



Submission of the Western Australian Government

Senate Economics References Committee Inquiry Unlawful underpayment of employees' remuneration

Introduction

1. The Western Australian Government thanks the Senate Economics References Committee (the Senate Committee) for the opportunity to make a submission to its inquiry into unlawful underpayment of employees' remuneration.
2. This submission addresses the terms of reference of the Senate Committee's inquiry by providing information on the findings and recommendations of the 2019 Inquiry into Wage Theft in Western Australia (Inquiry into Wage Theft) commissioned by the Western Australian Government, and the proposed Western Australian Government reforms in response to the Inquiry into Wage Theft.

Inquiry into Wage Theft in Western Australia

3. In 2019 the Western Australian Government commissioned the Inquiry into Wage Theft to examine whether wage theft was occurring in Western Australia, and to make recommendations for strategies to assist workers and address wage theft. The Inquiry into Wage Theft was undertaken by Mr Tony Beech, former Chief Commissioner of the Western Australian Industrial Relations Commission (the Inquirer).
4. The Inquiry into Wage Theft had nine Terms of Reference and covered both the State and national industrial relations systems. Western Australia has not referred industrial relations powers to the Commonwealth and consequently the State industrial relations system covers those businesses in Western Australia which operate as sole traders and unincorporated partnerships and trusts, as well as other employers that are not financial or trading corporations and the Western Australian public sector.
5. The Terms of Reference for the Inquiry into Wage Theft are at Attachment A. The Terms of Reference for the Inquiry into Wage Theft defined wage theft as the 'systematic and deliberate underpayment of wages and entitlements to a worker.'
6. In accordance with the Terms of Reference, the Inquiry into Wage Theft considered whether there is evidence of wage theft occurring in Western

Australia, the reasons behind it and the impact on workers, businesses and the community.

7. The Inquiry examined whether the current regulatory framework at the State and Federal level is effective in combating wage theft, whether new laws should be introduced in Western Australia to address wage theft, and if so, whether wage theft should be a criminal offence. Other strategies that could be implemented by the State Government, Federal Government or stakeholders were also considered.
8. The Inquiry into Wage Theft received 78 submissions, including 47 submissions from or on behalf of individual workers. The Inquiry also conducted an online survey to enable workers to provide details of their experiences of wage theft.¹
9. The Report of the Inquiry into Wage Theft (Inquiry Report) was released by the Western Australian Government on 6 December 2019. The Inquiry Report and the proposed Government response are available at www.dmirs.wa.gov.au/wagetheft.
10. The Inquiry Report makes a total of 28 recommendations to address wage theft in Western Australia. Broadly, the recommendations include strategies which aim to:
 - increase awareness of employment rights and obligations in Western Australia;
 - provide a pathway for employees who have been underpaid to obtain information and to seek redress; and
 - provide for greater detection of underpayments and enforcement of employment laws.²
11. Those aspects of the Inquiry Report that are of particular relevance to the Senate Committee's terms of reference are considered below.

Term of Reference A: The forms of and reasons for wage theft and whether it is regarded by some businesses as 'a cost of doing business'

12. The Inquiry into Wage Theft found that wage theft is occurring in Western Australia. The forms of systematic and deliberate underpayments identified in the Inquiry Report are:
 - unpaid hours;
 - non-payment of any wages or allowances for work performed;
 - underpayment of wages and entitlements;
 - unauthorised or unreasonable deductions; and
 - non-payment of superannuation.³

¹ The non-confidential submissions to the Inquiry into Wage Theft are available at: www.dmirs.wa.gov.au/wagetheftinquiry

² Report of the Inquiry into Wage Theft, pp.8-15.

