

Submission to the Wage theft inquiry

Inquiry into the operation of s327A(1) of the *Fair Work Act 2009*

Submitted by [Portable](#)

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We are a team living and working on the lands of the Wurundjeri and Boon Wurrung peoples of the Kulin nation. We acknowledge their ownership of the land and pay respects to their elders past, present and future.



We make this observation not to minimise the seriousness of deliberate underpayment, which is real and warrants a serious regulatory response, but to flag that the framing of this inquiry, and of s327A itself, centres enforcement in a way that may not reflect the experience of most affected workers. For the majority, the problem is not that their employer has not been prosecuted. It is that they do not know they have been underpaid in the first place.

Sweep has deliberately avoided the language of 'wage theft' in its public communications. This is a considered product and policy choice. The workers Sweep serves are often employed by small and medium businesses where underpayment arises from genuine complexity in award interpretation, not from bad faith. Framing underpayment as theft before a finding has been made risks hardening the very relationships that early resolution depends upon.

3 • A note on framing

Sweep is built on the view that wage underpayment is, in most cases, a compliance problem before it is an enforcement problem. Our product is designed to address the detection gap that sits upstream of any legal or regulatory response.

Sweep enables workers, beginning with those covered by the General Retail Industry Award, to upload their payslips and receive an immediate, plain-language analysis of whether they have been correctly paid. The app checks minimum pay rates, penalty and overtime rates, junior rates, and payslip compliance requirements. Where discrepancies are detected, Sweep helps workers understand their options, prepare for conversations with their employer, and where appropriate, access legal referral pathways.

2 • About Sweep

[Portable](#), a digital product agency, has developed an app called Sweep, which is a wage compliance platform for Australian workers. Sweep is incubated with support from the Department of Employment and Workplace Relations (DEWR) through the Business Research and Innovation Initiative (BRII).

1 • About Portable

Terms of Reference
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, and any other related matter.

4 • Our view on s327A(1)

Sweep does not have a strong position on whether the criminal penalty thresholds in s327A are calibrated correctly, nor on whether prosecution rates should be higher. These are matters for regulators, legal practitioners, and the workers most severely affected.

What we do observe, and what our product is designed to address, is a more fundamental problem: criminal liability for wage theft can only operate as a deterrent or as a remedy if underpayment is first detected, documented, and capable of being attributed to conduct. For the approximately 2.6 million Australian workers covered by modern awards, that detection infrastructure largely does not exist.

s327A(1) assumes that workers can identify underpayment and that evidence can be assembled to support a prosecution. In the experience of building Sweep, we would suggest that assumption is not yet well-founded for the majority of award-covered workers.

5 • What needs to improve

The inquiry's terms of reference ask whether s327A(1) has led to a decrease in the incidence of wage theft. We would suggest a prior question: do workers and employers have the tools and information infrastructure required to make that section work as intended?

Our view is that more attention is needed on detection and visibility for workers. The majority of award-covered workers currently have no practical mechanism to verify their pay against their entitlements. Investment in accessible, plain-language compliance tools and in ensuring workers know such tools exist is a necessary precondition to the criminal framework having meaningful reach.

6 • A proposal for a safe harbour

We invite the inquiry to consider whether a safe harbour or evidentiary presumption could be introduced for employers who can demonstrate they have taken reasonable, documented steps toward compliance, for example, by using a certified compliance platform or by actively encouraging their employees to use a payslip verification tool. It could:

- Create a positive commercial incentive for employers to adopt compliance tools, rather than treating compliance as a cost to be minimised.
- Raise the practical floor of what 'reasonable steps' looks like in a modern award context, making the standard more legible and achievable for SMEs.
- Give s327A(1) greater operational reach, by concentrating enforcement attention on employers who have not taken reasonable steps, rather than those who have tried and failed in a complex system.

We are conscious that a safe harbour could, if poorly designed, be used to shield employers engaged in deliberate underpayment. Any such provision would need to be carefully scoped to apply only where compliance efforts are genuine, documented, and substantive, not merely nominal. We would welcome further discussion with the inquiry on how this might be designed.

7 • Closing

Sweep's submission is not that the criminal framework is unnecessary. Deliberate wage theft causes real harm and warrants a serious response. Our submission is that the framework is currently operating without the detection and evidence infrastructure that would allow it to function as intended and that addressing this gap should be a priority alongside any refinement of the enforcement mechanism itself.