

EMPLOYEE UNDERPAYMENT INVESTIGATIONS

CLAYTON UTZ

**FORENSIC &
TECHNOLOGY
SERVICES**

Overview

At Clayton Utz, we offer a package of legal and compliance services to help you navigate Australia's complex industrial system.

As you know, Australia's industrial system is complex. Fair Work Act, modern awards, and enterprise agreements are just the beginning. Combined, they bring a complicated system of varying minimum wages, overtime, penalty rates, loadings and allowances. When the laws are this intricate, it's easy for organisations to make a minor slip up. When that occurs over a large workforce over a long period, the liability can quickly escalate, and a small mistake risks becoming the next headline.

We have a wealth of experience in undertaking forensic payroll analysis and extensive knowledge of workplace obligations in the public and private sectors. Together, our legal teams and Forensic & Technology Services (FTS) teams, can efficiently navigate through complex scenarios that can arise from a payroll audit and effectively manage the needs your organisation. Using data analytics we can assist with payment compliance testing and calculate any potential differences in payments.

Our team's prior experience in helping organisations who have identified similar issues means we are ready to hit the ground running to assist you. Given the nature of the issues, we understand that confidentiality and discretion is of the utmost importance and will we naturally ensure that legal professional privilege attaches to our advice, correspondence and other documentation.



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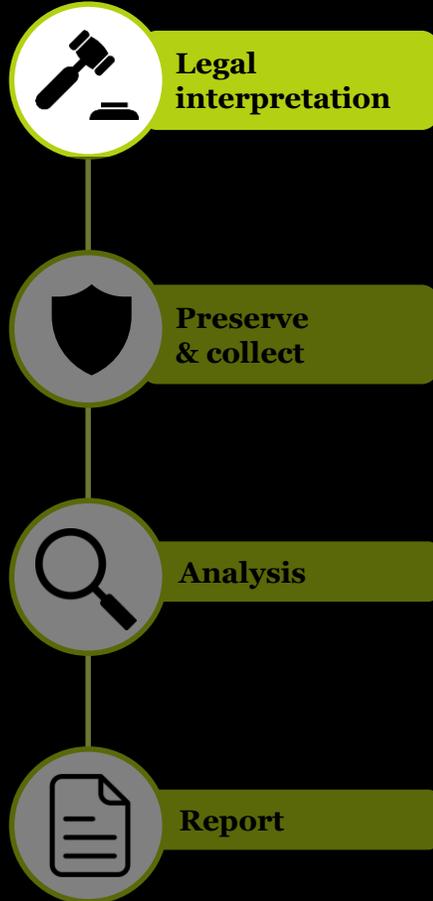
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What we do – Our end-to-end solution



LEGAL INTERPRETATION

Objective

The legal interpretation phase consists of identifying the correct entitlements applicable to employees based on a legal review of the Enterprise Agreements (EAs) and Modern Award and summarising this information to provide to the data analytics team.

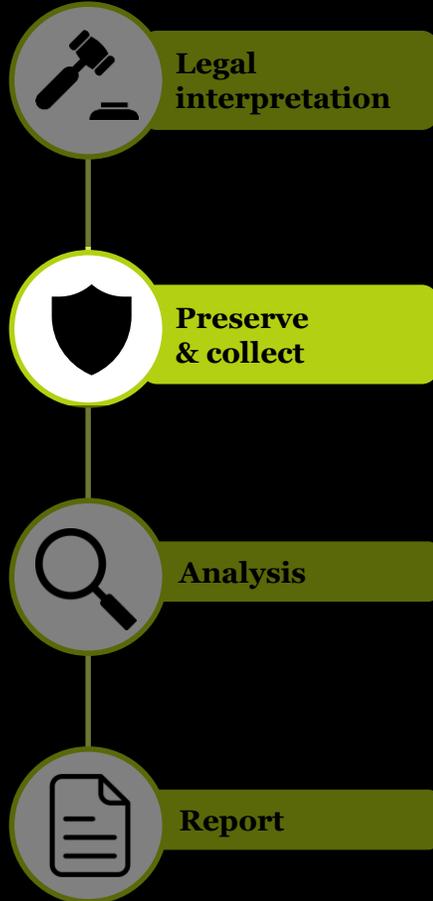
Activities

- ▶ Review and consider relevant EAs and Modern Awards
- ▶ Summarise conditions and entitlements for employees under the Enterprise Agreement and Modern Award

