Australian Government

# Australian Government response to the Senate Education and Employment References Committee report:

# Wage theft

SEPTEMBER 2026

# Contents

Introduction ..... 1
PART 1: Inquiry context ..... 2
PART 2: Operation of the criminal wage theft offence and civil penalties framework ..... 3
Links to the Closing Loopholes Review report recommendations ..... 3
Resourcing ..... 4
Interactions with the Criminal Code and future targeted review ..... 4
Access to justice ..... 5
PART 3: The broader workplace relations system ..... 6
Modern awards ..... 6
Superannuation ..... 7
Compliance notice regime ..... 8

## Introduction

The Australian Government thanks the Senate Education and Employment References Committee (the Committee) for its inquiry and report on wage theft, published on 25 June 2026.

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* amended the *Fair Work Act 2009* (Fair Work Act) to introduce a criminal offence for the intentional underpayment of wages or entitlements by employers and individuals (wage theft offence). The wage theft offence generally covers underpayments of entitlements under the Fair Work Act or a fair work instrument (such as a modern award or enterprise agreement), and does not apply where underpayments are accidental, inadvertent or based on a genuine mistake.

The wage theft offence was introduced to provide a greater deterrent and response to employers who intentionally underpay their workers, with the potential for serious penalties, including imprisonment. Introducing criminal penalties for deliberate underpayments is designed to encourage compliance and complement the civil remedy framework available to the Office of the Fair Work Ombudsman (FWO) to deter, prevent and address a range of non-compliance, including wage underpayments. The criminal offence is intended to be reserved for the most serious conduct, and to make businesses think more carefully about meeting their workplace obligations.

For potential criminal matters, the FWO will undertake investigations and refer matters to the Commonwealth Director of Public Prosecutions (CDPP) or Australian Federal Police (AFP) for consideration and prosecution where appropriate. The FWO's Compliance and Enforcement Policy outlines the public interest factors it considers when determining if a referral may be appropriate, such as the nature, seriousness and circumstances of the alleged conduct.

The wage theft offence was part of the government's Secure Australian Jobs Plan and this reform, along with amendments to strengthen the compliance and enforcement framework in the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Closing Loopholes No. 2 Act) form part of a package of measures introduced by the Closing Loopholes legislation. Other measures introduced by the Closing Loopholes No. 2 Act include:

- increasing the maximum civil penalty for a contravention related to an underpayment for a non-small business employer
- introducing a new threshold for 'serious contraventions' of the Fair Work Act: now a serious contravention can be found where there has been a 'knowing or reckless' contravention instead of the previous threshold of 'knowing and systematic'
- increasing penalties for non-compliance with a compliance notice.

Some of these measures were part of the government's election commitment to implement the recommendations of the Migrant Workers' Taskforce Report (2019), to address the prevalence of underpayments and more closely align penalties with business and consumer law frameworks.

## PART 1: Inquiry context

On 24 March 2026, the Senate agreed to refer to the Committee Senator Payman's motion to conduct an inquiry into the extent to which the wage theft framework under the Fair Work Act and the operation of subsection 327A(1), has led to a decrease in the incidence of wage theft in Australia, and any other related matter. The Committee received 30 submissions and held one public hearing on 4 May 2026.

The report acknowledged the challenges with measuring the level of wage theft and therefore the effectiveness of the wage theft offence, the need for clarity between intentional versus unintentional conduct, and perceived complexity of the workplace relations system. The Committee accepted that there had not been sufficient time for criminal prosecutions to have commenced but noted conflicting evidence on whether the offence has had a deterrent effect.

The Committee's report reflects the different views across the Committee, with separate dissenting reports from the Australian Labor Party and the Australian Greens, and additional comments by Senator Payman. The dissenting reports and additional comments include a range of observations and recommendations regarding the operation of the offence, future review arrangements, and compliance and enforcement measures.

The government has considered the views of the Committee and those set out in dissenting reports and additional comments. This response addresses recommendations thematically, with Part 2 responding to recommendations related to the criminal wage theft offence and civil penalties framework. Due to overlapping themes, these recommendations require further consideration alongside findings and recommendations of the independent statutory review of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023,* the Closing Loopholes No.2 Act and the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022* (the Closing Loopholes Review). Part 3 responds to recommendations that relate to broader improvements to Australia's workplace relations system. For some of these recommendations, there is existing legislation and processes available that are used to address the issues raised by the Committee.

