THE MCKELL INSTITUTE

# THE ECONOMIC IMPACT OF WAGE THEFT in SOUTH AUSTRALIA

MARCH 2019

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# FOREWORD

'Wage theft' has emerged as one of the preeminent issues facing Australian workers. Countless stories in the media have appeared in recent years, telling harrowing tales of workers being deliberately underpaid. Increasingly, it is becoming clear that the highest profile cases are only the tip of the iceberg: wage theft is becoming endemic, and there are too few resources for federal authorities to overcome this growing issue.

For too long, however, wage theft – its determinants, its victims, and its broader economic impact – has been underexamined. By its nature, wage theft is a hidden crime: few victims come forward for a range of reasons. Some feel unable to speak up, in fear of losing their job. Some do not know their full entitlements, with others unaware of who can help them.

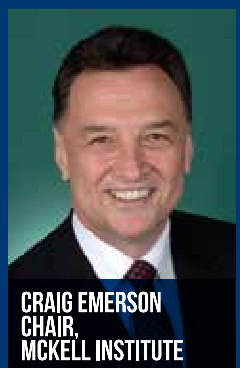
The result is that wage theft data and research has been scant. Only through the proliferation of high-profile cases has wage theft become a mainstream policy issue demanding the attention of policymakers.

This report builds on previous research by the McKell Institute exploring wage theft, with a focus on South Australia.

In 2018, The McKell Institute published *Wage Theft/Economic Distress: The Impact of Wage Theft on Queensland's Workers and Economy.* It estimated that around 1 in 5 Queensland workers were suffering some form of wage theft regularly, with the total economic impact exceeding $1.2 billion in that state.

Building on the McKell Institute's research in Queensland, this report explores the broad economic impact of wage theft in South Australia. Through a comprehensive analysis of existing data on the non-compliance of wage laws within South Australia, this report determines that up to 20.2 per cent of workers in South Australia are subject to wage theft, in all likelihood costing the state's workers more than half a billion dollars per annum.

Wage theft is poorly addressed by under-resourced federal authorities. But there are real levers state governments can pull to make wage theft less likely within their jurisdictions. This report puts forward recommendations aimed at overcoming this growing scourge in South Australia, and ensuring SA becomes a fairer, more prosperous state – for workers and businesses alike.



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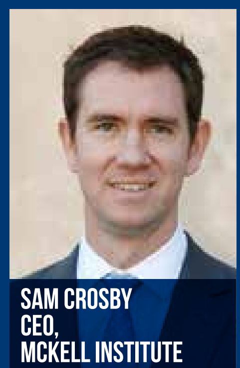

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# EXECUTIVE SUMMARY

**This report explores the economic impact of wage theft in South Australia. Wage theft is widespread and likely growing, impacting up to 170,000 South Australian workers to varying degrees, and almost certainly costing South Australian workers, collectively, more than $500 million a year.**

Part 1 of this report defines wage theft, drawing distinctions between wage theft - the unlawful non-compliance of wage laws by employers – and wage *suppression* which, while impactful in its own right, is not technically illegal, before Part 2 looks at the victims of wage theft. While workers in certain industries are more susceptible to wage theft than others, this report reiterates the growing evidence that wage theft occurs in a wide range of industries throughout the economy. It affects workers directly, but also the economy more broadly, with wage thefts significantly impacting workers' ability to consumer, and therefore constraining aggregate demand.

Part 3 explores the abrogation of oversight of wage laws by the Federal Government in recent years. Since 2013, the Fair Work Ombudsman (FWO) has seen a dramatic decline in its resources, constraining its capacity to conduct its work. The FWO is the national entity through which wage laws are enforced, and where workers can report incidents of lost and stolen wages. That the FWO has been so dramatically under resourced has meant that most perpetrators of wage theft are unlikely to ever be identified. In each of FWO's audits, however, consistently high levels of non-compliance have been unearthed.

Parts 4 and 5 assess the economic impact of wage theft and the underpayment and non-payment of superannuation in South Australia. It is likely that up to 170,000 South Australian workers are victims of wage theft to varying degrees. Around ⅓ workers entitled to superannuation are not being paid their full entitlements.

Such high rates of non-compliance have enormous economic impacts: this report's most conservative estimate of the combined loss of superannuation and income in South Australia due to wage theft is around $360 million. Medium estimates in this report see this figure rise to $560 million. This constrains consumer spending and likely costs the State Government between $31-60 million in forgone GST revenue each year, as noted in Part 6.

Part 7 then contextualises these findings, noting that wage theft costs considerably more than the theft of material goods in South Australia, before Part 8 offers a series of reform recommendations for the State Government. While many of the levers for addressing wage theft are available to the Federal Government, State Governments have options available to them, too.

This report puts forward 6 recommendations: ensuring best-practice labour-hire licensing within the state, tightening State procurement policy to ensure wage theft is eradicated from supply chains, actively collaborate on wage theft responses with other jurisdictions, consider ways to reform how superannuation is paid by the State government to set an example of best practice, invest in more education and training programs, and criminalising wage theft in the state while implementing strict financial penalties for non-compliance within SA.

Wage theft is one of the most significant public policy issues of our time – but there are tools available to governments, both Federal and State, to help eradicate the costly scourge of wage theft from the workplace.

# KEY FINDINGS

## FINDING 1:

**It is likely that around than 165,000-170,000 South Australian workers are impacted by wage theft to varying degrees** (prior to considering the non-payment or underpayment of superannuation). This equates to 20.24 per cent of the state's workforce of ~835,800 (or 1 in 5 South Australian workers).

## FINDING 2:

**Ordinary wage theft** (wage theft excluding the underpayment and non-payment of superannuation) **is likely to be costing South Australians between $280 and $470 million per year.**

## FINDING 3:

**29.1 per cent of South Australian workers are likely subject to the non-payment or underpayment of superannuation to varying degrees.** Many of these workers would overlap with workers who are experiencing ordinary wage theft.

## FINDING 4:

**The non-payment and underpayment of superannuation in South Australia is likely costing South Australian workers around $270 million per year in lost retirement savings, according to McKell Institute analysis of data compiled by Industry Super Australia.**

## FINDING 5:

**The most conservative estimate of the combined loss of superannuation and income in South Australia due to wage theft is around $360 million.** Medium estimates in this report see this figure rise to $560 million. It is almost certain that the collective loss of superannuation and wages is costing South Australians more than half a billion dollars every year.

## FINDING 6:

**There is little federal oversight of wage compliance in South Australia.** There are fewer workplace audit campaigns occurring today than there were in the 1970s, 80s and 90s. Since 2010, there have only been 23 Fair Work Ombudsman audit campaigns in South Australia, auditing a total of 1726, or 1.19 per cent, of employers in the state.

## FINDING 7:

**Wage theft impacts State Government revenue.** While it is challenging to quantify wage theft's detrimental impact on state-levied taxes, this report estimates that South Australia loses between $31 million and $60 million per year in GST revenue as a direct result of wage theft occurring within the state.

## FINDING 8:

**Over the past decade, just 1.19 per cent of South Australian employers have been audited by the Fair Work Ombudsman.** 37.1 per cent of audited employers were non-compliant with wage laws to varying degrees.

## FINDING 9:

**South Australian workers are vulnerable to wage theft.** The lack of federal oversight of South Australia's workplaces leaves SA workers more susceptible to wage theft compared with other jurisdictions.