13. The hospitality industry, particularly cafes and restaurants, contract cleaning, retail, and horticulture are identified as areas where the likelihood of wage theft is higher.⁴ The Inquiry Report also noted that wage theft in Western Australia frequently involves permanent or temporary migrant workers.
14. The Inquiry Report notes that some groups such as migrant workers, visa holders and those less than fluent in English may be more vulnerable than others,⁵ and also highlights cases where wage theft has formed part of the business model for employers.⁶
15. The Inquiry into Wage Theft examined the reasons wage theft is occurring and concluded:

The reasons why systematic and deliberate underpayment of wages and entitlements is occurring include the lack of detection and enforcement of non-compliance, the intention of some employers to maximise financial return, the vulnerability of some workers, and a lack of knowledge of employment conditions by both workers and employers.⁷

16. The first of these factors, the lack of detection of non-compliance and of enforcement, are identified in the Inquiry Report as “perhaps the most significant single reason” why wage theft is occurring.⁸
17. The Inquiry Report states that a lack of detection and enforcement is the key factor which facilitates wage theft:

I find that there is inadequate detection of non-compliance and enforcement of employment law, owing to too few resources given to regulators, and this combined with the availability of vulnerable workers, creates an environment where employers in some sectors have chosen to establish and run their business on the basis that they will be able to underpay workers.⁹

18. The Inquirer argues that the presence of significant penalties for non-compliance with employment laws has failed to act as a deterrent and states:

In my view, this is because to be effective, a law needs to be both known and adequately enforced. ... This is as true of employment law as it is of all laws. The importance of inspections by Fair Work Inspectors from the FWO or State Industrial Inspectors, and the application of a range of measures, including enforcement proceedings, by regulators, cannot be over-emphasised.¹⁰

19. The Inquiry Report describes the present lack of detection of non-compliance and of enforcement as “an issue of resourcing, rather than of lack of intent”¹¹ and makes a number of recommendations to increase enforcement capabilities at the State and national levels. The Inquiry into Wage Theft’s recommendation for

³ Ibid, p.7.

⁴ Ibid, p.7.

⁵ Ibid, p.72.

⁶ Ibid, pp.69-70.

⁷ Ibid, p.7.

⁸ Ibid, p.69.

⁹ Ibid, p.75.

¹⁰ Ibid, p.68.

¹¹ Ibid, p.69.

greater funding for the Fair Work Ombudsman's presence in Western Australia is discussed in relation to Terms of Reference C and F on pages 6 and 7 of this submission.

20. As noted above, the Inquiry Report also cites a lack of knowledge of employment conditions by both workers and employers among the identified reasons for wage theft. In considering this factor, the Inquirer suggests, "There certainly is room for the view that many underpayments do occur as a result of a lack of knowledge or genuine misunderstanding of employment obligations."¹² However, the Inquirer notes that employers often seek professional advice to manage other complex legal issues and comments:

The evidence in this Inquiry suggests more that systematic and deliberate underpayment of wages and entitlements results from a deliberate disregard of employment obligations rather than an honest misunderstanding of them.¹³

21. The Inquiry Report makes a number of recommendations to improve and expand the availability of information about employment obligations.¹⁴ The Western Australian Government recognises the importance of developing effective information and education resources and is taking action to combat wage theft through a range of strategies consistent with the recommendations of the Inquiry into Wage Theft.
22. In December 2019, consistent with Recommendation 4 of the Inquiry,¹⁵ the Western Australian Government established a wage theft website at www.wagetheft.wa.gov.au. This website provides information for Western Australian workers in both the State and national industrial relations systems on:
- how to seek assistance with resolving an underpayment issue or unpaid leave;
 - how to report wage theft anonymously to the relevant government department; and
 - how to seek help with unpaid superannuation.
23. The Western Australian Government also supports the need to develop effective information campaigns in consultation with unions and employers, and the other recommendations in the Inquiry Report for information and education initiatives to combat wage theft.

Term of Reference B: The cost of wage and superannuation theft to the national economy

24. The Inquiry Report concludes that the impacts of wage theft are significant, causing financial hardship for workers, creating an unfair commercial environment for employers who correctly pay their employees, and depriving State and Commonwealth Governments of taxation revenue.

¹² Ibid, p.67.

¹³ Ibid, p.67.

¹⁴ Ibid, see Recommendations 1, 2, 3, 4, 11 and 13, pp.8-9.

¹⁵ Ibid, Recommendation 4, p.110.

