

Let's talk shop.

Impact of ss327A(1) of the *Fair Work Act 2009*

April 2026

The Australian Retail Council (ARC) welcomes the opportunity to provide feedback to the Senate Education and Employment References Committee inquiry into the extent to which the wage theft framework (the framework) under the Fair Work Act 2009 (the Act), and the operation of subsection 327A(1), has led to a decrease in the incidence of wage theft in Australia, and any other related matter.

ARC represents the Australian retail sector. Valued at \$444 billion, the retail sector is the largest private sector employer in the nation. Retail employs more than 1.4 million Australians (one in ten workers) and is the single largest employer of young Australians aged 15 to 24 years.

ARC's membership spans the full breadth of Australian retail: from family-owned small and independent businesses, comprising 95 per cent of our membership, to large national and international retailers supporting thousands of jobs and sustaining communities across metropolitan and regional Australia. The sector operates more than 155,000 retail outlets nationwide, with the majority also represented by an online or e-commerce presence. A significant portion of every dollar spent in retail flows back to employees, suppliers, superannuation funds, and local communities.

ARC is committed to supporting Australian retailers by collaborating and advocating for policy and reform that drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

Australian employment and payroll compliance

Australian retailers are responsible, law-abiding employers, who highly value their employees and the critical contribution they make to their businesses. ARC rejects any suggestion that the deprivation of lawful entitlements is a feature of employment in the retail sector. Deliberate underpayment of employees through intentional and dishonest conduct by employers, including those in the retail sector, is unlawful, harms employees, undermines trust in the retail employers and the sector more broadly, and creates an illegitimate competitive advantage over retailers that do the right thing.

Workplace regulations, including payroll compliance obligations on Australian employers are increasingly complex and becoming more so. In retail, payroll compliance operates within a highly detailed industrial setting that involves classifications, age-based rates, casual and permanent status, penalty rates, rostering settings, loadings, allowances, record-keeping obligations, and state-based differences such as long service leave across large and dispersed workforces. Understandings of this industrial setting are also often reasonably contested, adding to overall complexity and reducing operational certainty for retailers.

The framework

ARC provides the following submissions to the Committee:

1. As a preliminary matter, we believe the timing of this inquiry is premature. As the framework is relatively new, it is too early to undertake a proper evaluation. This inquiry also has the potential to duplicate or conflict with



Let's talk shop.

the work of the Booth review into the Closing the Loopholes Act. ARC has lodged a submission to the Booth review.

2. The inclusion of "intention" in section 327A of the Act, as defined by section 5.2 of the Criminal Code (Schedule 1) is appropriate. This enables a distinction to be drawn between conduct which is deliberate and non-compliant and conduct which is accidentally non-compliant. In our experience, conduct which is accidental arises in sectors where workplace obligations are unusually complex.
3. To the extent that this may be considered by the Committee, ARC does not support any changes to the current "cooperation agreement" provisions or process.
4. Finally, the framework as a tool does not resolve the structural drivers of payroll non-compliance. We have already indicated that the underlying causes of payroll non-compliance include complexity in awards, uncertainty in classification, contested understandings of industrial obligations and entitlements, payroll system limitations, and inconsistent record capture. This same complexity can also result in overpayments, further illustrating that these issues are often driven by system and framework complexity rather than deliberate misconduct.

As a tool for delivering a policy outcome, the framework cannot be assessed solely by reference to prosecutions or the availability of criminal penalties, as these alone are unlikely to materially reduce the incidence of payroll errors in practice. This is particularly relevant in retail, where compliance is often heavily system dependent. Time and attendance systems, payroll configuration, break recording functionality, and the quality of internal controls can all affect whether an employer identifies and corrects issues early. The complexity of Australia's workplace relations laws also makes system configuration, implementation and maintenance more onerous, costly and prone to error.

In ARC's view, the key question is not only whether criminal penalties are available, but whether the broader framework is reducing non-compliance in practice. For award-reliant sectors such as retail, that requires a stronger emphasis on prevention as well as enforcement. Put simply, a stronger penalty at the back end is not a substitute for a simpler and more workable compliance framework at the front end.

ARC encourages the Committee to take a measured view of the effectiveness of the current framework, including by considering not only enforcement settings, but also the underlying causes of non-compliance, including award and legislative complexity. ARC has repeatedly called for a reduction in complexity in workplace regulations and a focus on measures that support compliance, including clearer rules, simpler award settings, better guidance, employer education, improved system capability, and more practical interpretive support to reduce avoidable disputation. ARC would welcome the opportunity to engage further with the Committee on such reforms.

Please direct any queries in relation to this submission to our policy team at policy@retail.org.au.