## FINDING 10:

**Despite the fact that most policy levers relating to industrial relations are held at the federal level, there are real interventions state governments can make to ensure the occurrence of wage theft is minimised,** including labour-hire licensing, criminalising wage theft in the state, reforming state government procurement processes, coordinating with other states, reforming the way superannuation is paid by the state, and funding education and training programs relating to workplace entitlements.



# FINDINGS FROM MCKELL'S PREVIOUS RESEARCH INTO WAGE THEFT IN QUEENSLAND

The McKell Institute's *Wage Theft, Economic Distress: The Impact of Wage Theft on Queensland's Economy and Workers*[1] provided one of the first attempts to quantify the extent to which wage theft was impact the Queensland economy. Written as a submission to the Queensland Parliament's inquiry into wage theft,[2] the report examined various data sets to determine the extent to which wage theft was occurring, and how much it may be impacted individuals and the economy under various scenarios.

The findings were alarming. The report determined that more than 430,000 Queenslanders, or close to 18 per cent of the state's workforce, were likely subject to wage theft, excluding superannuation. When looking just at superannuation, almost 600,000 individuals were estimated to be underpaid their entitled super. This is 23.4 per cent of the state's workforce.

The report explored the total economic impact on wage theft under various scenarios. It determined the aggregate loss in wages if workers were losing between 1-20 per cent of their wages. Even if only 1 per cent of wage theft victims' wages were being suppressed, this would leave Queensland workers around $250 million out of pocket. Under the more plausible rate of 5 per cent, the report determined that Queensland wage theft victims would be losing, on aggregate, $1.22 billion per year to the scourge.

The non-payment of superannuation was estimated by Industry Super Australia to be costing Queensland workers at least $1.1 billion per year.

Collectively, this has a significant impact on Queensland's economy, and costs in total substantially more than other crimes, such as the material theft of goods.

Additionally, the report estimated the economic impact from reduced consumer spending, and how this related to tax receipts within the state of Queensland. While the GST is a federally levied tax, it is one applied to consumer spending, and ultimately is redirected towards the states. The report estimated that Queensland was losing at least $13 million per year in GST revenue, with high estimates extending to more than $270 million in forgone revenue within that jurisdiction.

# PART ONE:
# WHAT IS WAGE THEFT?

The McKell Institute's past research on wage theft explored at length what wage theft constitutes.

In *Wage Theft, Economic Distress: The Impact of Wage Theft on Queensland's Workers and Economy,*[3] The McKell Institute found that:

> "Wage theft can take a number of different forms but generally relates to employers deliberately not paying employees their full entitlements including superannuation, award and penalty rates, leave and other employee entitlements. Wage theft should be distinguished from accidental errors, where an employer makes a genuine one-off mistake in the provision of entitlements. Wage theft occurs when the employer knows, or should be expected to know, of the employees' rightful entitlements and yet does not afford the employee these full entitlements. Wage theft can also occur in less direct ways, such as through the termination of an enterprise bargaining agreement which may revert workers back towards a lower award wage".

Additionally, the report identified ways in which wage theft occurs, including:

"1. Employees needing to "pay an upfront deposit" for a job

2. Employees needing to pay money back in cash to employers after receiving wages

3. Denying approval for paid professional development leave (an award entitlement)

4. Pressuring workers not to record overtime

5. Not paying overtime when it is claimed

6. Not paying or underpaying superannuation

7. Non-provision of meal breaks

8. Incorrectly classifying workers

9. Unpaid redundancies

10. Working for "free" whilst training

11. Not paying staff to attend mandatory staff meetings

12. Payment in the form of food and beverages, not wages".



## Contrasting wage theft and wage suppression

Wage theft and wage suppression are occasionally used interchangeably, but have different meanings and implications. 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'.[4]

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.

The economic analysis in this report focuses solely on wage theft, without attempting to quantify the impact of wage suppression on South Australian workers. It acknowledges that wage suppression is a prevalent issue with its own economic consequences beyond the scope of this report.

# PART TWO: IDENTIFYING THE VICTIMS OF WAGE THEFT

## Wage theft is prevalent in every industry and affects every South Australian

Wage theft is often associated with infamous cases, like the 7Eleven incident,[5] or known cases of exploitation in the horticultural sector[6] and hospitality sector.[7] However, the reality is that wage theft, in all of its forms, is evident in effectively every known industry in Australia. This is demonstrated by existing literature, as well as the broad nature of non-compliance identified through audits by the Fair Work Ombudsman, which are tabled in more detail later in this report.

Unfortunately, data on wage theft remains in its infancy. Most existing surveys have focused on specific elements of the labour market, particularly migrant workers and young workers. It should be noted, however, that the effects of wage theft extend beyond those directly impacted. All wage earners are impacted by the downward pressure placed on wages across the economy as a result of such wide spread wage theft. The impact on aggregate demand caused by wage theft also has a negative impact on Australia's consumer-driven economy, broadly impacted job creation. Australia is also experiencing a sustained period of stagnant wage growth, and considerably high underemployment and youth underemployment levels. The ongoing prevalence of wage theft is only exacerbating these existing trends.

## Wage theft is anti-competitive and undermines the majority of compliant businesses

McKell Institute analysis in Queensland has made clear the detrimental impact on the broader business community that wage theft has. The impact on affected individuals is clear, as has been made evident in this report so far. But the majority of well-intentioned, risk-taking, compliant business owners in South Australia should be equally outraged by the high prevalence of wage theft, and actively engaged in bringing it to an end.

Australia's wage laws are determined by an independent tribunal, the Fair Work Commission that constitutes both employer and employee representatives. While the McKell Institute does not agree with every single determination of the Fair Work Commission, most notably its decision to reduce penalty rate pay in February 2018, it does endorse the principle of weighing the needs of employers, employees and the economy when determining national rates of pay. This system, however, operates on an assumption that workers are paid according to the law of the day.

Evidence is growing that a large minority of employers across Australia are regularly failing to comply with wage laws. When a sizeable minority of employers fail to comply with the wage laws as written, they are engaging in anti-competitive behaviour that threatens the viability of their fully compliant competitors. Not only is such a practice anti-competitive and unfair, it is illegal, and it is damaging to the economy. Additionally, by not fully complying with their obligations, nefarious employers engaging in wage theft are actively suppressing the purchasing power of their workers. This has a ripple effect throughout South Australia's (and Australia's) consumer economy. Previous McKell Institute research has identified the relationship between a reduction in remuneration and lower aggregate demand.[8] The same phenomena are expected to be occurring as a result of wide spread wage theft in the South Australian economy.

## Wage theft affects every South Australian constituency and should not be a partisan issue

There is a tendency to view the wage theft debate through a simplistic and at times partisan lens. However, wage theft affects every single South Australian, with its impacts being felt across varying constituencies ranging from a majority of small and large business owners who are fully compliant (especially in the hospitality and agricultural sector), to low-income employees directly affected, to South Australian wage earners impacted by the negative impact wage theft has on wage growth, to South Australian residents facing shortfalls in tax revenue that could otherwise bolster essential services. In short, every South Australian is a victim of wage theft, and it is in every South Australians interest to minimise it to the greatest extent possible.