25. The problems associated with wage theft are demonstrated to extend beyond the impacts on individual workers and their families. Wage theft is described in the Inquiry Report as having potentially serious ramifications for both employers and the environment in which they operate:

The submissions show that the unfair cost advantage achieved by businesses which engage in wage theft can undermine those businesses which are compliant, and this has consequences for the viability of the compliant business, its employees, and in a wider sense for the economy. In those sectors where non-compliant businesses are more widespread, the effect can be to significantly undermine the integrity of the industry and unfairly disadvantage and penalise business-owners who operate their businesses lawfully. Compliant businesses may lose customers, or not win tenders, as customers and clients turn to those unfairly offering cheaper prices or tender quotes. It can distort reported financial returns and affect share prices and dividends.¹⁶

26. Further, the Inquirer notes that "Underpayment necessarily reduces the amount that employees would otherwise have to spend in the economy."¹⁷
27. The Inquiry Report highlights that "Non-compliant businesses do not just deliberately underpay their workers, they also will not be paying the full rate of taxation, both State and Commonwealth,"¹⁸ and includes the following information provided by the Western Australian Department of Finance, Office of State Revenue:

In the 2018-19 financial year, focussing mainly on the horticulture and primary production industries, we identified 44 unscrupulous labour hire firms operating in WA. By tracing payments made to these firms, which was in excess of \$40 million, we estimated that unpaid payroll tax amounted to almost \$1 million, of which \$330K has been collected to date mostly from garnishee actions. It is likely that the balance will not be collected as the firms involved have ceased operations and their owners cannot be located.¹⁹

28. The Inquiry Report also refers to the cost of unpaid superannuation contributions, noting "The non-payment of the Superannuation Guarantee contribution will, over time, impose a greater cost to the taxpayer as those who have less in their superannuation at retirement are more likely to seek tax-payer funded pension payments."²⁰

¹⁶ Ibid, pp. 80-81.

¹⁷ Ibid, p.81.

¹⁸ Ibid, p.81.

¹⁹ Ibid, p.81.

²⁰ Ibid, p.81.

Terms of Reference C and F:

- 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**
- 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**

Enforcement of employment laws

- 29. The importance of adequate resourcing for education and enforcement as a deterrent to underpayment is a major theme of the Inquiry into Wage Theft.
- 30. As noted above in relation to Term of Reference A, the Inquirer concluded that “one of the reasons, perhaps the most significant single reason, why wage theft is occurring is the lack of detection of non-compliance and of enforcement”,²¹ and described Industrial Inspectors as “the single most important factor in the effective regulatory response to wage theft.”²² In the view of the Inquirer, “a visit from an Industrial Inspector or a Fair Work Inspector is the only current practical means for detecting [wage theft]”.²³
- 31. The Inquiry Report notes that one common theme among submissions to the Inquiry into Wage Theft from both employer and employee organisations was that the Fair Work Ombudsman (FWO) should be given increased funding and resources for its work in Western Australia.²⁴ The Inquirer expresses agreement with those submissions and states:

In my opinion, a visit from a Fair Work Inspector is one of the most effective ways to counter wage theft; it is entirely consistent with my opinion that the number of Fair Work Inspectors in WA should be increased ... This does not reflect upon the work the FWO already undertakes in WA; it recognises the size of the State and the inherent difficulties in having inspectors visit businesses throughout the State.²⁵

- 32. The Western Australian Government supports the view of the Inquiry into Wage Theft with regard to the importance of FWO Inspectors in detecting wage theft, and is concerned about the limited number of FWO Inspectors operational in the field in Western Australia.
- 33. At the April 2019 Senate Estimates hearing, FWO officials indicated that there were only 12 designated FWO Inspectors in Western Australia, and that this

²¹ Ibid, p.69.

²² Ibid, p.114.

²³ Ibid, p.69.

²⁴ Ibid, p.119.

²⁵ Ibid, p.164.

includes the staff of the dispute resolution and early intervention team based in Perth.²⁶

²⁶ Senate Education and Employment Legislation Committee Estimates 10 April 2019, pp.94-95.

