

We, Dr Kathleen Smithers (University of New South Wales), Associate Professor Jess Harris (University of Newcastle), Professor Troy Heffernan (University of Newcastle), Dr Sarah Gurr (Charles Sturt University), and Mr Sean Groth (University of Newcastle), submit the following document to the Senate Education and Employment Legislation Committee. We make this submission as academics who research and publish about higher education (HE) in Australia, with several publications around the nature of casual employment and wage theft. This submission also draws on our current investigation into academic work in Australian universities, including a survey with responses from over 500 academics and interviews with 37 individuals working across a broad range of academic employment types. Participants ranged from early-career casual research and teaching staff to tenured professors with decades of experience in universities.

The inquiry asks the extent to which the wage theft framework under the Fair Work Act 2009, and the operation of subsection 327A(1) has led to a decrease in the incidence of wage theft in Australia. Our response to this question with respect to Australia's HE sector is premised by two important points. First, as provisions of subsection 327A(1) are relatively recent, it is too early to draw firm conclusions about their effectiveness in reducing the overall incidence of wage theft, particularly in sectors like HE characterised by complex employment arrangements and delayed detection of underpayment. Second, as subsection 327A(1) requires proof of intentional underpayment, it creates a high evidentiary threshold to recognise wage theft, which may limit the application of this clause in sectors where underpayment arises through diffuse and institutionalised practices rather than clearly identifiable and deliberate acts. We argue the HE sector provides a key example of the complexities of proving intentional underpayment and the need for further action to investigate and address issues of wage theft in Australia.

A significant proportion of wage theft does not occur solely through explicit or intentional underpayment within payroll systems. Instead, underpayment is frequently produced through workload models, promotion requirements¹, and employment practices that rely on a substantial degree of unpaid labour². In these contexts, staff may be formally paid according to a

¹ See Heffernan, T., & Smithers, K. (2025). Working at the level above: University promotion policies as a tool for wage theft and underpayment. *Higher Education Research & Development*, 44(3), 585-599.

² See Smithers, K., Spina, N., Harris, J., & Gurr, S. (2023). Working every weekend: The paradox of time for insecurely employed academics. *Time & society*, 32(1), 101-122.

predetermined number of hours assigned for their roles and workload allocations which do not recognise, capture, or remunerate additional work, and is often necessary for effective research, teaching and support for students.

In the HE sector, many forms of underpayment arise in ways that are difficult to characterise as deliberate breaches. Instead, they are embedded in organisational practices that position unpaid labour as voluntary, expected, or necessary for career progression. One particular case is the use of promotion policies to exploit academic staff. Participants in our current research highlight that, “there are expectations that you need to perform at a higher level for a number of years before you are allowed to apply for a promotion to that level”, and there are “crazy amounts of work to prove that you are doing the job at the higher level for almost two years before you get the promotion”. Our previous research into promotion policies highlighted that, of the forty-two universities in Australia, eleven universities required academics to meet some components for the level to which they were applying, eleven required applicants to be meeting the minimum standards of the level they were applying for, and eight universities required applicants to demonstrate sustained performance at or above the level to which they were applying³. These requirements mean academic staff must demonstrate they have been working, and will continue to work, at a higher academic classification than which they are currently being paid to perform. Unlike other sectors, very few academics receive secondments or ‘acting’ positions that enable them to show this capability. Rather, the expectation is that academics can demonstrate sustained engagement in tasks associated with a higher-level role to be eligible for promotion to that level.

Similarly, unpaid labour associated with research activity, grant writing, and professional development has been framed as an individual choice or career investment, “I have applied for several grants... in my own time on weekends and evenings, unpaid”, while others have spent “long hours of marking and preparing teaching materials and not get paid”. Some reported the reduced employment of staff to replace those who leave led to increased workloads, “university staff across the board are forced to forever fill in structural gaps... my workload could be shared by 2 people”. Others argue this is a deliberate practice, “the default seems to be ‘academics will

³ Heffernan, T., & Smithers, K. (2025). Working at the level above: University promotion policies as a tool for wage theft and underpayment. *Higher Education Research & Development*, 44(3), 585-599.

research in their own time anyway, so overload everything”’. In practice, these ‘choices’ are made within highly constrained conditions, where ongoing employment and career progression depend on meeting expectations for securing research funding and producing high quality publications that exceed paid work allocations.

Many participants in our research identified increasing workloads, requiring them to work on weekends and during their annual leave, “I work a 7-day week trying to produce quality content... many days of annual leave are spent getting ready for the next teaching period”. Others identified workload models that did not account for the work they undertook, including a “governance role that takes up a huge amount of time and governance is not calculated as part of workload”, and “allocation of 10 minutes for marking a postgraduate level essay that in reality takes over 30 minutes to do properly”. Others report that the time provided in workload calculations does not reflect the time for the task, “extreme workload... tasks are allocated far less workload than they take to complete... we end up working in excess of 2500 hours per year”.

For casual staff, these problems are amplified. In our prior research, we identified practices that casual research staff undertake to remain competitive in an increasingly insecure and hypercompetitive labour market, something we termed ‘concealed time’.⁴ Examples of these practices include working additional hours unpaid, falsifying timesheets, and working hours before a contract has been arranged. Some employers are unaware of these practices, even if they may *accidentally* encourage them, which makes proving intention near impossible. But this wage theft still occurs, even if intention is hard to prove.

Wage theft in the HE sector persists not only because of administrative complexity, but because of structural incentives and institutional arrangements that enable it to take place. First, the complexity of university payroll and workload systems is frequently cited as an explanation for underpayment⁵. However, this complexity also obscures responsibility and reduces accountability. Second, the decentralised management of casual staff allows responsibility for employment practices to be diffused across individuals, rather than supported at the institutional

⁴ Smithers, K., Spina, N., Harris, J., & Gurr, S. (2023). Working every weekend: The paradox of time for insecurely employed academics. *Time & society*, 32(1), 101-122.

⁵ Universities Accord (2024) Final report.

level. Third, the current system creates clear incentives and benefits from substantial unpaid labour. Universities benefit financially from underpayment and unpaid work, while individual academics rely on casual staff to meet increasing workloads within constrained budgets. Finally, the competitive nature of academic careers encourages staff to accept unpaid work as a necessary condition of employment and progression. This normalisation of unpaid labour reduces the likelihood of reporting and reinforces systemic exploitation.