



MCKELL INSTITUTE VICTORIA

# Ending Wage Theft:

ERADICATING UNDERPAYMENT  
*in the* **AUSTRALIAN WORKPLACE**

MARCH 2019

# About the McKell Institute Victoria

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# FOREWORD

Australia is now nearing the end of its sixth year of low wage growth. This means for many young Australians, the idea of a decent pay rise is almost a foreign concept. The very idea of a rising wage is becoming an anachronism – a phenomena some workers have heard about, but never experienced themselves. Sadly, the same cannot be said for the wage theft, an economic scourge all too familiar for younger workers and others throughout the country.

In recent reports, the McKell Institute has sought to quantify the economic impacts of wage theft on workers in Queensland and South Australia. It has identified the considerable economic cost of wage theft, and demonstrated it is likely impacting hundreds of thousands of workers across Australia. This report seeks to take a broad look at which workers are most vulnerable to wage-theft and what can be done to fix it.

It paints a clear picture of why we need to change the complacent attitudes that have allowed wage theft to be overlooked. It argues that that ending wage theft isn't just about protecting those directly affected, but all of us: wage theft is bad for workers, it is bad for the majority of compliant businesses, it places a handbrake on wage growth, and ultimately leaves the taxpayer out of pocket as slower consumer spending diminishes government returns.

This report tables a suite of recommendations including actions that can be taken by state and territory governments and not just the Commonwealth.

It places a greater emphasis on helping private enforcement actions by unions, lawyers and employer groups to be more effective rather than simply relying on government agencies with limited budgets, as well as other ideas, like rewarding the individual whistle-blowers that put their careers on the line to help workers who have been wronged.

There is obviously much more that needs to be done to get wages growing for everyone, but making sure all workers get what they're already entitled to is a critical first step to restoring fairness and dignity at work.



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CHAIR  
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EXECUTIVE DIRECTOR  
MCKELL INSTITUTE VICTORIA







## EXECUTIVE SUMMARY

Wage theft is now one of the most pressing public policy issues in Australia. In some sectors of the economy it has transitioned from a fringe activity to a business model. And at the same time, most Australians haven't seen a decent pay-rise in more than half a decade.

Wage theft and low wage growth are related. Our *Falling Wages, Stalling Growth* report highlighted how wage theft by some businesses undermines the ability of their competitors to give their staff a pay rise: a reminder that it's in everyone's economic interests to put an end to this pernicious practice.

This report builds on that 2018 report with a closer look at the people in our workforce that are most at risk to having their wages stolen. From young workers in hospitality not getting super or penalty rates to migrant workers in horticulture and more, we see that some segments of the population are more vulnerable than others. At the same time few, if any, sectors of the economy can say they are free from blemish — it's more a question of degrees or differing forms that wage theft takes than whether or not it occurs.

The report also seeks to highlight the financial and welfare impacts on those workers and their families as well as the flow-on consequences for the broader economy, including the Federal Budget deficit. Recognising that this harmful habit by some has become a community-wide problem that warrants all of our attention, this report puts forward ideas and solutions to eradicate wage theft. These are grouped into four broad categories.

First, this report advocates for a set of measures designed to demonstrate a zero-tolerance approach to wage theft. This includes reinforcing steps already underway to criminalise wage theft at a state level as well as new proposals to have it recognised as a form of anti-competitive conduct that will enable legitimate employers to seek damages when a competitor has undermined their business by underpaying their staff.

Second, measures to make compliance more straight forward for employers in the first place and private enforcement action more accessible for employees are then explored. In corporate parlance, the latter means ensuring an effective right of audit for employees or unions acting on their behalf. Meanwhile streamlining the payment of superannuation and payroll is a simple example of how unnecessary complexity can be removed for employers.

Third, we argue boosting public resources to tackle wage theft as well as improving government enforcement activities are required. Every dollar underpaid to staff means less income and payroll taxes flowing into government coffers. Conversely, this means whenever an employee makes a successful claim for underpaid wages the budget bottom line is improved. In effect, the commonwealth and state treasurers are free-riding on some of the more vulnerable workers in our labour force when it really should be the other way around. This is why we have proposed legislating the Stopping Wage Theft Subsidy Pool to subsidise private enforcement action, education campaigns and to reward whistleblowers.

Finally, the report looks at how other, often unrelated, areas of government policy need to be improved to ensure they don't unintentionally reward or encourage wage theft. The report puts forward specific suggestions in relation to government procurement and grants as well as immigration, and recommends the establishment of a whole-of-government taskforce to ensure all commonwealth policy levers are aligned towards ending wage theft as a business model.

# RECOMMENDATIONS

## SENDING A CLEAR SIGNAL OF ZERO-TOLERANCE FOR WAGE THEFT

- 1 State and Territory governments should amend their criminal codes to criminalise intentional, reckless or grossly negligent instances of wage theft
- 2 The *Fair Work Act 2009* be amended to increase the penalties for committing wage theft. Additionally, interest should be mandatorily charged on stolen wages recovered
- 3 The Australian Law Reform Commission should be asked to investigate how to establish wage theft as an anti-competitive practice as well as options for private enforcement of breaches of competition law.

## MAKING COMPLIANCE AND PRIVATE ENFORCEMENT EASIER

- 4 Employers should be required to pay superannuation at the same time as they pay wages into an employee's bank account
- 5 A statutory right of audit should be created for all employees, with Registered Organisations acting on their behalf
- 6 Amend the *Fair Work Act 2009* to ensure that the Fair Work Commission can operate as a strong, independent umpire
- 7 Increase the small claims threshold to \$100,000 indexed annually

## INCREASED PUBLIC FUNDING AND IMPROVED GOVERNMENT ENFORCEMENT

- 8 The *Fair Work Act 2009* should be amended to facilitate greater collaboration between the Fair Work Ombudsman and Registered Organisations
- 9 The Fair Work Ombudsman should be required to undertake a number of routine and targeted unannounced inspections per year
- 10 The educative function of the Fair Work Ombudsman should be separated from the Fair Work Ombudsman
- 11 The federal, state and territory governments should jointly establish the *Stopping Wage Theft Subsidy Pool* using recovered taxes to subsidise activities that will address wage theft
- 12 Establish a national whistle-blowing incentive scheme to encourage whistleblowers to come forward and report instances of wage theft

## ENSURING BROADER GOVERNMENT POLICIES PLAY A SUPPORTIVE ROLE

- 13 Commonwealth, State, Territory and local governments should promote compliance with the *Fair Work Act* by excluding businesses found to have committed wage theft from their procurement and grant payments
- 14 That the Commonwealth should amend the FWA and the *Migration Act 1958* to minimize the vulnerability for temporary migrant workers
- 15 Establish a whole-of-government taskforce to coordinate the implementation of these activities and identify further policies that might conflict with the goal of eradicating wage theft or accelerate its achievement





## PART ONE: UNDERSTANDING WAGE THEFT

Since 2015, a number of stories have broken about wage theft, from the exploitation of agriculture workers, to chefs and waitstaff at upmarket restaurants, from franchisees in major chains such as Caltex, 7-Eleven and Domino's to the Australian Broadcasting Corporation it scarcely seems as though an industry is free of wage theft.<sup>1</sup>

These stories have spurred the Fair Work Ombudsman (FWO) to take action, launching a number of inquiries into these businesses, as well as conducting 'blitz-style' audits of hospitality businesses in Melbourne, Sydney and Brisbane in July last year. These audits only confirmed that wage theft is a deep-rooted problem in the Australian economy.<sup>2</sup>

Concern about wage theft has also spurred inquiries by the Senate and the Queensland Parliament,<sup>3</sup> prompted the Victorian Government's promise to criminalise it,<sup>4</sup> and has seen the Australian Council of Trade Unions and the union movement incorporate it into their *Change the Rules* campaign.<sup>5</sup>

But what is 'wage theft'? Where does it occur, and who does it affect? In part one of this report we aim to answer these questions, unpacking what is meant by wage theft, and outlining what the research says about how widespread it is and who it affects.



## What is wage theft?

Wage theft refers to the unlawful underpayment of employee remuneration by employers.<sup>6</sup>

This can take a variety of forms, including, but not limited to: underpaying wages, penalty rates, superannuation, overtime, commissions, entitlements such as sick, annual or carers leave, termination payments, allowances, requiring workers to repay money earned or making unauthorised deductions from employee pay.

Wage theft is therefore a complex phenomenon, which can and does occur in a number of distinct and diverse ways. This variety is driven by the nature of work in a modern economy such as Australia's.

Every day Australians undertake a wide array of activities understood as 'work', regardless of whether they spend their day dealing with complex machinery or unruly children, and regardless of whether they spend their day making coffee or writing reports.

As a consequence of this variety, workers in Australia can be paid in a range of different ways. For instance, employees are paid penalty or overtime rates to compensate them for working unsociable hours that they could have spent with family or friends or are paid an allowance for using their belongings at work, such as their car, phone or tools.<sup>7</sup>

As a result of this, however, for every way you can be paid in Australia there exists a corresponding form of wage theft. Common to each of these forms however, is that there exists a lawful rate of pay for particular types of work, and that employees are being paid below it by their employer.

This should give some idea of what we mean by wage theft, however, in addition to taking on a variety of forms, wage theft can be perpetrated in a number of different ways. This can include the misuse of ABNs, sham contracting, cash-in-hand payment, applying the wrong Award, being misclassified under an Award, being paid at a flat rate, phoenixing, mandatory trial or training periods, or 'off-the-clock' violations.<sup>8</sup>

## DISTINGUISHING WAGE THEFT FROM WAGE SUPPRESSION

In our prior report, *Stalling Wages, Falling Growth*, we identified that Australia was in a wage suppression trap, with wage suppression driving the low wage growth that is holding the Australian economy back.<sup>9</sup> In so doing we not only diagnosed wage suppression as a significant driver of Australia's low wage growth environment, but also wage theft. Whilst the effect of both wage suppression and wage theft is to reduce wages, it is important to draw a distinction between the two.

The distinction that we draw is that wage theft refers to *illegal or unlawful* attempts by employers to reduce wage costs, whilst wage suppression refers to *legal or lawful* methods employers use to reduce wage costs. Wage theft therefore refers to the practice of not paying employees what they are owed on paper, whether that paper be an Award or an enterprise agreement (EA).

In contrast, wage suppression refers to practices that aim to reduce what employees owe on paper, such as by terminating EBAs, or by bullying a small cohort of employees to vote to approve an agreement which is then applied to a broader workforce, known as 'sham bargaining'.<sup>10</sup>

Whilst such actions contravene the spirit of the *Fair Work Act 2009* (Cth) (FWA) which aims to encourage good faith bargaining between employers, employees and their representatives, they are nonetheless too often allowed under our current industrial relations framework.

Of course, it is important not just to know what wage theft is, but also how widespread it is in the Australian labour market. Having defined wage theft, and contrasted it with wage suppression, in the next section we will turn to the question of how prevalent wage theft is in Australia.

## How widespread is wage theft?

As defined above and in our Queensland report, wage theft is the unlawful underpayment of employee pay by an employer.<sup>11</sup> Because of the variety of forms wage theft can take measuring the extent of wage theft is a matter which presents a large number of difficulties.<sup>12</sup>

In order to assess whether wage theft has occurred requires having access to the wages and hours of an employee, a knowledge of what work they were doing, and a copy of their employment contract and any applicable industrial instrument.

In this section we will consider the evidence regarding the prevalence of wage theft, beginning with the results of national campaigns conducted by the Fair Work Ombudsman.<sup>13</sup> We then provide the results of surveys conducted into wage theft before considering investigations into super theft.

## FAIR WORK OMBUDSMAN CAMPAIGN RESULTS

The charts below summarises the results of audits conducted during national campaigns by the FWO since its establishment (detailed breakdown is provided in Appendix 1).

FIGURE 1.1 AVERAGE WAGES RECOVERED

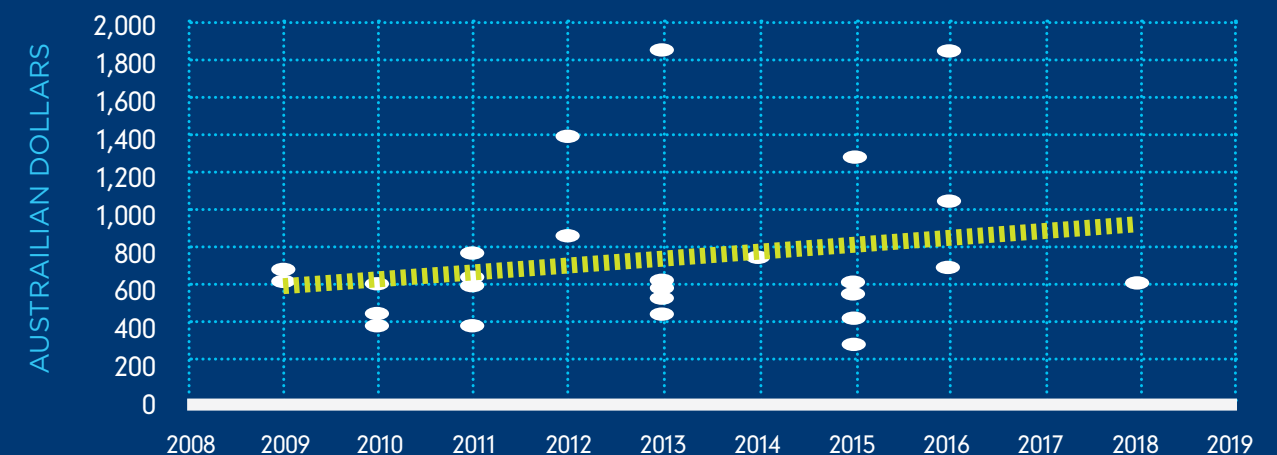
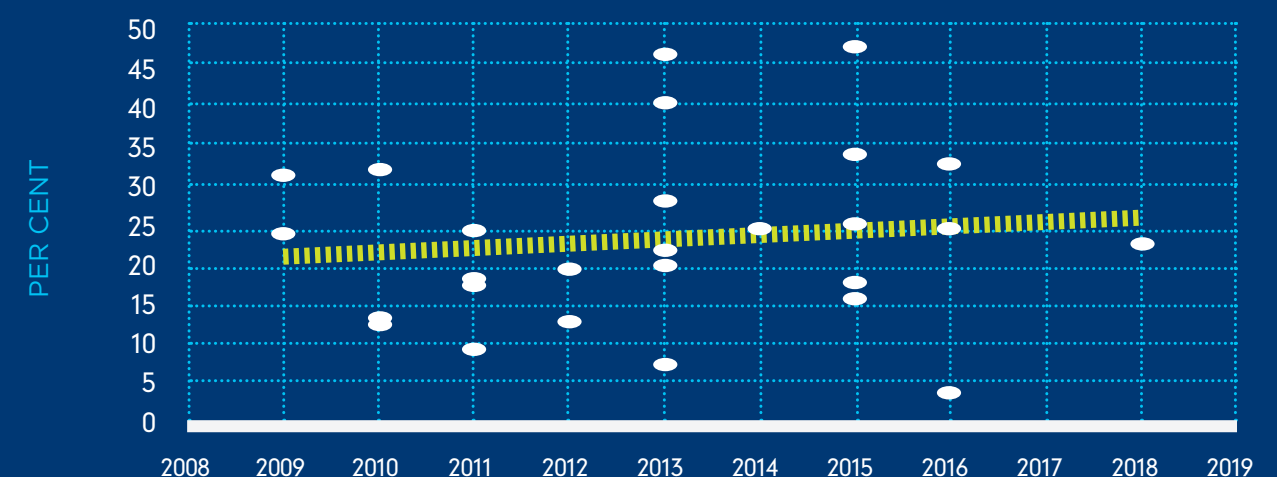


FIGURE 1.2 PROPORTION OF AUDITS FINDING WAGE THEFT



Source: Results of Fair Work Ombudsman Audits.



From this it is clear that all campaigns by the FWO have uncovered evidence of wage theft and that the trend on the whole has been worsening over time. It also highlights the fact that wage theft is not confined to any one sector of the economy and is found across the Australian economy. Nevertheless, an important caveat to note is that the sample of businesses audited by the FWO during a campaign is based on a combination of previous complaints and random selection, which may bias the results in favour of overestimating the prevalence of wage theft.<sup>14</sup> However, there are a number of reasons to believe that this is unlikely to be the case.

Firstly, the FWO is not responsible for enforcing superannuation payments, and so does not check for super theft.

