

# No, a 'complex' system is not to blame for corporate wage theft

November 11 2019, by Anthony Forsyth

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Credit: AI-generated image ([disclaimer](#))

Is Australia's award system so complex major corporations capable of handling millions of customers and billions of dollars can't manage to pay employees properly?

That's the spin flowing freely in the wake of Australian supermarket

behemoth Woolworths admitting it had underpaid about 5,700 staff by up to A\$300 million.

Woolies joins a conga line of companies this year admitting to shortchanging employees, from household brands [Qantas](#), [Commonwealth Bank](#), [Bunnings](#) and the [ABC](#) to the fine-dining empires of celebrity chefs [Neil Perry](#) and [George Calombaris](#).

The head of the [Business Council of Australia](#) has suggested these "inadvertent payroll mistakes" are due to an overly complex industrial relations system, with "122 awards, multiple agreements, multiple clauses."

The head of the [Australian Retailers Association](#) agrees there's a need to "simplify the system." Woolworths' chief executive, Brad Banducci, has chimed in with his desire "to come back and talk about the [lack of flexibility in awards](#) when interpreted literally."

Here's why this blame-shifting is wrong.

## **The system is not as complex as employers claim**

Australia's workplace relations system has already been significantly simplified in the past 15 years.

We used to have an interlocking web of federal and state industrial relations laws and tribunals. The system had evolved without much logic over a century, from the creation of the Commonwealth Court of Conciliation and Arbitration in 1904. For a national company, it meant workers in some states might be covered by state awards and others by federal awards, with differing pay rates and conditions.

In 2005, however, the Coalition government of John Howard tackled this

problem with its Workplace Relations Amendment (Work Choices) Act. The Work Choices "flexibility" agenda was bad news for workers, but it did implement a national workplace relations system.

The benefit of this was recognized when the Labor government of Kevin Rudd repealed Work Choices but kept the national system with the Fair Work Act in 2009.

The national system covers companies around the country. State industrial relations laws now mostly cover state public-sector workers. Several thousand federal and state awards have been reduced to just 122 federal awards applying to specific industries and occupations.

## **Businesses have made things more complex for themselves**

The real problem highlighted by a lot of these cases isn't that there are so many awards with different allowances that it's hard for someone in the payroll office to keep track. Rather it's a problem of employers' own making: the use of annualised salary arrangements.

Annualised salaries roll up the overtime and penalty rates workers are entitled to under an [award](#) into an annual sum. This is often done for convenience. It's lawful only if employees are paid the same or more than their award entitlements. So it requires regular checking and monitoring.

It is now clear many businesses caught underpaying employers were not doing this.

In the case of Woolworths, the 5,700 underpaid staff were mostly department managers placed on annualised salaries (of about A\$73,000).

Their salaries were supposed to cover their ordinary working hours, overtime and any other payments they were entitled to under the [General Retail Industry Award](#). But when the actual hours being worked were calculated, it turned out the salaries amounted to less, not more, than the award.

## **Paying workers properly not a top priority**

The central problem is that, despite all the talk of how much "[we pride ourselves on putting our team first](#)", the need to ensure staff are paid what they are owed apparently just didn't rate highly enough.

I'm not saying the system is devoid of intricacies. But there are many other "complex" dimensions to running a large business. Woolworths, for example, encompasses a thousand supermarkets and about 30 million customer transactions a week. The logistics of procurement, distribution and storage are immense. Imagine what it takes to keep track of use-by dates to comply with food safety regulations.

If Woolworths can do that, it's hard to believe, with all the lawyers, accountants and professional advisers at its disposal, it couldn't ensure it complied with industrial relations laws.

The fact the federal attorney general, Christian Porter, hasn't shied away from describing these underpayments as [wage theft](#) indicates how flimsy he thinks the case is for blaming underpayments on award complexity.

Accusing corporate Australia of being "asleep at the wheel," he has suggested directors of companies that underpay workers might be disqualified from [sitting on boards](#). His department has also released [a discussion paper](#) about criminal penalties for the most egregious forms of underpayment.

Clearly there is an insufficient level of deterrence. Too many businesses think they can underpay with impunity.

When a [chief executive](#) complains about having to interpret awards (which are legal documents) "literally," it's clear we also need a major shift in corporate culture.

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