

# **WAGE THEFT**

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## **AUSTRALIA**

### **Who We Are**

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Wage Theft Australia was formed by co-founders Michael Fraser and Maddison Johnstone after helping to expose franchisor misconduct at 7-Eleven, Domino's Pizza, Retail Food Group and Mortgage Choice. Due to the high profile nature of these investigations and what they led to, underpaid workers from many companies have approached us over time, enabling us to gain even greater insights about underpayments and exploitation in Australia.

We are independent advocates and researchers with unique insights into the wage theft and underpayment storm that Australia currently finds itself facing. We are self-funded and are not affiliated with any government department, union or group.

### **Why Australia Is Talking About Wage Theft**

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Some industry voices and organisations are pointing to the 7-Eleven scandal as the trigger point for increased interest and scrutiny of underpayments in Australia. 7-Eleven should be remembered more like a wage theft version of Enron, without the collapse. They should be remembered as the company who sacked the highly respected Prof. Allan Fels from their backpay program as he diligently and rightly paid back money to underpaid workers. They are not a good company for being exposed and paying some money back. It was their moral obligation to do so. We can learn a lot from the 7-Eleven scandal, but it won't come from listening to their public relations "we had no idea" story.

As the years have gone on, more underpayment scandals have been exposed. Companies had ample chance to conduct thorough payroll audits and investigations between 2015-2017 when a number of big companies were exposed for underpayments.

Instead, they have waited until 2019/2020, when there are serious talks of criminalisation and harsher penalties for directors should their business be involved in underpayment. If the mere discussion of criminalisation gets employers to take underpayment as a serious issue, then we can only imagine what criminalisation would result in for underpaid workers.

### **Not All Underpayment Is Wage Theft**

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Although our name is Wage Theft Australia, we acknowledge that there isn't a single term that appropriately encompasses the issues Australia is facing in relation to worker rights and entitlements.

We agree that the term 'wage theft' is emotive. However, being emotive and being valid are not mutually exclusive. As an example, a lot of people who have experienced exploitation and wage theft are emotive in recounting their stories. That does not mean their experience is invalid, and it is disrespectful for industry groups to imply or insinuate such a thing.

For simplicity we may at times use terms interchangeably. However, we usually speak with distinction around this issue by using three terms: wage theft, underpayment and exploitation.

### **Underpayments come in two forms**

To simplify the issue, underpayment essentially happens in two forms, deliberate (wage theft) and unintentional. This submission largely focuses on wage theft.

**Wage Theft:** Deliberately attempting to permanently deprive a worker of their legal wage entitlements, to benefit a person, persons, or entity.

Types of wage theft:

- The expectation that workers start/end their shift earlier/later than the rostered time, without pay
- Workers pay for their branded uniform, or are expected to wear the store's clothing at their own cost
- The expectation of excessive overtime, even if salaried, without pay
- The expectation that workers attend team meetings, training or events, for free
- Interns doing work that would otherwise be paid, to the primary benefit of the organisation
- Workers doing an excessive unpaid trial
- Workers employed as a contractor even though they may meet the criteria of an employee
- Workers being paid a flat rate, less than the legal rate of pay

### Flat Rate

Being paid a flat rate less than the legal rate of pay is a clear instance of wage theft. Anecdotally, we see this happening at an alarming rate to Australia's migrant workforce.

### Purchase of Uniform

We have seen ASX-listed companies expect workers to pay for their brand's clothing to wear while on shift. One of these companies is Accent Group Limited (which includes brands such as The Athlete's Foot, Skechers, and Platypus Shoes). It must also be current stock, which means workers are forced to spend some of their paycheck with their employer on a regular basis.

### De Minimis

Wage theft includes engaging in practices that require or expect off-the-clock or unrostered work without pay or proper pay. The idea of “de minimis”, which relates to an insignificant period of time beyond scheduled working hours, is important here.

In the USA, which is widely known for poor pay conditions, approximately 10 minutes of work beyond scheduled or rostered hours is considered “de minimis” (insignificant time). Employers are allowed to not pay workers for this time. By contrast, California’s state regulation protects workers required to work from 4-10 minutes of unrostered time as they don’t consider this “de minimis” and instead require workers to be paid for all hours worked.<sup>1</sup>

It seems in Australia, employers are going one step further and expecting well beyond 10 minutes of work for free. A number of employers are unilaterally deciding that opening or closing the store (often between 10 and 60 minutes each), coming in 15 minutes early, or for salaried workers, working an additional 2-32+ hours a week, is insignificant. As such, they are not paying workers for this time.

