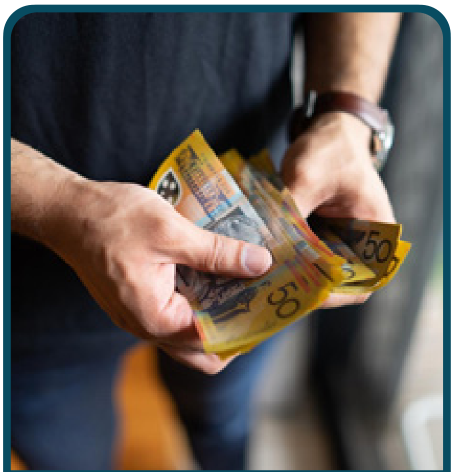
WINTER 2022

BUSINESS & PROFIT MATTERS

Strategies for managing your business



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Equipping Your Business for Success

Fair Work Commission's Minimum Wage Decision

From 1 July 2022, the minimum hourly wage for Australian workers has been raised from $20.33 to $21.38 by the Fair Work Commission in a landmark decision.

The decision sets the pay of at least 2.7 million Australians on the national minimum or awards. In fact, the proportion of all Australian employees dependent on the minimum wage and awards for pay rises is growing: from 15% to 21% since 2010. Women also depend disproportionately on this decision – they comprise 61% of all award-dependent workers.

For your business, this increase of 5.2% to the national minimum wage and 4.6% for award minimums could impact your current payroll amidst increasing inflation. Being better informed and preparing your business may require additional steps to be taken to maintain your compliance.

How Was The Minimum Wage Set?

Every year the Fair Work Commission holds the annual wage review, receiving submissions from unions, employers, governments and other stakeholders.

On the 15th of June, 2022, the commission's minimum wage panel announced an increase in the national minimum wage and the safety net in industrial awards, a decision that more than 2 million workers rely on to set their wage. This has been in effect since 1st July 2022.

The Outcome

The Fair Work Commission ordered modern award minimum rates to go up 4.6% "subject to a minimum increase of $40 per week", meaning that employees on awards earning above $870 per week will receive a 4.6% increase while those below that level will get $40 more per week.

However, the commission also ruled the increase be delayed until the 1st of October in the aviation, tourism and hospitality sectors due to "exceptional circumstances" including their slower recovery from the Covid recession. These industries include:

- Aircraft Cabin Crew Award 2020
- Airline Operations – Ground Staff Award 2020
- Air Pilots Award 2020
- Airport Employees Award 2020
- Airservices Australia Enterprise Award 2016
- Alpine Resorts Award 2020
- Hospitality Industry (General) Award 2020
- Marine Tourism and Charter Vessels Award 2020
- Registered and Licensed Clubs Award 2020
- Restaurant Industry Award 2020.

If you are a business operating in one of these industries or have concerns about how this decision will impact your business, you can speak with a trusted business advisor to better plan for your business's future compliance with regard to your employees.

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Wage Theft: Financial Crime Or Payroll Mistake?

Public discourse around wage theft generally devolves into accusations of big businesses ripping their employees off intentionally, but many other instances of the crime occurring are inadvertent, due to the complexity of Australia's payrolling system.

Wage theft appears across a broad range of industries and disproportionately impacts young people, overseas students, migrant workers and women, in general.

It is legally defined as the deliberate and dishonest withholding or underpayment of wages from employees or the falsification or avoidance of keeping employer records in order to obtain an advantage.

In some instances, this underpayment is a deliberate action by companies or individuals. It can involve employers:

- paying hourly rates below the national minimum rate;
- failing to pay overtime and penalties;
- making unlawful cash deductions from wages for things like breakages & accommodation;
- paying cash-in-hand;
- enforcing illegal cash-back schemes;
- and failure to pay superannuation.

In a large number of cases, however, this is caused by confusion at the payroll level.

The complexity of the legal documents that outline minimum pay rates and conditions of employment (awards) often results in many employers unknowingly underpaying their workers.

Typical mistakes that can cause this include:

- Incorrect interpretations of how overtime should be calculated
- Incorrectly classifying employees (casual or part-time, contractor, etc)
- Mistakes made by payroll as a result of lacking data around dates and times of people working
- Incorrect or mistaken applications of awards (or lack thereof) to an employee's salary.