Outcomes

Legal interpretation of entitlements applicable to employees to provide the data analytics team the information required to build the analytics rules.

What we do – Our end-to-end solution



PRESERVE & COLLECT

Objective

Preservation of payroll and accounting system data required to perform calculations of any underpayment of entitlements and impact on other payroll related obligations, such as QLD payroll tax.

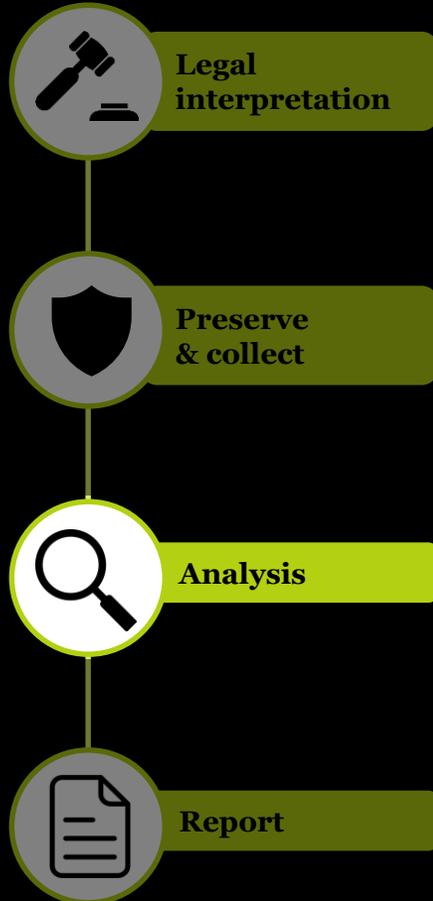
Activities

- ▶ Initial discussions with management and IT staff to understand the payroll systems used during the relevant period.
- ▶ Request and collect payroll and accounting data for the relevant six year period
- ▶ Consider the impact on your business to ensure disruption is minimised

Outcomes

Forensically preserved data necessary to perform the quantification. Hard copy payroll data is converted to electronic format for analysis.

What we do – Our end-to-end solution



ANALYSIS

Objective

Data analytics will be used to apply the legal interpretation of the industrial instruments to timesheet data to identify a calculated employee payroll amount that can be compared to the actual amounts paid to employees.

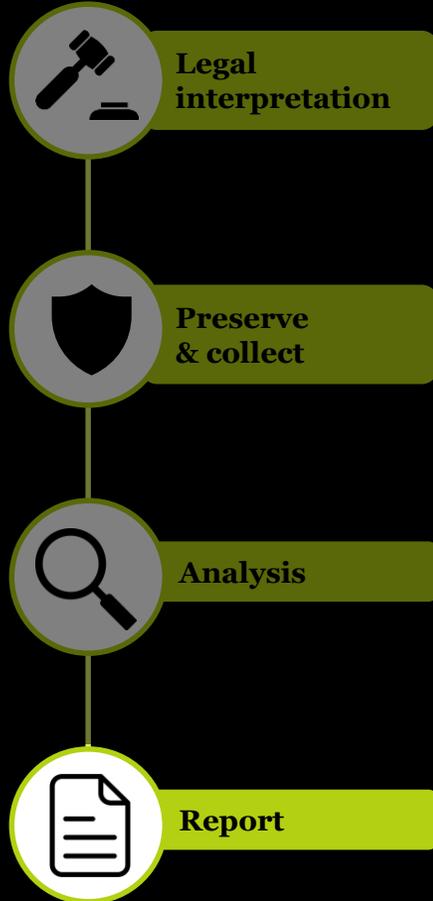
Activities

- ▶ Apply legal interpretation of Enterprise Agreements and Modern Awards to timesheet data, payroll data and another associated data
- ▶ Establish the analytical rules that will be applied to the data to calculate the entitled payroll amounts
- ▶ Use data analytics and create dashboards to quantify and present discrepancies between paid amounts and calculated entitlements at an employee level

