

# Wage Theft Inquiry Submission

Senate Standing Committees on Education and Employment

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## Introduction

I make this submission in relation to the inquiry into the extent to which the wage theft framework under the Fair Work Act 2009, including the operation of subsection 327A(1), has led to a decrease in the incidence of wage theft in Australia.

The committee's own question reveals the central problem. Parliament is not examining a framework whose effectiveness is so clear that only marginal refinement is required. It is asking the more basic and more troubling question of whether the framework has in fact reduced the incidence of wage theft at all. That is not the language of settled success. It is the language of unresolved doubt.

If the present measures were plainly strong, visible and effective, the inquiry would not need to ask whether wage theft is actually declining. It would be focused on calibration, administration and edge cases. Instead, the committee is required to ask the threshold question. That alone should make Parliament cautious about any claim that the present architecture has already proved itself fit for purpose.

This submission proceeds on a simple basis. The current measures appear insufficient if Parliament still cannot confidently say whether the problem is materially declining. A framework should not be judged by legislative symbolism, rhetorical toughness, or the formal existence of offences. It should be judged by whether wage theft occurs less often, whether workers can resist it, whether detection is timely, whether enforcement is credible, and whether the system reduces the structural conditions in which wage theft thrives.

The inquiry is therefore not merely about legal form. It is about real-world efficacy.

## **Wage theft should be assessed as a structural labour market failure**

Wage theft is often discussed as if it were only a matter of individual wrongdoing by non-compliant employers. That is too narrow. Wage theft is also a structural labour market problem. It flourishes where workers are weak, dependent, disposable, poorly organised, badly informed, fearful of dismissal, fearful of loss of hours, fearful of migration consequences, or otherwise unable to leave.

That matters because a framework that focuses mainly on punishment after the theft risks addressing the symptom while leaving the enabling conditions intact. Parliament should not confuse criminalisation with prevention. The two are not the same.

A serious wage theft framework must therefore be assessed against a broader public purpose. Does it change incentives before the theft occurs. Does it strengthen worker bargaining power. Does it improve the practical ability of workers to refuse unlawful conditions. Does it reduce the pool of labour forced by desperation to accept what the law forbids.

If it does not do those things, then its effect may be more expressive than transformative.

## **The present inquiry is fundamentally an effectiveness inquiry**

The terms of reference require attention to whether the framework has led to a decrease in the incidence of wage theft. That is an outcome question. It is not enough to say that Parliament has acted. It is not enough to say that a criminal response now exists. It is not enough to point to policy announcements, speeches, or formal investigative powers. The relevant question is whether the conduct itself is happening less.

That requires discipline. Parliament should insist on evidence that goes to incidence, deterrence, detection, recovery and enforceability. It should ask whether employers are changing behaviour because the risk of underpaying workers is now materially greater than before. It should ask whether workers are more likely to report. It should ask whether underpayments are being identified earlier. It should ask whether sectors with entrenched vulnerability are actually becoming cleaner, or merely more careful in presentation.

The inquiry should resist any attempt to substitute activity measures for outcome measures. More guidance material is not itself success. More commentary is not success. More public messaging is not success. Success is a real reduction in unlawful non-payment or underpayment of wages and entitlements.

## **The evidence problem should itself concern the committee**

There is an obvious evidentiary difficulty in this field. Deliberate wrongdoers are unlikely to incriminate themselves in submissions. Individual victims can provide powerful and

credible accounts of harm, but single experiences do not by themselves establish economy wide incidence. Much commentary from outside institutions is reactive to public reporting and may be selective, incomplete, or advocacy driven.

That creates a serious risk that the committee could receive a large volume of morally forceful but methodologically uneven material.

That is not a reason for pessimism. It is a reason for the committee to be much more demanding about evidence. If Parliament wants to know whether the framework has reduced wage theft, it should require the institutions with operational visibility to produce the best available aggregated evidence. The committee should place particular weight on complaint data, audit patterns, remediation patterns, repeat contraventions, sectoral trends, enforcement escalation, and any internal administrative material capable of showing whether behaviour is changing.

If the answer cannot be given clearly from the best available operational evidence, that itself says something important. It suggests that the framework may be inadequate not only in deterrence and enforcement, but also in measurement. A serious framework should not leave Parliament substantially unable to tell whether it is working.

A system that cannot be evaluated confidently is already compromised.

### **Why present measures are likely to be insufficient**

There are several reasons why present measures may prove inadequate even if they are well intentioned.

First, wage theft is often rational from the perspective of a non-compliant employer where the expected gains exceed the expected risks. If detection remains patchy, workers remain vulnerable, and enforcement remains slow or uncertain, the formal existence of offences will not by itself reverse the incentive.

Second, many workers do not confront employers from a position of real bargaining equality. A right that exists only on paper is weaker than a right supported by a credible exit option. Workers who cannot afford to leave are more likely to tolerate underpayment, delay complaint, accept partial remedies, or remain silent altogether. In those circumstances, the law may condemn wage theft while the labour market quietly reproduces it.

Third, wage theft frequently occurs in environments where the employer can rely on labour market insecurity as a disciplinary tool. If unemployment or underemployment remains the background threat, the capacity of workers to reject unlawful treatment is materially weakened. The labour market then does some of the coercive work for the employer.

Fourth, a system built primarily around reaction after the breach will always struggle if it does not also reduce the conditions that make the breach profitable and survivable.

For these reasons, Parliament should be wary of any suggestion that criminalisation or enforcement powers alone amount to a complete wage theft response.

**Under any other related matter, the committee should consider structural prevention**

The words any other related matter is important. They allow the committee to consider not only the formal operation of the present framework, but also the broader institutional conditions required for meaningful prevention.