At state levels, there is specific legislation and amendments to criminalise wage theft, which could incite significant financial penalties for companies or individuals. **It is treated as a crime in Victoria and Queensland**, which means that employers in those states can face criminal charges, convictions and up to 10 years of imprisonment. It is currently up to the states and territories to police these offences as necessary, as there is no current federal legislation in place (this could change pending plans from Labor).

How To Avoid Committing Wage Theft

In order to maintain compliance with National Employment Standards (NES) and avoid further issues of compliance from underpaying workers, employers need to be proactive in understanding changes to industry awards and employee classifications.

Companies need to have an ongoing compliance regime regarding payroll. Employers need to be constantly revising their payroll systems and getting advice year on year to make sure that their processes are up to date and that employees are not underpaid. In some cases, seeking legal advice can dispel concerns about compliance that might otherwise be missed.

Commercial Debt Forgiveness Rules: Natural Love & Exclusion

A debt that has been incurred by a business that cannot be 'collected or recovered' may be reduced under the Australian Taxation Office's commercial debt forgiveness rules. These rules often play a large role in insolvency proceedings and need to be handled carefully.

Commercial debt forgiveness occurs when a creditor forgives a commercial debt owed by a debtor. This means that a debt that your business owes could be forgiven if your obligation to pay the debt is released, waived or otherwise extinguished, other than by repaying the debt in full.

The commercial debt forgiveness rules operate so that the taxpayer is required to reduce a certain specified amount (such as tax losses, net capital losses or CGT cost bases of assets) by a "net forgiven amount". Creditors are able to claim a tax deduction and debtors reduce their prior-year loss, tax deduction or cost base for the net forgiven amount.

This year, a recent update announced by the Australian Taxation Office has clarified that the existing natural love and affection exclusion from these rules can only apply where the creditor is a 'natural person'. As a result, companies or other trusts cannot generally rely on the exclusion. However, the ATO has noted that this could potentially include an individual in their capacity as a trustee of a trust or as a partner in a partnership

This exclusion requires a direct connection between the forgiveness of the debt and the natural love and affection, where a creditor must be an individual and the 'object' of their love and affection must be another individual.

The ATO has indicated that an individual may be able to forgive a debt owing by a company or trust if the forgiveness has a direct connection with the natural love and affection for an individual associated with that particular entity.

If, for example, you borrowed money from your parent to fund your start-up company (100% of which is owned by you) and you now owe them a debt that you cannot pay back, your parent can choose to forgive the debt owed by your company due to the natural love and affection exclusion.

Commercial debt forgiveness may be worth investigating if you find yourself in an insolvency situation but should be consulted with your adviser to ensure that compliance and your outstanding tax obligations are being correctly met.

Classifying Casual Workers Compliantly

The meaning of casual employment has evolved and been upheld many times through common law. Under the Fair Work Act, a casual employee is classified as such ***if they have accepted an offer of employment where there is no firm advance commitment to ongoing work with an agreed pattern of work.***

There have been a number of drivers of growth in casual employment over the past several decades including:

- demand factors, such as employer preferences for a more flexible workforce that can be adjusted quickly in response to changes in operational needs
- supply factors including the greater labour force participation of women who may require part-time work to supplement household income and students who desire part-time work to assist them with their costs of living while undertaking study
- strong growth in employment in service industries that are more likely to use casual workers, such as hospitality, retail trade and health care and social assistance. There is also evidence of greater use of casual employment among industries that traditionally did not use this form of labour (such as the male-dominated industries of manufacturing, construction and mining).

However, the ability to define someone as a casual worker is something that employers need to be careful with. Are your employees classified as casual employees, but are actually operating more like a contractor? What does a permanent casual entail? How do you know if you are currently compliant?

There are four factors that must be taken into account to determine if an employee is in a casual position:

- **Choice:** An employer can elect to offer work and a casual employee can elect to accept or reject that work;
- **Need:** the employee will only work as required;
- **Job Type:** the employment is described as casual employment; and
- **Rate Of Pay:** the employee is paid a casual loading (a higher pay rate for being a casual employee), or a specific pay rate for casual employees

WHY IS THIS IMPORTANT?

