



CLEANING ACCOUNTABILITY FRAMEWORK

Cleaning Accountability Framework Submission:

SENATE INQUIRY INTO THE UNLAWFUL UNDERPAYMENT
OF EMPLOYEES' REMUNERATION

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About the Cleaning Accountability Framework (CAF)

CAF is an independent, multi-stakeholder initiative that seeks to improve labour standards in the cleaning industry in Australia. CAF promotes the rights of cleaners, responsible contracting practices, and transparent supply chains. We do this through the CAF Certification Scheme, recognising and rewarding good practice in the cleaning industry.¹

We work with all supply chain stakeholders to identify, remedy and prevent labour rights abuses. CAF has been recognised as an anti-slavery mechanism by leading business and human rights experts for the work we do in relation to worker-driven compliance, robust third-party auditing, and tripartite collaboration and education.

CAF was founded in 2013 by AustralianSuper, the United Workers Union, and a coalition of industry leaders that included the Fair Work Ombudsman, property owners, building managers, and cleaning contractors who shared the common aim of protecting cleaners from exploitation and driving responsible contracting practices in the cleaning industry. Over a four-year development period, these stakeholders developed a multi-stakeholder organisation, CAF, and a mechanism to achieve these goals: a star rating system for buildings where cleaning services are procured and delivered responsibly and in accordance with cleaners' right to decent work.

The CAF Core Principles, the CAF 3 Star Standard, the CAF Pricing Schedule (a mechanism to bring transparency and accountability to contract pricing), and CAF's unique worker engagement model were derived through our stakeholders' collaborative efforts. CAF certification was piloted in 13 buildings over a two-year period in 2017 and 2018. CAF certification for commercial office and retail mall buildings was launched in March 2019. CAF has now awarded a 3 Star rating to 20 buildings nationally and we are continuing to expand into new areas such as retail stores.

CAF builds cultures of compliance with labour standards in CAF-certified buildings through:

- ⇒ Education and engagement with cleaners through annual paid time meetings with the cleaning workforce,
- ⇒ Cleaners nominate a CAF Representative who receives training on labour standards and on how to assist their peers to raise breaches of labour standards, and provides a voice to cleaners within CAF,
- ⇒ Empowering CAF Representatives to engage with their employer and the building manager to monitor compliance with labour standards,
- ⇒ Improving capabilities of building managers to monitor cleaning contractors' ongoing compliance through training programs and compliance tools,
- ⇒ Working with cleaning contractors to improve their HR systems, policies and procedures to minimise the risk of cleaners being underpaid, and

¹ <https://www.cleaningaccountability.org.au/certification/>

- ⇒ Rewarding responsible contracting practices and supply chain conduct through the CAF certification scheme, creating a race to the top.

More information about CAF can be found on our website:

<https://www.cleaningaccountability.org.au/>

Executive Summary

The Cleaning Accountability Framework (CAF) welcomes the opportunity to make a submission to the Senate Inquiry into the Unlawful Underpayment of Employees' Remuneration.

Cleaners are the frequent victims of [underpayment](#) of wages and superannuation in Australia.

CAF's mission is to end this exploitation. CAF was born out of industry leaders' commitment to ending this exploitation.

CAF is at the forefront of innovation to tackle worker exploitation and modern slavery risk in Australia and has a proven track record in uncovering and remediating labour rights violations experienced by cleaners and ensuring that the conditions for decent work are in place in buildings across Australia.

CAF works with stakeholders across the cleaning supply chain to implement measures to mitigate risk of cleaners being underpaid, to improve transparency and accountability in contracting practices, to promote responsible business practices, and to empower cleaners to speak up when things go wrong.

For contracting industries such as cleaning, what is needed to address the unlawful underpayment of employees' remuneration can be summarised as follows:

- Responsible procurement practices
- Engaged workers who are supported to speak up
- Monitoring and enforcement of contract conditions and labour standards compliance by the entity procuring the services

CAF recommends that:

- ⇒ **The Australian Government introduce CAF requirements for Commonwealth leased office property.**

Implementing this requirement will lift labour standards for cleaners Australia-wide, providing a powerful form of protection against underpayment and wider exploitation to tens of thousands of vulnerable workers. It will also send a strong signal to the market that compliance with labour standards is non-negotiable when conducting business with Government.

