



Senator Marielle Smith
Chair
Senate Standing Committee on Education and Employment
PO Box 6100
Parliament House
Canberra ACT 2600

Via: eec.sen@aph.gov.au

Dear Chair,

RE: WAGE THEFT INQUIRY

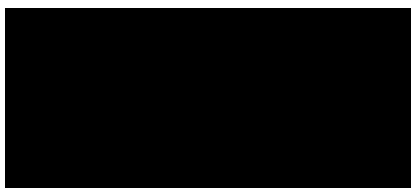
On behalf of the Victorian Trades Hall Council (VTHC) and the Young Workers Centre (YWC), we thank you for the opportunity to make a submission to this important inquiry. VTHC is the peak body for 40 Victorian unions, representing 500,000 workers and reaching into each and every industry in the state.

VTHC and affiliated unions established the YWC as a one stop shop for creating safer, fairer workplaces for young people aged 30 and under. Through its outreach programs and accredited community legal centre, YWC educates young workers on their workplace rights, provides assistance in resolving workplace issues, and supports young people campaigning for change. Wage theft is by far the most predominant legal issue young workers approach the YWC for assistance with.

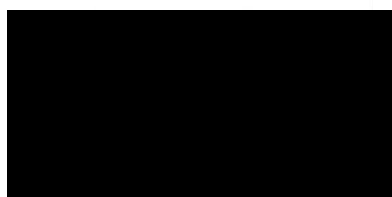
Wage theft represents one of the most direct, destructive and severe violations that can occur within an employment relationship. For a worker to provide their labour without receiving compensation is for a worker to experience exploitation in its most naked form. Victims of wage theft are forced to make impossible choices: to decide between bills or groceries, between meals or savings, rent or repairs. No worker should ever have to make such choices.

During the 2023 inquiry into new wage theft laws at the federal level, unions, workers and the Victorian Government itself warned that drafting issues could risk the Closing Loopholes' wage theft provisions being too limited to act as a deterrent. Although the legislation remains in its early days of being enforced, it appears that time has vindicated these concerns: not a single employer has been prosecuted under new wage theft laws. This submission outlines the necessity of strengthening the wage theft provisions under the *Fair Work Act 2009* (Cth). Please do not hesitate to contact Senior Research Organiser Oscar Kaspi-Crutchett if you have any questions about the materials therein at [REDACTED].

Yours sincerely,



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Wage Theft Inquiry

**Victorian Trades Hall Council
Young Workers Centre**

April 2026



Impetus for the Closing Loopholes Provisions

A Melbourne Law School study, released in mid-2025, found in a survey of 2,814 workers that wage exploitation was rife among young workers.

- 33% had been paid less than \$15/hr .
- 17.9% had not been paid for all work completed.
- 9.5% had been given food or products instead of being paid.¹

Although these findings would cover periods before the Closing Loopholes provisions came into effect, they are nevertheless significant for illustrating the scale of the problem these laws are up against.

Since 2016 the YWC has assisted, represented and advocated for thousands of young workers with a range of employment-related issues. To this day, the vast majority of enquiries received by the YWC are wage theft cases. Typically, these cases involve the blatant, severe and targeted theft of workers' wages and entitlements. They are not minor, incidental or trivial underpayments. It also is evident that in many of these cases, wage theft is baked into the very structure of the employing businesses.

In many industries, wage theft is not an aberration or an isolated case. It is a pattern of exploitation concentrated in sections of the labour market where workers lack industrial power, access to information, or union representation.

Wage theft is targeted at those who can't fight back or enforce consequences for it: young workers without access to industrial representation, migrants without full labour rights, women with caring responsibilities who can't afford to risk retaliation from their employer, students with limited work experience.

The tendency of wage theft to be committed precisely against groups who cannot, themselves, fight back is why it is so important for the State to be able to step in and impose a cost itself.

Under section 327A(1) of the *Fair Work Act 2009* (Cth), this has become possible. Under these laws it is a federal offence for an employer to intentionally engage in wage theft, and maximum penalties for this offence are steep.