Other types of free labour include unpaid team training, meetings or events, where workers are expected to attend. This can happen in the forms of promising free dinner or pizza.

This cannot be classed as an accident. An employer cannot accidentally request or expect workers to work for free on a consistent basis.

This also cannot be classed as a complexity issue. The Fair Work Ombudsman has been very clear about employers expecting free labour from workers. It is not a complex thought process or idea that workers are to be paid for the time they work.

Importantly, without transparency of what payroll audits involve, it is difficult to ascertain whether “de minimis” time is being audited and back paid. If audits are conducted within a specific scope (for example, regarding an Award interpretation), and no thorough investigation is carried out, it is very likely that work occurring beyond rostered hours is not being found.

### The Inadvertent Mistake

We also believe that big and/or ASX-listed companies engage in wage theft rather than underpayment when they neglect their responsibilities. Failing to prioritise industrial relations as an employer to hundreds or thousands of people is almost unbelievable and inexcusable, particularly if it is the employer’s stance that the Award system is “complex”.

We do not believe that “inadvertent” can be used to describe years of underpayment by big companies when they have the resources to conduct regular and in-depth audits, request external advice, hire an internal team, and otherwise be appropriately informed.

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<sup>1</sup><https://www.lexology.com/library/detail.aspx?g=17c11ab7-06f1-4562-8619-b4ac1c7e2736>

Self-reporting or sudden auditing should not absolve such a company from criticism, and brushing off years of underpayment as a mistake does just that.

### **Exploitation**

It's also important that there be a distinction between underpayment and exploitation. This goes beyond "wage non-compliance" and extends into the way workers are treated. Exploitation normally involves using a worker's vulnerability to gain an advantage. This could include things like asking them to perform inappropriate tasks, increasing their workload, or having unreasonable expectations or conditions of the work. How intertwined exploitation is with underpayment cannot be ignored; for example a lot of 7-Eleven workers were experiencing severe forms of exploitation in addition to wage theft.

## **The Fair Work Ombudsman (FWO)**

*"A general antibiotic, rarely administered in a full dose."*

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The Fair Work Ombudsman service is no doubt made up of many good people who care deeply about achieving positive outcomes for exploited workers and educating employers about their obligations to their employees. But we question whether it needs to be better resourced and if the approach to investigations and compliance needs a complete rethink.

Over the last seven years, we have had countless workers express concern and dismay when attempting to raise underpayment issues or make a complaint about their employer to the FWO.

Many say they were told to go and consult a lawyer when trying to inform the FWO that their employer was underpaying them. Apart from the potential costs associated with engaging a lawyer, being told to seek legal advice has left underpaid workers confused as to the purpose of the FWO.

### **The Consultative Approach**

Although we are not privy to the exact approach the FWO takes when it comes to potential or obvious systemic underpayments in a medium-to-large business or franchise, it appears they can take a consultative approach.

The challenge associated with a consultative approach is that it assumes the innocence and compliance of head office and senior management. When a company is informed by the FWO of concerns about potential systemic issues and asked to self-audit, assist with an investigation or that an investigation is pending, if underpayments are a part of their business model, a FWO investigation is likely to yield poor results.

Most of us would remember two storylines that have run in the movies we watched when we were children. Both involve the parents going away and leaving the kids at home.

In story one, the parents come home on time. The kids quickly band together and clean the house up. The parents inspect the house and sometimes find a smashed vase, but overall the house looks clean and well presented.

In story two, the parents return unexpectedly and ahead of time. They come in to find cake mix all over the walls, the dog is covered in blue dye and the baby is in a cage.

If the above point is not clear, what might the FWO expect to find when announcing their interest to a big company or franchisor?

In the case of the FWO investigation into Domino's Pizza, an anonymous worker called us to let us know that Domino's head office were somehow aware prior to the FWO visiting that store and that Domino's had been in to identify and rectify underpayments ahead of the FWO. The anonymous worker then went on to say that not only did Domino's miss evidence, but the FWO did too. Evidence including a manager keeping a record of paper IOU's in relation to workers being owed money.

In another large franchise system, a whistleblower called to inform us that their company had been approached by the FWO about potential systemic wage issues. They went on to tell us that head office staff were destroying or altering records that demonstrated systemic issues, particularly records where franchisees were known to have underpaid their workers.

