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**SUBMISSION TO INQUIRY INTO THE WAGE THEFT FRAMEWORK**

Committee Secretary  
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I thank the committee for the opportunity to contribute to this inquiry.

**The scourge of wage theft**

Australians deserve to be paid what they have earned. Most would agree with this, but wage theft has still been a stubborn problem for many years. Across various sectors, including hospitality, retail, higher education and others, whether accidental or otherwise, employers have failed to pay their staff what they are owed. As the explanatory memorandum<sup>1</sup> for the Fair Work Legislation Amendment (Closing Loopholes) Act 2023 states:

*Despite recent Government action to address underpayments, non-compliance remains a persistent problem. Several inquiries, including the Migrant Workers' Taskforce and the Senate Inquiry into Unlawful Underpayment of Employees' Remuneration, have recommended the introduction of a criminal offence for wage theft to further deter wage underpayments.*

That law introduced a criminal offence for the deliberate underpaying of wages. This is an act noble in sentiment, but one which has yet to bear fruit. As was noted when my motion to initiate this inquiry was considered by the Senate, the reforms made by the Closing Loopholes Acts of 2023 and 2024 are

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<sup>1</sup> p. 19.

currently subject to a review being conducted by Ms Susan Booth. That review must be completed by June and its report must be tabled in both Houses within 15 sitting days, meaning it may be as late as September when the Parliament and the public are furnished with its report. The Senate's inquiry is necessary in addition to that review as, firstly, the committee is a body constituted of government, opposition and crossbench senators, which provides multiple perspectives on an issue and, thus, a more fulsome analysis and, secondly, the committee will hold public hearings, something that the review will not do (though the review did receive submissions).

### Seeking answers

In February 2025, I asked the Department of Employment and Workplace Relations, in a question on notice at Estimates, what investigations or referrals to police in relation to wage theft had taken place. The department responded<sup>2</sup>:

*Given the recent commencement of the offence, as of 4 March 2025, there are no active Fair Work Ombudsman (FWO) investigations, and no matters have been referred to the Australian Federal Police.*

Fair enough. I asked again at the end of 2025, and received a slightly different answer<sup>3</sup>:

*Proceedings for an offence against subsection 327A(1) of the Fair Work Act 2009 (failing to pay amounts as required) or a related offence provision can only be commenced by the Director of Public Prosecutions or the Australian Federal Police. Questions relating findings [sic] of offenses of wage theft should be addressed to those relevant bodies.*

Despite the limited questioning time allocated to me during Estimates as an independent senator, I chose to follow this up in person during estimates at the beginning of this year<sup>4</sup>:

*Senator PAYMAN: ...At this moment in time we've only got two active investigations?*

*Ms Carey: That's correct. At this point in time.*

...

*Senator PAYMAN: ...[A]re you able to share how many investigations have resulted in referrals to the AFP or the Commonwealth Director of Public Prosecutions?*

*Ms Carey: No referrals have been made at this stage, Senator.*

*Senator PAYMAN: The 2023-24 budget allocated \$49.5 million over four years to support the new criminal investigation function. Could you please provide an update on how that funding has been implemented, including how many staff are currently dedicated to wage theft investigations?*

*Ms Carey: Thanks, Senator. We've established a dedicated criminal investigations branch. That branch currently has 16.7 ASL allocated to it. There are eight fair work inspectors that are badged inspectors...*

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<sup>2</sup> 2024-25 Additional Estimates, DEWR portfolio question number SQ25-000001.

<sup>3</sup> 2025-26 Supplementary Budget Estimates, DEWR portfolio question number SQ25-000837.

<sup>4</sup> *Hansard*, Education and Employment Legislation Committee, 11/02/2026, beginning page 75.

Clearly, this is a bizarre situation. 16.7 full-time equivalent staff have been working for 16 months and, at the time of writing in early April, my understanding is that there have still been zero referrals made. Over 10 million dollars a year is being spent on an office that hasn't made a single referral. It is no wonder, then, that two days after the hearing, the Australian published an article<sup>5</sup> in which business groups expressed concern as to whether the wage theft investigations unit was achieving value for money. The article also contained a statement from the Minister, which concluded:

*Clearly, Labor's strong new laws are having the intended effect.*

The contention that a lack of referrals corresponds to a lack of wage theft is an interesting one. Have there been no wage theft referrals by the Fair Work Ombudsman because wage theft has been reduced? That is what this inquiry is endeavouring to determine, and I do not wish to pre-empt its findings, but consider the words of ACTU secretary Sally McManus, who was also quoted in the article:

*Breaking the business model of wage theft in this country will take time and effort because the practice has been widespread. When one in three workers under 30 is still being underpaid, as Melbourne University research found recently, it's clear we have a way to go.*

The research cited was released in July 2025, 6 months into the operation of the criminal offence for wage theft. Personally, I am very suspicious of the extent to which wage theft has been reduced by the operation of the wage theft framework, hence my motion to initiate this inquiry. Since these laws were passed, there has been little attention paid to this offence. Orders for the production of documents<sup>6</sup> on this subject revealed that the Federal Police and Commonwealth Department of Public Prosecutions held no documents in relation to referrals of wage theft matters, and all that the Minister for Employment and Workplace Relations could offer the Senate was a document which outlined talking points about the wage theft offence.

Instinctively, I wonder whether the bar is too high for referrals from the Fair Work Ombudsman to have any chance of success in court. As the FWO noted during estimates, they have received thousands of complaints and initiated thousands of investigations since the offence provision commenced. I believe the FWO is capable of carrying out the task of investigating wage theft, but perhaps the high bar for prosecution is limiting the offence provision from acting effectively as a deterrent. In terms of deterrence, I believe an offence provision that has never been used is as useful as no offence provision at all.

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<sup>5</sup> 'Business blasts Labor's 'zero return' \$49m wage theft laws funded by taxpayers', the Australian, 13/02/2026.

<sup>6</sup> Senate orders for the production of documents nos. 311, 312 and 313, agreed on 3 February 2026.