2M In Australia, more than two million workers are employed on a casual basis.

As of August 2021, 20.9% of casual workers were male and 24.2% female. Overall, casual workers totalled 22.5% of the Australian workforce.

Young workers aged 15 to 24 years are much more likely to be contracted on a casual basis compared with those who are aged 25 to 64 years.

So why is it important to classify your workers correctly?

Take, as an example, a labour-hire company that supplies casual workers in the mines. These workers are given the same roster as their permanent full-time counterparts, but at fixed, all-inclusive hourly rates compared to a base salary rate.

This means that those employed as casual workers could receive up to 30-40% less than their permanent counterparts for performing the same or similar work (especially if they missed out on their 25% casual loading as a result of their rate).

A casual worker with fixed hours can become a compliance nightmare for payroll, particularly if awards and rates are not applied correctly, and especially given the legal definition of the type of employment.

HOW CAN I AS AN EMPLOYER BE COMPLIANT?

Now is the time for due diligence in assessing your casual employees' current situations.

Essentially, maintaining compliance with this matter is paramount to ensuring that your current employment and HR processes are working effectively for you and your employees. You need to ensure that:

- At the commencement of employment, your casual employees are provided with a Casual Employment Information Statement (as well as every 12 months after).
- Your current employment agreements reflect that casual employees do not have 'a firm advance commitment to ongoing work' and meet the specific criteria outlined in the definition of a casual employee to make sure that they are correctly classified.
- These employee contracts should specify whether an employee is casual, whether they can elect to accept or reject the hours and whether they are paid a casual loading.
- There is clear casual to permanent conversion frameworks in place in your business (if you are not a small business), with clear processes ready to identify employees that may be entitled to convert to permanent employment.
- Casual workers should also have superannuation contributions paid by their employers if they are over 18 years old (even if they earn less than $450 per month) or if they are under 18 years old and work more than 30 hours per week.

Casual employees must be offered a conversion to full or part-time permanent employment under the National Employment Standards if:

- they have worked for the employer for a 12 month period;
- they have worked a regular pattern of work on an ongoing basis for at least the past 6 months; and
- the employee could continue to work their regular hours as a permanent employee without significant adjustment.

Employees are required to respond in writing within 21 days as to whether they accept or reject the offer. If they reject the offer (or don't respond) they continue to be casual.

If your employee accepts the offer, you must discuss the terms with the employee and confirm them in writing within 21 days. The commencement date must be the first day of the employee's next full pay period after that notice unless the parties agree otherwise.

Incorrectly classifying your employees can lead to major compliance issues and result in significant penalties if caught. Talk to a trusted adviser or speak to a legal professional about your employment agreements today.

If, for example, you borrowed money from your parent to fund your start-up company (100% of which is owned by you) and now owe them a debt that you cannot pay back, your parent can choose to forgive the debt owed by your company due to the natural love and affection exclusion.

Incorrectly classifying your employees can lead to major compliance issues and result in significant penalties if caught. Talk to a trusted adviser or speak to a legal professional about your employment agreements today.

How Could Your Business Handle Mounting Costs As Inflation Rises?

As the country's interest rates rise, so too do the costs for businesses.The spike in inflation (recorded at 5.1% in Q1 of 2022) could provide additional challenges for unprepared businesses across the country. Understanding how and preparing your business for the impact of inflation is an important element of business planning that should be addressed as soon as possible.

Given that there is no expected expiration for how long the current inflation rate will apply, this is something that you may need to plan for in the long term.

Common issues that can impact small businesses as a result of inflation include:

- Increased costs of materials and stock (which can then take months to arrive)
- Fixed-price contracts failing to take into account these costs
- Increased shipping costs
- Increased employee costs, with inflation also applying to wages

While raising prices to address these costs might seem like an immediate solution, it can have a negative impact to customer relationships. The following are simple methods in which your business can address inflation (without potentially alienating customers).

Know Where Money Is Currently Being Spent

Knowing where the money of your business is currently being spent and who in turn is spending it is critical in knowing about how your business is currently sitting, expense-wise. In an inflationary period, it is critical to establish repeatable, end-to-end, actionable visibility of spending by cost category, business process, function, and business unit. You may want to discuss this with your trusted business adviser, who may be able to help you identify these elements better.