There have been many examples all over the world where big companies and/or their senior management behave badly in the pursuit of money. It should be no surprise to the public that when millions of dollars are at stake and serious consequences apply to those who are found complicit, rules, honesty and ethics sometimes go out the window when the regulator comes knocking.

We are not saying that a company alleged to have systemic issues should be treated as if they have committed a crime, but they should not automatically be assumed to be uninvolved in alleged practices.

### **Rarely administered in a full dose**

We have all heard medical professionals express the importance of taking the full dose of prescribed antibiotics. We are warned that not taking the full dose could lead to superbugs that require stronger antibiotics, or worse, become too strong to defeat.

When it comes to the approach of the FWO, it seems a light slap on the wrist for breaches of the Fair Work Act is enabling the growth of superbug companies who have a business model that incorporates or relies on underpayments.

These superbug companies observe the regulatory action taken against other employers and become stronger by making changes to avoid detection, knowing they can withstand and survive a dose of the FWO.

According to media reports, the Chatime franchisor had issues with systemic underpayments to the tune of millions. However, for some reason, the FWO only pursued a small portion of the underpayments owed to workers.

Upon taking legal action against the franchisor and a director last year - possibly triggered by Fairfax Media's big Chatime exposé - it appears they have chosen not to name another senior executive in the matter, who may have also been aware of or involved in the underpayments or covering up of underpayments.

Fair Work's own document states:

*"The evidence outlined above also indicates that [REDACTED] [REDACTED] was involved in the contraventions of the Company during the Assessment Period in that he was knowingly concerned in the contraventions pursuant to section 550(2)(c) of the FW Act."*

The evidence outlined above also indicates that [REDACTED] [REDACTED] was involved in the contraventions of the Company during the Assessment Period in that he was knowingly concerned in the contraventions pursuant to section 550(2)(c) of the FW Act.

#### Fair Work Document

The individual has become [REDACTED] and recently accepted awards on behalf of the company. By not publicly naming him or taking action against him for alleged contraventions of the Fair Work Act it has enabled him [REDACTED]

Concerningly, they did name a former employee of the company who appeared to be trying to get Chatime to do the right thing. That employee may have wished to remain anonymous.

In the case of Chatime, if the FWO don't administer the full dose of antibiotics - and it looks like they won't - Chatime will become a superbug company and the result will be many more people being underpaid while the company continues to be celebrated for their success.

We question how many CEOs or executives have been involved in contraventions of the Fair Work act over the last six years where Fair Work have chosen not to take action against or name the individual or individuals.

## Understanding The Mind Of A Whistleblower

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Over the years of advocating for others, we have encountered people who are whistleblowers of varying degrees. These people are often extremely concerned about speaking out, even if it is anonymously.

Whistleblowers can be incredibly helpful to an investigation. They can cut down research time and this can have the effect of reducing the cost of regulatory action.

It is extremely important that regulators are properly equipped to engage effectively with whistleblowers. They can be scared, timid, unreliable (in terms of contactability and information), extremely keen to assist - at 10PM on a Saturday night - then drop off for months or forever.

A majority of the most fruitful whistleblower discussions that we've had happened after close of business and sometimes late at night. Our policy is, if a whistleblower is ready to talk, we do our best to be available. You may only get one chance.

When passing on whistleblower details (with their consent) to regulators, we have found that there appears to be a knowledge gap when it comes to understanding the mind of a whistleblower. We have passed on whistleblower details before when the person is ready to talk, and weeks pass before they are contacted. Often contact is from a private number and naturally whistleblowers can be hesitant to take these calls. The calls can also happen during business hours.

Imagine being a whistleblower at a major corporation who has reached out directly to the regulator from a company supplied mobile phone - whistleblowers sometimes do not think these things through and have not done anything like this before. Then during business hours three weeks later the regulator calls you up while sitting next to your colleagues. The call is likely to be missed and the various regulators will say to us that they tried to call but didn't make contact. This event could be enough to scare the whistleblower away.

A better understanding of the mindset is needed as well as trained people who can be available to receive important resource-saving information.