34. A substantial increase in the number of FWO Inspectors available to undertake pro-active inspections of workplaces in industries where wage theft is likely to be prevalent, and to take enforcement action in response to employee complaints, is considered by the Western Australian Government as essential to improve detection and enforcement of wage theft in Western Australia.
35. The Inquiry Report recommends that the State Government recommend to the Commonwealth Government that there be greater funding for the Fair Work Ombudsman's presence in Western Australia.²⁷
36. The Western Australian Government recognises that to combat wage theft there needs to be an appropriate resourcing of industrial inspectors and educational services, and consistent with the recommendations of the Inquiry Report will also progress amendments to State industrial laws which include:
 - broader powers for industrial inspectors²⁸
 - in the case of wage theft:
 - the ability for a successful claimant in enforcement proceedings to recover costs for the services of a lawyer or agent²⁹
 - the Western Australian Industrial Relations Commission to be given the power to award interest on a denied contractual benefit and a general power to make any order it considers appropriate³⁰
 - a prohibition on:
 - employers unreasonably requiring employees to spend, or "pay back" to the employer, their wages³¹
 - employers discriminating against employees because they have inquired or complained about their employment conditions³²
 - employment being advertised at less than the applicable minimum wage for the position³³
 - sham contracting arrangements.³⁴
37. In addition, the State Government is committed to bolstering the Western Australian Industrial Magistrates Court's processes and powers to combat wage theft as recommended by the Inquirer.³⁵

²⁷ Report of the Inquiry into Wage Theft, Recommendation 26(1), p.167.

²⁸ Ibid, Recommendation 9, p.118.

²⁹ Ibid, Recommendation 15, p.136.

³⁰ Ibid, Recommendation 18, p.141.

³¹ Ibid, Recommendation 19, p.142.

³² Ibid, Recommendation 20, p.143.

³³ Ibid, Recommendation 24, p.160.

³⁴ Ibid, Recommendation 25, p.161.

³⁵ Ibid, Recommendations 7, 14, 16, and 17, pp.10-11.

38. The Inquirer also notes that the Industrial Magistrates Court (IMC) currently sits on two days per week and observes that:

In submissions made to this Inquiry, taking enforcement proceedings in the IMC is seen as a preferable alternative to taking enforcement proceedings in the federal courts. The sentiment behind the submissions reflects the need for matters to be listed sooner; this in turn suggests there needs to be additional judicial resources dedicated to the IMC, particularly if wage theft is to be more effectively addressed.³⁶

39. Recommendation 6 of the Inquiry is as follows:

I recommend that the State Government fund the operation of the Industrial Magistrates Court of WA to enable it to sit full time if necessary to increase the timeliness of matters being listed in the Industrial Magistrates Court.³⁷

40. The Western Australian Government has committed to seeking funding from the Commonwealth for the IMC, as most matters dealt with by the IMC arise under the national system and the Commonwealth does not currently contribute to its funding.

Possible criminalisation of wage theft

41. The Inquiry into Wage Theft examined whether the current regulatory framework at the State and federal level is effective in combating wage theft, whether new laws should be introduced in Western Australia to address wage theft, and if so, whether wage theft should be a criminal offence.
42. In considering the possible criminalisation of wage theft, the Inquiry Report identifies two fundamental issues to be addressed, namely the need to:
- try and reduce or prevent systematic and deliberate underpayment of wages and entitlements from occurring; and
 - ensure that a worker receives the wages and entitlements which should have been paid to them.³⁸
43. In the Inquirer's view, "If making wage theft a criminal offence may assist to address those issues, it deserves to be considered."³⁹
44. While accepting that criminalisation raises some complex issues, the Inquirer observes that widespread wage theft is occurring under current laws and reasons that "arguably, those laws are not effective in deterring wage theft."⁴⁰

³⁶ Ibid, pp.111-112.

³⁷ Ibid, p.112.

³⁸ Ibid, p.143.

³⁹ Ibid, p.143.

⁴⁰ Ibid, p.147.