## Existing literature identifies constituencies most susceptible to wage theft

Major surveys (tabled below) of the workforce by Nyland et al (2009),[9] Berg & Farbenblum (2017)[10] and the Young Workers Centre (2017)[11] have identified how wage theft is prevalent throughout the workforce. While these surveys focused on target constituencies, such as young workers or international students, they all identified the existence of wage theft across industries not always associated with it.

These existing surveys have largely focused on at-risk members of the workforce, such as international students, migrant workers, and young workers in industries known to have large rates of underpayment, like retail and hospitality. Some of these major surveys found extraordinarily high rates of regular wage underpayment. Campbell et al (2015), for example, determined that 81.8 per cent of survey respondents, all of whom were international students, were deemed to be victims of wage theft to varying degrees.

**FIGURE 2.1** Summary of major surveys on wage theft and non-compliance

| NYLAND ET AL. | BERG & FARBENBLUM | 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%) |

**FIGURE 2.2** Summary of major surveys on wage theft and non-compliance

| AUTHOR(S) | YEAR(S) CONDUCTED | SAMPLE SIZE | WAGE COMPARISON | PREVALENCE OF WAGE THEFT | SURVEY OF... |
|---|---|---|---|---|---|
| Nyland et al.[12] | 2005 | 200 | 15.00 | 58.1% | International students |
| Campbell, Boese & Tham[13] | 2014-2015 | 21 | 21.00 (Award)[14] | 81.8% | International students |
| Clibborn[15] | 2015 | 1,433 | 17.29 (NMW) | 60% | International students |
| Berg & Farbenblum[16] | 2016 | 4,322 | 15.00 | 46%[17] | Temporary migrant workers |
| Young Workers Centre[18] | 2016 | 1,024 | 17.70 (NMW) | 19.7% | Young (15-30) workers |
| | | 220 | 20.79 (Award) | 36.8% | Young (15-30) retail workers[19] |
| Hospo Voice[20] | 2017 | 624 | 19.53 (Award) | 76% | Victorian hospitality workers |

## Wage theft is common across Australia

Wage theft occurs all over Australia and in effectively every industry. This is demonstrated by the results of every nationally-focused FWO audit since the year 2009. The below table collates every national FWO audit, identifying the rates of underpayment observed in each award. Note that these audits were national in their scope – they audited employers in every jurisdiction. The results demonstrate the wide spread nature of wage non-compliance in the Australian work place.

**FIGURE 2.3** National FWO Campaigns

| INDUSTRY | CAMPAIGN | YEAR | AUDITS | PER CENT FINDING WAGE THEFT[21] | AVERAGE RECOVERED |
|---|---|---|---|---|---|
| Agriculture, forestry and fishing | Horticulture industry shared compliance program[22] | 2010 | 277 | 12.6% | $389 |
| Manufacturing | Structural metal product[23] | 2012 | 253 | 12.3% | $1,401 |
| | Textile, clothing and footwear compliance phase[24] | 2016-2018 | 371 | 22.4% | $615 |
| Construction | Insulation installers[25] | 2010 | 211 | 11.8% | $614 |
| | Building & construction[26] | 2014-2015 | 610 | 24.6% | $1,289 |
| Retail trade | Retail[27] | 2010-2011 | 1866 | 16.7% | $775 |
| | Pharmacy[28] | 2012-2013 | 523 | 21.4% | $469 |
| | Motor vehicle[29] | 2013 | 462 | 6.9% | $1,854 |
| Accommodation and food services | Food services[30] | 2009 | 481 | 16.8-30.8%[31] | $658 |
| | Hospitality (Accommodation, pubs, taverns and bars)[32] | 2012-2013 | 750 | 19.6% | $584 |
| | Hospitality (Restaurants, cafés and catering)[33] | 2012-2013 | 1066 | 46.3% | $442 |
| | Hospitality (Takeaway foods)[34] | 2014-2015 | 565 | 47.1% | $627 |

*CONTINUED*

**FIGURE 2.3** National FWO Campaigns

| INDUSTRY | CAMPAIGN | YEAR | AUDITS | PER CENT FINDING WAGE THEFT | AVERAGE RECOVERED |
|---|---|---|---|---|---|
| Administrative and support services | Cleaning services[35] | 2010-2011 | 315 | 23.7% | $390 |
| | Clerical worker[36] | 2011 | 1621 | 8.9% | $611 |
| | Cleaning follow up[37] | 2012-2013 | 578 | 27.5% | $629 |
| | Cleaning services compliance[38] | 2014-2015 | 54 | 33.3% | $289 |
| Public administration and safety | Security[39] | 2009 | 256 | 23.4% | $695 |
| | Security follow-up[40] | 2011 | 392 | 17.3% | $649 |
| Health care and social assistance | Children's services[41] | 2013-2014 | 420 | 24.3% | $751 |
| | Health care and social assistance[42] | 2014-2015 | 696 | 15.2% | $566 |
| Other services | Hair and beauty[43] | 2009 | 330 | 23.6% | $623 |
| | Vehicle repair and maintenance[44] | 2012 | 759 | 19.0% | $873 |
| | Hair and beauty[45] | 2012-2013 | 838 | 40.0% | $538 |
| Various | Follow up campaign[46] | 2010 | 311 | 31.5% | $452 |
| | National compliance monitoring[47] | 2015 | 891 | 17.3% | $429 |
| | Apprenticeship[48] | 2014-2016 | 822 | 32.1% | $1,051 |
| | Records and resources[49] | 2016 | 1376 | 3.7% | $1,845 |
| | National compliance monitoring #2[50] | n/a | 479 | 24.2% | $704 |




# PART THREE: A LACK OF FEDERAL OVERSIGHT

### The Federal Government is abrogating its responsibility to enforce wage compliance

The Commonwealth Government is largely responsible for overseeing the Australian workplace. The Fair Work Ombudsman (FWO), is a government agency with the power to audit workplaces and issue infringement notices to employers found to be non-compliant with wage laws. However, the FWO is under-resourced, and ill-equipped to deal with the task of overseeing a national labour market of 12.5 million individual workers.

Among the most alarming findings of McKell Institute's analysis submitted to the Queensland Parliamentary Inquiry is that the Commonwealth Government has, over recent years, drastically reduced its own capacity to enforce the payment of wages and superannuation nationally. Most of the powers in relation to auditing employers and enforcing wage laws sit with the Commonwealth Government. However, the decline in funding since 2013 has demonstrably impacted the Fair Work Ombudsman's ability to achieve its mandate. The Queensland inquiry demonstrated just how extraordinary the lack of enforcement is. In one submission, it was identified that across the entirety of Queensland, a state of more than 450,000 employers, there were less than 40 FWO inspectors operating in the state. The McKell Institute is unaware of the number of FWO inspectors operating with the state of South Australia, but it is probable that, being a smaller state, the FWO deploys fewer resources to South Australian than Queensland.

The confluence of an active disinterest by the Commonwealth represented by the demonstrable decline in funding of the FWO, and the fact that only around 1 per cent of South Australian businesses have ever been audited by the FWO, create an environment in which wage theft is all but guaranteed to exist and thrive in South Australia. There is, in effect, no 'cop on the beat'. A majority of South Australian employers that are engaged in wage theft – even acts of truly malignant wage theft – are highly unlikely to be held to account under the current regime. In this context, it is vital the State Governments pick up the slack, and use every resource and policy response at their disposal to dissuade and identify wage theft, and prosecute those actively engaged in it.