Side note: We referred a Domino's whistleblower to the FWO during their investigation. The whistleblower made serious claims in relation to the underpayment of some workers. The workers were migrants and not being paid for all hours as managers. The franchisee alleged to be engaging in the underpayments was a multi-unit franchisee from Perth. Despite the willing nature of the whistleblower to provide evidence, the whistleblower repeatedly told us they were yet to be contacted by the FWO. The FWO kept saying they tried contacting them but they didn't answer. Somehow the FWO investigation managed to be finalised without them interviewing an essential whistleblower. The whistleblower ended their complaint to us with a powerful sentence: *"I have made efforts to report this shocking story to Dominos, Dominos whistle-blower hotline, all to no avail."*

## Debunking Industry Spin

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A number of companies and industry groups have come out strongly as apologists for companies caught doing the wrong thing. It has become clear that industry is gearing towards a “solution” that involves simplifying the Award system. We are strongly opposed to this suggestion as this solution will no doubt involve the erasure or reduction of penalty rates, or workers taking home less pay.

Some workers have already recently endured penalty rate cuts of 10-15%. Some of industry promised that employers would hire more people as a result of the cuts. A representative of the Council of Small Business Australia was quoted as saying, *“This is a good decision for the community, for employees and for employers. And when I say employees, I mean the ones that don't have a job at the moment who'll now have the opportunity to work on Sunday,”*<sup>2</sup> The lobby group later conceded that there are “no extra jobs on Sunday” and that “There's no extra hours [for workers]”<sup>3</sup>.

Considering how vocal industry has been about how “the real problem” with underpayment is the complex Award system, it needs to be asked whether any of these industry groups knew about the 7-Eleven wage scandal before it was in the papers?

Did they know about it and turn a blind eye, allowing migrant workers to continue to be exploited and having their wages stolen?

Or were they ignorant of the systemic wage theft involving thousands of workers? Have they known about any of the many other companies embroiled in wage scandals before they were exposed by the media? If they didn't even know there was a problem, how can they propose to not only know what the real problem is, but to also have the solutions?

*“It's just a few bad apples”*

In their submission to Queensland's Wage Theft Inquiry, the National Retail Association seemed more fazed by the flow-on impact of “systematic wage non-compliance” to businesses, rather than the flow-on impact to workers. They go on to say, *“In the first instance, the value of the business decreases significantly as the value of goodwill declines drastically... This is particularly drastic in business networks such as franchise networks, in which the actions of a few ‘bad apples’ can significantly reduce the value of those related businesses who are innocent of any wrongdoing. This was seen in the case of 7-Eleven, in which the loss of goodwill in the 7-Eleven brand resulted in losses for franchisees, often ‘mum and dad’ investors, who were innocent of any wrongdoing and were simply ‘guilty by association’.”*<sup>4</sup>

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<sup>2</sup><https://www.abc.net.au/triplej/programs/hack/sunday-public-holiday-penalty-rate-cut-jobs/11487612>

<sup>3</sup><https://www.theaustralian.com.au/nation/politics/penalty-rate-cut-failed-to-create-one-new-job/news-story/4946a1915162c197a896063ae4009bb7>

<sup>4</sup><https://www.parliament.qld.gov.au/documents/committees/EESBC/2018/Wagetheft/submissions/021.pdf>



The flow-on impact of underpayment to workers will be addressed in this submission. It needs to be made clear that 7-Eleven was not the actions of a “few bad apples”. In fact, over \$160 million<sup>5</sup> was backpaid to over 3,600 workers<sup>6</sup>. And that is only counting the workers who had their claims both assessed and approved. Considering the 7-Eleven scandal is perhaps the most famous wage theft scandal of all, it is disappointing that the National Retail Association chose this take on the issue in their submission to Queensland Parliament.

*“It’s too complex”*

Woolworths, AI Group, the Council of Small Business Organisations Australia, Australian Retailers Association and others have all used the complexity argument to excuse underpayment of millions of dollars.

The Award system has been around in its simplified, current form for many years. Employers are only just now finding millions of dollars in underpayment spanning years. It didn’t suddenly become “complex”. If these employers rely on this complexity argument, they need to explain why they have failed to prioritise industrial relations as an employer to hundreds or thousands of people.

One question that needs to be asked of these companies is, what was their industrial relations advice? Has this advice centred around risk adversity and stretching the limits of what is allowed (EG. exploiting loopholes)? It is not enough to say that the issue is complex. What checks and balances have they been doing to at least try to get it right?

If employers insist on the complexity argument, we would argue that because these issues have now been raised and they say their systems have been thoroughly audited, they should have a good enough understanding of the Award system to no longer believe it is “too complex” to get right. To say otherwise would be to admit that they have not conducted thorough enough audits and undiscovered underpayment could still exist.

