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21 April 2017

Senate Education and Employment Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

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Dear Committee Secretary,

### **Inquiry into the Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017**

We write in response to the questions on notice arising during the hearing in relation to the above bill in Sydney on 13 April 2017.

In particular, during the course of our evidence Senator Marshall asked after that part of the Australian Chamber's submission which addressed amendments proposed by the *Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017* (Bill) to the *Fair Work Act 2009* (Cth)(Act) with respect to record keeping and payslips. Mr Grozier undertook to advise the Committee of the location of that part of the Australian Chamber's submission.

Paragraph 37 identifies that the Bill proposes to increase the penalties for current strict liability contraventions with respect to records and payslips. It also makes the point that although strict liability, the requirements are highly prescriptive and they give rise to a high likelihood for error by those without sophisticated systems. Paragraph 37 concludes by submitting:

*The strict liability nature of the offence risks capturing administrative breaches that do not give rise to egregious conduct of the nature which gave rise to the Bill.*

To reduce the likelihood of ambiguity the Australian Chamber is inviting the Committee to consider whether strict liability should apply to finding offences against records and payslips obligations under the higher penalty regime.

Paragraph 38 states that an education/publicity campaign would seem likely to address a number of the problems identified in the high profile cases giving rise to the policy behind the bill.

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The Australian Chamber stands strongly behind the proposition that improved compliance with employment obligations must come from both education / publicity and inspection / enforcement. This is particularly relevant in Australia which has one of the most complex and difficult employment law systems of any country (no other country has awards, plus national employment standards, plus considerably lengthy legislation) and most businesses people, particularly in SMEs find it very complex to understand and apply.

Later in proceedings Senator Cameron sought clarification on paragraph 60 of the Australian Chamber's submission regarding examples of deductions from wages or reasonable expenses that are legitimate.

Section 323(1) of the Act requires an employer to pay its employees amounts payable for the performance of work, in full and in money. However section 324(1) of the Act) provides that an employer may deduct an amount from an amount payable to an employee in accordance with subsection 323(1) if:

- (a) the deduction is authorised in writing by the employee and is principally for the employee's benefit; or
- (b) the deduction is authorised by the employee in accordance with an enterprise agreement; or
- (c) the deduction is authorised by or under a modern award or an FWC order; or
- (d) the deduction is authorised by or under a law of the Commonwealth, a State or a Territory, or an order of a court.

Section 326 of the Act ) also provides that a term of a modern award, an enterprise agreement or a contract of employment has no effect to the extent that the term permits a deduction (or requires the employees to make a payment) that is directly or indirectly for the benefit of the employer, or a party related to the employer; and unreasonable in the circumstances. The *Fair Work Regulations 2009* (Cth)(Regulations) provide further clarification as to the types of deductions that will be considered reasonable under the Act including where:

- (a) the deduction is made in respect of the provision of goods or services:
  - (i) by an employer, or a party related to the employer; and
  - (ii) to an employee; and
- (b) the goods or services are provided in the ordinary course of the business of the employer or related party; and
- (c) the goods or services are provided to members of the general public on:
  - (i) the same terms and conditions as those on which the goods or services were provided to the employee; or



- (ii) on terms and conditions that are not more favourable to the members of the general public.

The Regulations also provide examples of deductions that meet the above criteria such as provision of health insurance fees made by an employer that is a health or deduction for a loan repayment made by an employer that is a financial institution.

Clause 2.12 of the Regulations) also provide that for subsection 326(2) of the Act, a circumstance in which a deduction mentioned in subsection 326(1) of the Act is reasonable is that the deduction is for the purpose of recovering costs directly incurred by the employer as a result of the voluntary private use of particular property of the employer by an employee (whether authorised or not). Examples provided include

- 1 The cost of items purchased on a corporate credit card for personal use by the employee.
- 2 The cost of personal calls on a company mobile phone.
- 3 The cost of petrol purchased for the private use of a company vehicle by the employee.

The intent of the Australian Chamber's submission was to note that there are some other circumstances in which deductions may meet the above criteria, such that they would be permitted under the Act. The Australian Chamber provided examples which include employer provided accommodation and meals, depending on the agreed terms, and where employers organise to purchase tools of trade in bulk at a discount (which we intended to mean for the employee's benefit and personal use and not for use in the course of their duties), or to advance payments for annual travel passes (and purchasing annual train passes for personal travel and deducting monies over the course of a year has previously been agreed in enterprise agreements). In each case, we intended that such benefits would be agreed, not for the benefit of the employer and reasonable in the circumstances.

The Australian Chamber acknowledges that it could have better clarified that we intended that such deductions would be in conformance with the Act's requirements. As such, for the purposes of abundant clarity, the Australian Chamber wishes to reinforce that it does not in any way endorse the practice of unlawful deductions or the practices that led to the amendment proposed by section 325(1) of the bill, that is, the practice of paying employees the lawful rate, but then coercing them to pay back a certain proportion of their wages to the employer in cash.

Yours sincerely

**AUSTRALIAN CHAMBER OF COMMERCE AND INDUSTRY**