Know The Difference Between Strategic & Non-Strategic Spending

One of the key steps is to clearly distinguish between strategic and nonstrategic cost-cutting, the protecting of your signature customer and employee experiences, and fiduciary requirements, for example.

This may involve determining whether the spending for the business is:

- A committed cost, which is spending that is necessary for the business's operational structure on a long-term basis.
    - » E.g. Rent, salaries, etc
- A discretionary spend, which is spending that is not deemed as critical to the running of the business and which can be examined/ altered as required.
    - » E.g. marketing costs, holiday parties, event tickets, and tuition reimbursement

Rather than completely cut the costs of some of these discretionary spends though, you may be able to consolidate what's left. Combine activities like training days and celebrations into single events, or combine events across multiple departments. You could also cross-schedule the use of outside resources, such as facilities or trainers.

Why Are You Spending X Amount Here?

Why are you spending money in an area that costs too much to run?

Knowing the drivers of cost can add up in an inflationary environment to a better understanding of how your business could improve. You should understand the rate that you are currently paying and your consumption for critical cost categories. This is again something that can be discussed with your business adviser.

Doing so should allow you to tailor your business's approach to inflation by matching current expectations and challenges. This might include addressing issues in purchasing due to the supply chain and produce pricing pressures by choosing ways that allow you to spend better.

Eliminating Work & Implementing Automations

With labor shortages and ballooning labor costs, eliminating the work itself has the greatest impact. This can be done by scrutinising what activities are being performed, how those activities are being performed and what might be easily eliminated through automation.

You may be able to provide services on an optional basis (opt-in versus opt-out), create better processes for your staff to maximise productivity and their value and automate through technologies to free up current staff for other duties.

Here are just a few of the business processes you can automate easily:

- Email
- Contract creation and renewals
- Invoices
- General ledger entries
- Purchase orders
- Collections
- Inventory
- Shipping
- Sales and marketing

Lower Your Supply Chain Risk

To further hedge against inflation, it is suggested to keep an eye out for tendencies that might make your small business more vulnerable to supply chain disruptions, such as:

- Over-reliance on single suppliers
- Overseas suppliers that require a long lead time
- Materials that are challenging or costly to store
- A single commodity representing more than 10% of the cost of goods sold

To lower your supply chain risk, try the following:

- Create backup supply chains
- Search for domestic alternatives to overseas suppliers
- Stock up on core supplies with minimal storage costs
- Hedge commodities where appropriate

Company Tax Returns: What You Need To Have Ready For Your Accountant

If your company had a prior-year tax return outstanding on 30th of June, then your next company tax return is due by the 31st of October. This means that there may be multiple items that you need to prepare for your company's return, and the sooner that they're addressed, the better.

There are certain sections that relate to your company's taxation affairs that you will need to provide to your accountant so that they can assist you with completing the return on your behalf.

Income including

- accounting information, cashbook, assets register, dividend statements, managed funds distributions statements, capital gains statements and more

Expenses including details of

- advertising and marketing expenses, bad debts actually written off during the year, bonuses and commissions paid to employees, or of bonuses and commissions paid to external parties
- Interest on loan, motor vehicle expenses, donations of $2 and over to registered charities, entertainment expenses, salaries paid, superannuation contributions and more.

Balance Sheet - Assets, including

- Bank statements, CGT assets purchased during the year, leases entered into and terminated during the year, value of stock as at 30 June (and the basis of valuation) and more.

Balance Sheet - Liabilities including

- Accrued expenses and unearned revenue, all loans, the listing of trade creditors with amounts owing, provisions for long service leave and annual leave, and statements from the lending authorities detailing the opening and closing balances of existing loans during the financial year.

Balance Sheet - Equity, including details of

- Any changes to shareholdings, details of loans from shareholders or partners or details of any increases or decreases in reserves.

There may be more items that are required for your particular tax return. In that situation, consulting with your tax adviser is the best step for your business to take to prepare for your next company tax return

Proposed Labor Policies For Businesses

Though Labor has made announcements about policies designed to help small business owners, there are yet to be many details about these policies set in stone.

