

Submission by the Australian Nursing and Midwifery Federation

Wage Theft Inquiry

23 April 2026



**Australian
Nursing &
Midwifery
Federation**



Australian Nursing and Midwifery Federation / Wage Theft Inquiry

Annie Butler
Federal Secretary

Catelyn Richards
Federal Assistant Secretary

Alana Ginnivan
Assistant to the Federal Secretary (Strategy & Campaigns)

Australian Nursing and Midwifery Federation
Level 1, 365 Queen Street, Melbourne VIC 3000
E: anmfederal@anmf.org.au
W: www.anmf.org.au



Introduction

1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 356,000 nurses, midwives and care-workers across the country.
2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.
3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.
4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.
5. The ANMF thanks the Senate Standing Committee on Education and Employment for the opportunity to provide feedback on the efficacy of new wage theft laws in Australia.
6. The ANMF is an affiliate of the Australian Council of Trade Unions (ACTU). The ANMF has reviewed the submission of the ACTU and supports the positions taken therein. The ANMF submission should be read in conjunction with that of the ACTU.



Overview

7. Underpayments in have been a persistent problem in the Australian industrial landscape for some time. The effects of widespread underpayments are pernicious. For workers, not being paid their full wages hampers their ability to meet daily expenses, such as food, rent and other basic amenities. For businesses, any employers who underpay their workers enjoy an unfair advantage over their competitors that fundamentally distorts the labour market and business competition.
8. Until the Federal Parliament passed the *Fair Work Amendment (Closing Loopholes) Act 2023* (Cth) (the Amendment), the *Fair Work Act 2009* (Cth) (the Act) offered a singular pathway to relief for workers who had been underpaid. A worker underpaid by their employer had the right to bring proceedings through the court system against an employer to recover lost wages. Under section 539 of the Act, a worker, if successful in their claim, could also seek for penalty units to be imposed on the unsuccessful respondent.
9. The union movement long held reservations about the adequacy of such provisions. The requirement for a worker to bring a claim for their own underpayment placed the onus squarely with the worker. The expectation for the worker to seek relief in this way was blind to the power imbalance between employees and employers. For instance, workers may be reluctant to commence proceedings in circumstances where they remain in that employment relationship, or that the time and cost involved would not make pursuing a claim worthwhile. The ability for a business to adopt systemic underpayments as part of a business model became all too easy where the deterrence measures were minimal.
10. Several high-profile cases brought the issue of widespread corporate underpayments to national attention. Perhaps most prominently, a joint investigation led by the Australian Broadcasting Corporation and Fairfax Media exposed massive underpayments within 7-



Eleven franchises.¹ Similar large underpayments at well-known companies such as BHP,² Woolworths,³ the university sector,⁴ and Domino's Pizzas,⁵ indicate that the issue of systemic underpayment was prevalent in the large corporate sector and not limited to rogue small to medium sized businesses.

11. It was in this context that that Federal Parliament sought to legislate to create a wage theft offence. Such laws were intended to apply in circumstances where an employer has intentionally failed to pay or rectify an amount due to an employee. At the time the legislation was being debated, then Minister for Employment and Workplace Relations Tony Burke stated in his second reading speech to the Parliament:

‘In relation to wage theft, it is already a crime for a worker to steal from an employer, as it should be. But it's not a crime for an employer to steal from a worker. We will close this loophole.’⁶

12. The Amendment also included other complementary measures to tackle wage theft and underpayments in workplaces. Workplace delegate rights have been enshrined in both the Act, all modern awards and new enterprise agreements to provide avenues for workplace contraventions to be identified and rectified through the empowerment of workers and their representatives. The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) went further to dispense with the requirement of 24 hours notification for an entry permit holder to investigate a suspected underpayment.

13. The wage theft provisions in the Amendment came into effect on 1 January 2025, and

¹ Adele Ferguson, Sarah Dankert and Klaus Toft, ‘7:Eleven: Investigation exposes shocking exploitation of convenience store workers’, *The Sydney Morning Herald* (Sydney), 29 August 2015.

