

13 February 2020
Senate Standing Committees on Economics
Parliament House
Canberra ACT 2600

Dear Senators,

Re: SUBMISSION TO [UNLAWFUL UNDERPAYMENT OF EMPLOYEES' REMUNERATION](#) SENATE INQUIRY

WorkLawyers is a small law firm with a nation-wide client base focussed on employment law. We are instructed by a range of clients that are typically employees. A significant portion of our work involves people that have been underpaid by employers.

For instance, we are currently acting for two chefs that were referred to us by the *South Coast Labour Council* and were the subject national media attention because of:

1. The shocking level of underpayment that were exposed to (we claim around \$250,000.00 per person) Recent media coverage of this story includes: <https://www.abc.net.au/news/2019-04-17/second-chef-comes-forward-in-wage-theft-scandal/11003230>

and

2. The Federal Court issued a Freezing Order over the assets of the employer involved to the value of \$450,000.00. (*Basi v Namitha Nakul Pty Ltd* [2019] FCA 743). This case is currently next listed for an application for Orders for Discovery before the Federal Court in March 2020.

More broadly, we also assist employees in a range of industries and roles and as such are relatively aware of the context and drivers of wage theft. With that background set out, we provide some brief information for your consideration.

We would also be delighted to appear before your committee to give further evidence, and would welcome being able to do so with a representative from the South Coast Labour Council who we remain in regular contact with.

RESPONSE TO THE TERMS OF REFERENCE

The causes, extent and effects of unlawful non-payment or underpayment of employees' remuneration by employers and measures that can be taken to address the issue, with particular reference to:

- a. *the forms of and reasons for wage theft and whether it is regarded by some businesses as 'a cost of doing business';*

Wage theft can be overt or covert. Overt examples include cash back demands, (e.g. our client was required to withdraw cash from an ATM and give it to the employer), under payments, and ignoring Award rates. Covert measures include an expectation of unpaid overtime, unreasonable payments required by employees for breakages and unpaid training or "homework".

Employers can ensure employees do not oppose these measures by reducing the employees 'quantity and preference' for work shifts as well as termination. Employers of people on visas can and do threaten employees with detention and deportation.

Wage theft is certainly seen as a cost of doing business by some employers that typically operate in competitive markets. In our experience Food services, retail work and hospitality industries are notorious. It is a mistake to think that wage theft only occurs in small businesses.

b. the cost of wage and superannuation theft to the national economy;

We would estimate it is in the billions of dollars from lost wages, lost taxes, lost spending, court costs and stress.

c. the best means of identifying and uncovering wage and superannuation theft, including ensuring that those exposing wage/superannuation theft are adequately protected from adverse treatment;

- 1) At risk industries such as agriculture, food services, hospitality, and retail should be targeted by inspectors more frequently.
- 2) Unions should be able to inspect records more simply, perhaps by filing 'reasonable belief' forms online.
- 3) There should be a reverse onus of non-compliance on at risk industries.
- 4) Accountants should have to certify wage payments are reasonable when filing tax returns for at risk employers, perhaps by way of random roster sampling.
- 5) The 457 visa system should be abolished for people doing work in at risk industries so that the nexus between a person's lawful right to remain in Australia and their employment by a specific employer is severed.
- 6) There should be a class of visa known as a civil justice visa, so that a person can remain and or return to Australia to prosecute their underpayment claim and work at the same time.

d. the taxation treatment of people whose stolen wages are later repaid to them;

Tax should be paid by the employer to strike a balance between deterring wage thieves and the interests of the community in receiving the tax and the loss of the person who was a victim of wage theft. i.e. if a wage thief victim was owed \$100 gross and \$90 after tax, then they should receive \$100 tax free and the employer should pay the \$10 tax.

e. whether extension of liability and supply chain measures should be introduced to drive improved compliance with wage and superannuation-related laws;

Yes. It is not acceptable for an employer at the end of the chain, (say Coles or Woolworths) to not be in any way liable for the wage theft that occurred in the retailing of the goods,

say, strawberries they sell. In the same way that supermarkets profit from low cost goods, they should also be legally responsible for their input costs and wage thefts.

f. the most effective means of recovering unpaid entitlements and deterring wage and superannuation theft, including changes to the existing legal framework that would assist with recovery and deterrence;

1) The biggest barrier to employees are legal recovery costs. It is not simple to draw up a statement of claim and serve and file it or answer an employer's letter for further and better particulars. While the Fair Work Commission and Federal Circuit Court are relatively low on procedure, by their nature they are also formal, in the interests of fairness, they often have to be. A different way would be for the Government to automatically cover the wage theft that occurs (by way of an application and then to "chase" the employer for the funds by way of an extension to the current Fair Entitlements Guarantee scheme.

<https://www.ag.gov.au/industrial-relations/fair-entitlements-guarantee/Pages/default.aspx>

2) Further, this extension could be funded by 'at risk' industries by way of higher taxes and levies until such time as wage compliance is acceptable to the community.

3) As mentioned the Government must also break the nexus between lawful right to stay in Australia and working for an employer. It is simply too tempting for some employers to not 'lord it over' their staff, with the threat of deportation.

4) **Wage thieves should be imprisoned and be open to recovery of proceeds of crime proceedings by way of personal and real estate seizure and forfeiture.**

5) **legal costs should be allowed as a norm for compensation sought by employees that have had their wages stolen.**

6) **Community Legal Centres and Legal Aid should be funded to assist recover amounts from wage theft.**

g. whether Federal Government procurement practices can be modified to ensure that public contracts are only awarded to those businesses that do not engage in wage and superannuation theft; and

Yes, a simple accreditation process would be an incentive in this regard.

h. any related matters.

1) Court Filing fees for people experiencing wage theft should be abolished. It adds further injury to a person if they are a low income earner and also have to come up with Court filing fees of several hundred dollars to progress a matter in order to recover underpayments.

2)

3) It is not credible for businesses to say the Award is too complicated an explanation to not paying someone legally. People are getting ripped off and it's a disgrace. The Government must get serious about stopping this noxious blight on our society.

Please contact us if you would like us to give evidence in person, preferably with the South Coast Labour Council.

Yours faithfully,



Mr Kristian Bolwell
Principal