45. The Inquiry Report argues that the harmful effects of wage theft are of such significance that stronger measures are required. To this end, it is observed that:

A criminal offence is more serious and weighty than a civil offence. Making the most serious systematic and deliberate underpayment of wages and entitlements a criminal offence sends a message that it is treated more seriously. I consider it can play a role in more effectively trying to reduce or prevent systematic and deliberate underpayment of wages and entitlements from occurring, which is one of the two fundamental issues I refer to above.⁴¹

46. The Inquirer concluded with regard to criminalisation that "I do not accept that unintentional underpayment of wages and entitlements as such should attract a criminal sanction."⁴² The Inquiry Report goes on to recommend that "in principle, a criminal sanction should be considered by the State Government for the most serious cases of systematic and deliberate underpayment of wages and entitlements in Western Australia."⁴³

47. Recommendation 21 of the Inquiry Report states:

I recommend that in principle, a criminal sanction should be considered by the State Government for the most serious cases of systematic and deliberate underpayment of wages and entitlements in Western Australia.

The State Government's consideration should include:

- the commitment of the Commonwealth Government to consider the circumstances and vehicle in which criminal penalties will be applied for the most serious forms of deliberate exploitation of workers;
- the constitutional issues arising from the application of a State law criminalising the most serious cases of systematic and deliberate underpayment of wages and entitlements in Western Australia to employment covered by the Commonwealth *Fair Work Act 2009*;
- the desirability of an employee being able to pursue, in a timely manner, a civil claim of underpayment of wages and entitlements without it being delayed by a criminal proceeding; and
- the need to devote sufficient funding and resources to receive and investigate complaints, and adequately and properly enforce the proposed law.⁴⁴

⁴¹ Ibid, p.149.

⁴² Ibid, p.12.

⁴³ Ibid, p.150.

⁴⁴ Ibid, p.150.

48. The Inquiry Report details the Inquirer's concerns that recovery of wages and entitlements could be delayed if a civil case to recover an underpayment was adjourned pending the outcome of any associated criminal proceedings. The Inquirer notes that:

Criminal offences are required to be proved beyond reasonable doubt, which is a higher standard of proof than in a civil case where the standard is proof on the balance of probabilities. The time and resources needed to bring a criminal case can be more onerous than in a civil case, and the hearing of the criminal case may mean a considerable delay to the civil case. An underpaid employee may wait for some time, perhaps measured in years rather than months, before being able to pursue their lawful wages and entitlements.⁴⁵

49. The Inquirer relates that such delays have been observed in the United Kingdom and emphasises:

This is a significant issue given the submissions to the Inquiry, which I accept, that most underpaid workers want simply to have the underpayment rectified, and that punishing the employer is not the worker's objective.⁴⁶

50. As recommended in Recommendation 21 of the Inquiry Report, the Western Australian Government is giving further consideration as to whether wage theft should be criminalised. This will include consultation with the Commonwealth, which has committed to criminalise the most serious forms of exploitative conduct in the national industrial relations system.

51. In September 2019 the Commonwealth Attorney-General's Department released a discussion paper regarding penalties in the FW Act and the proposed introduction of criminal sanctions for non-compliance. The Western Australian Government made a submission in response to that discussion paper and looks forward to working cooperatively with the Commonwealth on this issue.

Labour hire regulation

52. The Report of the Inquiry into Wage Theft considered evidence from multiple sources indicating that wage theft by labour hire providers in the horticulture industry is a significant issue. This material included a research report which found that many labour hire contractors in the horticulture industry do not comply with labour standards,⁴⁷ and the Report of the Migrant Workers' Taskforce (MWTF), which highlighted cases in which vulnerable migrant workers have been exploited by unscrupulous labour hire operators.⁴⁸

⁴⁵ Ibid, p.145.

⁴⁶ Ibid, p.146.

⁴⁷ Joanna Howe, Stephen Clibborn, Alexander Reilly, Dianne van den Broek and Chris F Wright, *Towards a Durable Future: Tackling Labour Challenges in the Australian Horticulture Industry*, University of Adelaide and University of Sydney, 2019, p 25, cited in the Report of the Inquiry into Wage Theft, p.151.

