

A VISION IN THE WORKPLACE

This edition includes:

- 4 yearly review of 31 modern awards completed.
- The Senate approves an inquiry into wage and superannuation 'theft'.
- A \$30,000 penalty for failing to adequately and independently investigate a sexual harassment complaint provides a warning for all employers.



4 yearly review of 31 modern awards completed

Starting in 2020, the Fair Work Commission will extensively vary existing awards as a result of the 4 yearly review of modern awards.

The review of the first group of 31 awards has been completed. The varied awards have been issued and will commence operation on 4 February 2020.

To find out which awards have been varied, and to access the new versions of awards before they commence operation, go to the [modern award list](#) on the Commission's website.

Senate approves inquiry into wage and superannuation 'theft'

The Senate has approved an inquiry into the causes, extent and effects of unlawful non-payment or underpayment of employees' remuneration by employers and measures to address this issue.

The successful Senate vote on 13 November 2019, referred the inquiry to the Economics References Committee. This came as a result of successful push by Labor Senators and despite strong opposition from the Morrison-government.

The government argued a new Senate inquiry was unnecessary given wage underpayments have been considered in recent inquiries, including the 2019 Migrant Workers' Taskforce and the 2016/2017 Senate inquiry into 'Corporate' Avoidance of the Fair Work Act.

Recommendations from the Migrant Workers' Taskforce has led to the government drafting a bill that will propose the criminalisation of serious and intentional wage 'theft'. However, it is unclear whether this bill will

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address the systemic causes of wage ‘theft’ that the new Senate inquiry will consider.

What will the inquiry investigate?

- the reasons for wage theft;
- the cost of wage and superannuation theft to the national economy;
- uncovering wage and superannuation theft;
- tax treatment for individuals subject to wage theft;
- potential extension of liability and supply chain measures to drive compliance;
- recovery and deterrence mechanisms; and
- potential modification of government procurement practices to exclude organisations engaging in wage or super theft.

The inquiry is timely, given the successful vote comes just weeks after leading supermarket retailer Woolworths admitted to underpaying thousands of workers over the past decade, amounting up to \$200-\$300 million.

Woolworths is but one of the more recent companies to self-report, following a string of other companies self-reporting or being investigated by the Fair Work Ombudsman in recent times.

A bigger pattern is emerging, particularly in the retail sector, with Bunnings Warehouse, Super Retail Group, Dominos, Michael Hill, and MJ Bale all admitting to having underpaid their workers in the last year.

The Fair Work Ombudsman, Sandra Parker, has expressed frustration at the upsurge in large-scale employers admitting underpayments.

“Each week, another large company is publicly admitting that they failed to ensure staff are receiving their lawful entitlements. This simply is not good enough. Companies and their boards are on notice that we will consider the full range of enforcement options available under the Fair Work Act.” Parker said.

This comes after the Fair Work Ombudsman reported over \$40 million worth of wages had been repaid in the last financial year.

The report will be provided to the Senate by the end of June 2020.



\$30,000 penalty for failing to independently investigate a sexual harassment complaint

In a warning for employers to ensure sexual harassment complaints are taken seriously and investigated appropriately, the South Australian Employment

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Tribunal has awarded \$30,000 in general damages against Adelaide supermarket, Pasadena Foodland for failing to properly and externally investigate a sexual harassment complaint against its head chef.

The Facts - Allegations thought to be "nothing of concern"

An employee made a formal complaint alleging that three instances of sexual harassment, including inappropriate touching, occurred on the same day. Following this, Pasadena Foodland Manager, Mr Kunzel and Human Resources Manager, Mr Piantadosi watched CCTV footage from the day and concluded there was "nothing of concern". The CCTV footage was automatically destroyed two weeks later.

Two months after the incidents, a duty manager became aware of further details surrounding the complaint and recommended Mr Piantadosi escalate the matter for formal investigation.

Pasadena Foodland held a meeting with the complainant to discuss the allegations and called in Mr Piantadosi and Mr Kunzel to describe what they saw on the CCTV footage before interviewing other workers.

A report detailing the findings was prepared by General Manager, Mr Mabarrack providing certain recommendations and commitments of the employee. This report was provided to the employee at a further meeting where they were advised their allegations would not be pursued by Pasadena Foodland and no further action would be taken against the chef.

The Tribunal's Decision - A "self-serving" investigation report:

In awarding the \$30,000 in general damages, Deputy President Judge Leone Farrell found that the employee's complaint was not taken seriously. The investigation process undertaken months after the incidents was described as "too little too late". Judge Farrell criticised Pasadena Foodland for not obtaining a statement from the employee and described the investigation report prepared by Mr Mabarrack as a "self-serving document".

Judge Farrell was satisfied that the chef sexually harassed the employee and that Pasadena Foodland was liable. Judge Farrell also found that Pasadena Foodland did not take reasonable steps to implement and enforce its sexual harassment policy or conduct a "prompt and proper" investigation.

Judge Farrell stated that this case "highlights the need to ensure that employers conduct independent investigations and maintain proper records when complaints are made". The Tribunal criticised Pasadena Foodland for adopting a "very flawed" approach to investigating the complaint by allowing the managers into the meeting with the employee instead of obtaining their statements separately.

Following the Tribunal's decision, Foodland Pasadena issued a statement saying it had stood down the chef and will consider its response, including whether to appeal the decision in the Supreme Court.

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The Takeaway for Employers - Thorough and independent investigations:

The Tribunal's decision demonstrates the need for employers to take allegations seriously (particularly sexual harassment complaints) and to conduct thorough investigations – ideally by engaging an independent and impartial investigator.

Employers must also ensure all statements, written records and CCTV footage are appropriately compiled and maintained.

If you have any queries about responding to employee complaints and conducting thorough investigations, please do not hesitate to contact [Nick Stevens](#), [Jane Murray](#) or [Angharad Owens-Strauss](#).

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