Secondly, in all FWO campaigns reported above, businesses were warned in advance of an audit by the FWO, either directly via a letter or phone call or indirectly through FWO advertising, online posts and social media.<sup>15</sup>

Additionally, employers may also be contacted by their employer group prior to an audit, since the FWO works closely with employer groups when planning campaigns. This may provide an explanation of the FWO's finding that businesses that are members of an employer group are less likely to be found committing wage theft than those who are not members.<sup>16</sup>

Nevertheless, even if these figures are regarded as giving an accurate indication of the extent of wage theft within these industries, a large number of industries do not have a campaign report available.<sup>17</sup> Collectively these excluded industries employed almost 4 in 10 Australians as of August 2018, making them a significant omission.<sup>18</sup>

Moreover, as is apparent from the results above each ANZSIC division contains a broad array of businesses. For instance, as shown in the table above 'other services' contains both hairdressers and mechanics.<sup>19</sup> Thus, the particular

subindustries audited by the FWO may not be representative of the industry as a whole.

Nonetheless, despite these qualifications, the results of FWO audits still provide an important indicator regarding the extent of wage theft. In the next section we will supplement we will supplement this indicator with direct survey evidence regarding wage theft.

### SURVEY EVIDENCE

Since 2005 a number of surveys have been conducted that can identify wage theft.<sup>20</sup> These surveys typically focus on the difference between a benchmark wage, such as the National Minimum Wage (NMW) or the Award minimum and reported wages. Using this methodology, they identify a rate of wage theft between 20 and 82 per cent, with an average of 60 per cent.

It is clear therefore that the extent of wage theft is a significant issue. While many of these surveys only focus on specific demographics, such as international students or young workers, or particular industries, such as hospitality, a rate of wage theft of 60 per cent is still cause for considerable concern.

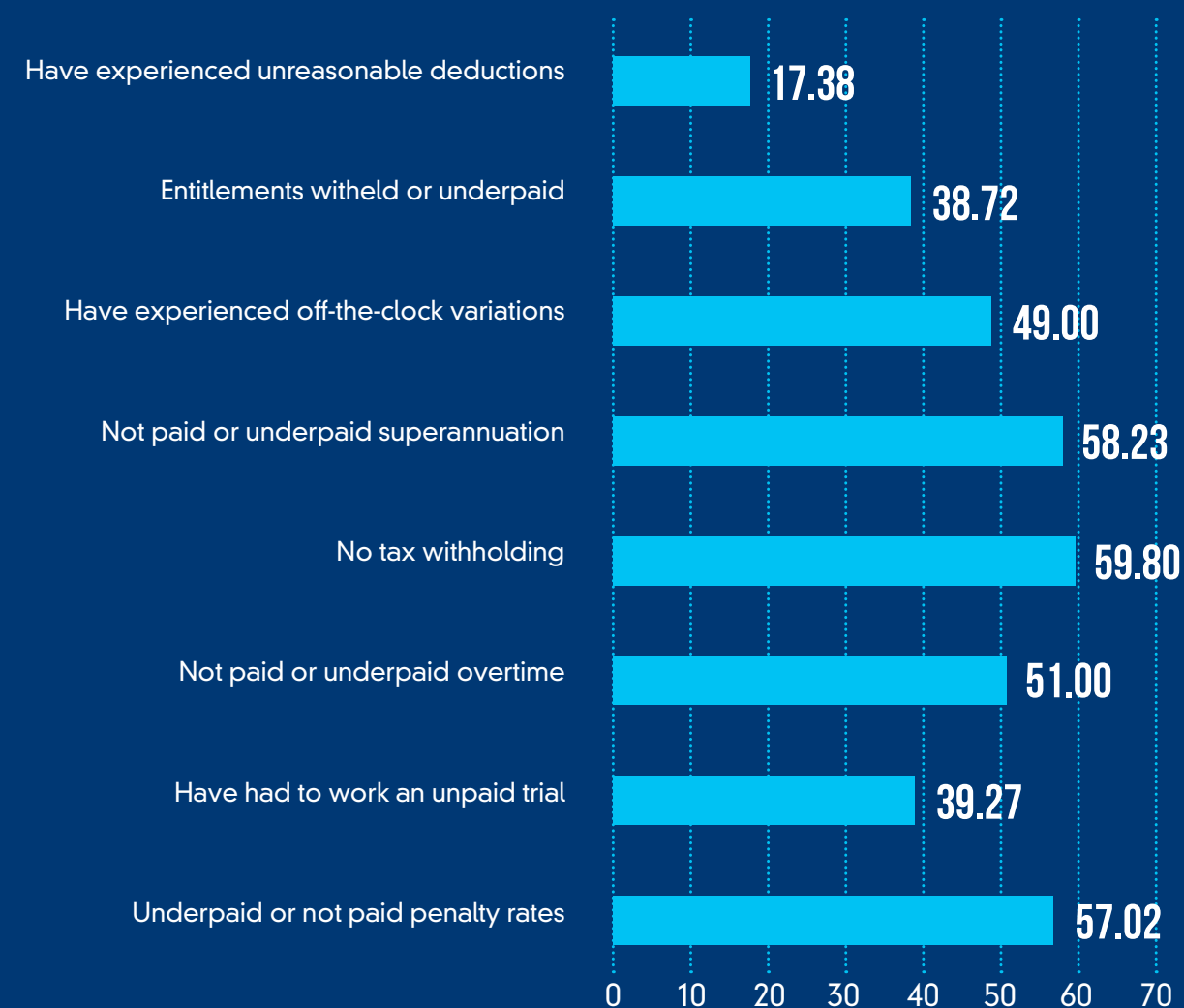
This is particularly so since these estimates are likely to underestimate the extent of wage theft since many of these surveys do not adjust for the fact that many respondents are employed casually, and so would be entitled to a base hourly rate higher than the NMW or the Award minimum.

Additionally, these estimates only account for one form of wage theft. Fortunately, many surveys also report results for other forms of wage theft.

### THESE RESULTS SHOW THAT:

- Between 45 and 76 per cent of workers are underpaid or not paid penalty rates<sup>21</sup>
- Between 21 and 56 per cent of workers have had to work an unpaid trial<sup>22</sup>
- 51 per cent of workers are not paid or underpaid overtime<sup>23</sup>
- 60 per cent of workers did not have tax withheld by their employer<sup>24</sup>
- Between 42 and 75 per cent of workers are not paid superannuation<sup>25</sup>
- 49 per cent have experienced off-the-clock violations<sup>26</sup>
- 39 per cent of workers have had entitlements withheld<sup>27</sup>
- 17 per cent of workers have experienced unreasonable deductions from their pay<sup>28</sup>

FIGURE 1.3 PREVALENCE OF OTHER FORMS OF WAGE THEFT



Source: Berg & Farbenblum 2017; Campbell, Boese & Tham 2016; Clibborn 2018; EESBC 2018; Hospo Voice 2017; Nyland et al. 2009; UnionsACT 2017; YWC 2017. Multiple results were averaged.



Additionally, many surveys also provide some detail on the frequency of practices often associated with wage theft. Between 18 and 59 per cent of workers do not receive a pay slip, or, if they do, receive one only infrequently.<sup>29</sup> Furthermore, between 35 and 44 per cent of respondents were paid cash-in-hand.<sup>30</sup> Moreover, 28 per cent of workers have experienced sham contracting.<sup>31</sup>

These surveys also consistently identify retail and accommodation and food services as being particularly problematic industries for wage theft. Additionally, professional services, administration and support services, education and training, construction and health care and social assistance are identified as being of concern.

### SUPER THEFT

The theft of employees' superannuation has also been the subject of research. As noted above, surveys have found that between 42 and 75 per cent of workers are not paid or are underpaid superannuation at one time or another.

Additionally, Industry Super Australia (ISA), Cbus and the Australian Taxation Office (ATO) each provide estimates of this specific aspect of wage theft.

ISA research released last year suggests that super theft costs \$5.9 billion and affects 2.98 million Australians, or over one in three workers, with an average amount of \$1,994 in 2015-16.<sup>32</sup> This is an increase from 2013-14, when ISA and Cbus estimated that super theft cost 2.76 million workers a total of \$5.6 billion.<sup>33</sup>

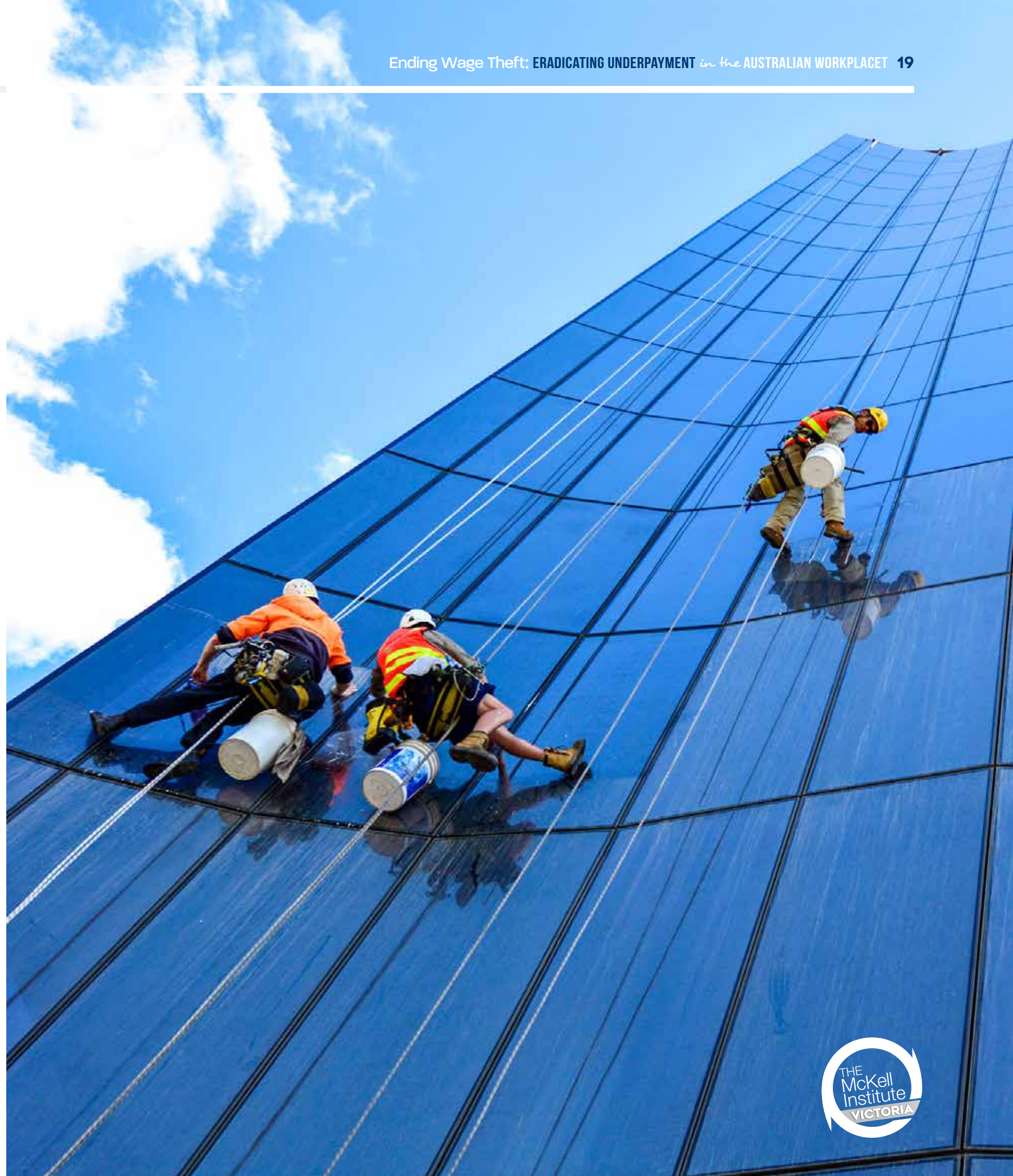
Using a different methodology, the ATO provide a lower estimate of the extent of super theft (or the 'super gap') at \$2.79 billion for 2015-16 as compared to \$2.76 billion in 2013-14.<sup>34,35</sup> However, as the ATO note, these estimates do not allow it to calculate the number of employees affected or characterise particular industries in the Australian economy as more or less susceptible to super theft.<sup>36</sup>

Nevertheless, super theft is a serious issue for many employees as it not only reduces their pay now, but can also rob them of future income in retirement from investment earnings and compound interest. Indeed, the Association of Super Funds of Australia estimate that a one-off loss of \$4,000 in super contributions at 25 equates to a loss of \$14,000 at retirement in today's dollars.<sup>37</sup>

This is particularly harmful for those members of the population who are already likely to have lower super balances, such as women, who as noted below are also more likely to experience wage theft in general.<sup>38</sup>

Additionally, as noted above Clibborn found that 75 per cent of international student respondents were not paid superannuation and the survey established by the Queensland Parliament's inquiry into wage theft found that 42 per cent of respondents experienced wage theft.<sup>39</sup>

Both of these estimates are higher than the 33 per cent found by ISA, and suggest that the numbers reported by the ATO are likely to be a quite conservative estimate of this particular aspect of wage theft.





## Who does wage theft affect, and how?

While all workers can fall victim to wage theft, a number of demographics have been identified as particularly vulnerable. Media reporting, and research by academics, unions and government organisations have shown that temporary migrant workers, young workers, and women are most at risk.

In this section we will provide a brief summary of the evidence regarding each demographic group, as well as considering some explanations that have been advanced as to why they are more likely to fall victim to wage theft.

### MIGRANT WORKERS

Migrant workers have been identified as a group susceptible to wage theft. Indeed, media reports by *Four Corners* regarding the treatment of migrant workers by 7-Eleven and by labour hire companies in horticulture and food processing and manufacturing played a key role in bringing wage theft to the attention of the public.<sup>40</sup>

Workers from culturally and linguistically diverse backgrounds are more likely to suffer wage theft because of language and cultural barriers, discrimination, insecure work, and a lack of knowledge regarding Australia's workplace laws.<sup>41</sup>

Difficulty finding work because of language and cultural barriers and discrimination make it more likely that migrant workers will engage in insecure work, which further heightens the likelihood of wage theft given the link between insecure work and wage theft.<sup>42</sup>

Discrimination, in the form of racism, has also been found by surveys of migrant workers and media reports, which have found that Asian workers receive lower wages than their white counterparts.<sup>43</sup>

Taken together, this means that despite making up between 6 and 11 per cent of the workforce, migrant workers are involved in 18 per cent of workplace disputes involving the FWO, and almost half the litigation conducted by the FWO.<sup>44</sup>

Furthermore, a subset of migrant workers known as temporary migrant workers have also been identified as highly vulnerable to wage theft and have been the subject of a large body of academic research.

Temporary migrant workers are workers who are in Australia on a short-term visa with work rights, such as a working holiday or student visa. These workers may not only face many of the barriers that other migrant workers face, but in addition face visa rules and conditions that can render them unduly dependent on their employer.

For example, visa rules that make it difficult to switch employer, that require employer approval to extend their visa, and restrict the number of hours that can be worked in a fortnight.<sup>45</sup>

For example employer approval for a visa extension has been identified as a key factor behind the exploitation of working holiday makers in regional areas working in horticulture and meat processing.<sup>46</sup> This is because such workers are required to complete an 88-day placement in a regional area as a condition for their visa to be renewed, which makes them almost entirely dependent on their employer.<sup>47</sup>

These conditions make temporary migrant workers vulnerable to exploitative employers, who can manipulate these conditions to avoid their obligations under the law.<sup>48</sup>

### YOUNG WORKERS

Young workers have also been identified as another demographic vulnerable to wage theft.<sup>49</sup> Whilst definitions of 'young' vary, most studies consider young workers to be those aged below 25.<sup>50</sup> Like temporary migrant workers, young workers have been recognised by the FWO as overrepresented in workplace disputes and litigation. Despite only comprising around 15 per cent of the Australian workforce young workers are involved in 28 per cent of workplace disputes and 44 per cent of FWO litigation.<sup>51</sup>

Young workers may be more vulnerable to wage theft for a number of reasons, including less awareness of workplace rights, a lower likelihood

of union membership, being more likely to be employed on a casual basis, and a higher rate of youth unemployment.