## PART 2: Operation of the criminal wage theft offence and civil penalties framework

*Committee recommendations*: *2, 3*
*Australian Greens' recommendations*: *1, 2*
*Senator Payman's recommendations*: *1-4, 6-10*

In its report, the Committee made several recommendations in relation to the wage theft offence that, together with recommendations made in the Australian Greens' dissenting reports and Senator Payman's additional comments, relate to the operation of the criminal wage theft offence and civil penalties framework. The specific themes included conducting a targeted review of the effectiveness of the wage theft offence and civil penalties framework, resourcing, interactions with the *Criminal Code Act 1995* (the Criminal Code), data collection, registered organisations' powers, and access to justice.

### Links to the Closing Loopholes Review report recommendations

Issues raised in several of the Committee's as well as the Australian Greens' and Senator Payman's recommendations overlap with matters contemplated by the Closing Loopholes Review Report tabled on 20 August 2026.

The Review examined whether the operation of the Closing Loopholes reforms was appropriate and effective, and it also examined the operation of the Paid Family and Domestic Violence Leave Act. The Review found that many of the Closing Loopholes amendments enhance the rights of workers and appear to be operating as intended, noting full assessment of the operational effectiveness of all amendments is not yet possible.

The Review made 51 recommendations to safeguard and ensure the ongoing success of the reforms. In relation to the wage theft offence, the Review noted that due to the nature of criminal law enforcement, it was too early to assess the effectiveness of the measure or any possible unintended consequences. The Review analysed the evidence from a range of stakeholders, including the FWO, which advised that in the period since 1 January 2025 to the date of the inquiry hearing, 42 matters had been assessed for potential investigation into suspected criminal conduct. The Review also noted that no referrals had yet been made to the CDPP or the AFP, and no prosecutions have commenced. In this regard, the Review concluded that the absence of prosecutions does not mean that the measure is ineffective, but that it is reflective of the early stages of implementation, and complexity of criminal enforcement.

Further, the Review made several recommendations in relation to wage theft (Recommendations 24–29), including that the government should undertake a targeted review of the operation of the wage theft offence and changes to the civil penalties framework within one year of publication of the Review.[1] As such, recommendations to improve the criminal wage theft offence and civil penalties framework will form part of the government's consideration of the Closing Loopholes Review.

[1] Susan Booth, *Closing Loopholes: An independent statutory review* (15 June 2026), p. 23

## Resourcing

The government has committed resourcing to implement and enforce the wage theft offence. In the 2023-24 Mid-Year Economic and Fiscal Outlook, the government confirmed funding of $55 million over 4 years from 2023–24 (and $12.5 million per year ongoing) to support the introduction of the wage theft offence. This includes $49.5 million over 4 years ($11 million per year ongoing) for the FWO to establish and operate the new investigatory functions for the offence and operate technology systems to undertake investigations to a criminal standard.

The FWO has established a dedicated Criminal Investigations Branch and is progressing criminal investigations and assessing new matters and investigations. Updated FWO data is that since 1 January 2025, it has now assessed 62 matters for potential investigation into suspected criminal conduct, with 6 ongoing operations investigating suspected criminal offending, and a further 24 matters under assessment to consider progression to criminal investigation.

The Closing Loopholes Review recommended a targeted review of the wage theft offence and civil penalty amendments, and that this review considers the adequacy of resourcing, capability, interagency coordination and infrastructure supporting enforcement.[2]

## Interactions with the Criminal Code and future targeted review

The Committee raised the interaction of the wage theft offence with the Criminal Code, citing concerns raised by stakeholders about the lack of clarity between intentional and unintentional conduct and the lack of a due diligence defence for corporate employers. It recommended the government provide further clarity on the interaction of the criminal offence with the Criminal Code and that a due diligence defence is made available where intention is attributed to a corporate employer through its culture.