This is to be expected, however, as Labor's vision will require the Treasury's assistance in getting these details right. Meetings with the Treasury & the Australian Tax Office officials should assist them with understanding the current position that the country is currently in (if they haven't been held already).

Prior to the election, Labor made an announcement regarding a plan that aims for small businesses to be paid on time. Labor wishes to ensure that small businesses are paid within 30 days. While this may be a welcome announcement for those businesses that find themselves constantly chasing money, this plan is yet to yield any further, more concrete information and requires further details.

It cannot simply be legislated that someone has to pay you in 30 days if they are without the financial means to do so. If this is to do with government departments and needing to pay within 30 days, this could be received well - but what about external, state-run institutions? More detail will be required (and provided by the government) at a later date regarding this potential policy.

It has also been announced that there will be a reduction in small business transaction costs at the point of payment ("merchant fees"), with a clear timeline for implementing least cost routing (or similar).

Least cost routing is when a customer pays you with their debit card and is not able to choose whether it will be paid via Visa Debit or EFTPOS. Instead, it will automatically process the transaction through the least cost vehicle.

This could result in major savings for small businesses that process a high number of small value transactions using EFTPOS or Visa/Mastercard Debit. The Reserve Bank is also already working on this issue, and you are currently able to discuss with your merchant provider about switching to least cost routing.

Labor also has a policy regarding beneficial ownership register for companies in the works. If you own shares in trust for someone else, you do not need to disclose anywhere who that "someone else" is. The banks will need to know when identifying their client, but the public has no way of knowing.

Labor has mentioned that they will bring in a register of beneficial ownership so that people can search for the real owner of a company, to promote public disclosure and transparency.

There are also multiple other announcements that have been announced at the election by both parties that promised other items, but only time will tell if any changes will be made on that end. With another Budget likely to be announced later this year, there is little doubt that there will be further changes and amendments to what has been proposed.

What's New This Financial Year For Superannuation & Your Business

From the 1st of July, the Super Guarantee rate will have increased to 10.5% of all wages (including some contractor payments). To ensure that you are remaining compliant with this process as an employer, you should make sure that you have made the necessary changes required (for those using payroll software, this should already be accounted for.)'

If your staff are on contracts that are superannuation inclusive you need to decide if they will be receiving a corresponding decrease in salaries or if will you merely be giving them the extra half a per cent of superannuation. If your staff are on a salary or wages that are not described as being inclusive of superannuation then you will need to find that extra half of a per cent. Your first SG payment is not due until 28 October, so there is time to make the necessary changes.

In terms of superannuation and the change in government, Labor has announced that it will not overhaul a "tsunami" of changes to superannuation. This is good news as change only undermines confidence in the existing system.

It is committed to the current program to increase the rate of Super Guarantee up to 12% by 2025 but has stated that it intends to establish a pathway to increase that rate up to 15%.

Labor has also stated that it wants to reform the super guarantee so that it applies to low-income contractors.

The Superannuation Guarantee already applies to many contractors. Any change to increase the rate of payment to a contractor by 10.5% may be met with a corresponding reduction to their payments of 10.5% by their employers. This is because contractors do not have the protection of a minimum wage like other workers. This policy will likely require some consideration and detailed drafting to ensure that it is not abused.

During the 2019 election, one of the policies committed to by Labor was paying superannuation on paid parental leave, a move that could reduce the current 'gender gap' in superannuation. This policy has effectively been dropped, but the party does still have an aim to reduce the gender gap currently existing in the superannuation system. At this point, the current plan to address this is unknown, but it has been announced that this may not be something that can be achieved in their first term.

Key Points For This Financial Year

10.5%

From 1 July 2022, you are legally required to pay your employees 10.5% super guarantee contributions.

$450

The $450 minimum monthly income threshold has also been lifted, so this may need to be addressed for your other employees as well.

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Inflation could affect how you price your products & services, so having a plan in place to address your costs & overheads is important.

To set up a company, you will need to first apply for a director ID - this has been the case since the 5th of April 2022, but is best to put it into practice before the company is registered.

Reforms to the Fair Work Act could impact the rights of employees to superannuation, leave, and other entitlements. It's important to stay up to date on how this could affect your business practices by regularly consulting with your business & legal advisers.