A lack of awareness of workplace rights has been identified in surveys conducted by the Young Workers Centre and UnionsACT. The Young Workers Centre found that just under 57 percent of respondents who were being paid below minimum wage believed that they were being paid the minimum wage.<sup>52</sup> UnionsACT found that only 2 in 5 young workers over 18 could correctly identify the minimum wage, while for young workers below 18 this dropped to only 1 in 5.<sup>53</sup>

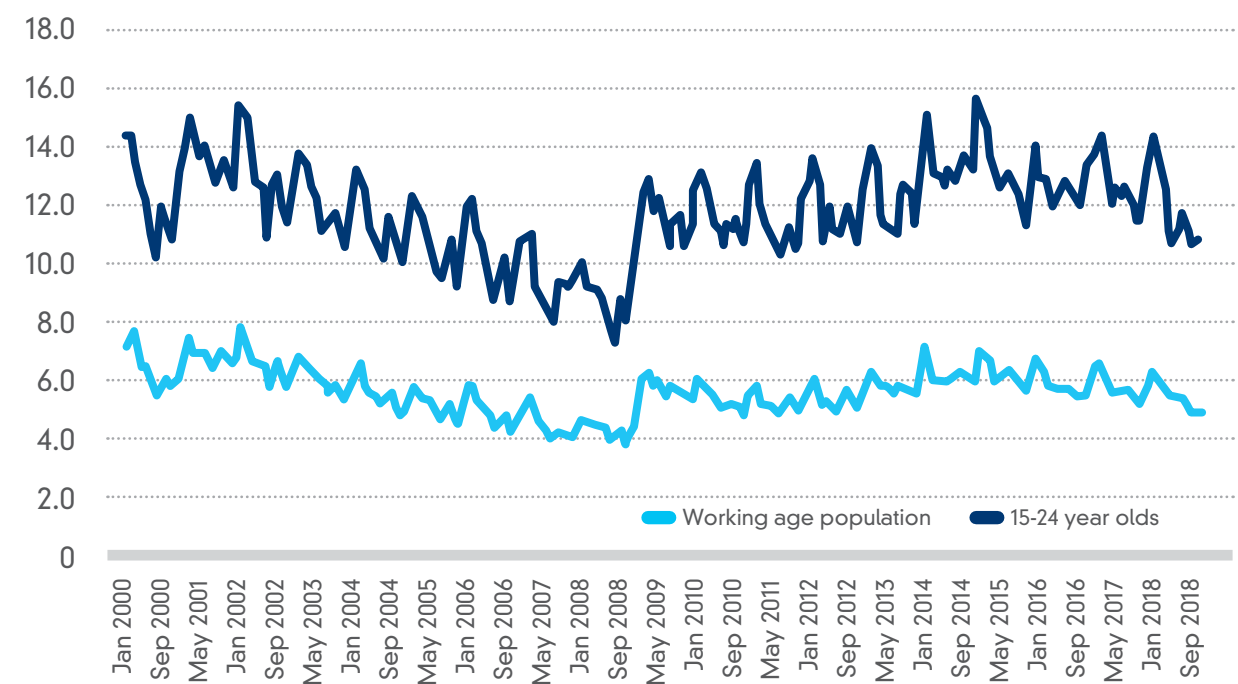
Union membership can offer a protection against wage theft, with union members being less likely to experience wage theft.<sup>54</sup> However, young workers are less likely to be a member of a union, which therefore contributes to their heightened vulnerability at work.<sup>55</sup> Furthermore, a lower level of union membership means that young people are more likely to complain to the FWO rather

than to their union, thus contributing further to their overrepresentation.<sup>56</sup>

Casual employment is another factor which increases the likelihood of wage theft. This is because casual employment is more insecure compared to part-time or full-time work, which has the effect of making workers more dependent upon their employer. Consequently, employees can fear speaking up because doing so may see their hours cut in situation where it can be very difficult to prove that this was done maliciously.<sup>57</sup>

Youth unemployment has also been identified as a factor influencing greater youth vulnerability to wage theft. As shown in the graph below, youth unemployment is significantly higher than the unemployment rate overall. This means that finding a job is harder for young workers, which means that committing wage theft is easier for an employer since they can more easily threaten young workers with replacement.<sup>58</sup>

FIGURE 1.4 YOUTH AND OVERALL UNEMPLOYMENT, JANUARY 2000-NOVEMBER 2018



Source: To come.



## WOMEN

Women have also been identified as being more likely to be victims of wage theft.<sup>59</sup> Two reasons have been advanced to explain this. The first, is that like young workers, women are more likely to be employed casually.<sup>60</sup> Thus, women are more likely to be exposed to the effects of insecure work.

Secondly, women are more likely to be employed in industries with a high degree of casualisation. This reflects the way that specific occupations and fields, such as disability support work or retail work, are gendered and regarded as ‘women’s work’.<sup>61</sup> These are often systematically underpaid and undervalued.

Compared to temporary migrant and young workers there is comparatively little research into wage theft and women workers, however the survey by UnionsACT<sup>62</sup> and research by Macdonald, Bentham and Malone<sup>63</sup> represent a promising start.

In this section we have focused on temporary migrant, young and women workers as discrete categories, in reality there can be a great deal of overlap. Temporary migrant workers, particularly those on student or holiday visas are also likely to be young workers, while it is of course possible to be a young woman working in Australia on a temporary work visa.

Additionally, many of the factors identified above, such as those regarding union membership or casual employment, are not exclusively experienced by any of the groups identified, and can affect any worker.

Furthermore, it is likely that there are additional categories of workers who are vulnerable to wage theft. The section above should not be regarded as exhaustive, but instead as indication of who is most vulnerable to wage theft.

## HOW DOES WAGE THEFT AFFECT EMPLOYEES AND THEIR FAMILIES?

The first impact of wage theft on employees is the denial of income. As a consequence, victims of wage theft are more likely to find it difficult to make ends meet, particularly given rising costs of living. Employees and their families subject to wage theft will find it even more difficult to meet the cost of housing, utilities, groceries and other everyday essentials.<sup>64</sup>

Wage theft also affects the future living standards of workers by making it hard for them to financially plan for the future, which can lead to deferred spending and lower levels of saving. It can also lead workers to take high-interest loans, borrow money from their family members, and even sell their possessions in order to keep their head above water.<sup>65</sup>

In the worst cases, homelessness can become a distinct risk for workers and their families as a consequence of wage theft making it harder to pay rent, pay off a mortgage, and receive or pay off a home loan.<sup>66</sup>

Additionally, when it comes to super theft, missing a contribution in the present permanently deprives workers not just of that contribution but also the compound interest and return on investments that that contribution would accrue. This not only causes a lower quality of life in the present but causes a lower quality of life for workers in retirement.<sup>67</sup>

Financial insecurity also means that employees are more likely to work longer hours, which results in less time to spend with family and friends, participating in social or communal life, or resting and recuperating.

On their own the material impacts of wage theft are bad enough, but, in addition to these, wage theft can also have a significant effect on workers’ mental and physical health. Wage theft often results in employees feeling anxious, stressed and powerless.<sup>68</sup>

The victims of wage theft often fear retaliation or adverse consequences if they raise the matter with their employer and may feel ashamed because they wrongly believe that wage theft is a consequence of their own actions.<sup>69</sup>

Additionally, a lack of awareness of support available can contribute to workers feeling isolated and alone.<sup>70</sup> This can be compounded by needing to work for longer for the same amount of pay, and the consequent foregoing of time that could be spent with friends and family outside work.

Taken together, wage theft can cause workers to feel desperate, unable to control their own lives and can lead to conditions such as depression.<sup>71</sup>

Additionally, a large body of work in the health literature identifies lower incomes as contributing to worse physical health outcomes, with higher rates of illness, disability and death. For instance, in Australia, people on lower incomes are 2.7 times more likely to have chronic lung conditions, 2.6 times more likely to have diabetes, and 1.7 times more likely to have heart disease or a stroke.<sup>72</sup>

In combination, this results in those on lower incomes having significantly shorter life expectancy and living significantly shorter lives.<sup>73</sup>

Of course, each of these effects do not occur in isolation but frequently occur together and mutually reinforce and compound one another. Worse material conditions will increase mental and physical health issues, which in turn can lead to worsening material outcomes.

The effect of wage theft on workers is therefore profound and significantly negative.

## What are the wider effects of wage theft?

### EFFECT ON THE ECONOMY

In terms of the broader economy, wage theft primarily has two effects. The first is to cause a reduction in consumer demand and the second is its anti-competitive effect on rival businesses.

The reduction in consumer demand is caused by the reduction of income associated with wage theft. As outlined above, as a consequence of this loss employees are likely to spend less across the board. However, this is likely to affect discretionary spending the most, as employees spend a greater proportion of their incomes on bills and rent.

This means less income for cafes and restaurants, clothing stores, supermarkets and retailers more broadly, with the further flow on consequence that less income for businesses is likely to translate into fewer jobs available, and therefore even lower consumer spending. Consequently, wage theft has the potential to begin an overall downward economic spiral.

Furthermore, since low-paid workers are more likely to be victims of wage theft, the reduction in consumer demand and spending for every dollar stolen is likely to be greater than one. This is because low-income individuals have a higher marginal propensity to consume. What this means is that low-income individuals are more likely to spend an additional dollar earned than individuals with higher incomes.

Thus, wage theft is likely to reduce consumer spending by more than just the amount stolen, causing significant economic harm to the potential of the Australian economy.

While the Australian economy is not in a downward spiral, the current position is fragile. Despite recent growth being stronger than expected, this comes at a time when the RBA has its foot to the floor, as it maintains a historically low cash rate to stimulate spending.



The fact that this monetary stimulus has been so slow at boosting economic growth is due to the poor performance of wage growth, which wage theft and wage suppression are significantly contributing to.

As outlined in our prior report, *Stalling Wages, Falling Growth*, economic growth in Australia could be significantly higher if not for wage theft and suppression.<sup>74</sup> This would support more jobs, higher wages and a stronger economy. Instead, wage theft has been allowed to become a pervasive feature of the Australian labour market.

In addition to this, wage theft also has a significant anti-competitive effect. This is because it allows businesses who break the law to gain a competitive advantage over businesses that follow the rules. This creates an uneven playing field between businesses, and creates an incentive for other businesses to break the law to restore their own competitiveness.

If left unchecked this can create a ‘race to the bottom’ where employers compete to see who can break the law the most.

This has been recognised by businesses themselves, with many businesses calling for action in order to prevent wage theft allowing their rivals to undercut them.<sup>75</sup>

A further consequence of this is that businesses will be less productive, since instead of trying to improve the effectiveness with which they combine capital, labour, and other inputs, they may instead divert resources into breaking the law.

Given the importance of productivity growth for raising the living standards of all Australians, allowing wage theft to continue therefore risks harming the future wellbeing of Australians, in addition to its direct impact on workers and aggregate demand.

EFFECT ON STATE, TERRITORY AND COMMONWEALTH GOVERNMENTS

Wage theft primarily has two effects on governments. The first, is that it reduces the revenue that governments receive from taxes, and the second is that it necessitates increased government spending. This squeezes governments from both sides of the balance sheet, and results in fewer and more contested resources for other spending priorities.

Wage theft deprives the Commonwealth government of pay-as-you-go (PAYG) withholding, personal income tax and Medicare levy revenue, while it deprives the States of payroll taxes.

In our report on the effect of wage theft in Queensland we identified a 1 per cent rate of wage theft as being associated with a corresponding loss of \$46.4 million in income tax revenue, rising to just under \$1 billion if 20 per cent of wages are stolen.<sup>76</sup>

Given the figures presented earlier 20 per cent of wages could be a very conservative estimate. Furthermore, these figures also only apply to wage theft in Queensland, meaning that the total cost to the Commonwealth is likely to be even higher.

Research by the ATO into ‘tax gaps’, or the difference between the theoretical amount of revenue and the actual amount of revenue can also provide some insight into the exist of Commonwealth funding lost. The table below presents the result of ATO research into the PAYG withholding gap paid by employers, and the superannuation gap.<sup>77</sup>

FIGURE 1.5 SELECTED ATO TAX GAP ESTIMATES

NET GAP, \$M	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
PAYG withholding	5,802	6,069	4,459	4,373	4,439	3,356
Superannuation gap	2,483	3,088	2,623	2,763	2,774	2,790
Total	8,285	9,157	7,082	7,136	7,213	6,146

Of course, these figures are likely to underestimate the nature of the problem since they do not take the direct and indirect effects of wage theft on earnings into account. As discussed above the direct effect of wage theft is to lower individual earnings, while the indirect effect of wage theft is to lower wages across the economy.

Furthermore, the extent of cash-in-hand payments identifies above suggests additional missing revenue for the government. For 2015-16 the size of the cash-in-hand payments and activities was estimated by the ATO to be \$8.5 billion.<sup>78</sup>

If these effects were taken into account, then it is likely that the amount of foregone Commonwealth revenue is much higher than the ATO estimates of the tax gap suggest.

But reduced revenue is not the only effect of wage theft on Australian governments. Wage theft also increases the need for government spending on social security payments. This is because of the highly targeted nature of the Australian social safety net, which is predicated on supplementing wage incomes.

The reduction in income caused by wage theft therefore increases the amount spent on payments such as the Newstart Allowance, Family Tax Benefit, or the Energy Supplement. Furthermore, because of the effects that super theft has, it is likely to increase reliance on the Age Pension in the future.

This impacts State and Territory governments too, since they provide additional support in areas such as housing. Wage theft increases the demand for such services, and consequently the spending of State and Territory governments.

Lastly, wage theft also increases the need for spending on measures to counteract wage theft, recover stolen wages, and punish reprobate employers. This requires increased spending on enforcement via the FWO, courts, and the ATO. Whilst it is necessary to these bodies to fight wage theft, in an world it would not be.





## PART TWO: RESPONDING TO WAGE THEFT

Our recommendations can be placed under four broad frames. Firstly, a clear signal should be sent that wage theft is unacceptable by criminalising it and establishing it as an anti-competitive behaviour. Secondly, both compliance and enforcement should be made easier and more effective. Thirdly, enforcement activity should be resourced in proportion to the problem. Lastly, governments should ensure that other aspects of the law and their purchasing arrangements take a stance against wage theft.

Of course, it should be recognised that no 'one size fits all' or 'silver bullet' solution exists for addressing wage theft. What works in one industry or for one group of workers will not necessarily work for all industries or workers. We therefore believe that all the recommendations below should be adopted as a comprehensive package aimed at eradicating wage theft.





## Sending a clear signal

### CRIMINALISING WAGE THEFT

#### RECOMMENDATION 1:

**State and Territory governments should amend their criminal codes to criminalise intentional, reckless or grossly negligent instances of wage theft**

Evidence suggests that some employers engage in wage theft in a systemic fashion, and that intervention by the FWO is unsuccessful, as almost 1 in 4 employers continue to engage in wage theft after being audited by the FWO.<sup>79</sup>

Additionally, there is disturbing evidence that employers with a greater awareness of FWO activities view detection of wage theft and other forms of non-compliance as being less likely. This was the finding of a survey of 643 businesses which found that employers who are more aware of FWO enforcement activities are more than twice as likely to believe that the FWO would not uncover instances of wage theft and other forms of non-compliance.<sup>80</sup>

Something has to change.

State governments should send a clear message that wage theft cannot and will not be tolerated and should act to punish those who commit wage theft.

Despite talk of a longstanding principle that criminal law has no place in industrial law,<sup>81</sup> theft by an employee is nevertheless a separate criminal matter in many jurisdictions, attracting its own set of penalties separate from those for theft by a non-employee.<sup>82</sup>

This creates the unfair scenario where stealing \$150 from the till is treated as a crime, whereas underpaying an employee is not.

We recognise, of course, that wage theft does not just occur because of malignant and exploitative employers. Genuine mistakes can occur, and we appreciate that most employers want to pay their employees lawfully.

For this reason, we believe that it is most appropriate for jail sentences to be reserved for intentional, reckless or grossly negligent instances of wage theft. Whilst all instances of wage theft should result in some form of sanction, a tiered system of penalties is most appropriate, with employers who make an inadvertent mistake remaining subject to civil penalties.

This was the position adopted by the Queensland Education, Employment and Small Business Committee who completed their inquiry into wage theft in Queensland in November last year.<sup>83</sup>

Consistent with this, and the position of the Victorian Government, it is clear that wage theft should be criminalised. Consequently, we recommend that States should amend their relevant criminal code to make the intentional, reckless or grossly negligent instances of wage theft a criminal offence.

### INCREASING THE PENALTIES FOR WAGE THEFT

#### RECOMMENDATION 2:

**The *Fair Work Act 2009* be amended to increase the penalties for committing wage theft. Additionally, interest should be mandatorily charged on stolen wages recovered**

While we welcome the recent amendments to the Fair Work Act that increase the penalties for 'serious' contraventions of the Act, they remain low relative to the benefits a business can receive from committing wage theft and therefore remain too low to function as an effective deterrent. Additionally, the penalties remain low relative to the penalties for serious offences in other legislation.