There are, however, important differences between the federal wage theft provisions under the *Fair Work Act 2009* (Cth) and the Victorian state-based equivalent that they have effectively rendered defunct.

Enforcement regime comparison: Victoria's Wage Theft Act (2020)

The *Wage Theft Act 2020* (Vic) introduced a new criminal offence for wage underpayment and a new regulator to prosecute wrongdoers under that offence. These laws came into effect on the 1st of July 2021.

Under Victoria's wage theft laws, it became an offence for employers to dishonestly withhold employee entitlements such as wages, salary, leave entitlements and superannuation

¹ Howe, John, Dillon, Tom. July 2025. "Underpaid and Overlooked: The Wage Crisis Facing Young Workers in Australia." *Melbourne Law School and Centre for Labour Relations and Employment Law*.

contributions.² Dishonest record keeping practices by employers were also criminalised, with these practices defined as to 'falsify, or fail to keep, employee entitlement records with a view to dishonestly obtaining a financial advantage.'³

Crucially, Victoria's wage theft laws also entailed the establishment of a new regulator to enforce wage and record keeping requirements: the Wage Inspectorate Victoria (WIV). The WIV was granted significant powers and resources to undertake its crucial work on wage and entitlements compliance. These powers, alongside its broad legislative remit, made the body capable of imposing a meaningful deterrent effect against wrongdoing. Notable convictions by WIV include:

- A fine of \$1.2million in 2024 on Woolworths after periodic underpayments to 1,191 former employees between 2018 and 2023.⁴
- A fine of \$50,000 in 2021 against Coles for underpaying entitlements.⁵
- Sentencing of Commonwealth Bank in July 2024 for underpaying 529 current and former staff their long-service leave entitlements.⁶

In its first year, alone, WIV assisted 15,000 workers. It successfully prosecuted major corporations from a range of industries which were exploiting working Victorians.

VTHC echoes the position of the Victorian Government in its 2023 submission to the Closing Loopholes Inquiry.

In order for Wage theft laws to be effective, they ... require a robust enforcement framework, which is why the Victorian Government established the Wage Inspectorate Victoria.⁷

Contrast: s327A of the Fair Work Act

Under the federal wage theft laws, a standalone regulator was not established, and the Fair Work Ombudsman (FWO) was made responsible for enforcement.

The offence provision in clause 327A of the *Fair Work Act 2009* (Cth) is also drafted such that it requires the prosecution to demonstrate beyond reasonable doubt that the employer intentionally engaged in wage theft and intended that their conduct would result in a failure to make a required payment to the employee in full on or before the day when the required amount was due to be paid. In effect, this means that prosecutors have to prove that employers knew the specific, relevant rate of pay under the Applicable Award or agreement and that they deliberately failed to comply with it.

² *Wage Theft Act 2020* (Vic.) Section 6(1).

³ *Wage Theft Act 2020* (Vic.) Section 7 (1)-(2), 8, (1)-(2).

⁴ Victorian Government. 26 April 2024. "Woolworths Fined \$1.263 for underpaying \$1 million in long service leave." Available at: <https://www.vic.gov.au/woolworths-fined-1263-million-underpaying-1-million-long-service-leave>

⁵ Victorian Government. 20 November 2024. "How the Wage Inspectorate helped recover \$1million in entitlements." Available at: <https://www.vic.gov.au/how-wage-inspectorate-helped-recover-1-million-entitlements>

⁶ Victorian Government. 29 July 2024. "Commonwealth Bank Underpaid Staff \$1.67 million in long service leave, ordered to pay \$48,000." Available at: <https://www.vic.gov.au/commonwealth-bank-underpaid-staff-167-million-long-service-leave-ordered-pay-48000>

⁷ Victorian Trades Hall Council, 2023. Submission to the Inquiry into the Fair Work Legislation Amendment (Closing Loopholes No.2) Bill 2023 [Provisions], p. 6.