## The FWO has had its funding reduced by almost half since its peak in 2013

The FWO has seen its resources dramatically reduced since the change of Federal Government in September 2013. In fact, its total appropriation has almost halved since its peak in FY2012-2013.

**FIGURE 3.1**
The decline in FWO resources since 2013.

| YEAR | FWO RESOURCES ($'000) |
|---|---|
| 2009-10 | **$197,921** |
| 2010-11 | **$228,063** |
| 2011-12 | **$197,828** |
| 2012-13 | **$224,777** |
| 2013-14 (CHANGE OF GOVERNMENT) | **$221,973** |
| 2014-15 | **$205,806** |
| 2015-16 | **$192,008** |
| 2016-17 | **$112,786** |
| 2017-18 | **$22,157** |
| 2018-19 | **$126,226** |

**FIGURE 3.2** The decline in FWO resources since 2013.

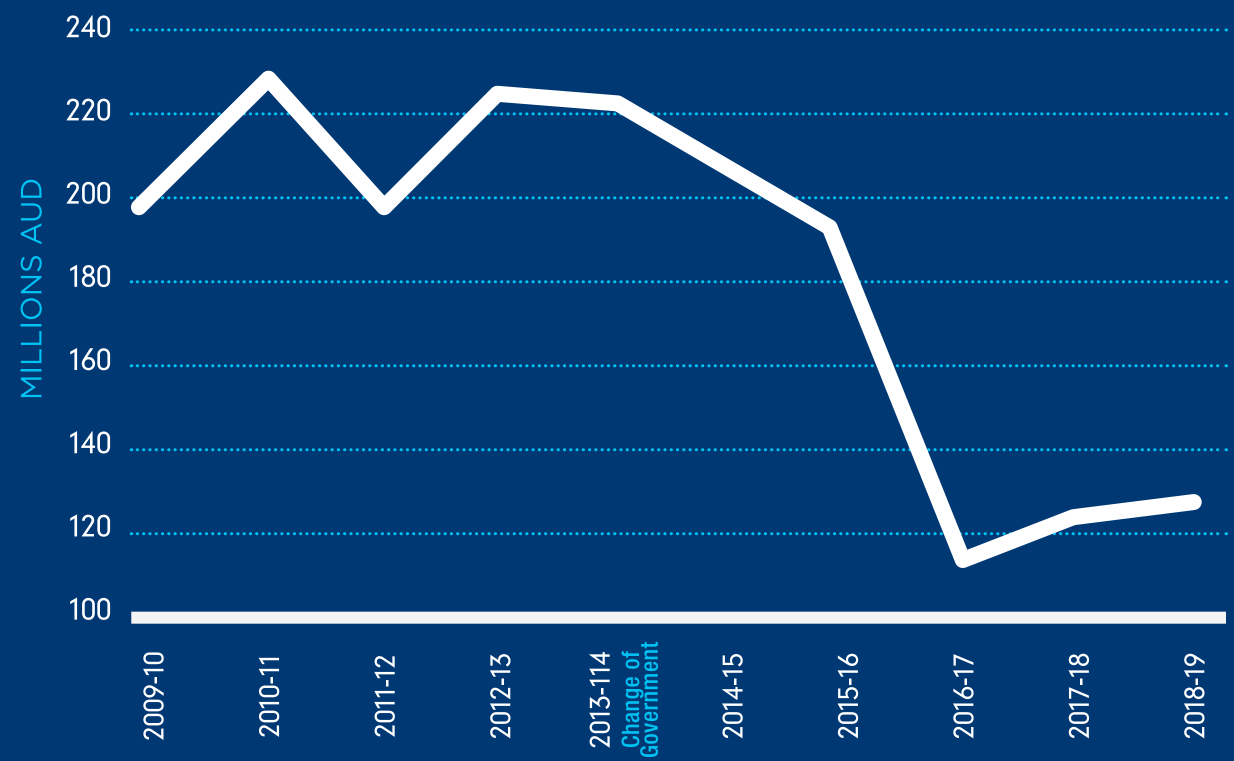
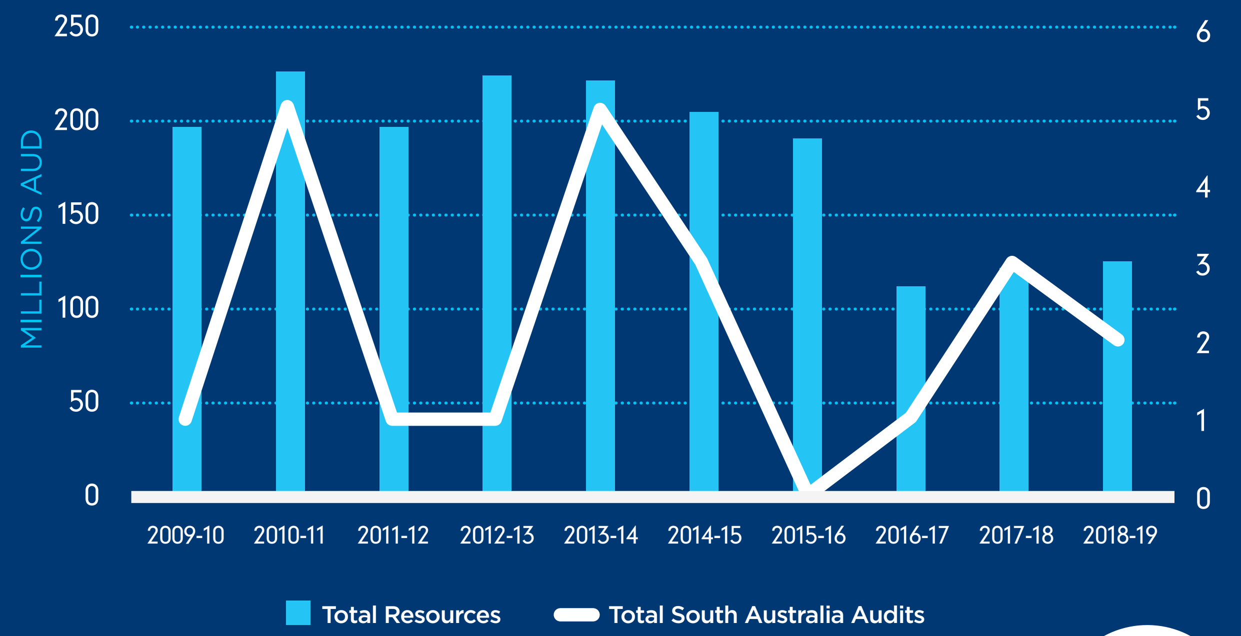



**FIGURE 3.3** FWO Audits in SA and FWO resources.

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## FWO campaigns in South Australia

