

# Alert

## EMPLOYMENT LAW

### *MasterChef* Celebrity's Legacy to be the Criminalisation of 'Wage Theft'

By Ben Duggan

Celebrity chef George Calombaris' business empire's punishment for underpaying nearly \$8 million, has catapulted 'wage theft' to the forefront of political debate over the last few weeks.

The Industrial Relations Minister of the Morrison Government Christian Porter has acknowledged and agreed what the public had already determined, that the fine of \$200,000 handed to Calombaris' restaurant businesses over the systemic underpayment of its workforce was clearly 'light'.

Earlier the ACTU and other workplace players had used more colourful language in their criticism of the punishment, which includes Calombaris agreeing to provide some remorseful speaking engagements as part of a comprehensive enforceable undertaking agreed to with the Fair Work Ombudsman in their successful attempt to highlight what is already described as 'wage theft'.

Calombaris' appearance on the ABC *7.30 Report* last week to apologise for his conduct has attracted broader public criticism. Such that he may not be required for any speaking engagements by the Fair Work Ombudsman in the future.

The Morrison Federal Government sensing the growing public anger over Calombaris' indulgence has decided to consider the criminalisation of underpayments, something that would not have been likely several months ago.

At present, the Fair Work laws provide civil remedies, including the imposition of civil penalties for a breach of employment standards, which mandate that employers provide for minimum pay under Modern Awards or enterprise agreements. The recent Protecting Vulnerable Workers amendments have greatly increased the civil penalties for serious breaches of the Fair Work laws. At the time of these recent amendments, the introduction of criminal offences for such breaches did not have widespread support.

The Federal Government's review of the Fair Work laws to introduce amendments that would criminalise worker exploitation is much the same as the recent Protecting Vulnerable Workers amendments, involving the targeting of serious instances of underpayments by employers.

Significantly, the proposed Wage Theft amendments could seek to impose greater responsibility upon directors of employing companies that engage in underpayments by introducing a penalty of jail time as recommended by the Federal Government's Migrant Taskforce earlier this year.

A number of workplace participants and commentators have cautioned against the criminalisation of breaches of the Fair Work laws in the past.

The business sector, in particular small business who have long claimed a connection between the complexity of the Fair Work laws and mistakes as to wages paid by employers, has called for the simplification of the

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workplace laws to ensure that the amendments only target those who are deliberately not complying with employment standards.

A key element of the small business sectors argument is that there should be a Modern Award that contains simplified terms and conditions, including governing minimum pay that applies to small businesses in Australia.

Small Business Ombudsman Kate Carnell has also called on Minister Porter to 'simplify' workplace laws that regulate pay as part of the Federal Government's review of the Fair Work workplace laws.

The comments attributed to Trent Hancock, principal lawyer at labour law firm McDonald Murholme from his practical experience on this topic are instructive. Hancock indicated that establishing what's 'deliberate' and 'serious' in the context of underpayments can be 'difficult'. His opinion was that 'there is probably an even split' between cases of underpayment that arise from mistakes and those that are deliberate cases of underpayment. Clearly the Federal Government must aim to ensure that criminal penalties are only imposed for deliberate underpayments rather than genuine mistakes by providing priority to the simplification of the Fair Work laws.

We shall keep you informed of future developments in relation to the Morrison Federal Government's proposed amendments to criminalise 'wage theft' which they have suggested could be actioned in the next couple of months.

We recommend that in the meantime, all employers consider a review of their payroll function to ensure that they are compliant with minimum wage obligations under Modern Awards and other obligations under the Fair Work laws.



[MORE INFO](#)

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