Under this framework, no criminal liability can be found if conduct is mistaken, accidental or unintentional. An employer who simply does not bother to inform themselves about their obligations under an Award or Enterprise Agreement would not be captured by this offence, even if they profit considerably from this ignorance to their obligations.⁸ It is worth noting here that, for the impacted worker, it makes no difference to them if the wage underpayment was accidental. Bills are still missed, essential goods still need to be sacrificed, and hard choices still have to be made - all while employers profit off failing to meet their obligations.

The FWO's Approach to Enforcement

Alongside the narrowly defined fault element in the legislation, Victorian unions also note potential limitations to the Fair Work Ombudsman's approach to enforcing these vital laws.

In 2023, VTHC expressed concerns about the Government's designation of the FWO as the body responsible for enforcing wage theft violations due to FWO's history of taking a light-touch approach to enforcement.⁹ In their submission to the 2023 Inquiry into the Closing Loopholes Legislation, the FWO sought to '**assure the Committee and the wider community that ... criminal sanctions would be sought by the FWO to address only the most egregious behaviour.**'¹⁰ Victorian unions would strongly prefer to see all incidents of wage theft addressed, not only the most unjustifiable.

VTHC and YWC continue to hold concerns about the FWO's approach to investigation and enforcement. In the YWC's experience, when calculating the value of underpayments, the FWO commonly underestimates the value of the wage theft because it does not consider the whole period of employment or the full sum of entitlements withheld. In all of these instances, workers remain out of pocket for considerable sums of money while the YWC struggles to persuade the employer that they continue to owe the worker money despite complying with the FWO.

Unions and community legal centres such as the YWC carry the burden of pursuing the majority of wage theft claims. This weakens the enforcement regime, because employers know it is unlikely that FWO will investigate complaints against them, let alone commence prosecutions.

Why Deterrence is Essential

Any reforms to the wage theft offence under section 327A of the *Fair Work Act 2009* (Cth) should clearly recognise deterrence as their cardinal aim. Wage theft is targeted against workers without the means or information to resist it. The goal must be to prevent it from happening in the first place by making such practices intolerably risky for employers. Even in the cases where stolen wages are repaid after the fact, this often occurs years later, compounding the cost of the initial underpayment as workers miss out on earning interest. As noted by the United Workers Union, any serious response to wage theft must have deterrence as its central focus. Deterrence and prevention will always be better for workers

⁸ Victorian Trades Hall Council, 2023. Submission to the Inquiry into the Fair Work Legislation Amendment (Closing Loopholes No.2) Bill 2023 [Provisions], p. 4.

⁹ Victorian Trades Hall Council, 2023. Submission to the Inquiry into the Fair Work Legislation Amendment (Closing Loopholes No.2) Bill 2023 [Provisions].

¹⁰ Fair Work Ombudsman, 2023. Submission to the Inquiry into the Fair Work Legislation Amendment (Closing Loopholes No.2) Bill 2023 [Provisions], p. 4.

than seeking recoup for payments later.¹¹ However, the way the wage theft offence is currently drafted is not having the desired deterrent effect.

Recommendation 1: Amending the Fault Element

The intentionality fault element in the current provisions drastically reduces the range of wrongful conduct that is likely to be prosecuted. This is the fundamental reason as to why the deterrent effect of these laws is insufficient.

The Government has two options available to it that can correct this issue and enhance the deterrent capacity of the wage theft offence.

Replacing Intention with Dishonesty

The fault element prescribed in the *Wage Theft Act 2020* (Vic) was dishonesty, rather than intentionality. This allowed a much broader range of harmful misconduct to be covered by the offence. Reframing current federal laws along these lines would improve their rigour and capacity to deter misconduct.

Introducing a Recklessness-Based Offence

Alternatively, the Government could also introduce a new recklessness-based offence in addition to the intentional offence currently in place. This was recommended by the Victorian Government in their submission to the 2023 Inquiry into the Closing Loopholes legislation. A recklessness-based offence would address the major challenge posed by the 'intention' fault element in the existing wage theft offence. Recklessness is a common fault element in criminal offences. An overview of its basic features is provided by the Attorney-General's Department:

"5.4 Recklessness

- (1) A person is reckless with respect to a circumstance if:
 - (a) he or she is aware of a substantial risk that the circumstance exists or will exist; and
 - (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

- (2) A person is reckless with respect to a result if:
 - (a) he or she is aware of a substantial risk that the result will occur; and
 - (b) having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

- (3) The question whether taking a risk is unjustifiable is one of fact."¹²

It is worth noting that although a recklessness-based offence would meaningfully increase the range of misconduct that could be captured for prosecution, it would

¹¹ United Workers Union, 2023. Submission to the Inquiry into the Fair Work Legislation Amendment (Closing Loopholes No.2) Bill 2023 [Provisions], p. 19.