Outcomes

Quantified discrepancies between paid payroll amount and the calculated entitlements according to the legal interpretation of the industrial instruments, with a granular view to be used in remediation of employee's pay if required.

What we do – Our end-to-end solution



REPORT

Objective

Dashboards will be developed to allow users to view the differences between what was paid to employees and how much they are entitled to according to the legal interpretation of their applicable award.

Activities

- ▶ The dashboards will have customisable parameters to allow users to adjust certain inputs used in the calculations.
- ▶ The dashboard will also have advanced filters to allow users to view the analysis at the desired level of details
- ▶ The purpose of using dashboards is to enable an interactive experience where users can visually identify employees with greater discrepancies and drill down instantaneously to their payroll history

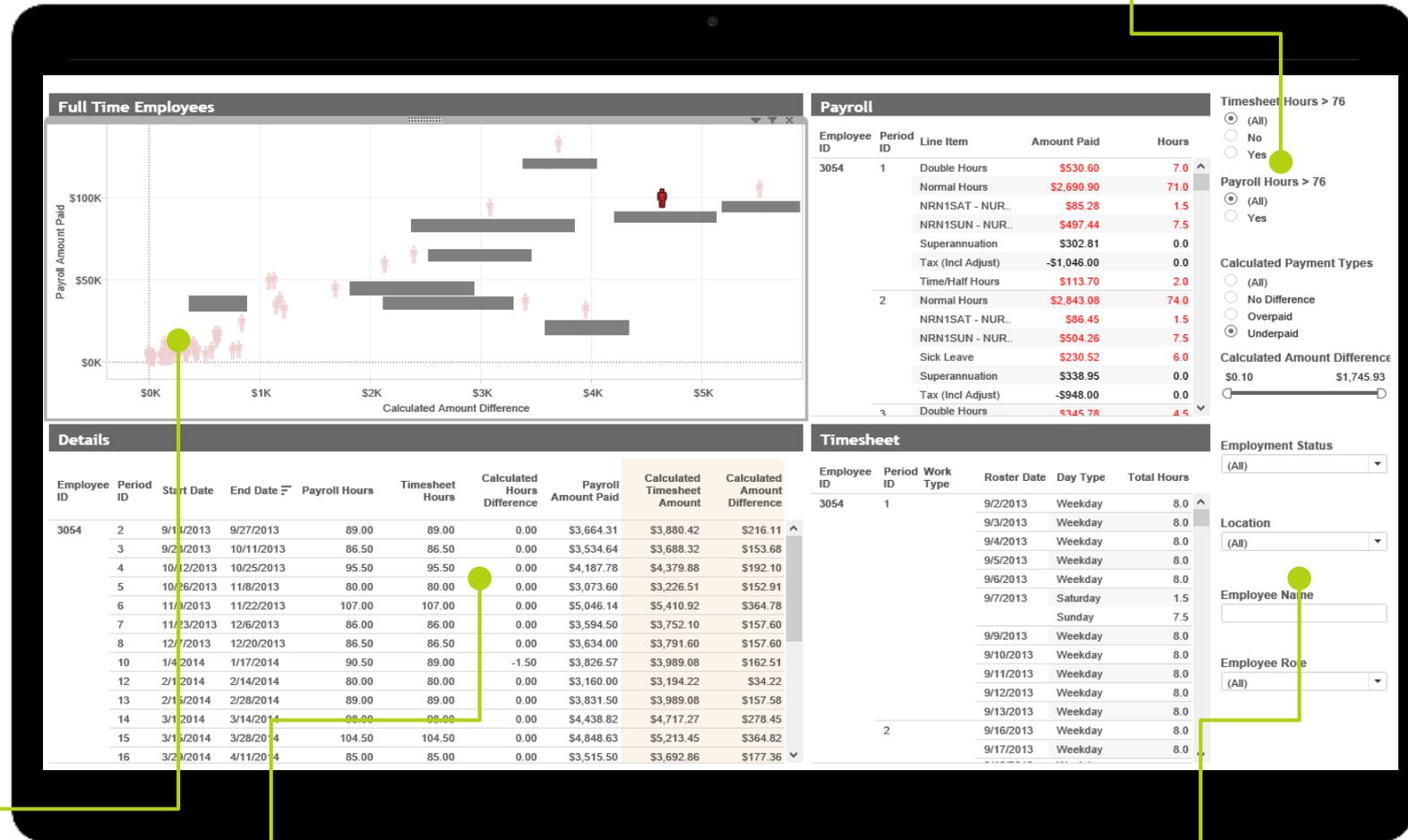
Outcomes

Data analytics dashboards to visualise the discrepancies between the paid amount and calculated entitlements at employee level, with customisable parameters and advanced filters. If required, a written report can be provided.

Case Study - Employee Payment Validation

We provided a client a bespoke analytics model to identify discrepancies between their Enterprise Agreement and payment rules setup in the payroll system.

Through this model the client was able to accurately identify the employees affected and the quantum of the underpayments, which was then used in remediation discussion with unions and individual employees.



Compare actual payments to the modern award with detailed breakdowns per shift

Detailed calculation for each payroll

Different rules can be applied for different location /roles/groups

Case Study - Employee Payment Validation

Compare actuals paid to employees under the enterprise agreement vs modern awards

Test conditions in the enterprise agreement or Modern Award that may not be adhered to

Comparisons can be run at an individual level or across a group of employees



Relevant Experience

Our Workplace Relations, Employment and Safety practice group works closely with our Forensic and Technology Services team to bring tailored advice to our clients with end-to-end solutions to suit unique requirements.