CAF would welcome the opportunity to work with the Australian Government to mitigate the risk of exploitation of cleaners in Government buildings.

1. Underpayment in the cleaning industry in Australia

Underpayment of employees' wages and entitlements is an unfortunately all too common characteristic of the cleaning industry. Investigations by the Fair Work Ombudsman, the United Workers Union, and academic researchers have found extensive non-compliance with cleaners' minimum legal wages and entitlements for the past twenty years.²

Underpayment has become widespread due to the cut-throat competition for cleaning contracts, with under-priced contracts being awarded to cleaning contractors who are then unable to meet the cost of their employees' wages and entitlements or provide assurance of safe working limits. This ultimately means that cleaners either perform unpaid overtime, or they work at speeds that increase the risk of occupational injury.

Cleaners working in government-occupied buildings have not been exempt from this.

Property owners ultimately fuel this race to the bottom by awarding contracts to the lowest bid and not completing proper due diligence checks to ascertain whether the price of the contract is sufficient to meet the wages and entitlements of those performing the work, including any applicable on-costs.

Other reasons for high levels of non-compliance with cleaners' minimum wages and entitlements include:

- Decline of worker voice
- Low capacity for enforcement of minimum standards by the Fair Work Ombudsman and unions, which in turn leads to a perception by employers that there is a low chance of getting caught, or the cost of getting caught on a rare occasion is a manageable business cost.

It is difficult to achieve justice for workers who experience exploitation because of the high evidentiary threshold, expense, difficulty and length of prosecution, and the precarious migration status of those involved. Typically, workers who have been exploited in Australia

² Fair Work Ombudsman (2016) 'Cleaning industry compliance needs to improve', Media Release, 13 May 2016, accessible at <https://www.fairwork.gov.au/about-us/news-and-media-releases/2016-media-releases/may-2016/20160513-cleaning-compliance-campaign-presser>

Fair Work Ombudsman (2018) *An inquiry into the procurement of cleaners in Tasmanian supermarkets*, accessible at <https://www.fairwork.gov.au/reports/inquiry-into-the-procurement-of-cleaners-in-tasmanian-supermarkets>

Clibborn, S. and C.F. Wright (2019) 'Employer theft of temporary migrant workers' wages in Australia: Why has the state failed to act?', *Economic and Labour Relations Review*, vol. 29, no. 2, pp. 207-227.

United Voice (2018) [Submission](#) to the Senate Inquiry on the Exploitation of General and Specialist Cleaners working in Retail Chains for Contracting or subcontracting cleaning companies.

Campbell, I. & Peeters, M. (2008) 'Low Pay, Compressed Schedules and High Work Intensity: A Study of Contract Cleaners in Australia', *Australian Journal of Labour Economics*, 11:1, pp. 27-46.

Hunter, L. (2017) 'United Voice reveals wage theft in Victorian schools', *InClean*, 16 May 2017, accessible at <https://www.incleanmag.com.au/united-voice-reveals-wage-theft-victorian-schools/>

Fair Work Ombudsman (2019) 'FWO recovers entitlements for school cleaners', Media Release, 29 November 2019, accessible at <https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/november-2019/20191129-victorian-government-school-cleaners-report>

will simply return to their country of origin, with no remedy or compensation for their suffering or lost wages, and without any prosecution or significant penalty paid by their employer or the entity benefiting from their labour.

Those who remain in Australia or who are permanent residents or citizens experience financial insecurity, are unable to meet the cost of housing and living expenses, and are unable to plan for the future. As underpayment of wages typically flows onto underpayment of superannuation guarantee, the financial insecurity of underpaid workers has long term consequences for workers' economic security in retirement, and attendant consequences for Australia's welfare expenditure.

2. How CAF addresses underpayment

CAF was set up to tackle the unlawful underpayment of employees' wages and entitlements by removing trigger points for these practices in the supply chain.

Types of underpayments uncovered thus far through CAF include:

- Underpayment of minimum hourly award or agreement rate;
- Cash back scams;
- Illegal wage deductions;
- Underpayment of superannuation guarantee;
- Non-payment of shift loading;
- Non-payment of penalty rates for weekend and public holiday work;
- Unpaid induction or training activities;
- Unpaid overtime;
- Overtime paid at base rate; and
- Non-payment of allowances.