*“Overpayment is just as common”*

A recent article detailed how the Australian Payroll Association surveyed 39 organisations and found that 27 organisations overpaid workers<sup>7</sup>.

We have seen industry representatives refer to this to spread the message that overpayment is “just as common” as underpayment.

Not only is it a tiny data sample in comparison with how many companies have been exposed for underpayment, but it also doesn’t highlight the monetary value of the overpayments. It also did not state whether any of these 27 organisations underpaid workers, too.

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<sup>5</sup><https://www.aph.gov.au/DocumentStore.ashx?id=64883586-31b1-4133-90f8-603a7b582763&subId=565756>

<sup>6</sup><https://web.archive.org/web/20180217052118/http://www.wagerepaymentprogram.com.au:80/>

<sup>7</sup><https://www.afr.com/work-and-careers/workplace/overpayment-as-common-as-wage-theft-20200221-p54326>

*“They self-reported”*

In our experience, a number of companies only self-report after workers have identified problems with their salary/wage and complain to the company. We have seen companies try and intimidate workers out of making a complaint, threatening their job or hours, or only agree to back pay them (often only a portion of the amount owed) if they sign a Non Disclosure Agreement and agree not to take any other action.

Companies will self-report when they fail to restrain the worker and fear the underpayment or wage theft will go public. While much of industry paints self-reporting as noble and brave, it can often be done as a last resort.

*“It was inadvertent / a mistake”*

If small business owners are given incorrect advice, forget a birthday, incorrectly apply an Award, or misinterpret a particular clause, we don't believe these are instances of wage theft. Employees often also have a good gauge on whether underpayment is deliberate and can raise it with their employer.

The “it was inadvertent” excuse flies out the window when you are a big and/or ASX-listed company that has the capacity to engage external advice and have payroll audited regularly. You cannot find what you don't look for. It seems as if companies are relying on labelling underpayment as a mistake even though they have turned a blind eye to outdated systems and poor auditing that have enabled underpayment spanning years.

## Flow-on Impact To Workers

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It was brought to our attention that workers who have experienced wage theft or underpayment have also experienced adverse flow-on effects.

As reported in The Sydney Morning Herald, *“The administrative appeals tribunal has acknowledged a worker ripped off by 7-Eleven who fought and won a \$62,000 lump sum in back pay ended up paying more in tax than he would have had he not been ripped off.”*<sup>8</sup>

An unfair increase in taxation that penalises underpaid workers is not the only flow-on impact.

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<sup>8</sup><https://www.smh.com.au/national/ripped-off-by-7-eleven-worker-s-back-pay-treated-unfairly-by-tax-man-20190825-p52kk0.html>

In determining how accidental and deliberate underpayment can impact workers beyond being underpaid, the following need to be considered:

- Increase in tax.
- Loss of childcare subsidy. The government gives a childcare subsidy based on yearly earnings. A worker could lose a significant amount of subsidy due to their pay being backloaded.
- Loss of Centrelink payments. Does backpay result in Centrelink payments decreasing or stopping? If they were paid at the correct time, their Centrelink entitlements might not be impacted.
- Backpay could impact the Medicare levy/surcharge, low-income healthcare card benefits and other payments such as child, disability and carer support.

**Recommendation:** As a bare minimum, employers who have underpaid their workers should be required to pay adverse taxation impacts faced by workers.

## Franchising: Aggressive Growth

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### Correlation between aggressive growth and underpayments

There appears to be a correlation between a franchisor's aggressive growth plans and the potential for systemic underpayments in a franchise network.

The desire for a franchisor to grow profits, grow the number of outlets, and acquire investors is becoming an all too common and disturbing pattern. The end goal can be to grow to many outlets fast and then sell off to private equity, or float on the Australian Stock Exchange. This can make the founders extremely wealthy, but the outcome is often very different for the majority of the franchisees and their workers.

Vulnerable migrants often tend to be targeted by the franchisor to become franchisees. Migrant franchisees then tend to hire migrant workers who are also vulnerable. Profits can be non-existent or small and this can lead to systemic underpayments in the network.

Disturbingly, the franchisor will conveniently not notice the many indicators that their network has systemic underpayment issues, but they will try to ensure there is no clear way to prove head office or management are complicit should they be investigated.