In my view, one of those conditions is the existence of a genuine lawful employment floor outside exploitative private arrangements.

A Job Guarantee should therefore be considered as a related structural reform. This is not because it sits within the present wage theft offence provisions. It does not. It is relevant because wage theft is easier to perpetrate where workers lack credible alternatives. A Job Guarantee directly addresses that vulnerability.

A federally funded locally administered Job Guarantee paid at a lawful living income would do several things that are directly relevant to this inquiry.

It would reduce coercive dependence on underpaying employers.

It would provide a genuine exit option for workers facing unlawful conditions.

It would set a visible labour floor below which employment is publicly deemed exploitative.

It would strengthen worker bargaining power at the bottom of the labour market.

It would make it harder for businesses to rely on fear of unemployment as an enforcement mechanism.

It would help distinguish lawful market competition from competition based on wage theft and labour desperation.

That is not peripheral to wage theft. It goes to its enabling structure.

A labour market in which a worker can walk away from an abusive or unlawfully underpaying employer and step immediately into lawful paid work is a labour market in which wage theft becomes materially harder to sustain. By contrast, a labour market in which the alternative is unemployment, destitution, or prolonged insecurity is a labour market that quietly subsidises non-compliance.

Put bluntly, if unemployment remains the disciplining reserve in the labour market, wage theft will always find oxygen there.

### **The Job Guarantee is relevant as both prevention and evaluation architecture**

The relevance of a Job Guarantee goes beyond prevention. It also has evaluative value.

A lawful public employment floor provides a benchmark. It makes visible the minimum set of conditions the polity is willing to accept as lawful work. If private employers can attract and retain labour only by pushing below that floor through underpayment, insecurity, or coercion, the problem becomes clearer both politically and administratively.

In that sense, a Job Guarantee would not merely absorb unemployment. It would sharpen the distinction between lawful employment and exploitative dependency.

It also has disciplinary implications for employers, but of a lawful kind. Employers would still be free to recruit, expand and offer better opportunities. What they would lose is the capacity to rely on desperation as a hidden subsidy.

That is a highly relevant consideration for an inquiry concerned with wage theft incidence.

### **Decent work should be part of the committee's evaluative frame**

The committee should also recognise that wage theft is not only theft of money. It is a denial of decent work.

Work should not be reduced to mere market access at any price. A lawful labour system should aspire to work performed in conditions of security, dignity, fairness and real participation. Wage theft strikes at all of these. It takes income, but it also corrodes trust in the legal order, degrades standards across sectors, punishes compliant employers, and normalises a lower conception of labour.

That is why the issue should not be treated only as compliance administration. It is a question about the kind of labour market Parliament is willing to tolerate.

A system that leaves lawful work too weak and exploitative work too survivable is not a system that adequately protects workers.

### **Fiscal objections should not be allowed to end the discussion**

If the committee considers a Job Guarantee or any comparable structural lawful employment floor, it should not allow the discussion to be shut down by simplistic claims that the Commonwealth cannot afford it.

The Commonwealth is the issuer of the Australian dollar. It is not financially constrained in the same way as a household, firm, or state government. The real questions are

whether the policy would serve a strong public purpose, whether labour and other real resources are available, how quickly it should be introduced, and how any inflationary pressures should be managed.

In that context, a Job Guarantee should also be understood not merely as expenditure, but as a bottom-up counter cyclical fiscal stabiliser. When private demand weakens and workers are displaced, the Job Guarantee pool expands automatically and public spending rises with it. When private demand strengthens, employers hire from that pool, the Job Guarantee contracts, and public spending falls automatically. That means the state of the economy, rather than slow and politically contingent discretionary responses, determines the size of the fiscal support required to maintain full employment and social stability.

That matters here because wage theft is more likely to flourish where workers are pushed into insecurity by downturns and weak exit options. A lawful employment floor that automatically expands when private labour demand collapses is not just a labour market reform. It is also macroeconomic protection against the vulnerability on which exploitation feeds. Parliament should not treat that as an irrelevant fiscal extravagance. It should treat it as part of a serious prevention architecture.

## **Conclusion**

The committee should approach this inquiry with a clear eye. The fact that Parliament must still ask whether the framework has reduced the incidence of wage theft is itself a warning sign. It suggests that the present response has not yet established unmistakable credibility as an instrument of deterrence, prevention and measurable reduction.

That does not mean the current measures are worthless. It means they have not yet earned the presumption of sufficiency.

The committee should therefore reject any complacent claim that the mere existence of a wage theft framework answers the problem. The correct question is whether workers are safer, whether employers are more constrained, whether unlawful underpayment is actually occurring less often, and whether Parliament can prove that with confidence.

If the answer remains uncertain, then the framework is at least incomplete.

A complete response to wage theft should include not only sanctions after the breach, but structural prevention before it. Under any other related matter, the committee should therefore examine whether Australia requires a stronger lawful employment floor, including a federally funded locally administered Job Guarantee, so that workers are not forced to choose between unlawful work and no work.

In the end, a labour market that still depends on fear, scarcity and worker vulnerability will continue to produce wage theft, whatever the statute book says. If Parliament is serious about reducing incidence, it must do more than criminalise the conduct. It must weaken the conditions that make the conduct viable.

That is the harder question. It is also the more important one.

### **Reference Sources**

- Cook, Beth, Mitchell, William, Quirk, Victor and Watts, Martin, *Creating effective local labour markets: a new framework for regional employment policy*, Centre of Full Employment and Equity, University of Newcastle, November 25, 2008.
- Mitchell, William F. and Mosler, Warren B., *Fiscal Policy and the Job Guarantee*, Centre for Economic Policy Research, Australian National University, Discussion Paper No. 441, December 2001.

*(Note: One or all of the above sources can be supplied on demand)*