The government deliberately designed the criminal offence to only capture intentional underpayments. The offence does not apply where the underpayment is accidental, inadvertent or based on a genuine mistake by an employer. Intention is a relevant fault element, and the prosecution will need to prove beyond reasonable doubt that the employer's conduct was intentional, and that the intended result was that an employee was underpaid. A body corporate may be held liable for a wage theft offence based on the actions of its employees and/or agents or officers acting within their authority via default provisions in Part 2.5 of the Schedule to the Criminal Code. Officers of bodies corporate (including directors) can also be liable for wage underpayment as ancillary offenders, where there is sufficient culpability (Part 2.4 of the Criminal Code and section 6 of the *Crimes Act 1914*).

In considering similar issues regarding the availability of a due diligence defence, the Closing Loopholes Review made no recommendations for any changes,[3] but recommended a targeted review of the wage theft offence and civil penalties reforms. Taking into account the intersection with the Committee's recommendation above, as well as some of Senator Payman's and the Australian Greens' recommendations, the government is carefully considering the Closing Loopholes Review, including the recommendation to conduct a future targeted review to assess the effectiveness of the criminal wage theft offence and civil penalty regime in deterring and remedying underpayments.

---

[2] Susan Booth, *Closing Loopholes: An independent statutory review* (15 June 2026), p. 23

[3] Susan Booth, *Closing Loopholes: An independent statutory review* (15 June 2026), p. 283

## Access to justice

Several submissions to the inquiry raised the issue of the effectiveness of existing pathways for wage recovery in the civil jurisdiction. Senator Payman included a recommendation that the government make it easier for employees who have experienced underpayments to seek remedy in the courts.

The government is committed to enabling timely and effective access to justice for more Australians. On 23 July 2026, the government announced its intention to establish a new federal Fair Work Court. The proposed Fair Work Court will provide a specialist forum to resolve workplace relations disputes, with the aim of supporting faster, simpler and more accessible dispute resolution. The design and operation of the Court will be informed through consultation, including how small claims and underpayment processes should be incorporated into the new framework. The relationship between the Fair Work Commission and the court will also be considered as part of the design process.

## PART 3: The broader workplace relations system

*Committee recommendation: 1*
*Senator Payman's recommendations: 5 and 11*

Beyond the operation of the wage theft offence, the Committee's report and Senator Payman's additional comments made recommendations relating to the broader workplace relations system. These recommendations concern modern awards, underpayment of superannuation, and the Fair Work Act's compliance notice regime. Existing legislation and established processes are available to address the issues raised in relation to modern awards and superannuation. In relation to the recommendation on the compliance notice regime, these issues will form part of the government's consideration of the Closing Loopholes Review report.

### Modern awards

The Committee noted that some stakeholders raised the complexity of the modern award system as contributing to difficulties in employers understanding and complying with their obligations.[4] Existing mechanisms are in place that support ongoing simplification and improvement of modern awards.

Modern awards set minimum wages and conditions of employment at an industry and occupation level, providing classification structures and workplace entitlements that are designed to reflect the nature of work undertaken within those roles. Modern awards, together with the National Employment Standards and the National Minimum Wage form a safety net of minimum terms and conditions of employment. The safety net is particularly important in sectors that are low-paid, female-dominated and award-reliant.

Under the Fair Work Act, the FWC, as the independent workplace relations tribunal, is responsible for setting terms and conditions in modern awards. The FWC can vary awards on its own initiative or upon application by a party with standing under the Fair Work Act, including where the applicant seeks to vary an award to address concerns related to award terms and useability. While parties, like registered organisations, have standing to make an application to the FWC to vary awards, the Minister for Employment and Workplace Relations does not.

In setting and varying modern award terms and conditions, the FWC must apply the modern awards objective at section 134(1) of the Fair Work Act to ensure a fair and relevant safety net, which requires consideration of a range of factors, relevantly including the need to ensure a simple and easy to understand, stable and sustainable modern award system.[5]

There have been a number of processes the FWC has undertaken to simplify modern awards. For example, in its most recent 4-yearly review of modern awards, the FWC simplified the language and structure of 118 awards. This plain language exercise, together with the FWC's review of common issues raised by parties, resulted in the standardisation of key clauses and a new modern awards structure which improved accessibility across the awards system.[6]

---

[4] Senate Education and Employment References Committee, Wage theft (25 June 2026), p. 24
[5] *Fair Work Act 2009* (Cth) s 134(1)(g)
[6] Fair Work Commission, *4 yearly review of modern awards – finalisation of the 4 yearly review,* 17 October 2022, https://www.fwc.gov.au/documents/decisionssigned/html/2022fwcfb189.htm