**FIGURE 3.4** FWO audits in South Australia since 2009

| INDUSTRY/BUSINESS | EMPLOYERS COMPLIANT | % | NON-COMPLIANT | % | MONEY RECOVERED | EMPLOYEES PAID |
|---|---|---|---|---|---|---|
| **Pooraka Produce Markets 2010** | 35 | 83% | 7 | 17% | $3,647 | 13 |
| **Car Wash 2010** | 4 | 47% | 3 | 43% | $8,131 | 18 |
| **Limestone Coast 2010** | 46 | 65% | 25 | 35% | $55,377 | 144 |
| **Royal Adelaide Show 2009** | 33 | 72% | 13 | 28% | $7,937 | 69 |
| **Fast Food Campaign 2010** | 60 | 69% | 27 | 31% | $13,376 | 53 |
| **Clipsal 500 2011** | 15 | 48% | 16 | 52% | $1,677 | 29 |
| **McLaren Vale/Barossa Valley Winery 2010** | 40 | 65% | 22 | 35% | $15,901 | 10 |
| **South East Tourism Campaign 2012** | 37 | 70% | 16 | 30% | $6,797 | 42 |
| **Fuel Retailing Campaign 2013** | 40 | 53% | 36 | 47% | $28,229 | 54 |
| **Residential Building Industry Campaign 2013** | 18 | 37% | 31 | 63% | $25,413 | 27 |
| **Dental/Orthodontic/Medical Rooms 2013** | 62 | 69% | 23 | 31% | $7,060 | 11 |
| **Land development and site preparation 2013** | 39 | 70% | 17 | 30% | $42,892 | 47 |
| **Private Hospitals/Aged Care/Nursing agencies 2013** | 158 | 89% | 20 | 11% | $109,962 | 563 |
| **Specialised Food Retailing Campaign 2014** | 110 | 57% | 83 | 43% | $151,789 | 285 |
| **Kangaroo Island Education and Compliance 2014** | 42 | 75% | 14 | 25% | $15,618 | 61 |
| **Retail Campaign 2014** | 65 | 58% | 48 | 42% | $18,273 | 75 |
| **Compliance Campaign Report 2016** | 53 | 52% | 49 | 48% | $79,886 | 168 |
| **Hospitality Campaign 2016** | 10 | 24% | 32 | 76% | $99,527 | 140 |
| **Limestone Coast 2016** | 72 | 56% | 56 | 44% | $23,453 | 49 |
| **Barossa-Two Wells/Gawler Regional Campaign 2018** | 35 | 50% | 35 | 50% | $11,438 | 12 |
| **Adelaide CBD and Inner Metro Campaign 2018** | 69 | 55% | 56 | 45% | $54,701 | 113 |
| **Remote and Regional Locations Outcomes 2019** | 42 | 52% | 12 | 48% | $20,390 | 38 |
| **Total** | 1085 | 62% | 641 | 37% | $801,474 | 2021 |

The FWO have completed 23 audit campaigns since 2009 in South Australia. It has audited a total of 1726 employers across a diverse set of industries. Overall, 37.14 per cent of South Australian employers have been found to be non-compliant with wage laws in Australia.

There are more than 144,00 employers registered in South Australia. The total number of businesses audited by the FWO since its inception is 1.19 per cent of all employers operating in the State.

It should be emphasised that the actual number of non-compliant employers could be higher than those identified by the FWO. The FWO tend to notify employers prior to audits, theoretically giving non-compliant employers some opportunity to improve their compliance.[51]

### There is, effectively, no 'cop on the beat'

Only 1726 South Australian employers have been audited by the Fair Work Ombudsman since its creation in 2009. Of these, more than 37 per cent have been found to be non-compliant with federal wage laws.

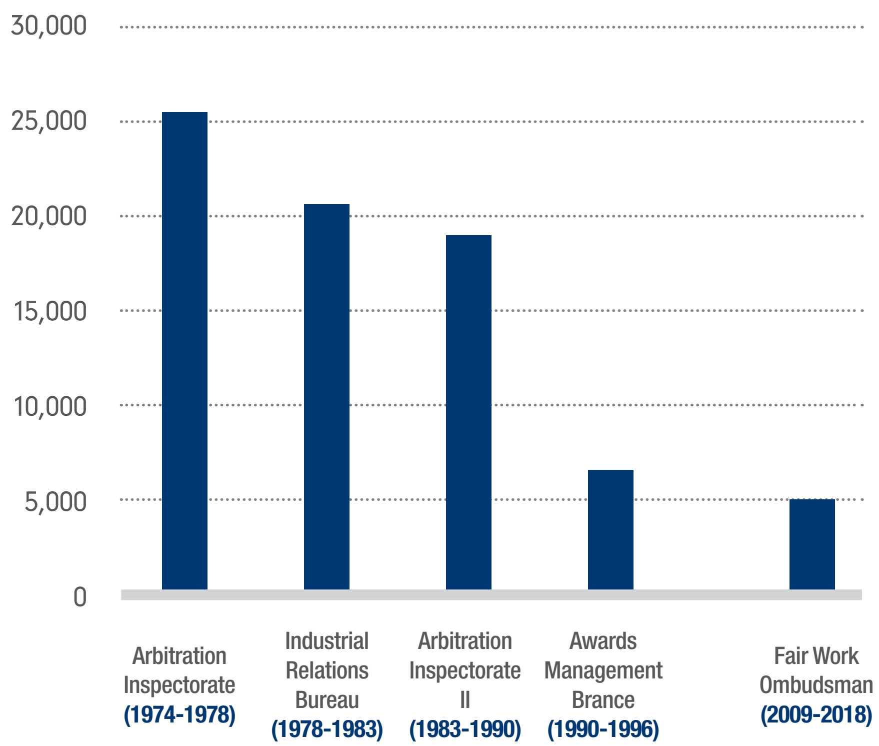
There are over 144,000 employers registered in South Australia. This means that, of all the business in South Australia, only around 1.19 per cent would have been audited since 2009. Simply, there is very little oversight of South Australian workplaces by federal authorities.

Under current policy settings, the vast majority of employers engaged in wage theft are unlikely to ever be caught or punished.


## Workplace audits by the Federal Government at an all time low

Workplace audits by the Federal Government has reached a record low. Predecessor agencies to the FWO, such as the Arbitration Inspectorate and the Industrial Relations Bureau, routinely inspected many more workplaces than is currently the case. This was during a period where the overall labour market as much smaller than today. 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.

**FIGURE 3.5** Average number of annual workplace audits by various Federal Government agencies over time.



# PART FOUR: THE COST OF WAGE THEFT IN SOUTH AUSTRALIA

**FIGURE 4.1** Cost of wage theft in South Australia under various scenarios

| NUMBER OF TOTAL EMPLOYERS IN SOUTH AUSTRALIA 2018 | 144,519 |
|---|---|
| Estimated number of non-compliant businesses in SA using FWO audit % | 53,671 |
| Estimated number of wage theft victims across all non-compliant employers in SA | 169,220 |
| Total Wages at Average Salary of $55,600 | $9,408,605,553 |
| If 1% of identified wage theft victims' wages were not paid | $94,086,056 |
| If 3% of identified wage theft victims' wages were not paid | $282,258,167 |
| If 5% of identified wage theft victims' wages were not paid | $470,430,278 |
| If 10% of identified wage theft victims' wages were not paid | $940,860,555 |
| If 15% of identified wage theft victims' wages were not paid | $1,411,290,833 |
| If 20% of identified wage theft victims' wages were not paid | $1,881,721,111 |

Quantifying wage theft is a challenging exercise that requires the use of scenarios to explore the likely impact of demonstrable levels of wage theft if they were replicated through the South Australian economy.