Another key area of underpayment in the cleaning industry is sham contracting. CAF's audit, worker engagement, and ongoing compliance processes include mechanisms to check for the presence of cleaning employees being misclassified as independent contractors.

See [appendix](#) for case studies of underpayment of employee remuneration remediated through CAF.

CAF addresses worker underpayment in the cleaning industry through a rigorous identification, investigation and remediation process. CAF's approach is centred on behavioural change, transparent and cooperative engagement throughout the supply chain, and worker education and engagement.

CAF's approach helps to build a sustainable culture of compliance that cannot be achieved through point in time audits alone. CAF proceeds in the following manner to identify, investigate, remediate underpayment and to mitigate risk of its recurrence:

- ⇒ Audit of a sample of payroll and attendance records to check whether cleaners are receiving their correct wages and entitlements.
- ⇒ Worker engagement to verify correct pay and entitlements and correct classification of employees that cannot be uncovered through a desk-based audit (e.g. targeting sham contracting, unpaid unrecorded overtime, payment of sick leave).
- ⇒ Where underpayment is identified through the sample of payroll records or through worker engagement, CAF requires that a more detailed investigation occurs to determine the full scope of underpayments throughout the life of the cleaning contract.
- ⇒ Once the full scope of underpayment has been ascertained, CAF requires that back-payment to all affected past and present employees occurs, in addition to improvements to payroll processes as a mitigation strategy, prior to certification being awarded.
- ⇒ Education through worker engagement so that cleaners understand their rights are supported to raise any inaccuracies with their pay.
- ⇒ Quarterly check-ins between the building manager and the CAF Representative, where the cleaning workforce representative can raise any labour issues.
- ⇒ Ongoing compliance checks (monthly or quarterly) between the building manager and the cleaning contractor to promote transparent and accountable labour management.
- ⇒ Annual payroll compliance audits at CAF certified buildings at annual health checks to ensure ongoing compliance.

3. What is needed to address the systemic underpayment of workers

A range of legislative reforms would prove useful to addressing the unlawful underpayment of employees' remuneration. Reforms focused on improved enforcement and removing barriers for workers to come forward are urgently needed.

CAF urges the Senate Committee to consider all law reform options that will facilitate:

- Greater compliance by business,
- Support for workers to seek and obtain justice, and
- Protection of vulnerable workers, particularly those on temporary work visas.

Beyond the sphere of legislative reform, there are voluntary supply chain regulation mechanisms such as CAF that are crucial to achieving greater levels of compliance.³ For

³ Kaine, S. and M. Rawling (2019) 'Strategic "co-enforcement" in supply chains: the case of the Cleaning Accountability Framework', *Australian Journal of Labour Law* v.31, pp. 305-334, accessible at: <https://www.uts.edu.au/sites/default/files/2019-06/Kaine%20Rawling%20%20%282019%29%2031%20AJLL%20305.pdf>

contracting industries such as cleaning, what is needed to address the unlawful underpayment of employees' remuneration can be summarised as follows:

- Responsible procurement practices
- Engaged workers who are supported to speak up
- Monitoring and enforcement of contract conditions and labour standards compliance by the entity procuring the services

A CAF Star rating on a building provides assurance to investors, building owners and their tenants that cleaning services at that building are being procured, managed, and delivered in a manner that foregrounds respect for cleaners' rights.

Governments and large businesses that rent office space can contribute to the large scale implementation of fair labour standards for cleaners by creating demand for CAF certification, namely by including CAF requirements in their leasing arrangements. The Commonwealth Government has an opportunity to lead in this area.

CAF Recommendation

As a major tenant of commercial office property around Australia, CAF recommends that:

The Australian Government introduce CAF requirements for Commonwealth leased office property.

Implementing a procurement rule to include CAF requirements in Commonwealth leased office property arrangements will measurably lift labour standards for cleaners Australia-wide, providing a powerful form of protection against exploitation and modern slavery to tens of thousands of vulnerable workers.

It will also send a strong signal to the market that compliance with labour standards is non-negotiable when conducting business with Government.

CAF would welcome the opportunity to work with the Australian Government to mitigate the risk of exploitation of cleaners in Government buildings.