⁴⁸ Report of the Inquiry into Wage Theft, p.151.

53. The Inquirer concludes that “labour hire in horticulture, is a form of employment or engagement where underpayment of wages and entitlements is occurring,”⁴⁹ and that “the material before the Inquiry shows that there should be a licensing scheme for labour hire in the horticulture industry.”⁵⁰
54. The Inquirer also notes that the MWTF Report recommends, and the Commonwealth Government has committed to, “a national labour hire registration scheme not just for the horticulture industry, but also for meat processing, cleaning and security.”⁵¹ The Inquirer observes:

There is not the same level of material before the Inquiry in relation to those other industries, however there is sufficient for the Inquiry to recommend that consideration be given also to a licensing scheme for labour hire in other industries, including the meat processing, cleaning and security industries.⁵²

55. Recommendation 22 of the Inquiry is:

I recommend the State Government should:

- introduce a licensing scheme in Western Australia for labour hire in the horticulture industry and, in consultation with stakeholders, give consideration to a licensing scheme for labour hire in other industries including the meat processing, cleaning, and security industries; and
 - consult with the Commonwealth Government about its commitment to establish a national labour hire registration scheme for horticulture, meat processing, cleaning and security and take it into account in considering whether the State Government should introduce a State-based scheme.⁵³
56. Consistent with Recommendation 22, the Western Australian Government is committed in principle to a labour hire licensing scheme in this State and consulting with the Commonwealth.

Federal Government strategies recommended by the Inquiry into Wage Theft

57. The eighth term of reference for the Inquiry into Wage Theft was “whether there are strategies and legislative change the Western Australian Government could recommend to the Federal Government to deal with wage theft in the federal jurisdiction.”
58. Recommendation 26 of the Inquiry into Wage Theft highlights a range of strategies that the Western Australian Government could recommend to the Federal Government.

⁴⁹ Ibid, p.151.

⁵⁰ Ibid, p.154.

⁵¹ Ibid, p.154.

⁵² Ibid, p.154.

⁵³ Ibid, p.156.

Recommendation 26

I recommend the State Government recommend to the Commonwealth Government:

- 1) that there be greater funding for the Fair Work Ombudsman's presence in Western Australia;
- 2) that the rights of student or temporary visa holders to hold an Australian Business Number (ABN), or to be able to be a company director, be reviewed to address any abuse of the visa system, including by 'sham contracting' arrangements;
- 3) that:
 - a) in the performance and exercise of functions under the Fair Work Act 2009 the Fair Work Ombudsman must act in a manner that facilitates and encourages cooperation between the Fair Work Ombudsman and the Chief Executive Officer of the Western Australian Department of Mines, Industry Regulation and Safety wherever appropriate and practicable;
 - b) Fair Work Inspectors may participate in joint campaigns or inquiries with State Industrial Inspectors; and
 - c) the Fair Work Ombudsman may confer and exchange information with the Western Australian Department of Mines, Industry Regulation and Safety in relation to participating in joint campaigns or inquiries with the Fair Work Ombudsman;
- 4) that superannuation be regarded as part of a worker's wages and entitlements, including for enforcement purposes in the event of non-payment of the Superannuation Guarantee contribution;
- 5) that a pre-lodgment conciliation process prior to enforcement action commencing be examined for application in the national regulatory framework;
- 6) that a person who has engaged in work in Australia for an employer that is contrary to the conditions of their visa, or who is an unlawful non-citizen, or where the contract is illegal and who is subject to systematic and deliberate underpayment of their wages or entitlements, should have the right to seek to remedy the underpayment under the *Fair Work Act 2009*,⁵⁴
- 7) that in cases of systematic and deliberate underpayment of wages, successful complainants in the national system be permitted to recover their legal costs; and
- 8) that the application of the Fair Entitlements Guarantee scheme, access by employee organisations to employment records in order to check that workers' wages and entitlements are being paid correctly, and the definition of 'employee', be optimised to assist to address the circumstances of wage theft identified in this Inquiry.⁵⁵

⁵⁴ Elsewhere in the Report, the Inquirer notes that "An examination of the visa system has been done comprehensively by the MWTF in its March 2019 report, and I respectfully endorse its recommendations" (Ibid, p.71).