For instance, under the *Competition and Consumer Act 2010* (Cth) (CCC), an individual guilty of cartel conduct faces a maximum penalty of 10 years in jail and/or fines of up to \$420,000 per offence.<sup>84</sup> This is over three times the

maximum monetary penalty an individual faces for committing 'serious' wage theft, and more than thirty-three times the regular penalty for wage theft.<sup>85</sup>

It is absurd that restricting competition is treated more seriously than mistreating and potentially exploiting an employee, particularly given the additional anti-competitive effect that wage theft has on lawful businesses. Consequently, the penalties for wage theft should be increased, taking the current 'serious' penalties as a floor.

This would additionally eliminate the strange situation where some breaches are regarded as 'serious', whereas some are not. While some instances of wage theft are more egregious than others, the creation of two tiers of penalties of such contrasting amounts is not the ideal approach.

Additionally, interest should be mandatorily charged on all stolen wages. While the FWA currently allows for interest to be calculated on application, we believe that this should be the default, just as it is for the late payment of Superannuation Guarantee contributions.<sup>86</sup>

This would ensure that there is an incentive to pay stolen wages as quickly as possible, and avoid the situation where employees could effectively be giving their employee an interest free loan.<sup>87</sup>

This was the approach recently taken by Super Retail Group, which owns franchises such as Rebel Sports and Supercheap Auto.<sup>88</sup> Following an internal review, they uncovered inadvertent wage theft of almost \$8 million since 2010. As a consequence, they self-reported the breach to the FWO and committed to pay back what was owed with the addition of 5.5 per cent interest per year.

Whilst this is a positive example of a business responding in the right way following the discovery of wage theft, too many workers who suffer wage theft have a very different experience. Applying interest to stolen wages should be mandatory and the FWA should be amended accordingly.

### ESTABLISH WAGE THEFT AS AN ANTI-COMPETITIVE BEHAVIOUR

#### RECOMMENDATION 3:

**The Australian Law Reform Commission should be asked to investigate how to establish wage theft as an anti-competitive practice as well as options for private enforcement of breaches of competition law.**

As outlined in part one above, wage theft has a much broader negative effect to Australia than the specific negative effect it has on workers subject to it. In particular, wage theft harms businesses who play by the rules and try to do the right thing.

These businesses may lose customers, tenders, and government contracts to businesses that commit wage theft and are able to offer lower prices. Particularly in industries such as hospitality and fruit picking where wages make up a large portion of costs, businesses who pay a legal wage struggle financially against those who commit wage theft.<sup>89</sup>

While this may lower prices for the consumer, reducing the prices that consumers have to pay should not come at the expense of businesses paying their employees a fair wage. This would be robbing Peter to pay Paul.

If left unchecked, this can create a negative spiral as wage theft goes from something that only a minority of bad employers to do something all businesses do in order to compete. In this way, the bad drive out the good. Given the extent of wage theft revealed above it is clear that this is already occurring, necessitating action.

Furthermore, wage theft can only have a negative effect on Australia's productivity, since instead of finding better ways to combine scarce or costly resources businesses may simply opt to break the law.



For this reason, the Commonwealth government should therefore ask the Australian Law Reform Commission (ALRC) to investigate the possibility of wage theft being established as an anti-competitive practice in law.

This would send a clear message that competition in Australia cannot be over the rules of the game, but instead must be conducted through innovation and productive efficiency. It would also raise the spectre of an additional penalty for businesses to pay, as well as raising the number of potential cops on the beat.

This would have a deterrent effect, inspiring businesses that are currently committing wage theft to rectify their practices and preventing those considering wage theft from committing it.

Furthermore, the Australian Law Reform Commission should also investigate the possibility of private options for the enforcement of anti-competitive behaviours, in particular, wage theft.

At present, businesses wishing to pursue actions against rivals who have committed wage theft could potentially rely on economic torts such as conspiracy by unlawful means or causing loss by unlawful means.

However, the status of some of these torts is contentious in Australia, with causing loss by unlawful means, in particular, not recognised by some lower courts.<sup>90</sup> Without the investigatory powers vested in the ACCC it may also be difficult for plaintiffs to provide evidence in their favour.<sup>91</sup>

Furthermore, the process of private enforcement of competition laws in Australia is generally difficult, with research showing that it is often costly, slow, and highly complicated.<sup>92</sup>

Nevertheless, allowing for private enforcement of competition laws has the potential to strengthen competition law. Firstly, it reduces the burden on public agencies to solely deal with matters, and secondly, by increasing monitoring and the potential for punishment private enforcement can have a deterrent effect.<sup>93</sup>

Consequently, the Commonwealth should ask the ALRC to consider options that would allow a greater role for private enforcement when it is investigating establishing wage theft as an anti-competitive practice.

Of course, both of these options for treating wage theft as an anti-competitive practice are likely to face a number of issues in practice. In the first instance, care must be taken to ensure that treating wage theft as a violation of competition law does not take precedence over ensuring workers get paid the wages they are owed.

Additionally, enforcement along these lines may face issues caused by corporate structure, such as franchising, extended supply chains, and phoenixing. Whilst it is beyond the scope of this report to address these issues, any successful response along the lines recommended will need to confront them, and changes to combat these issues should be considered alongside our recommendations.

## Making it easier to comply or enforce

### STREAMLINING ADMINISTRATION

The administrative processes associated with the calculation and payment of wages and other entitlements can both contribute to complexity that can cause unintended errors and underpayments and also create a level of opacity that makes errors or deliberate wage theft harder to detect or easier to pass off as a mistake.

### RECOMMENDATION 4:

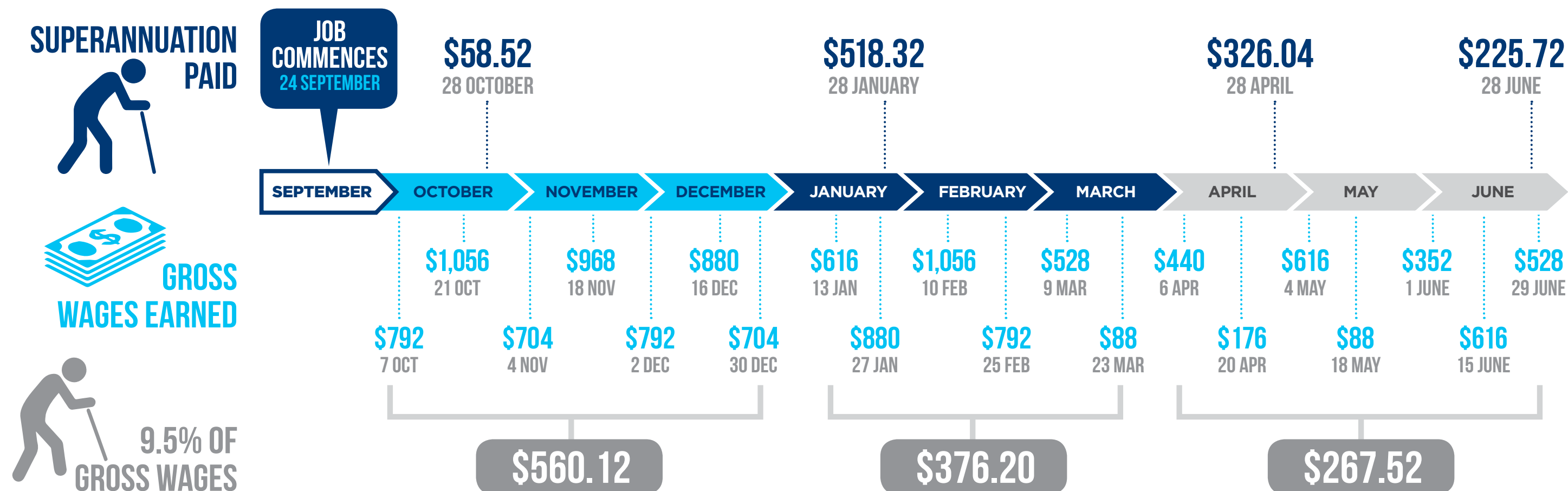
**Employers should be required to pay superannuation at the same time as they pay wages into an employee's bank account**

One well-known example of this is the misalignment of regular pay cycles from the payment of superannuation obligations. For instance, many employers pay wages on a fortnightly basis, but are only required by law to pay superannuation on a quarterly basis.<sup>94</sup> This can lead to those different cycles overlapping in a manner that makes the risk of super theft higher, and makes it more difficult to discover.<sup>95</sup>





**FIGURE 2.1**  
INCOME AND SUPERANNUATION EARNED BY A PART-TIME WORKER ON A FORTNIGHTLY PAY-CYCLE



**This figure shows the earnings of a part-time worker who starts a new job on the 24 September and working variable shifts.**

In light blue we show the amount of gross wages earned each fortnight, and above in dark blue we show the amount paid as part of the superannuation guarantee. Below in grey we show the figures you would get if you simply calculated superannuation for each quarter based on earnings figures provided on pay slips.

In an additional complication, in the months of March and April they earned \$440, putting them below the \$450 monthly superannuation guarantee threshold.

As should be apparent, the amounts in dark blue and the amounts in grey do not exactly match, and without breaking earnings down by day it is impossible to reconcile pay slips

and superannuation paid.

Whilst this scenario has been designed for illustrative purposes, for many workers, whether working full-time or part-time, reconciling wage and super payments is a needlessly complicated and difficult process which could be simply eliminated by aligning super and wage payments.



These issues were noted by a number of respondents to the Economics References Committee's (ERC) inquiry into super theft, as well as the Committee itself.<sup>96</sup> Consequently, the ERC recommended that the Government consider introducing legislation to require the Superannuation Guarantee to be paid at least monthly, while noting that alignment with pay would be preferable.<sup>97</sup>

However, to date the Government has yet to respond to this report let alone introduce legislation to enact this recommendation.

Therefore, we reiterate the need to align the payment of superannuation and wages to ensure that employees are paid the superannuation they're owed.

This will require amending *Superannuation Guarantee (Administration) Act 1992* to replace the current requirement with wording that ties the timing of payment to whatever period an employer chooses for paying of wages to their staff and for the relevant amounts to be included on the payslip.

While the ERC recommended that superannuation be paid at least monthly, we believe that completely aligning superannuation and wage payments will completely reduce the risk of super theft owing to misaligned cycles, and will make discovery of super theft as easy as possible.

While we can expect some businesses to be concerned about the cash flow impacts of such a change, these effects, while not immaterial, have to be balanced against the amounts lost by employees as a consequence of super theft, and the fact that technology now makes payroll management easier than it has ever been.

Accordingly, we believe that these effects are relatively insignificant compared to the current levels of super theft identified above.

## SUPPORTING PRIVATE ENFORCEMENT

### RECOMMENDATION 5:

**A statutory right of audit should be created for all employees, with Registered Organisations acting on their behalf**

Rights of audit are routinely included in commercial contracts, even when the companies involved have a positive and constructive working relationship. This commitment to openness and transparency helps maintain an effective relationship between the parties.

However, these same companies do not allow a right of audit to exist for their employees, instead, as Elizabeth Anderson has noted, companies often attempt to operate as 'private governments', attempting to deny rights for employees that they themselves would insist on if dealing with another company.<sup>98</sup>

We believe that if this approach is good enough for businesses across Australia, then it should also be good for their employees.

Employees should therefore have a right to request an audit of their employer, to be performed by a Registered Organisation acting on their behalf.

While employees do have some rights in this regard at present, for those employed in insecure work or who may experience difficulties finding a new employer, exercising these rights may be more a matter of theory than practice.

This runs counter to an important foundation of Australia's legal system, which is the ability of a person to initiate action against another who has breached their legal rights or a contract, including having the matter heard in court.

For instance, a company that discovers a supplier has been overcharging for its work has recourse

to seek recovery via the courts if the supplier does not agree to voluntarily reimburse. Critically, this enforcement activity is funded by the companies themselves and does not rely on a government agency to enforce the contract on their behalf.

However, the financial nature of wage theft means that from an individual employee's perspective this path may not be practical or affordable and so they are left with two options:

1. Relying upon the Fair Work Ombudsman to take their claim
2. Organising to take collective action, including via their union, in order to share costs

Relying upon the FWO means that an employee has to hope that their claim will be among the handful of actions that the FWO takes each year, due to its finite budget. While the FWO has been targeting its efforts to assist vulnerable workers, its limited resources mean that these are unlikely to be enough.

Organising collectively has its own difficulties, as many companies vigorously oppose collective action by their employees or their employees' representatives, despite often organising collectively themselves in employer groups. Furthermore, strict right of entry standards for Registered Organisations, such as unions, greatly circumscribes the ability of employees and their representatives to monitor and enforce labour standards.

This is, historically, an anomalous situation in Australia. Traditionally, unions have played a large role in the monitoring and enforcement of labour standards on behalf of employees.<sup>99</sup> Additionally, studies examining the effectiveness of regulatory regimes around the world show that the most effective systems of enforcement involve a combination of state and non-state actors.<sup>100</sup>

In spite of this, the current system of industrial relations is strongly biased towards either government enforcement via the FWO, or enforcement initiated by individuals in state courts.

As noted in the sidebar below, the FWO conducts fewer audits per year on average than its predecessor organisations such as the Arbitration Inspectorate.

Given that our industrial relations system is now far more centralised than in the past, this means that the FWO is dramatically underperforming its predecessors given the more limited scope of Federal coverage in the past.

Moreover, as we document below, recovery via the courts is often a difficult process for employees, further limiting the effectiveness of our enforcement regime.

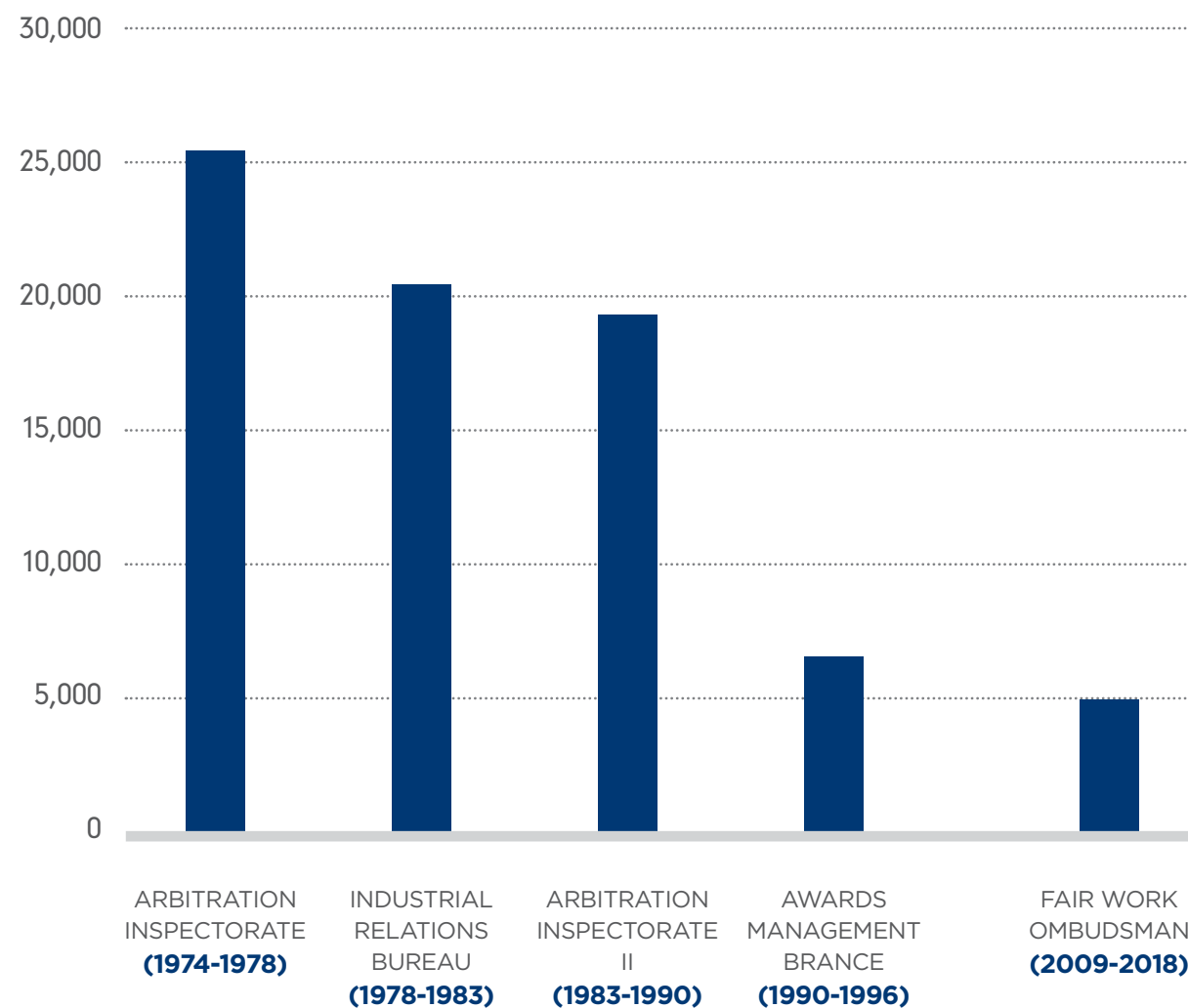
Strengthening the right of audit for employees therefore has the potential to greatly improve enforcement by increasing the number of potential inspectors at no extra cost to the government.