### Concerns referred to the FWO about Guzman y Gomez and Soul Origin

Last year we referred concerns about two fast growing franchise brands to the FWO. Both brands are quite boastful about their growth and are celebrated for their success. However, we identified early stage indicators that there were potential systemic underpayment issues in their network and that it may be part of their business model. We believe the FWO is looking into both of the brands.

## **Guzman y Gomez**

We first raised concerns about this brand in our submission to a Queensland wage inquiry in August of 2018.<sup>9</sup>

In one store, we observed possible indicators of underpayment. The store appeared to be well overstaffed and only employed vulnerable workers. Given the workers appeared to be over 20 years old (and entitled to a higher rate), there seemed to be little commercial sense if legal rates were being paid.

A prospective employee also told us she was denied employment in two of the stores. Reasons given: they only hire Portuguese or Spanish speaking people, and they don't hire Europeans. The woman believed she was racially profiled because she didn't "look Mexican".

This particular franchisee owns six stores and is a former investment banker. He has been written about as having over 150 employees and that Guzman y Gomez has proved to be a particularly popular employer among young Mexican and other Latin American students. He said "The brand really resonates with them". The article said "95% of his employees are students."

A franchising executive told us that his franchisor considered reporting Guzman y Gomez to the regulator in relation to wage issues, but decided not to for reasons unknown to us.

We are also aware that a migrant community group and others are conducting early stage investigations into the brand off the back of complaints received from Spanish speaking migrants.

The main co-founder of the brand is an ex-hedge fund manager and has spoken of a plan to grow to hundreds or even thousands of stores, and one day list on the stock exchange. They also have a private equity partner.

The hard part for the FWO will be to identify any cash payments to students working beyond their 20 hour per week limits, unpaid overtime and creative accounting to conceal underpayments.

Despite our public submission about the concerns, neither the company, nor the private equity partner have reached out to us, or publicly responded as far as we are aware.

## **Soul Origin**

This franchisor first came on our radar when we were in Canberra and realised they had engaged a lobbyist not long after the 2018 franchising inquiry was announced. They did not put in a submission as far as we are aware.

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<sup>9</sup><https://www.parliament.qld.gov.au/documents/committees/EESBC/2018/Wagetheft/submissions/049.pdf>

When looking at the brand, we noticed there was a pattern of rapid store growth, high rent locations and a theme of stores heavily staffed with vulnerable workers. Observing the store traffic, we felt that the model may not be viable.

It wasn't long until we became aware through the grapevine that one of the founders was extremely concerned that we would take a deeper look into their business model.

An ex-franchisee told us that the most senior management in 2018-2019 spoke to large groups of franchisees using language to suggest underpayments are common, but they should really try to pay legal wages. The franchisee we spoke to thought that management said that to separate themselves from the risk of being found complicit at some point.

A franchisee told us that underpayments are all through the network. We were told that one of the ways underpayment happens is paying workers (often friends and family of the franchisee) in cash, a flat rate, or for free in the business.

A franchisee told us the company seem to have a plan to grow to 200 stores and then list on the Australian Stock Exchange or sell to private equity for hundreds of millions.

The franchisee had concerns that the company were "giving away stores" to favourite franchisees who in turn were used to promote the success of the brand and attend industry events as a success story.

When franchisees realise that they can't be as successful as the brand and their favourite franchisees have led them to believe, underpayments begin or increase.

A concerned franchisee also flagged concerns when franchisees are under financial pressure. In addition to underpayments, food and safety standards drop. They said in NSW alone there were a handful of stores that had received notices from the NSW Food Authority.<sup>10</sup>

The FWO will be faced with migrant workers who are not willing to speak up because they are related to or have a connection to the franchisee or franchisor. The FWO may also be faced with creative accounting.

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<sup>10</sup><https://www.foodauthority.nsw.gov.au/offences/penalty-notices?s=soul+origin>

## Case Studies

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### Accent Group

We used Fair Work's reporting tool that allows anyone to anonymously report a place of business for underpaying workers. In this instance, we reported a specific store belonging to Accent Group Limited. We won't name this specific store in order to protect the worker who came to us, however we hold wider concerns around the payment model at Accent Group's brands and are currently investigating the company.

The main concerns raised to us were:

- The expectation that workers arrive 10 minutes before their rostered start,
- Staying back after end of trade to till up and clean, normally for around 10-30 minutes, unpaid,
- The expectation that workers attend staff meetings for free,
- No laundry allowance provided despite wearing branded clothing, and
- The expectation that workers purchase in-stock shoes to wear while on shift.