Here are examples to give you a flavour of the type of work we do and how we work with our clients.

Confidential University investigation

Problem

Our client needed a forensic analysis of potential underpayments of superannuation guarantee entitlements of their employees in the last 10 years.

What we did

Using data analytics we reviewed the clients payroll data from the Ascender system, to report on any discrepancies against superannuation guarantee charge obligation and quantified the amount owing to these individuals based on prescribed formulas within the Super Guarantee (Administration) Act. We customised a reporting dashboard that allowed our client to easily visualise the amount of shortfall against superannuation guaranteed entitlement and drill down to individual's payroll details.

We are also supporting our client with the lodgement of super guarantee statements to the ATO to disclose the issue and the remediation effort.

Value

Our data driven advice assisted our client in determining the extent of the issue, allowing them to report accurately to senior stakeholders and the ATO.

Relevant Experience

(continued)

Confidential Construction Industry Employee Payment Validation

Problem

A large construction company was notified the individual contracts they had employees on did not override the relevant modern award they were under. The client request support in identifying the quantum of the payment difference between amounts the employees were paid and the amount they should have been paid under the award. There were additional conditions in the modern award such as a limit to the number of hours that could be worked on a shift that the client requested we calculate the number of breaches of these conditions.

What we did

We extracted all payroll and timesheet data from the clients systems and developed an analytics model firstly to identify the quantum of discrepancies between the employee payment based on their contract against the amount they would have been paid through the award. Secondly we identified the number of breaches the client potentially had against the conditions of the modern award so they could disclose to the Fair Work Commission.