The above table provides such scenarios. Using the FWO Audit data as a base, it extrapolates across the South Australian economy. Around 37 per cent of South Australian businesses audited have been found to be non-compliant. This would equate to 53,761 businesses if extrapolated across the state. 3.15 employees were identified per non-compliant business. If extrapolated across the South Australian economy, this would equate to approximately 169,220 workers. This estimate corresponds with Industry Super Australia estimates of victims of underpayment or non-payment of superannuation, which to an extent corroborates the estimate. From this base, various levels of wage theft are applied, assuming each worker earns an average income. In reality, many wage theft victims would earn more or less than the average (further sector-by-sector analysis is to be explored in the McKell Institute's forthcoming report on wage theft in South Australia). Applying various rates of wage theft to this identified cohort, the above table identifies the cost of varying degrees of wage theft.


# PART FIVE: THE COST OF UNDERPAYMENT AND NON-PAYMENT OF SUPERANNUATION IN SA

Arguably the most common form of wage theft is in the form of superannuation non-payment. Unlike other forms of wage theft, detailed data exists estimating the extent of superannuation non-payment. Industry Super Australia maintains detailed databases that estimate non-payment. ISA data was published by *The Guardian* in 2018, breaking down the findings in each Federal electorate. The findings are profound. When aggregated, ISA determined that almost 170,000 South Australian workers were being underpaid superannuation, with an underpayment figure averaging almost $1700 per year.

**FIGURE 5.1** Aggregated estimates of superannuation underpayment in South Australian federal electorates. Note – percentages are estimates of those who are entitled to superannuation only.

| FEDERAL ELECTORATE | % ELECTORATE UNDERPAID SUPER | AVERAGE UNDERPAYMENT | EST. NUMBER OF PEOPLE UNDERPAID | EST. AGGREGATE SUPERANNUATION LOSS (ANNUAL) |
|---|---|---|---|---|
| **Grey** | 30% | $1,574 | 12,632 | $19,882,768 |
| **Wakefield** | 31% | $1,652 | 15,896 | $26,260,192 |
| **Barker** | 31% | $1,359 | 14,637 | $19,891,683 |
| **Mayo** | 28% | $1,748 | 12,896 | $22,542,208 |
| **Makin** | 31% | $1,694 | 18,253 | $30,920,582 |
| **Sturt** | 28% | $1,889 | 15,033 | $28,397,337 |
| **Port Adelaide** | 30% | $1,676 | 17,310 | $29,011,560 |
| **Hindmarsh** | 28% | $1,688 | 16,374 | $27,639,312 |
| **Adelaide** | 28% | $1,876 | 16,780 | $31,479,280 |
| **Boothby** | 27% | $1,741 | 14,262 | $24,830,142 |
| **Kingston** | 28% | $1,748 | 14,463 | $25,281,324 |
| **Total** | 29% | $1,695 | 168,536 | $285,668,520 |

**Source:** Industry Super Australia.

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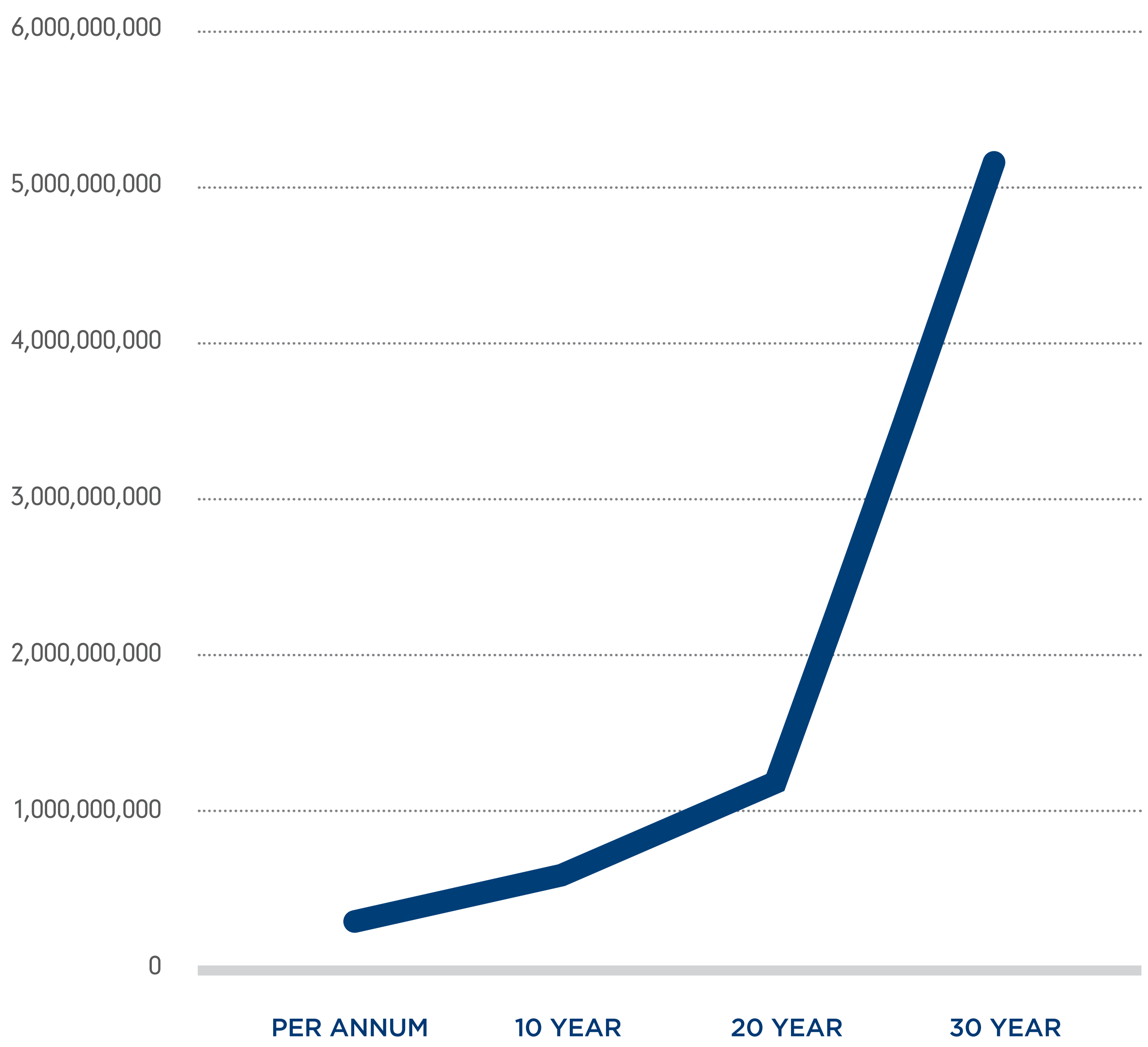
**FIGURE 5.2** Compound loss of annual unpaid superannuation estimates in South Australian federal electorates. Source: Industry Super Australia.

| PER ANNUM | 10 YEAR | 20 YEAR | 40 YEAR |
|---|---|---|---|
| **$285,668,520** | $588,771,836 | $1,213,477,337 | $5,154,671,041 |

**Source:** Industry Super Australia.

**FIGURE 5.3**
Assuming superannuation continues to deliver its relatively high rate of return, the annual loss of superannuation amounts to trillions in lost super over a period of several decades.






It is tempting for some to see the non-payment of superannuation as a lesser infringement than the underpayment of non-superannuation wages. But the non-payment and under-payment of superannuation is of equal – if not greater - detriment to an employee than the theft of ordinary wages. Compulsory superannuation is, in effect, a deferred payment of an employee's regular wages and should be seen no less essential than regular wages. Employees receive lower wages today in exchange for allocating a certain percentage of their income to their future retirement savings. When employers do not pay superannuation to the extent they are mandated, it is a crime equal to any other form of non-payment.