There were also alleged instances where the till came up short and workers were expected to contribute from their own pocket to eliminate the shortfall. Although there is no evidence, this particular instance is highly concerning as it is a much more literal form of wage theft: expecting workers to take money from their purse/wallet and give it to their employer. Although difficult to prove, this type of conduct is not unheard of and was exposed by workers at Pig 'N' Whistle<sup>11</sup>.

After reporting the company to Fair Work anonymously, some changes were eventually made. We are not sure if this was because Fair Work was involved or due to internal checks.

Some of the changes included now being paid for the time spent after end of trade cleaning and tilling up. However no back pay was provided for the many years that this work went unpaid.

The store also continued to (and as far as we know still does) require workers to purchase in-stock shoes to wear while on shift.

### The award winning Gold Coast chef

An award winning Gold Coast Chef was the manager of a prominent restaurant that went into liquidation reportedly owing almost \$600,000 to creditors in late 2018. His mother was listed as the director. Reportedly, the liquidators report said he ran the business.

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<sup>11</sup><https://www.couriermail.com.au/business/pub-empire-accused-of-staff-exploitation/news-story/a32dabf874dab7fe5a22375104453528>

Only months later a company was registered with him as the sole director to essentially re-launch a similar restaurant. Once his restaurant opened, we immediately noticed a pattern of vulnerable workers - who were restricted to 20 hour work weeks - working long hours in the business.

**THE boss of a failed Gold Coast cafe which left creditors almost \$600,000 out of pocket is planning to open a new restaurant at Harbour Town in the same name.**

Gold Coast Bulletin

Some of the migrant workers told us they were told to get an ABN and invoice an agreed amount every pay period. They were treated poorly and some were working really long hours. All were too scared to speak up for fear of getting in trouble for exceeding their hours.

There were two silent investors who are "highest awarded" coffee roasters from Brisbane. They found out we were speaking to workers and one of them called. Most of the focus of the underpayment conversation revolved around him trying to identify the workers who spoke to us.

On the Gold Coast there is a restaurant called [REDACTED]. We have mentioned it before in a Queensland inquiry. It has been run by three brothers. [REDACTED] has a reputation when it comes to treatment of workers. Even a local MP told us about their concerns.

We have heard of cash payments, underpayments, flat rates (below award) and general underpayment of migrants. Concerningly, it appears they had groomed some staff to believe things work a certain way in Australia. "Because I am not Australian, I get less per hour." We even received information about a young front of house worker who was asked to help with renovations and use a jackhammer.

[REDACTED] Minimal or no training for staff. My daughter (uni student) worked there for 4 weeks and was ONLY paid the day she was fired, for "not progressing rapidly enough". That's after they deducted over \$100 from the cash payment for her uniform of one blouse and one skirt. She asked several times for the promised training but was rostered on dishwashing duties every shift. No payslips provided. Glad she is out of there and working somewhere else she enjoys - with training, support and more money - and payslips!!  
Like · Reply · 1 · 19 December 2016 at 15:41

Facebook

They also have [REDACTED] and receive positive media for their success.

We heard that the FWO investigated them, but don't know the details of the outcome. It is our belief that underpayments were found, and if so, the FWO has not made any public comment about it.

The brothers have now launched a new company called [REDACTED] where they will provide "advice and funding for entrepreneurs".

### **Domino's Pizza Enterprises**

For some time we have been aware of the conduct of senior Domino's management that may have had the effect of depriving workers of their legal wage entitlements. The decisions were said to be made in the interests of the business.

Much of the information relayed to us through whistleblowers cannot be specifically detailed in this submission without risking the identification of the whistleblowers. The company is known for taking an aggressive stance towards those who wish to speak up, hence the reluctance of them to come forward. The CEO has demonstrated how the company views whistleblowers by taking to radio last time people spoke up by calling them "criminals" and "blackmailers".

*A former franchisee has lashed out at Domino's chief executive Don Meij after being depicted, along with other franchisees, as a blackmailing "criminal" for speaking out about wage fraud inside the pizza network.*

The Sydney Morning Herald

Rather than putting the whistleblowers at risk, we would encourage the committee to call on Domino's to a hearing to answer questions about the nature of our allegations, where they will be well aware of the serious consequences of misleading Parliament. And they would also be aware of the risks associated with a whistleblower subsequently coming forward after they have provided evidence and demonstrating otherwise.

