

Exclusive

# Labor ‘repudiating’ wage theft election promise: ACCI



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Small business is urging the Albanese government to rein in its expanding wage theft laws, saying jail time must be limited to deliberate underpayments and warning of strong opposition if it is extended to employers’ reckless behaviour.

The Australian Chamber of Commerce and Industry’s submission on the government’s [second tranche of workplace reforms](#) – including the criminalisation of underpayments – has accused the government of going beyond its election promise and seeking to create criminal offences for “honest” mistakes.



ACCI chief Andrew McKellar has backed submissions warning of strong opposition from the ACCI network if the government exceeds its wage theft promise. **James Brickwood**

The government’s consultation paper [released last month](#) flagged it was considering criminal offences for employers who recklessly underpay staff, not just “knowledge based” underpayments.

But ACCI said this marked a big shift from what the government took to the election and what it had referred to as its policy to criminalise “wage theft”.

“The consultation paper fails to describe the policy anywhere as intending to criminalise the ‘theft’ or ‘stealing’ of wages, as has been consistently conveyed until its publication,” it said.

“The government made a commitment to criminalising the “theft” of wages. It must abide by that commitment and refrain from criminalising conduct that cannot be appropriately classified as ‘theft’.”

## **A perverse result**

ACCI argued no employer should be convicted for wage theft unless they “knowingly” acted with dishonesty, and failure to require dishonesty “would be a repudiation of the federal government’s commitment to criminalise ‘wage theft’.

“It would also perversely result in the criminal prosecution of employers for underpayments where they acted honestly but inadvertently made a mistake,” the submission said.

It warned such an outcome “would be strongly opposed by the ACCI network”.

It also opposed criminal offences for false pay records because it argued that exceeded the government’s wage theft election commitments.

Proposals to lift fines to \$4 million for a broad range of offences if they involved underpayment were an “unnecessary” deterrent.

“Given that deliberate underpayments would be criminalised, it does not seem necessary to simultaneously increase the penalties for non-deliberate conduct,” it said.

ACCI’s submission also called on the government to limit its proposed gig economy laws to the ride share and food delivery industries, and not set pay and conditions for owner-drivers or independent contractors generally.

It also wants to restrict Labor’s same job, same pay laws for labour hire to “genuine” labour hire and exclude service providers, recruitment services, contracting arrangements and group training organisations.

The submissions represent the final feedback in the consultation ahead of the government introducing legislation in the second half of the year.

## **FWC a ‘union retirement home’**

Meanwhile, the Albanese government on Friday appointed eight current and former union officials to the Fair Work Commission, including the current ACTU assistant secretary, Scott Connolly.

The latest wave of appointments brought the total number of FWC members the government has appointed since the election to 13, all with union backgrounds.

Workplace Relations Minister Tony Burke said he was seeking to correct the Coalition’s “shameless stacking” of the commission with members from employer backgrounds and said there “was more work to do”.

However, Australian Resources and Energy Employer Association chief executive Steve Knott said the government had turned FWC into a “retirement home for union bosses”.

“The notion that 50 per cent of the FWC’s membership must be filled by ex-union officials is completely at odds with the fact they represent less than 10 per cent of private-sector employees,” he said.

“There will now be 52 members of the tribunal, of which only one has managed a substantive private-sector business.”

He warned that unless the government reverted to non-partisan appointments, Labor was “only setting the FWC up to be subject to calls for a complete ‘spill and fill’ in the future”.

ACTU secretary Sally McManus said the appointments were “highly skilled” and consistent with Labor’s promise to rebalance the commission.

She said it was also the first time two women of colour had been appointed to the commission.

The new members include former CFMEU mining division national legal officer Tony Slevin, who also represented the construction division in the Trade Union Royal Commission as a barrister. He will be made a deputy president.

The ACTU’s Mr Connolly, who is from the Transport Workers’ Union and has responsibility for superannuation issues, will be made a commissioner from next week.

Other commissioners include Australian Workers' Union national assistant secretary Stephen Crawford; Australian Services Union senior industrial officer Pearl Lim; Community and Public Sector senior legal officer Mark Perica; former United Workers Union official Susie Allison; former ACTU legal officer turned practice leader at Johnston Withers Lawyers Emma Thornton; and ex-CFMEU manufacturing division legal officer turned Young Workers Centre lawyer Oanh Thi Tran.

The members are likely to take on the FWC's new powers coming into effect from June 6, including arbitration and multi-employer bargaining.