Unfortunately, the non-payment of superannuation is pervasive. But fortunately, it is one of the components of wage theft that state governments and the Commonwealth can actively dissuade and end more simply than other forms of wage theft.

Currently, superannuation is paid quarterly by employers. This provides challenges for employees in monitoring their superannuation payments, and puts the onus on employees to proactively check and calculate the accuracy of their superannuation payments each quarter. This must be reformed to ensure more transparency over superannuation payments. Both State and Commonwealth governments have the capacity to mandate such a scheme in their own procurement processes, and reform the way in which they themselves pay superannuation.

This report recommends that the State Government explore ways to ensure that the South Australian Government's procurement process adopts measures to ensure that superannuation is paid accurately for all employees involved in State-procured projects. The Government should also consider financial literacy campaigns, and explore how the financial literacy of South Australians can be monitored over time to ensure that it continue to improve for all age groups.

## Super non-payment affects all South Australians

The most insidious aspect of superannuation non-payment is its compounding effect over time, and how this long-term nature of the crime costs not only its individual victims, but the broader society and economy in every state in Australia.

Superannuation is valuable because it compounds over time. This means that every dollar invested into superannuation today will accrue to a higher value over a working life. Many Australian workers would not expect careers of around 45 to 50 years. The formal retirement age, while debated and unsettled, is likely to hover around 70 years of age by mid-century. And while youth unemployment is higher than regular unemployment, a vast majority of young South Australians commence some form of paid employment in their late teens or early 20s.

# PART SIX: WAGE THEFT'S NEGATIVE IMPACT ON REVENUE IN SOUTH AUSTRALIA

The consequences of wage theft extend beyond direct impacts on individuals. Wage theft also impacts government revenue. It is inherently challenging to determine the precise impact of wage theft on taxes levied within South Australia, such as stamp duties, land taxes, gambling taxes, registration fees and charges, and pay roll tax. It is reasonable to assume that pay roll tax revenue, in particular, is significantly impacted by wage theft – especially when wage theft manifests itself in the form of 'off the books' employment below award wages that allows an employer to minimise their official overall pay roll. It's worth noting that South Australia's financial standing has taken a hit in recent years, according to the Commonwealth Grants Commission, because of a lack of revenue sourced from taxable pay rolls and property sales:

> "South Australia's fiscal capacity, which remains the third lowest [in the nation], has deteriorated slightly, mainly due to slow growth in taxable payrolls and property sales, and a decline in its share of mining production"
>
> ***– COMMONWEALTH GRANTS COMMISSION, 2018.[52]***

Providing accurate estimates of the extent to which wage theft is impacting state revenue directly, however, requires the active participation of the State Government and the deployment of its resources.

Despite the challenges of quantifying the impact wage theft has on state revenue, it is possible to provide reasonable estimates of its impact on tax relating more directly to workers' income and expenditure. Income tax and the goods and services tax are administered and collected at the Commonwealth level, with a substantial portion of this revenue being re-allocated towards the states. South Australia currently receives $1.47 for every $1.00 in GST levied within the state.[53]



It is, therefore, possible to estimate the impact the overall loss of wage theft is having on overall GST collection and redistribution within South Australia. McKell Institute analysis has previously identified that around 55.09 per cent of workers' incomes is spent on goods and services on which the GST is levied. From this, the estimated loss in GST collection and therefore GST redistribution within South Australia can be arrived at, based upon the wage theft scenarios.

The below table explores the likely impact on GST revenue in South Australia as a result of wage theft, as well as the conservative estimates of lost income tax within South Australia. In the most conservative scenario, where just 1 per cent of identified wage theft victims' ordinary wages are lost, this would equate to $6.1 million in lost revenue. It is almost certain that this is a gross underestimation of the extent of the problem. It is more probable that identified wage theft victims lose considerably more than 1 per cent of their wage to wage theft, as is demonstrated by various case studies. More probable is that wage theft victims lose between 3 and 10 per cent of their overall wages to the scourge – with many losing more.

**Under these scenarios, it is likely that wage theft costs the South Australian Government between $30.85 million and $61.72 million in lost GST revenue annually.**

**FIGURE 6.1** Cost of theft compared with the costs of wage theft, 2017-2018

| | TOTAL WAGE'S LOST | INCOME TAX LOSS | GST LOSS |
|---|---|---|---|
| 1% of wage-theft victims' wages lost | $94,086,056 | $17,876,350 | $6,171,637 |
| 3% of wage-theft victims' wages lost | $282,258,167 | $53,629,051 | $18,514,911 |
| 5% of wage-theft victims' wages lost | $470,430,278 | $89,381,752 | $30,858,185 |
| 10% of wage-theft victims' wages lost | $940,860,555 | $178,763,505 | $61,716,371 |
| 15% of wage-theft victims' wages lost | $1,411,290,833 | $268,145,258 | $92,574,557 |
| 20% of wage-theft victims' wages lost | $1,881,721,111 | $357,527,011 | $123,432,743 |

