

# Anti-business rhetoric has no place in workplace legislation

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Anti-business rhetoric in Victoria has reached fever-pitch, risking jobs and investment.

By parroting overly emotive unions terms such as “wage theft”, the State Government is supporting a divisive agenda that will only serve to drive employers away.

Running businesses is risky, complex and tough. The populist race to the bottom with the unions to describe wage underpayments by a tiny minority of businesses as “wage theft”, effectively labels all employers, large and small, as potential “thieves”.

It is a divisive invitation by the unions to indulge in old-fashioned class warfare rather than supporting a serious conversation about building the economy for everyone’s benefit.

Such language may result in more internet hits but the implication that such activity is rife and that existing penalties are small or rarely imposed does not bear any scrutiny whatsoever. There is no need for this click-bait legislation.

Of course, underpaying workers is unacceptable behaviour and should not be excused. However, heavy penalties already exist to deter and punish those who break the law.

Under the *Fair Work Act*, penalties of up to \$630,000 are in place for underpaying workers or failing to maintain the correct pay records. These penalties were increased just last year by up to 20 times.

A very well-resourced and active regulator, the Fair Work Ombudsman, is in place to investigate and prosecute underpayments. Indeed, in the past few days, an employer was fined more than \$200,000 for underpaying two employees in a case pursued by the FWO. In such cases, the FWO typically takes action against directors and senior managers, as well as against the businesses. Where wrongdoing is identified the penalties are severe and effective.

I am not suggesting this, but, as an extreme parallel, does the Victorian Government also propose to label workers who illegitimately take repeated sick leave when they aren’t sick as fraudsters and thieves? Should this area be included in “wage theft” legislation?

More to the point, should amounts transferred to some unions from industry worker entitlement funds be included as “wage theft”? given that the amounts contributed to these funds were paid by employers for the benefit of their own employees – not for the benefit of unions? Why would this unacceptable behaviour not be included in the proposed Victorian legislation?

Three important points should be made about employee underpayments.

Firstly, where such underpayments deliberately occur the employers concerned should and do face harsh penalties.

Secondly, many underpayments are the result of genuine misunderstandings and payroll errors. There are 122 federal industry and occupational awards containing over 10,000 pages of award entitlements. This is on top of thousands of pages of workplace relations laws and regulations. It is not surprising that from time to time businesses, particularly small businesses without dedicated HR staff, are confused about their obligations.

Thirdly, wage underpayment is an area comprehensively dealt with under federal laws and further regulation under the Victorian Crimes Act is totally unnecessary. It was sensibly decided many years ago that workplaces should be regulated through national, not state legislation. Jurisdictions like Victoria ceded most of their workplace relations powers to Canberra in the early 1990s. Many businesses operate nationally and the implementation of State workplace relations laws, including underpayment laws, would be a retrograde step that would create confusion for employers and employees.

Labelling underpayments as a crime appears to be a thinly disguised tactic to give a State Government the ability to legislate for what is a federal matter.

Australia's economic success, including employment and wages growth, depends upon the ongoing willingness of men and women to take risks to establish and build businesses. Often employers put their houses and life savings on the line. Labelling businesspeople as thieves and subjecting them to over-regulation, not only demonises them: it deters investment, job creation and growth.

State Governments should be doing all they can to make it easier to do business, not harder. They should be proactive about building a prosperous economy and an inclusive society rather than partnering with the unions' misleading, divisive and anti-business agenda.