This would have the flow on effect of increasing the likelihood that wage theft will be uncovered. Since detection is an essential precondition for effective enforcement, this will have the effect of improving enforcement.<sup>101</sup> As a consequence of this, the prevalence of wage theft is likely to decrease as businesses decide to comply rather than be caught out.

The *Fair Work Act 2009* should therefore be amended to ensure that all employees in Australia have access to a right of audit, and that Registered Organisations be able to exercise this on their behalf. To be effective this would need to allow for audits to be conducted without notice.

While potentially a matter of employer concern, as noted above, companies frequently commit to allow themselves to be audited by other businesses they contract with as a signal of openness and transparency. If businesses are playing by the rules, they should have nothing to hide.



**FIGURE 2.2** AVERAGE NUMBER OF INSPECTIONS BY THE FWO AND ITS PREDECESSORS PER YEAR

Source: Maconachie & Goodwin 2006, FWO annual reports.

The chart above shows the number of inspections or audits conducted by the Fair Work Ombudsman (FWO) and its predecessor agencies.<sup>102</sup> As can be seen, the number of inspections conducted by the inspectorate has dramatically declined from an average of 25,602 a year during the first Arbitration Inspectorate to

just over 5,000 under the Fair Work Ombudsman. While this trend began prior to the establishment of the FWO, the fact is that the risk of getting caught committing wage theft is now lower than it was in the 70s and 80s, despite advances in technology and simplifications to the industrial relations system.

## STREAMLINING THE RECOVERY PROCESS

### RECOMMENDATION 6:

**Amend the *Fair Work Act 2009* to ensure that the Fair Work Commission can operate as a strong, independent umpire**

### RECOMMENDATION 7:

**Increase the small claims threshold to \$100,000 indexed annually**

For an employee who has been a victim of wage theft, unless their employer agrees to pay stolen wages following a request by that employee, a union representative, or the FWO, the only option to recover their stolen wages is the courts.

This is a likely to be a challenging task for most employees in the best of times, however, as noted above, the impacts of wage theft are disproportionately likely to fall on vulnerable workers, making this even more of a challenge.

The first challenge for many workers is knowing that this opportunity exists. Survey evidence suggests that 2 in 5 workers do not know that this option exists.<sup>103</sup>

For most workers, the prospect of appearing in court to demand their wages is daunting, which has a deterrent effect on workers receiving what they're owed.

Mounting a legal challenge to recover stolen wages requires an employee to provide evidence, work through procedural hurdles, and be willing to carry the burden of waiting times and legal costs.<sup>104</sup>

All this has to be weighed up against the likelihood of success, and the opportunity cost of pursuing the matter through the courts instead of

moving on and using time and money that would have been spent recovering stolen wages to do other things.

Furthermore, despite the attempts made to simplify and centralise the industrial relations system the recovery of wages remains subject to a confusing split between State and Federal courts.<sup>105</sup>

This can make it even more difficult for workers to recover the wages that they are owed.

Employees who have had their wages stolen by unscrupulous employees should have access to a quick, inexpensive and simple means of recovering stolen wages.

Ensuring that the FWC can act as an independent and impartial umpire is key to the creation of a fairer system. Having an umpire that can enforce the rules will ensure that employees do not have to agonise over recovering the wages and superannuation that they are owed.

Under the present rules, the FWC can only resolve workplace disputes when agreements empower them to do so. The FWC should be given the ability to resolve all workplace disputes quickly and fairly.

Dual appointments should also be made to the FWC and the courts to ensure that those hearing such matters are subject-matter experts.

Additionally, the threshold for small claims should be increased to \$100,000 and annually indexed.



## Increased public funding and improved government enforcement

### IMPROVING GOVERNMENT ENFORCEMENT

#### RECOMMENDATION 8:

**The FWA should be amended to facilitate greater collaboration between the FWO and Registered Organisations**

Under Article 5 of ILO Convention no. 81 Australia's labour inspectorate, the FWO, is required to take steps to ensure effective cooperation and collaboration between the inspectorate and employer groups and unions.<sup>106</sup>

Having ratified this convention, Australia is obliged to facilitate this, however, at present there is little in the FWA which requires the FWO to undertake such arrangements.<sup>107</sup>

This is not just an abrogation of Australia's international obligations, it also reduces the effectiveness of both public and private enforcement in Australia.

If the FWO was required to share information with Registered Organisations this would allow for a reduction in wage theft and an increase in compliance for two reasons.

Firstly, because unions would be able to exercise their right of audit on behalf of employees who had complained to the FWO regarding their employer. Secondly, because employer groups would know which employers are currently breaking the law, and would be able to provide them with assistance and advice in order to rectify the problem.

Additionally, the FWA should be amended to create a formal advisory panel which would allow FWO leadership to liaise with representatives from Registered Organisations. This would provide for the sharing of additional information,

the raising of concerns, and facilitate greater cooperation between private and public enforcement.

At present the FWO deals with representative organisations largely on a case-by-case basis via campaigns, and shared compliance programs. Embedding collaboration and cooperation would therefore represent a shift toward a more responsive and efficient system of enforcement.

#### RECOMMENDATION 9:

**The FWO should be required to undertake a number of routine and targeted unannounced inspections per year**

Prior to 1980, routine, targeted and unannounced inspections formed a key part of the federal industrial relations inspectorate's enforcement toolkit.<sup>108</sup> However, at present the FWO rarely uses inspections or audits in this manner.

Instead the FWO mainly relies on a complaints-based system, where investigations and campaigns are instigated due to a high degree of complaints being received about a particular business or industry.

This is in line with the FWO's focus on achieving voluntary compliance or dispute resolution where necessary and focusing enforcement efforts on the most serious instances of wage theft and other forms of employer non-compliance.<sup>109</sup>

However, the prevalence of wage theft means that this is an ineffective strategy for effectively enforcing labour standards.

Too much of the burden is still placed on employees to come forward in order for proceedings to be initiated. This means that the issue is likely to be underestimated for two reasons. Firstly, employees may not be aware of their entitlements. Secondly, employees may fear employer retribution for making a complaint.<sup>110</sup>

This latter point is particularly salient in light of

the increasing number of casual workers in the Australian economy. Such workers are particularly dependent on their employer for continued employment opportunities, and so have a heightened vulnerability to employer retribution.<sup>111</sup>

Additionally, as noted above, it may be difficult for employees to prove to authorities that they have been specifically targeted because they raised concerns about their pay rather than for other reasons.

For these reasons there is a need for the FWO to reincorporate routine unannounced inspections into its enforcement strategy.

This would place employers on notice, suggesting that they can be inspected at any time even if none of their employees have issued a complaint. This approach would increase the probability of detection, in addition to sending a warning to employers.

Additionally, key to the success of these inspections as an enforcement strategy is the element of surprise. At present, most FWO audits occur through targeted campaigns, which are preceded by extensive communication attempts.<sup>112</sup>

This means that these audits do not take make use of two advantages that a surprise inspection provides. The first is that they do not allow unscrupulous employers to 'cook the books' or suspend or sack employees suffering wage theft. The second, is that they allow a clear picture of compliance levels to be identified.<sup>113</sup>

Notably, the unannounced inspection 'blitz' that the FWO conducted in mid-2018 revealed a far higher rate of wage theft than uncovered in any of the FWOs other national campaigns.<sup>114</sup> This suggests that unannounced inspections are likely to be more effective at uncovering and catching those committing wage theft than inspections announced in advance.

Thus, the key priority of these inspections should be that they are not part of a campaign, and unannounced. This does not mean that these inspections should be random, and indeed they

should target businesses based on factors that affect the likelihood of wage theft. This should include organisational size, whether urban or regional, unionisation status, compliance history, whether or not the organisation is new, and whether or not there is a new Award in place.<sup>115</sup>

Consequently, we believe that the FWO should not just incorporate this inspection method but should be required to undertake these inspections. The Commonwealth government should investigate the appropriate means of implementing this.

#### RECOMMENDATION 10:

**The educative function of the FWO should be separated from the compliance function of the FWO**

At present the FWO is the body responsible for both educating employers regarding their workplace duties and obligations, as well as the body responsible for enforcing those duties and obligations.

This creates an intrinsic conflict between two aims that are each worthy of support. This has a downside for both educating employers, as well as enforcing Australian labour law. Consequently, we recommend that the FWA should be amended to remove the responsibility for educating employers from the FWO.

In so doing, the Commonwealth should investigate other potential options for ensuring that employers have access to educational materials to assist them make the right decisions.

This could include transferring these responsibilities to the Department of Jobs and Small Business, or a new government body.

Additionally, the Commonwealth could investigate the possibility of providing grants to Registered Organisations or peak employer or employee groups such as the Australian Chamber of Commerce and Industry or the Australian Council of Trade Unions to provide this training.





Such grants should be subject to our recommended rules regarding procurements and grants detailed below. Furthermore, these grants should be disbursed by an independent, tripartite body subject to Senate oversight to ensure accountability and transparency.

This approach could allow the Commonwealth to leverage activities already conducted by employer groups and trade unions to increase the quality and quantity of education activities whilst also reducing the burden on Commonwealth finances.

### EXPLORE WAYS OF REWARDING THIRD PARTIES WHO ENGAGE IN ENFORCEMENT ACTIVITIES

The widespread occurrence and impacts of wage theft suggests that currently there is inadequate resources being devoted to tackling wage theft right across the economy and that a significant increase in resources would be justified. Of course, if at some point in the future compliance levels are returned to more tolerable levels (i.e. isolated and rare rather than widespread and endemic) then we wouldn't want excess resources to be continued to be allocated to tackling the problem. Ideally, we want resourcing to be able to adjust so that it is in proportion to the problem.

The first way to achieve this is to remove barriers to effective self-enforcement, as per the recommendations in the previous section. Quite simply, we can expect both employers and employees not to waste their own resources tackling wage theft if at some point in the future it is a problem that no longer exists.

But it is also possible that both employers and employees may under-resource compliance activities, whether it be enforcement and training, if they are concerned action may have a low chance of success.

Given the broader impacts on other employees, employers and the economy as a whole (including public finances) there is a public good justification for subsidising activities that would improve compliance and reduce wage-theft, in particular protecting tax revenue and the livelihoods of workers and small businesses that might be challenging to organise.

### RECOMMENDATION 11: The federal, state and territory governments should jointly establish the *Stopping Wage Theft Subsidy Pool* using recovered taxes to subsidise activities that will address wage theft

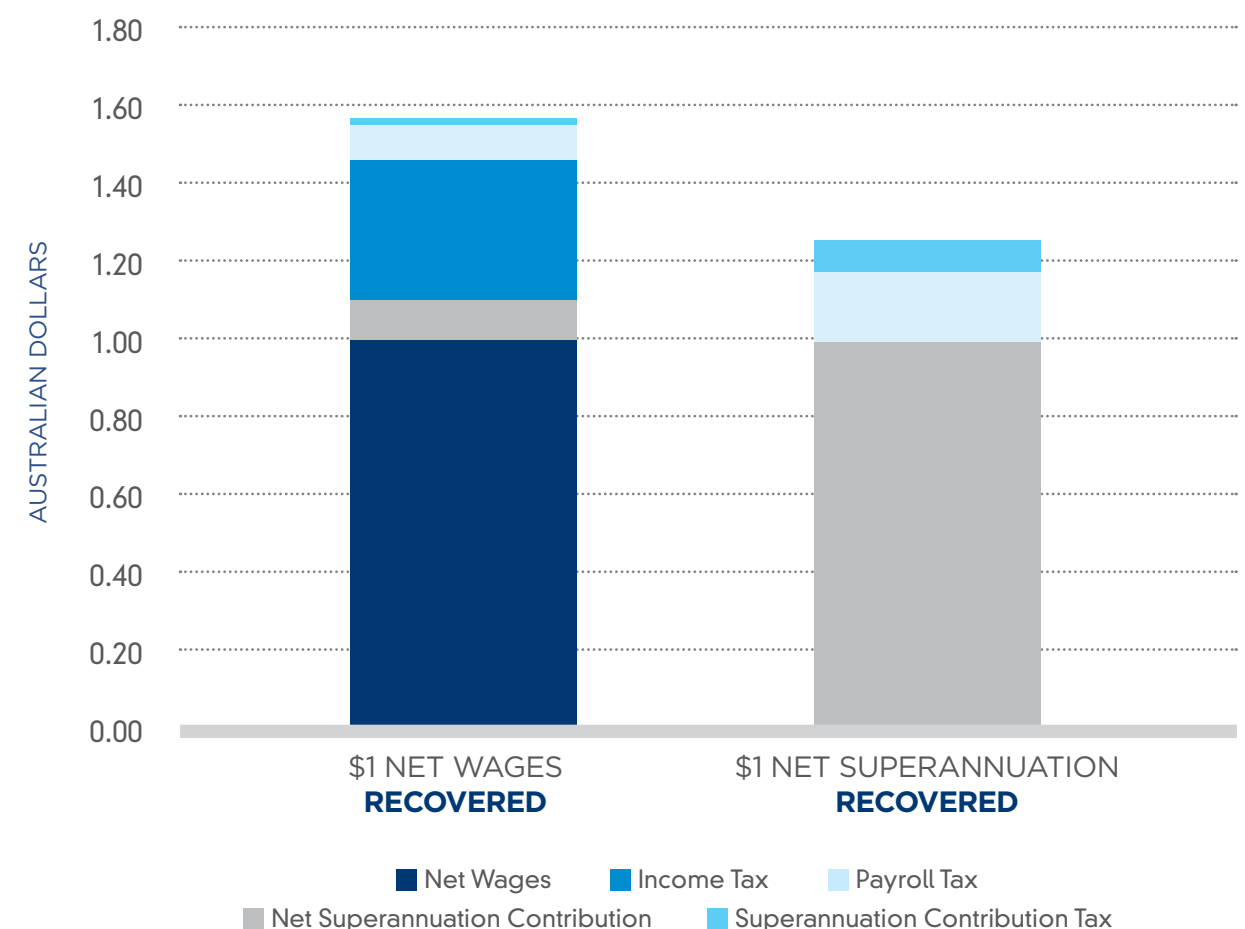
The foregone tax revenue attributable to wage-theft should provide a direct basis for subsidising appropriate activities. Where instances of wage-theft have been established, it of course makes sense that all wages recovered should be returned to the employee to whom they're owed, but some or all of the taxes recovered should be used to support the costs of improving compliance.

The relevant taxes that could be used to create a pool of funds for this purpose include:

- Federal personal income taxes (including the Medicare Levy)
- State and territory payroll taxes
- Federal superannuation contribution taxes

As it currently stands, for every \$1 in after tax wages that are recovered and returned to employee from whom they were stolen, there will be an average of 45.7 cents recovered underpaid taxes or for every \$1 in stolen superannuation there will be an average of 23.5 cents in unpaid payroll taxes and superannuation contributions taxes.<sup>16</sup>

FIGURE 2.3 GOVERNMENT REVENUE PER DOLLAR RECOVERED, STATE AND FEDERAL



Source: McKell Institute own analysis.



## DETERMINING THE SIZE OF THE SUBSIDY POOL

It is proposed the size of the pool of funds to be tied to the average tax rates for the individual claims that are successfully made. Not only would this be simpler than tying it to the actual taxes recovered, it would also ensure that a public subsidy doesn't bias increased action in favour of high-income earners that face a higher-marginal tax and to the detriment of more vulnerable workers on low incomes that face lower marginal tax rates. At the same time, given the broader economic impacts such the anti-competitive effect of undercutting other businesses with a lower labour cost structure, the average tax rates across the economy are a more appropriate proxy for the true cost to the public purse.

Furthermore, any liability to governments will effectively be capped by the level of wage theft in the economy. The cost to government budgets will only increase if there has been a rise in the level of non-compliance in which case the negative impact on tax revenues would justify the additional resources being thrown at tackling the problem. Conversely, if compliance improves and successful claims to recover stolen wages decline, the size of the subsidy pool will also contract, and public money freed as per our objectives.