For more information on this submission, please contact Dr Miriam Thompson via miriam@cleaningaccountability.org.au

Appendix: Examples of underpayment recovery through CAF

- **\$28,600 underpaid to 12 current and former employees at a CBD commercial building**

As part of an annual health check conducted in 2019, CAF uncovered over **\$26,116.22** worth of wage underpayments at a commercial building dating back to the start of 2017. The underpayments related to breaches of minimum engagement provisions within the enterprise agreement. With superannuation included, the total underpayment to workers at this building amounted to \$28,597.26. The average underpayment (wages and super) per affected employee was \$2,383.10.

As a result of this discovery, the employer has contacted all affected current and former employees to arrange back-payment of wages, superannuation and PAYG remittance. Some affected employees have since returned to their country of origin, and if they are not able to be contacted by the employer, their wages will be held in trust by the Fair Work Ombudsman, who will seek to locate these employees and reunite them with their wages.

In light of this underpayment, the cleaning contractor has put in place mechanisms to prevent further breaches of minimum engagement provisions.

	Breach of minimum engagement provisions
Wages	\$26,116.22
Super	\$2,481.04
PAYG tax	Unknown as yet
Total recovered	\$28,597.26 + applicable PAYG tax
Average wage and super recovered per cleaner affected	\$2,383.10

- **Shopping centre cleaners paid below-Award rate and not paid for inductions**

As part of the CAF certification audit at a shopping centre, CAF uncovered underpayment of weekend and public holiday rates stemming from the employer's payroll system being incorrectly set up to use the previous year's award rates. CAF also found that cleaners had not been paid to attend their induction.

CAF recovered **\$587.75** in wages and super for five employees who had been underpaid over a three-month period from the start date of the cleaning contract. CAF also required that the employer's payroll system be updated and independently verified prior to CAF certification being awarded at the building.

In going through a CAF audit for this one site early in the life of the cleaning contract, the owner of this building, with CAF's assistance, was able to identify and obtain remedy for the underpayments occurring both at this site and at the other buildings within their portfolio that are cleaned by this company. In addition to ensuring fair wages for their cleaners, this property owner significantly reduced the reputational and legal risk associated with underpayment of cleaners in their supply chain.

CAF certification provides cleaners a pathway to report and obtain remedy for any further underpayment that may arise at this building. CAF certification of this building goes further to affect thousands of other employees of this cleaning company who will now be paid at the correct rate following CAF's intervention – cleaners whose underpayment would have gone un-noticed and unremedied.

CAF certification of this building also helped bring a cleaning company into compliance with minimum legal wages and entitlements, which is part of the educational and transformational mandate of CAF to drive industry-wide improvement.

The owner of this building now has oversight of their contractor's compliance, assurance that their cleaners are being paid properly, and has maintained a cooperative relationship with their supplier that is based on transparency and accountability.

	Previous year's Award rate applied to five employees	Unpaid induction of four employees	Grand total
Wages	\$363.95	\$172.80	\$536.75
Super	\$34.57	\$16.43	\$51.00
PAYG tax	n/a	n/a	n/a
Total recovered	\$398.52	\$189.23	\$587.75
Average wage and super recovered per cleaner affected	\$79.70	\$47.31	

- **Penalty rate and shift loading underpayments at a shopping centre**

At a shopping centre, CAF discovered underpayments affecting five out of seven cleaners as part of the audit during the application for certification. The underpayment centred on public holiday shifts worked being paid at the ordinary rate; and early morning shifts being paid at the lower day shift rate. A total of \$6,667.67 in wages and super was recovered for five employees and \$1,508 of PAYG tax was remitted to the ATO as a result of the CAF audit. The average wage and super underpayment per affected worker amounted to \$1,333.53.

	Public holiday underpayment for four cleaners for one public holiday	Early morning shift loading underpayment for three cleaners over a six-month period	Overall recovery of wages at this building (including compensation)
Wages	\$1,087.06	\$2508.84 backpay + \$2498.19 compensation. Total recovered: \$5,007.03	\$6,094.09
Super	\$97.91	\$475.67	\$573.58
PAYG tax	\$294.00	\$1508.00	\$1,802.00
Total recovered	\$1478.97	\$6990.70	\$8,469.67
Average wage and super recovered per cleaner affected	\$296.24	\$1,827.57	\$1,333.53



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