Value

The client did not have the technical capability in house to carry out the analytics, therefore having a firm that could carry out the analytics and cater the legal advice based on the issues and quantum was invaluable as it allowed them to resolve the issue with unions and the Fair Work Commission in a timely manner.

Relevant Experience

(continued)

Confidential University investigation

Problem

1. Our client needed a forensic analysis on a list of specific pay codes to determine the extent in which they have not met superannuation obligations per their current Enterprise Agreement.
2. Our client also required us to conduct analysis of any shortfall against superannuation guarantee entitlements in the last 10 years.

What we did

In collaboration with our WRES team, FTS quantified the superannuation underpayments through analysing payroll records extracted from the Ascender system.

Our team used data analytics to identify employees and specific pay runs where underpayments occurred and we visualised the underpayment in an interactive dashboard for the client to perform further analysis and remediation.

We are also supporting our client with the lodgement of super guarantee statements to the ATO to disclose the issue and the remediation effort.

Value

Our data driven approach gave our client confidence in our quantification of superannuation underpayment for both the Enterprise Agreement and the superannuation guarantee entitlements.

Relevant Experience

(continued)

Confidential BOOT Testing for a University

Problem

A large Australian University was in the process of implementing a new Enterprise Agreement. Our client engaged us to perform data analytics to assist in finalising entitlements for employees on the basis that the new agreement satisfies the Better Off Overall Test (BOOT).

What we did

We analysed historical payroll data provided by the University and calculated what each employee would have earned under the rules of the new Enterprise Agreement. We then compared the output against historical earnings for each employee to flag any scenarios where the employees were worse off. This information was presented in the form of an interactive dashboard where the client could alter various parameters associated with the new Enterprise Agreement to see how it affected the BOOT calculation.

Value

Our data driven approach enable our client to make the optimal financial decision for their business.

Confidential Employee Underpayment for a University

Problem

An Australian University has noted the entitlements negotiated in the previous Enterprise Agreement had not been incorporated into their payroll system. As a result we were engaged assess how many employees were affected and the quantum of potential underpayment.

What we did

Our lawyers reviewed the Enterprise Agreement in question and documented the entitlements that the University is required to provide to its employees. This then formed part of our calculation to determine the extent of underpayment that had occurred. This matter is ongoing.

Why Us?

Our Advantage

MULTI-DISCIPLINARY TEAM

We bring together a team of highly trained and experienced forensic accountants, investigators, data analysts, mathematicians, actuaries, IT experts, lawyers and paralegals with past experience at ASIC, APRA, ATO and the AFP to name a few.

INTEGRATED SERVICE OFFERING

By combining our forensic and legal expertise, we help our government clients identify, mitigate and manage the risks in their department while preserving legal professional privilege, all in an efficient and cost effective manner.

LEADING TOOLS

Our highly trained team provide cost effective, technology-based solutions to solve complex problems. We use the latest advanced digital forensic investigation tools to process, analyse and locate critical facts across vast amounts of data.

SECURELY HOSTED

We are the first large Australian law firm to be awarded the ISO 27001 certification internationally recognised for our information security policies and procedures.

PROTECTED ENVIRONMENT

The first and only private law firm to offer an IRAP assessed environment to host and process protected classification documents for analysis. This service was designed exclusively for government agencies.

Awards and accreditations



**2018 & 2019 WINNER OF
COMMUNITY CHOICE AWARD,
BEST INNOVATION,
RELATIVITY FEST**

The leading global e-Discovery conference
for legal technology

"....not only is your group **ground breaking** in the context of law firms, it illustrates **what is possible** when one **modifies the law firm business model** and incorporates a diverse set of professionals and **Technology tools** into the mix."

Client quote, 2019

"The forensic and technology team were **solutions focused, prompt** with responses and **provided timely updates.**"

Client feedback



**CU ON THE LIST OF 2020
INNOVATIVE FIRMS**

Australasian Law Awards, 2020

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