## DETERMINING HOW THE SUBSIDY SHOULD BE ALLOCATED

There are a range of activities that could help tackle wage theft that should be eligible for financial support:

- Private-enforcement by Registered Organisations
- Rewards for whistleblowers
- Training and education campaigns

Of actions initiated by Registered Organisations, it could be that 80 cents of every dollar in the pool would go to help them cover the costs of managing their enforcement activities. This would be distributed in proportion to the wages recovered by each Registered Organisation. Where an individual action relies on a whistleblower (other than the individual victims of the wage-theft themselves) up to 40 cents of every dollar of tax recovered could be paid to the whistleblower as a reward and in recognition of the risks to their career that they might be taking to provide evidence to support legal action.

The residual 20 cents of every tax dollar recovered would be made available for training and education campaigns under application by Registered Organisations to a tripartite committee comprising employer groups, trade unions and relevant government agencies (e.g. Fair Work Ombudsman, the Australian Taxation Office, State Treasuries) designed to improve compliance by employers or raise awareness of rights of workers.

## PROVIDING CERTAINTY AND REINFORCING STRONG SIGNAL

The precise formulas and funding arrangements should be agreed across all levels of government and then each government's financial contribution to the Stopping Wage-Theft Subsidy Pool should be legislated. This will help to further reinforce the strong signal that tackling wage theft is a national priority and its practice will not be tolerated and it will also ensure Registered Organisations and their service providers or partners have adequate certainty to build the capability and plan resources.

**FIGURE 2.4** EXAMPLE STRUCTURE OF THE 'STOPPING WAGE-THEFT SUBSIDY POOL'







## ENCOURAGE WHISTLEBLOWERS TO COME FORWARD VIA A WHISTLEBLOWER INCENTIVE SCHEME

There also exists the potential for whistleblowers to play a role in eradicating wage theft. For instance, a whistleblower from 7-Eleven assisted the ABC/Fairfax investigation into 7-Eleven, and which has gone on to recover \$41 million in stolen wages. This illustrates the potential contribution that whistleblowers can make in the fight against wage theft.

However, protections for whistleblowers in the private sector in Australia have lagged behind similar protections for public sector workers and have featured significant gaps. While the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* currently before Parliament will strengthen private sector whistleblower protections, more can be done to encourage whistleblowers to come forward in cases of wage theft.

Like other forms of misconduct, wage theft can be difficult to prove in court and the FWO due to a lack of records including pay slips and rosters. Encouraging whistleblowers to come forward therefore represents a potential opportunity for this information to be disclosed to authorities, assisting enforcement and the recovery of stolen wages.

Furthermore, encouraging whistleblowers to come forward would have the additional benefit of increasing the risk that businesses committing wage theft would be caught. In addition to allowing better enforcement against businesses committing wage theft the extra risk associated with committing wage theft should act to deter businesses from stealing wages.

The Government should therefore actively encourage whistleblowers to come forward and report instances of wage theft by establishing a whistleblower incentive scheme for contraventions of the FWA, which could be financed as outlined in our recommendation around resourcing third parties below.

This would be in line with policies adopted by various other governments around the world to encourage whistleblowers to come forward. For instance, as noted in the sidebar above the U.S. Government maintains a number of schemes to create an incentive for whistleblowers to come forward covering areas such as fraud in government contracting and securities.

### RECOMMENDATION 12:

**Establish a national whistle-blowing incentive scheme to encourage whistleblowers to come forward and report instances of wage theft**

## WHISTLEBLOWER LEGISLATION IN THE US

The United States has a number of schemes which provide a financial incentive for whistleblowers. Two of these are the schemes established under the *False Claims Act 1983* and the Dodd-Frank Act. The first of these allows whistleblowers to sue those on who have been defrauding the U.S. Government on behalf of the U.S. Government.

Successful whistleblowers are eligible for between 15 and 25 per cent of the amount recovered by the U.S. Government if the U.S. Government intervenes and supports the action, and between 25 and 30 per cent if the U.S. Government declines to intervene in the suit.<sup>117</sup>

The second of these schemes is allows whistleblowers to report misconduct in the securities, stock and options markets to the Office of the Whistleblower within the U.S. Securities and Exchange Commission. If this report results in enforcement action that yields sanctions of over \$1 million then the whistleblower is eligible to be awarded between 10 and 30 per cent of these sanctions.<sup>118</sup>

Since it began operation in 2011 this scheme has awarded \$326 million to 59 individuals and has resulted in monetary sanctions totaling \$1.7 billion.<sup>119</sup>

Schemes which provide a financial incentive are therefore one option that can be used to enhance the operations and effectiveness of government enforcement.





## Ensure broader government policies play a supportive role

### PROCUREMENT AND GRANT REFORM

#### RECOMMENDATION 13:

**Commonwealth, State/Territory and local governments should promote compliance with the *Fair Work Act* by excluding businesses found to have committed wage theft from their procurement and grant payments**

Every year Australian governments spend around 35 per cent of their budgets on procurement, or the purchase of goods and services from private providers.<sup>120</sup> For the Commonwealth this amounted to \$47 billion for 2016-17.<sup>121</sup>

This means that governments in Australia are a significant purchaser of private sector goods and services. Furthermore, governments are often not just a major purchaser overall, but often a significant purchaser within the markets it purchases from.<sup>122</sup> For instance, infrastructure investment by governments often means that the government is one of the largest purchasers in the construction industry.

Because of this, governments have a responsibility to model good behaviour in the marketplace and leverage their significant purchasing power to require suppliers to improve their practices.

Given the prevalence of wage theft, governments at all levels should take action to ensure that their procurement activities explicitly guard against inadvertently rewarding businesses that commit wage theft.

Consequently, governments at all levels should exclude businesses found to have committed wage theft from their procurement processes.

This recommendation follows a similar recommendation from the Black Economy

Taskforce, which recommended that the Commonwealth should promote good tax behaviour by excluding businesses with a bad tax record from procurement.<sup>123</sup>

This involved the insertion into contracts of a clause mandating compliance with all tax legislation and regulation, as well as requiring tenderers for large contracts to acquire a certificate of tax compliance from the Australian Tax Office. Additionally, the Black Economy Taskforce recommended that this should only apply to contracts valued over \$4 million.

This recommendation was among those accepted by the government, although it remains in the consultation stage.<sup>124</sup>

We believe that this recommendation should also be adopted with regards to wage theft and industrial relations more broadly. Companies that do not comply with the FWA and associated labour laws should not receive government contracts.

Consequently, we recommend that the Commonwealth institute a similar scheme, with certification to be conducted by the FWO. State and territory and local governments should also alter their procurement policies to involve certification by the FWO as a condition of entry for procurement consideration.

Furthermore, we believe that the recommendation should be extended. The Black Economy Taskforce and the government response both indicate that tax certification would only apply to contracts over \$4 million in value. Whilst procurement statistics published by the Department of Finance do not allow us to precisely determine how many contracts are above or below this value, at a minimum this ignores just over 95 per cent of Commonwealth procurement contracts.<sup>125</sup>

Given this fact, whilst there may still be a positive flow on effect from only certifying for large contracts, the Commonwealth would still be missing a large opportunity to influence the behaviour of suppliers by only focusing on contracts over \$4 million.

Certification should therefore be required for all contracts, but with stringency progressively rising in line with the value of the contract.

Additionally, businesses found to have committed wage theft via FWO audits or in court should be barred from receiving government procurement contracts, with the length of the ban depending on how severe the wage theft was, and whether or not the business is a repeat offender.

Moreover, clauses should be inserted into procurement contracts which allow governments to terminate those contracts with minimal cost should the supplier be found to have committed wage theft or any other breach of industrial relations legislation during the course of the contract.

Of course, it should be noted that procurement policies by many State governments in Australia already promote compliance with industrial relations law.

For instance, the Victorian Government maintains a social procurement framework, which lists purchasing from suppliers that comply with industrial relations laws as one of its desired outcomes.<sup>126</sup> However, this devolves responsibility for assessing compliance to Victorian Government departments, who may lack the expertise to properly assess compliance with industrial relations laws.

Indeed, this has been identified by researchers as a key issue with New South Wales procurement policy regarding government school cleaners.<sup>127</sup> This policy involved the insertion of labour standards clauses in contracts for government school cleaners, with the NSW Department of Education and Communities required to assess whether these standards had been met.

Unfortunately, this policy had limited efficacy at improving labour standards for school cleaners.

Inserting clauses into procurement contracts is of course only one option that governments can pursue. Three phases of the procurement process can be identified where governments can impose standards.<sup>128</sup> These are at the qualification stage,

during the tender assessment process, and in the contractual requirements imposed upon the successful tenderer.

Whilst the Victorian policy focuses on the latter regarding industrial relations standards, state governments have also used the tender assessment stage as an opportunity to impose labour standards.

Such an approach, however, often simply includes labour standards as one of many that should be considered when assessing a tender. This raises the possibility that industrial relations considerations could either be ignored or subsumed by other considerations (such as price).<sup>129</sup>

Therefore, in order to tackle wage theft, we believe that the most appropriate approach is for governments to require compliance as a condition of entry. This avoids the issue of Departments being required to operate outside their areas of expertise, as well as ensuring that compliance with industrial relations laws is not just considered as one criterion amongst many.

Indeed, obeying the law is, at a minimum, what we should expect of all businesses, whether applying for a government contract or not.

Another area where governments make significant payments to the private sector is the grants sphere. Governments at all levels across Australia use grants to provide financial assistance to address one or more policy goals.<sup>130</sup> For instance, by increasing the provision of social services, emergency relief, or increasing opportunities for business.<sup>131</sup>

In 2016-17 this amounted to just over \$44 billion payments to private sector recipients, with the Commonwealth contributing approximately \$18 billion and the States roughly \$26 billion.<sup>132</sup>

Similarly, to the case of procurement, grants present the opportunity for the governments to use their revenues to help eradicate wage theft, whilst also exposing governments to the risk that they will inadvertently provide funding to businesses committing wage theft.



In his foreword to the *Commonwealth Grants rules and guidelines* Minister Cormann notes that governments provide grants to support Australia's 'jobs, growth and innovation'.<sup>133</sup> Unless governments around Australia take action to ensure that their grants process excludes businesses who commit wage theft this won't happen.

The certification scheme proposed above should therefore be extended to grants, and governments should make it mandatory that grant administrators check the certification of applicants with the FWO.

Additionally, reporting requirements for grants should be made more stringent to require the recipients of grants to demonstrate that they have not violated Australian labour law.

Firms that have been found to have committed wage theft should also be automatically excluded, as recommended above.

## PROTECT TEMPORARY MIGRANT WORKERS

### RECOMMENDATION 14:

**That the Commonwealth should amend the FWA and the *Migration Act 1958* to minimize the vulnerability for temporary migrant workers**

As outlined in part one above, temporary migrant workers are particularly vulnerable to wage theft. This can be because of specific visa conditions, language difficulties, trouble finding employment elsewhere, or overt discrimination.

Combined, these factors contribute to both the exploitation of temporary migrant workers and make temporary migrant workers reluctant to take action in response. In recognition of this, the Commonwealth should act to ensure that its laws, policies and practices regarding temporary migrant workers do not enable or encourage exploitation.

At present a key source of vulnerability is an ambiguity within the FWA. Holders of a short-term visa with work rights, such as an international student visa, are restricted to working 40 hours per fortnight. Breaching this condition is grounds for visa cancellation, and, if the visa is cancelled, may void the employment rights which allow for protection under the FWA.<sup>135</sup>

The view of the FWO is that this is not the case.<sup>136</sup> However, temporary migrant workers should not need to rely on the interpretation of the FWO and should have statutory protection. Otherwise, this potentially allows reprobate employers committing wage theft to shield themselves from responsibility by encouraging temporary migrant workers they employ to breach their visa conditions.<sup>137</sup>

The FWA should therefore be amended to remove this ambiguity and ensure that temporary migrant workers are protected by law.

Furthermore, temporary migrant workers reporting wage theft and other workplace issues to the FWO should be exempt from being deported or having their visa revoked for breaching visa conditions regarding work. This would ensure that temporary migrant workers are protected from exploitative employers and cannot suffer further as a consequence of employer wrongdoing.

Additionally, given that many temporary migrant workers report being threatened with deportation or being reported to the Department of Home Affairs, it is imperative that these protections be statutorily enshrined to ensure that there is no basis for fearing coming forward.<sup>138</sup>

While the FWO and the Department of Home Affairs have an informal agreement, this is not binding on the FWO.<sup>139</sup> The Commonwealth therefore must take action to guarantee protection for temporary migrant workers who have had their wages stolen. The FWO should also be given the responsibility for monitoring sponsor obligations regarding visa working conditions.

Additionally, the Commonwealth should review visa conditions that make a temporary migrant worker open to exploitation by making them dependent on their employer. Ideally conditions which create this vulnerability would be eliminated, however, it may not be possible to completely eliminate this source of vulnerability, which increases the necessity of taking an across-the-board stance against wage theft.

## ESTABLISH A WHOLE-OF-GOVERNMENT ANTI-WAGE THEFT TASKFORCE

### RECOMMENDATION 15:

**Establish a whole-of-government taskforce to coordinate the implementation of these activities and identify further policies that might conflict with the goal of eradicating wage theft or accelerate its achievement**

As the wide variety of recommendations demonstrate, tackling wage theft is a multi-faceted challenge that will require policy changes not only at state and federal level but also across multiple cabinet portfolios. For instance:

- The Department of Jobs and Small Business will oversee any changes to the FWA or the role of the FWO
- The Treasury has responsibility for dealing with any revenue implications as well changes to the *Competition and Consumer Act 2010*
- The Attorney-General's Department is responsible for referring matters to the ALRC
- The Department of Finance oversees Commonwealth procurement and grant policies
- The Department of Home Affairs has responsibility for change to visa conditions
- The Department of Prime Minister and Cabinet typically takes the lead for coordinating with States and Territories

Making sure all the necessarily elements are progressed in a timely manner and ensuring their combined impact is as effective as possible will therefore require cross-government coordination and reporting. This is why we are recommending a whole of government taskforce or interdepartmental committee be established to perform this function.

This body should also be charged with identifying any other government policies across all portfolios that could be used to help eradicate the practice or might potentially operate in conflict with objective.









APPENDIX 1:  
FWO AUDIT RESULTS

TABLE 1 RATE OF WAGE THEFT IDENTIFIED BY FWO NATIONAL CAMPAIGNS

INDUSTRY	CAMPAIGN	YEAR	AUDITS	PER CENT FINDING WAGE THEFT <sup>140</sup>	AVERAGE RECOVERED
Agriculture, forestry and fishing	Horticulture industry shared compliance program <sup>141</sup>	2010	277	12.6%	\$389
Manufacturing	Structural metal product <sup>142</sup>	2012	253	12.3%	\$1,401
	Textile, clothing and footwear compliance phase <sup>143</sup>	2016-2018	371	22.4%	\$615
Construction	Insulation installers <sup>144</sup>	2010	211	11.8%	\$614
	Building & construction <sup>145</sup>	2014-2015	610	24.6%	\$1,289
Retail trade	Retail <sup>146</sup>	2010-2011	1866	16.7%	\$775
	Pharmacy <sup>147</sup>	2012-2013	523	21.4%	\$469
	Motor vehicle <sup>148</sup>	2013	462	6.9%	\$1,854
Accommodation and food services	Food services <sup>149</sup>	2009	481	16.8-30.8% <sup>150</sup>	\$658
	Hospitality (Accommodation, pubs, taverns and bars) <sup>151</sup>	2012-2013	750	19.6%	\$584
	Hospitality (Restaurants, cafés and catering) <sup>152</sup>	2012-2013	1066	46.3%	\$442
	Hospitality (Takeaway foods) <sup>153</sup>	2014-2015	565	47.1%	\$627



CONTINUED

TABLE 1 RATE OF WAGE THEFT IDENTIFIED BY FWO NATIONAL CAMPAIGNS

INDUSTRY	CAMPAIGN	YEAR	AUDITS	PER CENT FINDING WAGE THEFT	AVERAGE RECOVERED
Administrative and support services	Cleaning services <sup>154</sup>	2010-2011	315	23.7%	\$390
	Clerical worker <sup>155</sup>	2011	1621	8.9%	\$611
	Cleaning follow up <sup>156</sup>	2012-2013	578	27.5%	\$629
	Cleaning services compliance <sup>157</sup>	2014-2015	54	33.3%	\$289
Public administration and safety	Security <sup>158</sup>	2009	256	23.4%	\$695
	Security follow-up <sup>159</sup>	2011	392	17.3%	\$649
Health care and social assistance	Children's services <sup>160</sup>	2013-2014	420	24.3%	\$751
	Health care and social assistance <sup>161</sup>	2014-2015	696	15.2%	\$566
Other services	Hair and beauty <sup>162</sup>	2009	330	23.6%	\$623
	Vehicle repair and maintenance <sup>163</sup>	2012	759	19.0%	\$873
	Hair and beauty <sup>164</sup>	2012-2013	838	40.0%	\$538
Various	Follow up campaign <sup>165</sup>	2010	311	31.5%	\$452
	National compliance monitoring <sup>166</sup>	2015	891	17.3%	\$429
	Apprenticeship <sup>167</sup>	2014-2016	822	32.1%	\$1,051
	Records and resources <sup>168</sup>	2016	1376	3.7%	\$1,845
	National compliance monitoring #2 <sup>169</sup>	n/a	479	24.2%	\$704





# APPENDIX 2: SURVEY DETAILS

The table below provides a summary of survey research into wage theft conducted in Australia. This includes when the survey was conducted, the number of respondents, the wage rate which reported wages were compared to to determine wage theft, the prevalence of wage theft found and the details on the specific focus of the survey. NMW indicates that the wage comparison was to the level of the National Minimum Wage (NMW) at the time of the survey.