We would also encourage the committee to seek a response from Fair Work about how many of Domino's senior management, or entities they have been a director of, have received complaints about underpayment on non-payment of entitlements.

The FWO and Domino's should be asked what happened to the investigation into the large NSW franchisee Pamir Dehsabzi, who runs 10 stores and was exposed by Fairfax Media<sup>12</sup> for underpaying workers three years ago. We are not sure that the underpaid workers who spoke up have ever been contacted by Domino's and perhaps not by the FWO.

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<sup>12</sup><https://www.smh.com.au/business/workplace/one-of-the-biggest-dominos-franchisees-investigated-20170310-guv02y.html>



Side note: It took us 45 minutes to find underpaid workers in Pamir Dehsabzi stores. Within two hours we had a manager who was willing to provide evidence and be publicly named. Three years have passed and the FWO have not announced an outcome and the Domino's CEO told the franchise inquiry in mid 2018 that they found "some minor infringements" in their investigation. The evidence we saw suggested contraventions of the Fair Work Act and book tampering.

## Woolworths

Within a week or two of Woolworths "self reporting" up to \$300 million in underpayments to workers we became aware of a concerning practice. Even though Woolworths have software and computer systems in their stores for workers to clock in and out of their shifts, workers began telling us about Woolworths using a paper record keeping system on the side for adjustments.

| Day Of Change | Payroll Number | Employee Name (Surname, First Name) | Roster Change / Addition / Deletion | Remarks Section | Team Managers Signature | Employee's Signature | SSO / SSA |
|---------------|----------------|-------------------------------------|-------------------------------------|-----------------|-------------------------|----------------------|-----------|
|---------------|----------------|-------------------------------------|-------------------------------------|-----------------|-------------------------|----------------------|-----------|

Woolworths Document

The document is called an Adjustments Sheet and has no Woolworths markings on it. Workers who sign off on it also do not receive a copy of what they signed. Rather than describe our understanding of the documents function we have included a workers description below.

*"This adjustment sheet is used for every department, and every department has their own folder with adjustments for that week in it, and previous weeks. There has been numerous team members across multiple departments that have had to stay back to do the work that is REQUIRED of us to be done, yet are not paid for it as the adjustment needs to be signed by a manager. The policy itself doesn't make sense as we are agreeing to not being paid the extra time even if we stayed back and didn't get a managers approval as we were busy.*

*An example is staff staying back an extra half hour to do duties such as restocking items on shelves/registers that need to be out for the next day. We (Team members) would not be paid for that unless we called the manager over (In another department if you aren't in the department of the duty manager who is in charge e.g. Meat would have to ask the Nightfill manager as they are on duty, not the Meat manager) and asked for permission to stay back which is generally not in anyone's mind when they are trying to get stuff done.*

*If these tasks are not done by the next day, generally whoever was on the previous shift would get 'gently' reminded that they should have clocked off first then continued tasks OR gotten it done before the shift ended. Some of these tasks can take up to 3+ hours for ONE tasks e.g. Restocking Drinks fridges.”*

*“Employee is 'kindly' asked to sign if they agree to what is written, but most of the time there are unseen consequences if we don't e.g. Managers are standoffish, lack of shifts or just general discomfort as they want/need you to sign the form.”*

### **Questions that could asked**

- Has AI Group at any point in time provided informal or formal advice to Woolworths regarding the remuneration of workers (employees and/or contractors)?
  - To what extent, if any, was AI Group involved in providing advice that led to the underpayment of Woolworths workers to the tune of \$315 million?
  - If involved, should AI Group's members be thoroughly investigated to ensure they haven't relied on incorrect advice provided by AI Group that has led to them potentially underpaying workers?

### **Case studies: final thoughts**

If underpayment practices were caught early and if the parties and entities involved were named, shamed and appropriately penalised, it would go a long way to slowing down the growth of unscrupulous operators and reducing the amount people exploited and underpaid by them.

## **Recommendation: Public Register**

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We believe that the FWO should publish a register of notices and breaches served upon businesses and their directors. This register should include the trading address and the name of the business. It should be similar to the NSW Food Safety Name and Shame Register.<sup>13</sup>

Such a register would enable prospective employees to ensure their potential employer does not have a history of underpayments. Investors could also glean information from the register to ensure they are investing in ethical companies. It would also make it easier for the media to report on dodgy employers.

We welcome the opportunity to give evidence in person at this inquiry.

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<sup>13</sup><https://www.foodauthority.nsw.gov.au/offences>