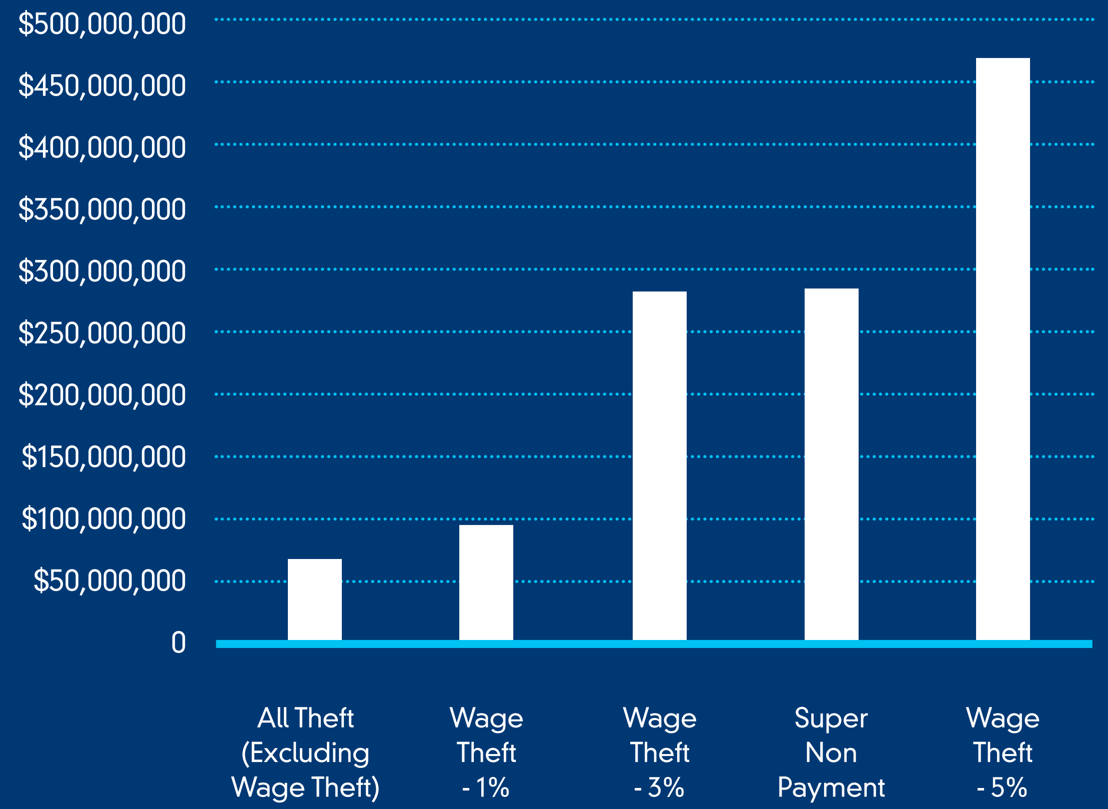


# PART SEVEN: CONTEXTUALISING WAGE THEFT

## Wage theft costs more than material theft in South Australia

In 2017-2018, South Australia Police identified a total of 22,664 incidents of theft of all varieties.[54] The Australian Institute of Criminology estimates that the average cost of theft ranges from $550 for theft from motor vehicles, to $6000 for the theft of motor vehicles, to $4500 for theft from shops. Based on these estimates, it can be assumed that theft in these forms cost South Australians approximately $68,784,350.[55] This is significantly lower than the most conservative estimate of the costs of wage theft put forward in this report, and less than a quarter of the cost of lost superannuation in South Australia. **It is probable that the direct cost of wage theft (including the non-payment of superannuation) is up to ten times higher than that of the direct cost of the material theft of goods.**

**FIGURE 7.1** Cost of theft compared with the costs of wage theft, 2017-2018.



# PART EIGHT: RECOMMENDATIONS FOR REFORM

Many policy responses to wage theft are best handled by the Commonwealth Government, particularly in the form of enhancing the resources of the FWO and better enforcing the payment of superannuation through the ATO.

However, there are still significant levers state governments can pull that can help eradicate the scourge of wage theft from within their jurisdictions.

Beyond lobbying the Commonwealth to take a more active approach to wage theft nationally, the South Australian Government should consider implementing the following proposals as a response to the endemic nature of wage theft within South Australia:

## RECOMMENDATION 1: Ensure best practice labour-hire licensing

Labour-Hire licensing is one of the major levers state governments can pull to ensure better standards in the workplace within their jurisdiction. With the notable exception of South Australia, major state governments are moving ahead with labour-hire licensing initiatives in lieu of federal regulation in the area.

The South Australian Government enacted labour-hire licensing in 2017. Upon a change of government in March 2018, the Government then committed to repealing the legislation. This report has previously noted that there is no need for partisanship when it comes to enforcing basic workplace laws, like the payment of wages according to award. Unlicensed and 'rogue' labour-hire firms often supply labour in ways inconsistent with Commonwealth labour laws.

There is clearly a place for compliant labour-hire firms in South Australia. But ensuring these fully compliant labour-hire firms can compete with those conducting illegal activities

The South Australian Government should not repeal labour-hire licensing laws already active in the State. Additionally, it should work with other states and the Commonwealth Government to create a nationally consistent labour-hire licensing framework.

## RECOMMENDATION 2: The Government leading by example through procurement policy

The state government has a key role to play in ensuring wage theft does not occur as a result of state government procurements. Better oversight of supply chains and clear language outlining severe punishments for companies and employers who do not pay their staff adequately could be incorporated into government contracts.

Employers found to be routinely and deliberately underpaying their staff's ordinary wages of superannuation should be blacklisted from conducting business with the State Government.

## RECOMMENDATION 3: Collaboration with other States

The State Government has shown commendable leadership in collaborating with other jurisdictions in advocating for better migration flows towards smaller states. Partnering with the Governments of Northern Territory and Tasmania, the Marshall Government exercised the full weight of the State Government to lobby the Commonwealth on a policy area of vital interest to South Australia, while creatively collaborating with other comparable jurisdictions.

This demonstrated the capacity of state governments to collaborate – even outside of the COAG process. This method could be replicated on other issues, including wage theft. Knowing the extent to which wage theft is occurring in South Australia, the State Government should engage other State Governments to conduct a coordinated lobby effort on the Commonwealth to ensure Canberra is fulfilling its oversight obligations.

State Governments could also collaborate on other areas of reform, including multi-jurisdictional labour-hire licensing schemes, and inter-state procurement policies that aim to iron out the existence of wage theft in supply chains.

## RECOMMENDATION 4: Reforming the way superannuation is paid by the State Government

The underpayment of superannuation is one of the most common forms of wage theft. Many argue a key reason for this is that superannuation tends to be paid quarterly. For employees, it takes detailed knowledge of their superannuation entitlements to accurately check their pay check every quarter to ensure they are being remunerated appropriately. The State Government should consider leading by example and reforming the way superannuation is paid, to give greater oversight of their superannuation entitlements to state employees.

## RECOMMENDATION 5: Education and training programs

Many workers are not fully aware of their entitlements, nor how they raise alarms when they are mistreated or underpaid. The State Government should explore the creation of an education program that gives employees – particularly those in industries with high incidences of wage theft, like hospitality and agriculture -

## RECOMMENDATION 6: Criminalising wage theft within South Australia and enhancing penalties

> "Employers will not comply with the law if the expected penalties are small because it is easy to escape detection or because assessed penalties are small."[56]

Just as regular theft is a crime, so too should wage theft be a criminal offense. It is logically inconsistent for a state criminal code to see wage theft as anything other than a crime. The responsibility for enforcing wage theft has hitherto been solely a Commonwealth matter. This includes enacting punishments for employers found to be actively underpaying their staff. But, as this report has emphasised, the Commonwealth has, in many ways, abrogated its core responsibilities in this regard. Therefore, State Governments are required to intervene where they can to ensure that illegal activity within their jurisdiction does not go unpunished.

The South Australian Government must criminalise wage theft within South Australia. It should also implement heavier financial penalties, and explore other deterrents.

# CONCLUSION

This report has identified the likely economic impact the endemic rate of wage theft is having on South Australian workers and the state's economy.

It finds that it is likely that around 20.24 per cent of South Australia's workforce, or 1 in 5 SA workers, experience direct ordinary wage theft to some degree. This equates to more than 165,000 workers.

Analysis of existing data determines that it is probable that around 29 per cent of workers *entitled to superannuation* are not receiving their full superannuation payments.

The costs of such wide spread non-compliance is significant, depriving SA workers of more than half a billion dollars annually, constraining aggregate demand, and impacting the South Australian Government's revenue. Between $30-60 million in lost GST revenue alone is the likely result of wage theft. Further, the less money in the pockets of workers has a direct impact on aggregate demand within the state, lowering overall economic activity and disadvantaging compliant businesses who are impacted by a smaller consumer base.

The Commonwealth Grants Commission noted that SA's fiscal capacity has been constrained thanks to the slow growth in taxable payroll – a result of a low overall rate of wage growth which is no doubt exacerbated by wide spread wage theft.

The consequences of wage theft are clear. Equally clear is the Federal Government's inaction on the issue. This report has noted the dramatic decline in Fair Work Ombudsman resources since 2013. This has limited its capacity to enforce wage laws – demonstrated by the fact that workplace audits are rarer today than they were in past decades.

Given the extent of the issue, and the lack of federal oversight, it is beholden on the South Australian Government to explore every policy response available to it, and act.



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