TABLE 2 WAGE THEFT SURVEY EVIDENCE

AUTHOR(S)	YEAR(S) CONDUCTED	SAMPLE SIZE	WAGE COMPARISON	PREVALENCE OF WAGE THEFT	SURVEY OF...
Nyland et al. <sup>170</sup>	2005	200	15.00	58.1%	International students
Campbell, Boese & Tham <sup>171</sup>	2014-2015	21	21.00 (Award) <sup>172</sup>	81.8%	International students
Clibborn <sup>173</sup>	2015	1,433	17.29 (NMW)	60%	International students
Berg & Farbenblum <sup>174</sup>	2016	4,322	15.00	46% <sup>175</sup>	Temporary migrant workers
Young Workers Centre <sup>176</sup>	2016	1,024	17.70 (NMW)	19.7%	Young (15-30) workers
		220	20.79 (Award)	36.8%	Young (15-30) retail workers <sup>177</sup>
Hospo Voice <sup>178</sup>	2017	624	19.53 (Award)	76%	Victorian hospitality workers
UnionsACT <sup>179</sup>	2017	260	N/A	76%	ACT young workers



Additionally, the Queensland inquiry into wage theft also ran a survey of Queensland workers who had experienced wage theft.<sup>180</sup> While not included in the table above, this survey provides valuable information on forms of wage theft and their incidence.

As noted above these surveys reveal an incidence of payment below the legal wage of between 20 and 82 per cent, with an average of around 60 per cent. Given that these results are likely to underestimate the extent of wage theft this rate is disturbingly high.

There are two reasons why these surveys are likely to underestimate the extent of wage theft.

The first is that many of these surveys do not adjust for the fact that respondents are casual employees, who are therefore entitled to an additional 25 per cent loading. This affects the results for Clibborn, Berg and Farbenblum and the Young Workers Centre, as the authors note. Consequently, there are likely to be workers experiencing wage theft who are not captured in these figures.

Secondly, these results only account for one form of wage theft, paying below the minimum Award or the NMW. However, as noted above, wage theft does not just mean being paid below the NMW or the Award, but can also include being underpaid penalty rates, superannuation or overtime pay, and can occur in a variety of ways, such as being required to work an unpaid trial or being subjected to off-the-clock violations. Excluding these will also tend to bias the estimates of wage theft downwards.

Fortunately, most surveys do report findings regarding at least some other forms of wage theft:

- Campbell, Boese and Tham report that 58.3 per cent of respondents are underpaid penalty rates, the Young Workers Centre report 45 per cent, Hospo Voice 76 per cent and the EESBC 49 per cent.
- Hospo Voice also report that 51 per cent of respondents are underpaid overtime.
- Clibborn reports that 59.8 per cent of respondents did not have tax withheld by their employer, and that 75 per cent were not paid superannuation, which contrasts with the 41 per cent rate of super underpayment found by the EESBC survey.
- Berg and Farbenblum also report that 4 per cent of respondents were required to pay cash back to their employer, and that 6 per cent paid a potentially unlawful training fee as a condition of employment.
- Additionally, many surveys also provide some detail on the frequency of practices either associated with wage theft or that allow wage theft to occur. Berg and Farbenblum report 50 per cent of respondents did not receive a pay slip, with Clibborn reporting a similar figure at 50.2 per cent, Campbell, Boese and Tham reporting a higher 59 per cent and UnionsACT reporting a much lower 18 per cent.
- The Young Workers Centre and Hospo Voice surveys also provide results regarding unpaid trials, with 20.8 per cent of Young Workers Centre respondents, 56 per cent of UnionsACT respondents, and 41 per cent of Hospo Voice respondents having had to work an unpaid trial.<sup>181</sup> Additionally, 49 per cent of Young Workers Centre respondents report being subject to off-the-clock violations.
- Cash-in-hand pay is also reported as quite common, with Berg and Farbenblum finding a rate of 44 per cent, the Young Workers Centre a rate of 39.91 per cent and Hospo Voice finding 35 per cent.

- The EESBC survey also finds that 39 per cent of Queensland workers that experienced wage theft had entitlements withheld, 17 per cent had unreasonable deductions from their pay, 28 per cent had encountered sham contracting, and 27 per cent reported 'other' forms of wage theft which included unpaid redundancy payments and being paid less than their duties entitled them to.

Survey results can also provide some information as to which industries may be most problematic regarding wage theft. The table below reports the top five industries reported by respondents for surveys which did not focus solely on one or two industries.

TABLE 3 TOP 5 INDUSTRIES EMPLOYING RESPONDENTS

NYLAND ET AL.	BERG & FARBENBLUM <sup>182</sup>	YOUNG WORKERS CENTRE
University (31%)	Waiter/kitchen hand/food server (38%)	Hospitality & accommodation (22.3%)
Hospitality (26.1%)	Professional services (11%)	Retail (22%)
Professional (15.5%)	Fruit/vegetable picker or packer or farm worker (9%)	Education & training (9.9%)
Retail (10.6%)	Cleaner (9%)	Professional, scientific and technical services (=4, 5.6%)
Labouring (=5, 6.3%)	Shop assistant/retail job/sales (8%)	Administration (=4, 5.6%)
Other education (=5, 6.3%)		Healthcare (5.5%)

Retail and accommodation and food services (aka hospitality) are consistently identified by respondents in all four of these services. Additionally, these industries are focused on by most or all the other surveys: Campbell, Boese & Tham focused on international students in food services, Clibborn on international students in food and retail, and Hospo Voice on hospitality workers. Additionally, the UnionsACT survey reported that 31 per cent of respondents were employed in hospitality and tourism and 27 per cent in retail and sales.

In addition to these two, professional services, administration and support services (which includes cleaning) and education and training are identified across three of the surveys, suggesting that these industries may also feature workers more at risk of wage theft. Less consistently are construction and health care and social assistance, which are each identified in two surveys.



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6. Our definition draws on those provided by: Young Workers Centre (YWC) 2018, *Criminalising wage theft*, Young Workers Centre, Melbourne: 'Wage theft describes the denial or underpayment of wages and entitlements that are rightfully owed to an employee under the Fair Work Act (2009)' (p. 4); Peetz, D 2018, Debt in paradise: on the ground with wage theft, *Griffith review*, 61: Who we are, 185-191: Wage theft: 'paying workers less than they are entitled under the law' (p. 186) & Office of Industrial Relations (OIR) 2018, *Response to committee request*, Queensland Government, Brisbane: Wage theft is 'when an employer fails to provide their employees with the full wage or salary to which they are entitled' (n.p.). The requirement that underpayment be 'unlawful' provides a point of differentiation between our definition of wage theft and the more normative approach adopted by Macdonald, Bentham and Malone when considering disability support workers and in recent reports about the pay of casual university staff (see: Macdonald, F; Bentham, E & Malone, J 2018, Wage theft, underpayment and unpaid work in marketised social care, *The economic and labour relations review*, 29(1), 80-96 & Cook, H 2018, 'I'm being exploited': the underpaid workers in our universities, *The Age*: <https://www.theage.com.au/national/victoria/i-m-being-exploited-the-underpaid-workers-in-our-universities-20180817-p4zy2l.html>). Under the normative approach, the underpayment of these workers may be lawful, however, it is wrong because these workers *should* be entitled to a greater rate of pay, e.g. for the time they spend travelling or preparing for classes. Whilst we will not deal with this potential dimension of wage theft in this report, it is nevertheless important to recognise that the question of what someone actually is entitled to be paid, is a separate and distinct question from what someone actually ought to be paid.
7. See FWO 2018, *Penalty rates & allowances*, Commonwealth of Australia, Canberra: <https://www.fairwork.gov.au/pay/penalty-rates-and-allowances>.
8. Whilst some of these forms of payment do not necessarily involve wage theft, such as cash-in-hand payment, inquiries such as that conducted by the Black Economy Taskforce have found that the main way that wage theft occurs is through practices such as cash-in-hand payment. See Black Economy Taskforce 2017, *Final report – October 2017*, Commonwealth of Australia, Canberra.
9. Pawluk, J 2018, *Stalling Wages, Falling Growth: Getting Australia out of the Wage Suppression Trap*, The McKell Institute, Sydney.
10. Knox, A 2018, Regulatory avoidance in the temporary work agency industry: evidence from Australia, *The economic and labour relations review*, 29(2), 190-206, see page 200 especially.
11. Cavanough, E & Rajadurai, E 2018, *The impact of wage theft on Queensland's workers & economy*, The McKell Institute, Sydney.
12. These difficulties are by no means unique to the issue of wage theft. For instance, Jeff Borland notes in research for the Fair Work Commission an analogous challenge for researchers who wish to study the effect of minimum wages in Australia. See Borland, J 2018, *A review of methods applied in international research on the employment effects of the minimum wage and implication for Australian research*, Research report 4/2018, Fair Work Commission, Commonwealth of Australia, Canberra & Borland, J 2018, *Prospects for research on the employment effects of minimum wages in Australia*, Research report 4/2018: Part II, Fair Work Commission, Commonwealth of Australia, Canberra.
13. In this we follow Howe, J, Hardy, T & Cooney, S 2014, *The transformation of enforcement of minimum employment standards in Australia: a review of the FWO's activities from 206-2012*, Centre for Employment & Labour Relations Law, The University of Melbourne, Melbourne. See pages 145-146 for their original table.
14. Howe, Hardy & Cooney 2014, page 144.
15. FWO 2018, *Compliance and enforcement policy*, Commonwealth of Australia, Canberra.
16. See for example the reports for the national pharmacy campaign, the national health care and social assistance campaign, and the 2015 compliance monitoring campaign.
17. No FWO campaign report is available for: Mining; Electricity, gas, water and waste services; Wholesale trade, Transport, postal and warehousing; Information media and telecommunications; Financial and insurance services; Rental, hiring and real estate services; Professional, scientific and technical services; Education and training; or Arts and recreation services.
18. This calculation based on ABS cat no. 6291.0.55.003, table 04.
19. See ABS cat no. 1292.0 for an explanation of the ANZSIC system. 'Other services' is obviously an easy target to characterise as diverse. However, this diversity is also apparent in other divisions. For instance, manufacturing covers everything from cheese making to furniture makers to oil refining.
20. See the Appendix for further details. The surveys we reference are: Berg, L & Farbenblum, B 2017, *Wage theft in Australia: findings of the National Temporary Migrant Worker Survey*, Migrant Worker Justice Initiative, Sydney; Campbell, I, Boese, M & Tham, J-C 2016, Inhospitable workplaces? International students and paid work in food services, *Australian journal of social issues*, 51(3), 279-298; Clibborn, S 2018, Multiple frames of reference: why international student workers in Australia tolerate underpayment, *Economic and industrial democracy*, forthcoming; Hospo Voice 2017, *Hospo wage theft investigation 2017*, United Voice, Melbourne; Nyland, C, Forbes-Mewett, H, Marginson, S, Ramia, G, Sawir, E & Smith, S 2009, International student-workers in Australia: a new vulnerable workforce, *Journal of education and work*, 22(1), 1-14; UnionsACT 2017, *Disposable: the war on young workers*, UnionsACT, Canberra & Young Workers Centre (YWC) 2017, *Young workers snapshot: the great wage rip-off*, Young Workers Centre, Melbourne. Additionally, we also utilise the results of a survey ran by the Queensland inquiry into wage theft reported in EESBC 2018.
21. Campbell, Boese & Tham 2016; EESBC 2018; Hospo Voice 2017 & YWC 2017.
22. Hospo Voice 2017; UnionsACT 2017 & YWC 2017.
23. Hospo Voice 2017.
24. Clibborn 2018.
25. Clibborn 2018 & EESBC 2018.
26. YWC 2017.
27. EESBC 2018.
28. Ibid.
29. Berg & Farbenblum 2017; Campbell, Boese & Tham 2016; Clibborn 2018 & UnionsACT 2017.
30. Berg & Farbenblum 2017; Hospo Voice 2017 & YWC 2017. Campbell, Boese & Tham 2016 also report that respondents were 'often' paid cash-in-hand.
31. EESBC 2018.
32. Industry Super Australia (ISA) 2018, *Unpaid super: getting worse while nothing is done*, Industry Super Australia, Melbourne.



