Introduction

I am writing this submission as someone who has been the victim of wage theft. This is a difficult admission to make as I would never have imagined myself in this position.

I do not fit the media picture of a wage-theft victim; I am paid above the minimum hourly rate and hold a responsible role as a professional Business Analyst. I have chosen to bring my experience to the attention of the Attorney General as: 1) I believe that there is the potential for instances similar to those I experienced to increase as less Australians join unions, and 2) because my situation left me without remedy outside the Court process.

I have included four specific recommendations that I believe, if implemented, will assist us to achieve a fairer Australia for all workers.

Background

I was employed by my Canberra based employer in 2009 and worked for them for almost 9 years. This organisation contracts with the ACT Government, the NSW Government and the Federal Government. I had a good relationship with my employer and enjoyed the benefits of flexible work arrangements including moving to Sydney in 2014 and continuing to work remotely under my original contract.

On my resignation, when calculating my termination entitlements my employer chose to: 1) initially undercalculate my long service leave entitlement; and, 2) once this was brought to their attention, to refuse to pay long service leave at all.

Despite many requests to address the issue, my previous employer ignored all my entreaties, and I was forced to begin Court proceedings in order to gain redress for what I now understand is classified as wage theft. My case came before the Court on 11 November 2019 and the Court found in my favour.

This has cost me considerably both financially and emotionally. This has cost my employer nothing. They are simply required to pay the original amount of my entitlement and interest. It has cost the Australian public considerably as the case involved three directions hearings, one mediation and one half-day court case with His Honour Justice Neville in the Small Claims Court.

Recommendations

1. Remove the limit of $20,000 from the Small Claims Court for Fair Work matters.

I count myself as fortunate that my claim was under this limit and therefore I could, with little risk, take action to recover my lost entitlements. Had I been required to file a claim in a higher court which may attract legal fees, I would NOT have been able to pursue the matter. If I had not been part-time for most of the almost nine years of employment with my previous employer, the value of my long service leave would most certainly have been outside of this limit.

2. That employers found guilty of wage theft are required to reimburse employees costs in pursuing justice.

As mentioned previusly, the cost of pursuing this claim was born entirely by myself and the State of ACT. The Respondent was content to allow the matter to go to Court without, it appears, seeking legal advice. During the Court hearing, they expressed a willingness to allow the Judge to provide them with instructions on how they 'could do better next time', but seemed indifferent to the emotional and monetary cost of their behaviour in this instance. Major costs included lost wages as I was required to take time off work to appear in Court on three occasions; travel from Sydney to the ACT; and the Court filing fee. More minor costs included printing and stationery. I have not included the donation I made to the party who provided pro-bono legal advice and wrote my submission, however I mention this as it was important to me that I did not waste Court time by appearing before the Judge unprepared and uninformed of the legal basis for dealing with the issue.

3. That employers found guilty of wage theft are penalised.

There is nothing to prevent my previous employer from attempting to perpetrate the same injustice in the future. There is nothing in the system to encourage them, when faced with legal issues they have not previously encountered, to seek legal advice before making false and misleading statements to employees. Many employees do not have my experience, or easy access to those who have a knowledge of legal matters. They may believe an employer who makes false and misleading statements such as 'the NES overrides the contract' or 'the contract no longer includes that clause' or 'I have to deduct time-in-lieu when calculating your LSL', rather than challenging such statements. There is even nothing to encourage my prevous employer to settle a matter before it goes to a Court hearing.

While I understand that legislation needs to ensure that honest, well-meaning but misinformed employers are not caught by penalties, I believe that description does not fit my previous employer. Despite the legal information provided by the Judge, they have not apologised for their actions and continue to be aggressive in their communication to me as we work out settlement terms. This includes:

\* reclassifying time-in-lieu as overtime in order to reduce their obligation;

\* refusing to use the interest rate specified in the Court Order; and

\* miscalulating interest owed by selecting a random date some three months after resignation as the starting date for calculation purposes.

4. That the Fair Work Ombudsman website be modified to include information on how independent, unregistered contracts should be managed.  
  
In order to empower workers to protect themselves from employers - both those who are misinformed and seeking to do what is right and those who are deliverabely perpetrating wage theft - I would like to see additional information on the Fair Work website that details employer and employee rights and responsibilities for an agreement under an unregistered contract. There are many, like me or my previous employer, for whom the Fair Work Ombudsmen can provide no assistance, however, this website is the first place that both I and they turn to for information on employment matters. The page titled 'Employment contracts' provides heplful advice for ensuring that an employment contract does not include less than legal minimums but does not include any advice for when an employer fails to abide by a contract that promised to pay above the legal minimums. Instructions such as those given by the Judge in his summing up, including an explanation of why an employment agreement is important i.e. 'all employees need certainty in their employment' and that 'you cannot unilaterally change the terms of a contract' would have been helpful for my previous employer to read.