



The Honourable Don Harwin MLC

Leader of the Government in the Legislative Council
Special Minister of State, Minister for the Public Service and Employee Relations,
Aboriginal Affairs, and the Arts
Vice-President of the Executive Council

Ref: A3177352

The Hon. Christian Porter MP
Attorney-General
Minister for Industrial Relations
PO Box 6922
House of Representatives
Canberra ACT 2600

By email: IRconsultation@ag.gov.au

Dear Attorney

I am writing to you with respect to the discussion paper released on 19 September 2019 (*Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance*) inviting submissions on the current penalty framework for non-compliance in the *Fair Work Act 2009*.

As you are aware, since the previous Labor Government referred its industrial relations powers to the Commonwealth, the NSW state industrial relations system has had very limited authority and capacity to regulate private sector workplaces.

However, the NSW Government continues to be an active partner in the national workplace relations system via the Intergovernmental Agreement entered into with the Commonwealth and the other States and Territories in 2009. As a partner in the national workplace relations system, the NSW Government is committed to supporting workplaces that are fair and free from exploitation and abuse.

As such, the NSW Government concurs with the Commonwealth's comments in the discussion paper that any changes to the national workplace relations system should be measured against driving jobs and wages growth, boosting productivity, and strengthening the economy, all while ensuring the protection of employees' rights.

The NSW Government acknowledges that the vast majority of employers comply with their obligations under the Fair Work Act. However, examples of systemic exploitative behaviour by a small number of businesses highlighted in the Migrant Workers' Taskforce Report earlier this year is concerning. Such behaviour not only denies employees their legal entitlements but also makes it difficult for the overwhelming majority of employers to compete on a level playing field.

The NSW Government supports the addition of criminal sanctions to provide regulators and the courts with the appropriate tools to address the most serious contraventions of the Fair Work Act.

However, we support the approach canvassed in the Commonwealth's discussion paper and believe these types of sanctions should be confined to only the most serious and culpable forms of workplace misconduct. Similarly, any new offences should not apply to employers who had a genuine misunderstanding or made inadvertent errors that led to underpayment

Finally, if any changes to the current penalty framework in the Fair Work Act are made, the NSW Government supports a comprehensive information roll out to ensure business, employees and the broader community are aware of the consequences of non-compliance.

Thank you for providing the NSW Government with the opportunity to share its views about this important issue.

Yours sincerely



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Date: 4.11.19