33. Ibid.
34. See ERC 2017 for the ATO's commentary
35. Australian Taxation Office (ATO) 2018, *Super guarantee system*: [https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Superannuation-guarantee-gap/?anchor=Trends\\_and\\_latest\\_findings#Trends\\_and\\_latest\\_findings](https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Tax-gap/Superannuation-guarantee-gap/?anchor=Trends_and_latest_findings#Trends_and_latest_findings).
36. Ibid.
37. ERC 2017.
38. Maconachie & Goodwin 2010; UnionsACT 2018, *Sick of it: what young women feel about wage-theft, harassment & casualised work*, UnionsACT, Canberra.
39. Clibborn 2018; EESBC 2018.
40. See Ferguson 2015 and Meldrum-Hanna 2015.
41. Hemingway, C 2016, *Not just work: ending the exploitation of refugee and migrant workers*, WEStjustice Western Community Legal Centre, Melbourne; Nyland et al. 2009 & Clibborn 2018
42. Clibborn, S & Wright, CF 2018, Employer theft of temporary migrant workers' wages in Australia: why has the state failed to act?, *The economic and labour relations review*, 29(2), 207-227; Stewart, A, Stanford, J & Hardy, T (eds) 2018, *The wages crisis in Australia: what it is and what to do about it*, The University of Adelaide Press, Adelaide.
43. Hemingway 2016; Berg & Farbenblum 2017, 2018; Henrique-Gomes 2018.
44. Fair Work Ombudsman & Registered Organisations Commission Entity (FWO&ROC) 2017, *Annual report 16-17*, Commonwealth of Australia, Canberra. This report suggests migrants make up 6 per cent of the Australian workforce, whilst Berg and Farbenblum (2017) suggest a figure of 11 per cent for temporary migrant workers.
45. Clibborn, S & Wright, CF 2018, Employer theft of temporary migrant workers' wages in Australia: why has the state failed to act?, *The economic and labour relations review*, 29(2), 207-227; Howe, J, Stewart, A & Owens, R 2018, Temporary migrant labour and unpaid work in Australia, *Sydney law review*, 40(2), 183.
46. Reilly, A, Howe, J, van den Broek, D & Wright, CF 2018, Working holiday makers in Australian horticulture: labour market effect, exploitation and avenues for reform, Griffith law review; Underhill, E & Rimmer, M 2016, Layered vulnerability: temporary migrants in Australian horticulture, *Journal of industrial relations*, 58(5), 608-626; Wright, CF, Clibborn, S, Piper, N & Cini, N 2016, Economic migration and Australia in the 21st century, Lowy Institute, Sydney; SEERC 2017.
47. Wright et al. 2016.
48. Ibid.
49. FWO&ROC 2017; YWC 2017; UnionsACT 2017; Maconachie, G & Goodwin, M 2010, Employer evasion of workers' entitlements 1986-1995: why, what and whose?, *Journal of industrial relations*, 52(4), 419-437; Nelms, L, Nicholson, P & Wheatley, T 2011, *Employees earning below the Federal Minimum Wage: review of data, characteristics and potential explanatory factors*, Research report 3/2011, Fair Work Australia, Commonwealth of Australia, Canberra.
50. YWC 2017 define 'young' as 15-30, UnionsACT 2017 use 15-25, Nelms, Nicholson and Wheatley 2011 use 21-24, and the FWO and Maconachie and Goodwin those under 25.
51. FWO 2017.
52. YWC 2017.
53. UnionsACT 2017.
54. Maconachie, G & Goodwin, M 2006, Recouping wage underpayment: increasingly less likely?, *Australian journal of social issues*, 41(3), 327-342; Maconachie & Goodwin 2010.
55. Gilfillan, G & McGann, C 2018, Trends in union membership in Australia, Parliamentary Library, Research Paper Series 2018-19, Commonwealth of Australia, Canberra.
56. Maconachie & Goodwin 2010.
57. Campbell, Boese & Tham 2016.
58. Patty 2016; UnionsACT 2017.
59. Maconachie & Goodwin 2010; UnionsACT 2018.
60. Gilfillan, G 2018, *Characteristics and use of casual employees in Australia*, Parliamentary Library, Research Paper Series, 2017-18, Commonwealth of Australia, Canberra; UnionsACT 2018.
61. UnionsACT 2018; Macdonald, Bentham & Malone 2018.
62. UnionsACT 2018.
63. Macdonald, Bentham & Malone 2018.
64. Hemingway 2016; EESBC 2018.
65. EESBC 2018.
66. Ibid; Hemingway 2016.
67. ERC 2017.
68. EESBC 2018; UnionsACT 2017.
69. Forsyth, A 2016, *Victorian inquiry into the labour hire industry and insecure work*, Final report, State of Victoria, Melbourne.
70. EESBC 2018.
71. Ibid.
72. Australian Institute of Health and Welfare 2018, Australia's health 2018, Commonwealth of Australia, Canberra: <https://www.aihw.gov.au/getmedia/7c42913d-295f-4bc9-9c24-4e44eff4a04a/aihw-aus-221.pdf.aspx?inline=true>.
73. Ibid.
74. Pawluk 2018.
75. For example: Minter, S & Baker, K 2018, As café owners we know that wage theft is rife. But there is no excuse for it, *The Guardian*: <https://www.theguardian.com/commentisfree/2018/may/19/as-cafe-owners-we-know-that-wage-theft-is-rife-but-there-is-no-excuse-for-it>. See also the submission to the Queensland inquiry by the National Retailers' Association.
76. Cavanough & Rajadurai 2018.
77. Estimates of the personal income tax gap are omitted because they are only provided for 2013-14 and 2014-15.
78. Black Economy Taskforce 2017.
79. FWO 2018, *National compliance monitoring #2*. This is the most recent FWO on compliance monitoring. Prior reports indicate that this number could be as low as 1 in 6 or as high as 1 in 3.
80. Hardy, T & Howe, J 2017, Creating ripples, making waves? Assessing the general deterrence effects of enforcement activities of the Fair Work Ombudsman, *Sydney law review*, 39(4), 471-500.
81. OIR paper for the Qld parliamentary inquiry. See also industry group submissions, such as the one from AiG.
82. For example, *Criminal Code Act 1899 (Qld)* s 6, *Crimes Act 1900 (NSW)* s 156.
83. EESBC 2018, recommendation 15.
84. See s 79 of the CCC and s 4AA of the *Crimes Act 1914* (Cth). It should additionally be noted that Australia's penalties are low in an international context, see: OECD 2018, *Pecuniary penalties for competition law infringements in Australia*, Organisation for Economic Co-operation and Development, Paris: <http://www.oecd.org/competition/pecuniary-penalties-competition-law-infringements-australia-2018.htm>, and Beaton-Wells, C & Clarke, J 2018, Corporate financial penalties for cartel conduct in Australia: a critique, working paper, 20 June 2018, SSRN.
85. The penalty for a 'serious contravention' is \$126,000. In contrast, regular contraventions attract a penalty of \$12,600. See ss 539, 557A & 557B of the FWA, and s 4AA of the *Crimes Act 1914*.
86. See FWA s 572 & *Superannuation Guarantee (Administration) Act 1992* (SGA Act), s 49.
87. Weil, D 2018, Creating a strategic enforcement approach to address wage theft: one academic's journey in organizational change, *Journal of industrial relations*, 60(3), 437-460.
88. Hatch, P 2018, Rebel, Supercheap Auto owner says it underpaid workers by \$8m, *The Sydney Morning Herald*: <https://www.smh.com.au/business/companies/rebel-supercheap-auto-owner-says-it-underpaid-workers-by-8m-20180821-p4zyqe.html>.
89. See for example Minter & Baker 2018.
90. Goodwin, DJ 2018, *Inhibiting economic coercion by groups: an examination of the economic torts and anti-secondary boycott laws in Australia*, PhD thesis, RMIT University.
91. Ibid.
92. Gilsenan, R 2016, Could the Harper Review recommendations revive private enforcement of cartel prohibitions?, *Australian journal of competition and consumer law*, 24, 6-14.
93. Ibid.
94. Obligations regarding wages are set out in s 323 of the FWA, which states that payment must be made at least monthly, while the lodgement dates for the Superannuation Guarantee are set out in s 33 of the *Superannuation Guarante (Administration) Act 1992* (Cth). The lodgement dates are set at four weeks following the end of a quarter. For instance, the lodgement date for the December quarter (1 October – 31 December) is January 28.
95. ERC 2017.
96. Ibid. See for example submissions 7, 31, 32 and 52 by Industry Super Australia, Institute of Public Accountants, CPA Australia and Council on the Ageing, respectively.
97. ERC 2017, recommendation 5.
98. Anderson, E 2019, *Private government: how employers rule our lives (and why we don't talk about it)*, Princeton University Press, Princeton.
99. Goodwin, ML 2003, *The great wage robbery: enforcement of minimum labour standards in Australia*, PhD thesis, The University of New South Wales, Sydney; Goodwin, M & Maconachie, G 2007 Recouping wage underpayment: increasingly less likely?, *Australian journal of social issues*, 41(3), 327-342; Hardy & Howe 2009; Lee, M 2006 Regulating enforcement of workers' entitlements in Australia: the new dimension of individualisation in Australia, *Labour and industry*, 17(1), 41-60.



100. Hardy, T & Howe, J 2009, Partners in enforcement? The new balance between government and trade union enforcement of employment standards in Australia, *Australian journal of labour law*, 22, 306-336.
101. Hardy & Howe 2009.
102. Note that figures for the Office of Employment Advocate (1997-2005), Office of Workplace Services (2005-2007) and the Workplace Ombudsman (2007-2009) are not available.
103. Berg & Farbenblum 2018, *Wage theft in silence: why migrant workers do not recover their unpaid wages in Australia*, Migrant Worker Justice Initiative, Sydney.
104. Arup, C & Sutherland, C 2009, The recovery of wages: legal services and access to justice, *Monash University law review*, 35(1).
105. See YWC 2018 for a diagrammatic representation of the present court system.
106. See International Labour Organization (ILO) 1950, CO81 – *Labour inspection convention, 1947 (no. 81)*, [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX\\_PUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312226](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX_PUB:12100:0::NO::P12100_INSTRUMENT_ID:312226).
107. Howe & Hardy 2009.
108. Maconachie & Goodwin 2006, Maconachie & Goodwin note that in July 1980 a rule requiring prior notification of employers was introduced. Routine inspections continued to be utilised until the 1990s however. See also Goodwin 2003.
109. See FWO 2018, *Compliance and enforcement policy*, Commonwealth of Australia, Canberra.
110. Howe, Hardy & Cooney 2014.
111. Clibborn & Wright 2018; Howe, Stewart & Owens 2018.
112. This includes letters, phone calls, visits from Fair Work Inspectors, social media posts and uploads to the FWO's website. See FWO 2018, *Compliance and enforcement policy*.
113. Maconachie, M & Goodwin, M 2010, Transforming the inspection blitz: targeted campaigns, enforcement and the Ombudsman, *Labour & industry: a journal of the social and economic relations of work*, 21(1), 369-389.
114. FWO 2018, Food precincts activities.
115. Ibid. See also Maconachie & Goodwin 2006.
116. It is assumed that the average income tax rate is 23%, Need to validate average income tax rate (26%) and average payroll tax rate (5%) and average super contributions tax rate (15%). Current assumptions are in brackets. Superannuation contributions tax does not factor in low income offset.
117. The United States Department of Justice 2011, *The False Claims Act: a primer*, U.S. Federal Government: [https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS\\_FCA\\_Primer.pdf](https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf).
118. U.S. Securities and Exchange Commission 2018, *Whistleblower Program*, Annual report to Congress: <https://www.sec.gov/files/sec-2018-annual-report-whistleblower-program.pdf>.
119. Ibid.
120. OECD 2017, *Government at a glance 2017*, OECD Publishing, Paris. See Department of Finance 2017, *Commonwealth procurement rules: achieving value for money*, Commonwealth of Australia, Canberra, 2017 for a definition of procurement.
121. Department of Finance 2018, *Statistics on Australian Government Procurement Contracts*, Commonwealth of Australia, Canberra, <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>.
122. Wacey, T & Jones, K 2017, *In the national interest: supporting local jobs and industry through government purchasing*, CFMEU & TCFUA, Melbourne.
123. Black Economy Taskforce 2017, recommendation 9.1.
124. Australian Government 2018, *Tackling the black economy: Government response to the Black Economy Taskforce final report*, Commonwealth of Australia, Canberra.
125. The Department of Finance divides procurement contracts into those worth below \$80,000, and those equal to or greater than \$80,000. The Department further splits the contracts equal or above \$80,000 into those between \$80,000 and \$249,999, those between \$250,000 and \$999,999, those between \$1m and \$4.999m, and those \$5 and above. Adding the figures for \$80,000 or less, \$80,000-\$249,999 and \$250,000-\$999,999 yields a figure of 95.2 per cent. It is unknown how many contracts between \$1m and \$4.999 are below \$4m.
126. Victorian Government 2018, *Victoria's social procurement framework: Building a fair, inclusive and sustainable Victoria through procurement*, State of Victoria, Melbourne.
127. Holley, S 2014, The monitoring and enforcement of labour standards when services are contracted out, *Journal of industrial relations*, 56(5), 672-690; Holley, S, Maconachie, G & Goodwin, M 2015, Government procurement contracts and minimum enforcement standards enforcement: Rhetoric, duplication and distraction?, *The economic and labour relations review*, 26(1), 43-59.
128. Howe, J & Landau, I 2007, 'Light touch' labour regulation by State governments in Australia, *Melbourne University law review*, 31, 367-399.
129. Ibid.
130. Department of Finance 2017, *Commonwealth grants rules and guidelines 2017*, Commonwealth of Australia, Canberra.
131. Ibid.
132. Local governments also contributed \$183 million and multi-jurisdictional grants made up \$10 million. See ABS cat no. 5512.0, table 1 for more details.
133. Finance 2017, *Commonwealth grant rules* above.
134. Wright et al. 2016.
135. Ibid; EERC 2017.
136. Gartrell, A 2018, Migrant workers 'left exposed' by workplace watchdog amnesty promise, *The Sydney Morning Herald*: <https://www.smh.com.au/politics/federal/migrant-workers-left-exposed-by-workplace-watchdog-amnesty-promise-20180402-p4z7d8.html>.
137. Zhou, N 2017, Work visas: students often forced to breach conditions, lawyers say, *The Guardian*: <https://www.theguardian.com/australia-news/2017/apr/22/work-visas-students-often-forced-to-breach-conditions-lawyers-say>.
138. Berg & Farbenblum 2018.
139. Gartrell 2018.
140. It is important to note that the FWO does not use the term 'wage theft' in its reports. Instead, the FWO report the rate of 'monetary non-compliance' uncovered. We regard this as being cognate with wage theft.
141. FWO 2010, *Horticulture industry shared compliance program 2010*, Final report, Commonwealth of Australia, Canberra.
142. FWO 2013, *National structural metal product manufacturing campaign 2012*, Final report, Commonwealth of Australia, Canberra.
143. FWO 2019, *Textile, clothing and footwear compliance phase campaign report*, Commonwealth of Australia, Canberra.
144. FWO 2010, *National insulation installers audit program*, Final report, Commonwealth of Australia, Canberra.
145. FWO 2015, *National building and construction industry campaign 2014/15*, Report, Commonwealth of Australia, Canberra.
146. FWO 2011, *National retail industry campaign 2010-11*, Final report, Commonwealth of Australia, Canberra.
147. FWO 2013, *National pharmacy campaign 2012-13*, Final report, Commonwealth of Australia, Canberra.
148. FWO 2015, *The motor vehicle retailing campaign*, Report, Commonwealth of Australia, Canberra.
149. FWO 2009, *National food services campaign*, Final report, Commonwealth of Australia, Canberra.
150. The report for this campaign does not provide a figure for the number of monetary non-compliant businesses audited. These numbers are therefore inferred from a pie chart that lists the percentage of wage, pay slip, weekend penalties, time/wage records, district allowance and other miscellaneous breaches. The low figure is produced by summing the percentage of wage, weekend penalty and district allowance breaches, applying this figure to the number of non-compliant businesses and then calculating a total percentage. The high figure adds the other miscellaneous breaches figure to the initial sum.
151. FWO 2013, *National hospitality campaign 2012-2015: accommodation, pubs, taverns and bars*, Commonwealth of Australia, Canberra.
152. FWO 2015, *National hospitality industry campaign restaurants, cafés and catering (wave 2) [sic]*, Report, Commonwealth of Australia, Canberra.
153. FWO 2016, *National hospitality industry campaign 2012-15 takeaway foods (wave 3)*, Report, Commonwealth of Australia, Canberra.
154. FWO 2011, *National cleaning services campaign 2010-11*, Report, Commonwealth of Australia, Canberra.
155. FWO 2012, *National clerical worker campaign 2011*, Final report, Commonwealth of Australia, Canberra.
156. FWO 2015, *National cleaning industry follow up campaign 2012 – 2013*, Report, Commonwealth of Australia, Canberra.
157. FWO 2016, *National cleaning services compliance campaign 2014/15*, Report, Commonwealth of Australia, Canberra.
158. FWO 2010, *National security industry campaign 2009*, Report and recommendations, Commonwealth of Australia, Canberra.
159. FWO 2012, *National security industry follow – up campaign 2011*, Final report, Commonwealth of Australia, Canberra.
160. FWO 2015, *National children's services campaign – 2013/14*, Report, Commonwealth of Australia, Canberra.
161. FWO 2017, *Health check: outcomes from the Fair Work Ombudsman's national health care and social assistance campaign*, Commonwealth of Australia, Canberra.



162. FWO 2009, *National hair and beauty campaign final report*, Commonwealth of Australia, Canberra.
163. FWO 2012, *National vehicle repair and maintenance campaign, Final report*, Commonwealth of Australia, Canberra.
164. FWO 2013, *National hair and beauty campaign 2012-13, Final report*, Commonwealth of Australia, Canberra.
165. FWO 2010, *National follow up campaign final report*, Commonwealth of Australia, Canberra.
166. FWO 2017, *Compliance monitoring: outcomes from the Fair Work Ombudsman's national compliance monitoring campaign 2015*, Commonwealth of Australia, Canberra.
167. FWO 2017, *Fair trades: outcomes from the Fair Work Ombudsman's national apprenticeship campaign 2015*, Commonwealth of Australia, Canberra.
168. FWO 2016, *Records and resources campaigns – report, Report*, Commonwealth of Australia, Canberra.
169. FWO 2018, *National compliance monitoring campaign #2*, Commonwealth of Australia, Canberra. Note that this report includes details of wage theft uncovered by a combination of Chemist Warehouse self-audits and FWO auditing. Since this led to a compliance partnership and an additional report figures referring to Chemist Warehouse have been omitted here.
170. Nyland et al. 2009.
171. Campbell, Boese & Tham 2016.
172. The Award rate at the time of this survey was slightly higher at \$21.09 under the *Restaurant Industry Award*.
173. Clibborn 2018.
174. Berg & Farbenblum 2017.
175. An additional 15 per cent of respondents were paid between \$15-17. However, because the NMW was within this range at \$16.87 when some respondents were working, Berg and Farbenblum (ibid) focus on those paid below \$15 as underpaid. Of course, this is likely to understate the true extent of wage theft.
176. YWC 2017.
177. This row covers a secondary set of results reported by the Young Workers Centre. For these results the Young Workers Centre focus on respondents who reported being employed in the retail industry. They then compare their reported pay to the Award in order to obtain a more accurate measure of wage theft
178. Hospo Voice 2017.
179. UnionsACT 2017.
180. EESBC 2018.
181. Campbell, Boese & Tham also report that some respondents worked an unpaid trial, however, they do not provide an estimate of its prevalence
182. Note that Berg and Farbenblum report their results as a mix of occupations and industries.





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