The government has supported FWC-led processes to simplify awards, including through the Modern Awards Review 2023-24 (Modern Awards Review), which invited parties to make proposals on how to make the most commonly used awards easier to use. In doing so, the government has made clear its position that award simplification should not be at the expense of employee entitlements.[7] To respond to issues raised in the Modern Awards Review, the FWC commenced several matters on its own initiative using its powers under sections 157 and 160 of the Fair Work Act. This included the commencement of a review of part-time provisions in 11 modern awards (including the 7 most commonly used awards) and other matters to address ambiguities and uncertainties in awards.[8]

The FWO has an important role in supporting employers to understand and comply with their relevant obligations in modern awards. The FWO provides free information and advice to all employees and employers in Australia on pay, conditions, and workplace rights and obligations. This includes targeted education and advice initiatives for small businesses, such as a dedicated advice line via the Small Business Helpline, and an Employer Advisory Service which provides tailored written advice. The FWO also provides free online resources to assist workplace participants determine award coverage and calculate entitlements, including the 'Find my award' form and the Pay and Conditions Tool.

To support the FWC's ongoing efforts to ensure modern awards continue to deal with emerging issues, in July 2026 the FWO and the FWC, established a new process for the FWO to refer any ambiguities, uncertainties or errors in modern awards it identifies to the FWC. The FWC will use this process to determine whether to examine referred matters using its power under section 160 of the Fair Work Act to commence proceedings on its own motion.[9]

## Superannuation

The Committee acknowledged superannuation is primarily regulated under separate Commonwealth legislation which is administered by the Australian Taxation Office.[10]

The government is committed to strengthening the superannuation system so that it is equitable, sustainable and delivers a dignified retirement for all Australian workers. On 22 June 2023, the government passed the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* which introduced a right to superannuation in the National Employment Standards (NES). This amendment enables most employees covered by the NES to take court action under the Fair Work Act to recover unpaid or underpaid superannuation.

The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* included superannuation as part of the criminal offence framework to the extent possible under current legal arrangements. The criminal offence covers most entitlements payable under the Fair Work Act or fair work instruments (such as modern awards or enterprise agreements), including superannuation. For referral employees

[7] Minister for Employment and Workplace Relations, *Letter to the President of Fair Work Commission*, 12 September 2023, https://www.fwc.gov.au/documents/consultation/letter-from-minister-2023-09-12.pdf
[8] Fair Work Commission, *Modern Awards Review 2023-24 – Final Report*, 18 July 2024, https://www.fwc.gov.au/documents/sites/award-review-2023-24/am202321-review-report-180724.pdf
[9] Fair Work Commission, *President's statement*, 21 July 2026, https://www.fwc.gov.au/documents/consultation/president-statement-fwo-referrals-2026-07-21.pdf
[10] Senate Education and Employment References Committee, *Wage theft* (25 June 2026), p. 10

covered by the Fair Work Act through a State's referral of powers to the Commonwealth, certain matters are excluded from the offence due to limitations on those referral powers. This includes:

- superannuation
- long service leave
- paid leave that the employee was entitled to take by reason of being a victim of crime
- paid leave that the employee was entitled to take because the employee attended for service on a jury, or for emergency services duties.

These limitations do not affect other employees covered by the Fair Work Act.

Together, these measures provide mechanisms to address unpaid superannuation and strengthen employee protections.

## Compliance notice regime

The government's Closing Loopholes No. 2 Act included amendments that strengthened the compliance notice regime. It doubled the maximum civil penalty for an individual who fails to comply with a notice issued by the FWO, increasing it from 30 penalty units to 60 penalty units.[11] The amendments also made a non-compliance with a compliance notice a 'selected civil remedy provision', thereby attracting higher maximum penalties for bodies corporate that are not small business employers.[12]

In addition, the amendments clarified that compliance notices issued by the FWO can require an employer to calculate the amount of an underpayment that is owed to an employee, and that a court can order the recipient of the notice to comply with its terms.

These issues will form part of the government's consideration of the Closing Loopholes Review.

[11] *Fair Work Act 2009* (Cth) s 539(2) item 33

[12] *Fair Work Act 2009* (Cth) ss 12 (definition of 'selected civil remedy provision'), 539(2) item 33