² Australian Associated Press, ‘BHP admits it underpaid workers nearly \$430m since 2010 in public holiday error’, *The Guardian* (Sydney), 1 June 2023.

³ Max Mason and David Marin-Guzman, ‘Woolworths hit with underpayments shareholder class action’, *Financial Review* (Sydney), 29 November 2025.

⁴ James Guthrie and Adam Lucas, ‘Australian unis rob staff, splash on Big 4 consultants, hoard billions’, *Michael West Media* (Sydney), 18 October 2025.

⁵ Ben Schneiders, ‘Class action case accuses Domino's of underpaying workers’, *The Sydney Morning Herald* (Sydney), 26 October 2022.

⁶ Commonwealth, *Parliamentary Debates*, House of Representatives, 4 September 2023, 6,235 (Tony Burke).



consists of three substantive provisions:

- Section 327A of the Act establishes the criminal offence in relation to intentional underpayments;
- Section 327B of the Act empowers the relevant Minister to create a *Voluntary Small Business Wage Compliance Code* as a safe harbour from criminal prosecution for small businesses who have complied with the Code; and
- Section 327C of the Act provides the Director of Public Prosecutions or the Australian Federal Police with standing to commence prosecutions for wage theft offences.

Role of the Fair Work Ombudsman

14. The investigative and compliance functions of the Fair Work Ombudsman (the FWO) are set out at section 682 of the Act. While the FWO is able to commence proceedings in relation to statutory rights, fair work instruments and safety net contractual entitlements, these functions do not extend to prosecutions for wage theft offences.⁷ The FWO is able to make referrals to relevant authorities, which ought to include referrals in relation to potential wage theft prosecutions.⁸
15. The ANMF notes with some concern that since the wage theft laws have come into effect that no referrals have been made by the FWO to the appropriate authorities to commence prosecution.⁹ The wage theft laws have likely had a positive effect in that employers may have improved their practices in terms of avoiding unintentional underpayments, and others may be less likely to engage in intentional underpayments to avoid criminal liability. While positive, the ANMF posits that there is no evidence that underpayments and wage theft practices have been eradicated since 1 January 2025.

⁷ Sub-section 682(d) of the Act.

⁸ Sub-section 682(e) of the Act.

⁹ Evidence to Education and Employment Legislation Committee, Parliament of Australia, Canberra, 11 February 2026, 73 (Michelle Carey).



16. The FWO's Annual Report for 2024-25 indicates that amongst their activities, over \$358 million in unpaid wages was recovered for more than 249,000 workers.¹⁰ While the Report only applies to half of the period during which the wage theft laws were in operation, it is curious that no criminal referrals were made from amongst the body of cases that would have been brought to their attention. The FWO's upcoming Report for 2025-26 (being the first full reporting period during which the wage theft laws have been operational) may provide some indication of whether wage theft laws are having a deterrent effect on underpayments in Australia, intentional or otherwise.
17. The ANMF hopes this Inquiry will shed some light as to why the FWO has failed to make any referrals for criminal prosecution under wage theft laws since 1 January 2025.
18. The ANMF has observed that the FWO has more recently been proactive in identifying and rectifying underpayments in the aged care sector. For example, this year the FWO recovered \$11.7 million in worker entitlements for 5,500 employees of Southern Cross Care, having accepted an enforceable undertaking from the employer.¹¹ The ability provided under section 715 of the Act, combined with the risk of a wage theft prosecution, appears to be an effective motivator for employers to co-operate with the FWO.