⁵⁵ Ibid, p.167-168.

59. The Western Australian Government is committed to engaging with the Commonwealth Government on a range of issues to address wage theft, including federal measures to facilitate cooperation between State and federal industrial inspectors and seeking greater funding for the Fair Work Ombudsman's presence in Western Australia.
60. The Western Australian Government will also support legislative change to enhance the level of cooperation and information sharing between the Western Australian Department of Mines, Industry Regulation and Safety and the Fair Work Ombudsman.

Term of Reference 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

61. The Inquiry into Wage Theft examined issues around contracting and procurement and observed that "It is becoming increasingly recognised that businesses may have a moral duty, if not a legal duty, to ensure that contractors or franchisees pay their employees their lawful entitlements."⁵⁶
62. After referring to developments including the *Modern Slavery Act 2018* (Cth), the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017* and the recommendation of the Migrant Workers' Taskforce Report that the Commonwealth Government consider 'additional avenues to hold individuals and businesses to account for their involvement in breaches of workplace laws', the Inquiry Report states:

In these circumstances it would be prudent for the State Government to consider ensuring that contracts it enters into for the provision of cleaning or security services, and generally, contain terms which are aimed at addressing or minimising breaches of workplace law in relation to the workers actually providing the services to the Government.⁵⁷

63. Recommendation 23 of the Inquiry into Wage Theft is:

I recommend that the State Government give consideration to:

- ensuring that contracts it enters into for the provision of at least cleaning or security services, if not generally, contain terms which are aimed at addressing or minimising breaches of workplace law in relation to the workers actually providing the services to the Government;
- not entering into a contract for the provision of cleaning or security services, and generally, with a business which has been found by a court or tribunal to have systematically and deliberately underpaid their workforce, or with a business which has a director or owner who has been so found.

64. The Western Australian Government has committed to strengthening procurement processes, particularly in high risk industries, and is presently consulting with relevant stakeholders to progress this issue.

⁵⁶ Ibid, p.156.

⁵⁷ Ibid, p.157.

Conclusion

65. The Western Australian Government is committed to a fair safety net of wages and entitlements for all workers and, as the national industrial relations system covers the majority of private sector workers in Western Australia, strongly supports clear action on the critical issue of wage theft being taken at a national level.
66. The Western Australian Government thanks the Senate Committee for the opportunity to provide input into its deliberations and welcomes the Senate Committee's focus on underpayment of employees' wages and the measures that can be taken to address this issue.

ATTACHMENT A



Inquiry into Wage Theft in Western Australia Terms of Reference

The Western Australian Government is committed to ensuring there is a fair safety net of wages and entitlements for all workers and workers are not denied their legal pay and entitlements through employers engaging in wage theft. Wage theft is the systematic and deliberate underpayment of wages and entitlements to a worker.

The Inquiry into Wage Theft in Western Australia is to consider and make recommendations to Government on the following terms of reference:

1. Whether there is evidence of wage theft occurring in Western Australia, and the various forms wage theft may take.
2. What are the reasons wage theft is occurring, including whether it has become the business model for some organisations.
3. What is the impact of wage theft on workers, businesses which are compliant with employment laws, and the Western Australian community and economy.
4. Whether wage theft is more prevalent in particular industries, occupations, forms of employment/engagement or parts of the State.
5. Whether the current State and federal regulatory framework for dealing with wage theft is effective in combating wage theft and supporting affected workers.
6. Whether new laws should be introduced in Western Australia to address wage theft, and if so, whether wage theft should be a criminal offence.
7. Whether there are other strategies that could be implemented by the Western Australian Government, or industry stakeholders to combat wage theft.
8. Whether there are strategies and legislative change the Western Australian Government could recommend to the Federal Government to deal with wage theft in the federal jurisdiction.
9. Other matters incidental or relevant to the Inquirer's consideration of the preceding terms of reference.