¹² The Commonwealth Criminal Code: A Guide for Practitioners, Attorney General's Department, Division 5 Fault Elements, 5.4 Recklessness. Available at: <https://www.ag.gov.au/crime/publications/commonwealth-criminal-code-guide-practitioners-draft/part-22-elements-offence/division-5-fault-elements/54-recklessness>

not entail wage theft becoming a strict liability offence - i.e., where all that is necessary for prosecution is for it to be proven that the conduct happened.

Broadening the fault element to cover reckless conduct would address one of the major difficulties with the offence as it is currently drafted, without inappropriately increasing the scope of these laws. It would send a clear message to employers that ignorance is not sufficient to justify the theft of workers' wages, and that reckless conduct of this nature will not be permitted in Australian workplaces anymore.

Recommendation 1: That the Federal Government amend the fault element of wage theft laws under the *Fair Work Act 2009 (Cth)* to either lower culpability from intention to dishonesty (as defined by the *Victoria's Wage Theft Act 2020*), or to introduce a new recklessness-based offence for wage theft.

Recommendation 2: Directorial Disqualification

Enhancing the deterrent effect of wage theft laws can also be achieved by ensuring that the consequences of offending are felt across the entire organisation chart of the offending business.

To this end, VTHC notes the Victorian Government's 2023 recommendation to amend the *Corporations Act 2001 (Cth)* to ensure that the Act's disqualifying provisions are applied against those convicted of wage theft.¹³ This would allow for the automatic disqualification of convicted company directors from being able to manage corporations.

Recommendation 2: That the Federal Government amend the *Corporations Act 2001 (Cth)* to disqualify those convicted of wage theft from being able to manage corporations.

Conclusion

Victorian unions commend the Federal Government for criminalising wage theft. This was a long overdue and necessary step towards a fairer and more legitimate industrial system.

However, under current settings, employers are simply not guaranteed to face consequences for stealing from working people. The possibility of being punished is too remote to deter bad behaviour. This creates an incentive for exploitation that many find all-too tempting: employers understand, correctly, that they can get away with blatant violations of their obligations due to:

1. A very high threshold for culpability to be proven under Section 327A,
2. A regulator that prefers to avoid aggressive enforcement actions,
3. A knowledge that there have been zero prosecutions in over a year of current laws being effective, and
4. A workforce that remains largely unorganised and without access to union representation which would significantly increase the costs associated with stealing from a worker.

¹³ Victorian Government, 2023. Submission to the Inquiry into the Fair Work Legislation Amendment (Closing Loopholes No.2) Bill 2023 [Provisions], p. 8.

Although not all of these issues can be solved by amendments to Wage Theft laws alone, Victoria's model proves that there are more effective ways available for the Government to enforce compliance with wage and entitlement obligations.

Victorian unions urge the federal government to guarantee Australian workers the strongest possible protections against wage and entitlement underpayment. Wage theft is a national disgrace and an affront to Australia's egalitarian identity. Strong deterrence, significant penalties and co-enforcement with unions is necessary to eliminate it. There can be no tolerance for wage theft in Australian workplaces. It must be legislated out of existence.

List of Recommendations

Recommendation 1: That the Federal Government amend the fault element of wage theft laws under the *Fair Work Act 2009* (Cth) to either lower culpability from intention to dishonesty (as defined by the Victoria's *Wage Theft Act 2020*), or to introduce a new recklessness-based offence for wage theft.

Recommendation 2: That the Federal Government amend the *Corporations Act 2001* (Cth) to disqualify those convicted of wage theft from being able to manage corporations.