Fair Work Court

19. The Fair Work Commission (the FWC) is Australia's workplace relations tribunal, the functions of which are outlined in section 576 of the Act. It would be surprising to many that the FWC is not empowered to make orders to rectify underpayments, even in relation to amounts payable under fair work instruments.
20. Employees alleging an underpayment may attempt to use the dispute resolution mechanisms of the FWC to achieve a suitable outcome, however, for declaratory relief, a worker must turn to the court system, usually the Federal Court of Australia, or the Fair Work

¹⁰ Commonwealth, Office of the FWO, *Annual Report 2024-25 (2025)*, 40.

¹¹ Office of the FWO, 'Southern Cross Care (NSW & ACT) signs Enforceable Undertaking after \$11m underpay' (Press Release, 2 April 2026).



Division of the Federal Circuit Court.

21. The absence of a court with expertise in employment matters is a barrier to workers seeking outcomes for workplace issues, such as underpayments. For many, elevating a claim to a higher-level court is daunting and likely to deter workers from seeking to redress underpayments.
22. The ANMF is of the view that the Commonwealth should establish a Fair Work Court that sits alongside the FWC that has jurisdiction to deal with underpayment matters. Ideally, such a court should be set up in a manner that is generally informal, not strictly bound by the rules of evidence, and able to inform itself of any matter in any manner it sees fit, similar to existing arrangements for the FWC.
23. Consideration should also be given to empowering such a court with a criminal jurisdiction in respect of wage theft matters.

Exploitation of Vulnerable Workers

24. The ANMF is of the view that wage theft practices persist within certain settings. It remains the case that any worker could be underpaid by their employer. While the employment relationship is one characterised by an inherent power imbalance, there are circumstances where that power imbalance is exacerbated by other factors.
25. In the case of the health and care sector, shortages in nurses, midwives and other carers within the domestic workforce have led to employers utilising worker migration pathways, such as through the Pacific Labour Mobility (PALM) scheme. It has been reported to the ANMF that some employers, having engaged workers through the PALM scheme, make a range of potentially unlawful wage deductions from those workers. Such deductions may include:
 - Miscellaneous fees being charged without explanation or breakdown of what the fees relate to;



- Inflated fees for furniture, such as cheap furnishing (i.e. Kmart items), with no right to take the furniture with them after they leave, even though the workers have paid in full and well above ordinary market prices;
- Charges for basic everyday items, such as shampoo, when the workers are purchasing these items themselves;
- Inflated rental prices, in circumstances where the employer is also the provider of accommodation;
- Failure to pay overtime to workers in full for working additional hours, completing paperwork from home, being recalled to work without having the proper break between shifts (not a deduction per se, but an underpayment nonetheless).

26. Assuming that such deductions are not permitted under section 324 of the Act, or unreasonable expenses pursuant to section 325 of the Act, there will have been both a contravention of the Act and an underpayment requiring redress. Such an underpayment ought also reasonably give rise to a question of whether the threshold is reached for a criminal prosecution under wage theft laws.

27. It is difficult to not examine the situation of workers under the PALM scheme and not reach the conclusion that such workers were particularly susceptible to exploitation because of their visa status and/or English not being their first language. It can be assumed that such workers live and work at the behest of the employer who gave them passage into Australia, and are unlikely to have a comprehensive understanding of domestic labour laws and norms.

28. The ANMF is of the view that section 327A of the Act could be amended to outline criteria that lift the ordinary wage theft offence into an **aggravated offence** to which higher penalties may apply. An aggravated offence should be framed around the presence of certain vulnerabilities in a worker's personal circumstances that give rise to an assumption that a wage theft, once established, was the byproduct of an employer exploiting that vulnerability. Such circumstances might include a lack of English language proficiency,



migrant status, age, disability, or similar characteristics.

Conclusion

29. The ANMF recommends that the Senate Standing Committee on Education and Employment:

- Seeks clarification as to why no referrals have been made for criminal prosecution under wage theft laws;
- Gives consideration to the establishment of a Fair Work Court;
- Gives consideration to establishing an aggravated offence for wage theft matters where there is a particular vulnerability in respect of the worker or workers concerned.