional or knowing non-compliance. However, the broader use of the term "wage theft" in political and public discourse risks conflating deliberate misconduct with inadvertent non-compliance.

The Act itself does not use the term "wage theft" and instead frames the offence more precisely. Greater alignment between legislative language and public messaging would help ensure that the distinction between intentional and unintentional conduct is clearly understood.

Concerns Regarding Criminalisation —

AVAA has significant concerns regarding the broader policy and practical implications of criminalising underpayments within this context.

A key concern is that criminalisation may undermine businesses' willingness to voluntarily identify and correct mistakes. The framework includes mechanisms that encourage voluntary compliance, including the *Voluntary Small Business Wage Compliance Code*. However, where the risk of criminal liability is perceived as significant, some businesses may be less inclined to proactively disclose errors, particularly when those errors arise from uncertainty and confusion rather than intent.

There is also a risk that the framework may adversely impact employment decisions. Small businesses in the auction and valuation sectors, already operating with limited capacity, may become more cautious in hiring where there is uncertainty about award coverage or classification. The prospect of severe penalties, including criminal sanctions, may lead to more conservative employment practices, particularly in roles that do not align neatly with existing award structures.

Further, the extension of liability to individuals involved in intentional underpayment, including directors, managers, and payroll personnel, reinforces the seriousness of the regime but also heightens concern in small-business environments where roles are often less clearly delineated. This underscores the importance of ensuring that the threshold for criminal liability is clearly confined to deliberate misconduct; however, the views of AVAA members indicate that this is not clear.

The Role Of Intention —

It is essential that the legislative framework and its practical application clearly distinguish between intentional and unintentional conduct; the advice from members suggests this is not so with the current legislation.

Criminal penalties should be clearly confined to conduct involving intentional or knowing non-compliance with statutory obligations. This includes circumstances where an employer knowingly fails to pay entitlements or engages in conduct designed to avoid those obligations. They should not extend, in practice or perception, to situations where underpayments arise from genuine mistakes, misunderstandings, or administrative shortcomings. For this reason, greater clarity in regulatory guidance and enforcement practice would help ensure that this distinction is consistently applied and understood.

Structural Limitations Of The Current Approach —

The current framework does not adequately address the root cause of underpayment in small business environments. The primary driver of non-compliance is the complexity of the industrial relations system, particularly the modern award framework.

Criminal sanctions do not simplify this system. They do not make it easier to determine award coverage, apply classifications, or calculate entitlements. As such, they are unlikely to have materially reduced the incidence of underpayment.

Instead, there is a risk that the framework increases anxiety among compliant businesses, encourages overly risk-averse behaviour, and diverts resources from managing compliance risk to supporting business growth and employment.

Pathways to Improved Compliance —

AVAA submits that a more effective approach to reducing underpayments would focus on simplification and support.

Simplification of the award system, including clearer and more accessible classification structures and guidance on coverage, would materially reduce the risk of error. Targeted, sector-specific guidance would assist businesses in applying the framework in practical settings. Strengthening preventative measures, including education, tools, and support for compliance, would encourage early identification and correction of issues.


Equally important is ensuring that regulatory messaging reinforces the distinction between deliberate misconduct and inadvertent error. A compliance environment that encourages engagement, transparency, and correction is more likely to achieve sustained improvements than one that is perceived as punitive.

The criminalisation of intentional underpayment represented a significant policy development. However, AVAA submits that, in its current form, the framework under subsection 327A(1) is not well aligned with the realities of small business compliance and is unlikely to materially reduce underpayments without broader structural reform and support for small businesses.

In the auction and valuation sectors, underpayments are most often the result of complexity rather than intent. Addressing this requires a focus on simplifying the industrial relations system, supporting businesses to comply, and ensuring that criminal penalties are reserved for deliberate, systemic, and dishonest conduct.

AVAA would welcome the opportunity to engage further with the Committee on reforms that support both fair outcomes for employees and practical compliance for small businesses in the auction and valuation sectors.

Yours faithfully


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