



Hon Jill Hennessy MP

Attorney-General
Minister for Workplace Safety

The Hon Tim Pallas MP

Treasurer
Minister for Economic Development
Minister for Industrial Relations

Our ref: CD/19/771153

The Hon Christian Porter MP
Minister for Industrial Relations
4 National Circuit
BARTON ACT 2600

By email: IRconsultation@ag.gov.au

Dear Minister Porter *Christian,*

We write on behalf of the Victorian Government in making this submission in response to the Commonwealth Government's discussion paper *Improving protections of employees' wages and entitlements: strengthening penalties for non-compliance*.

Wage theft is a serious issue and more must be done to address it

A number of recent high profile cases, data from audits conducted by the Fair Work Ombudsman, and the findings of the Migrant Workers' Taskforce confirm the widespread and prevalent practice of the underpayment of worker entitlements. While it affects employees across a range of industries and demographics, some workers are particularly vulnerable to wage theft, such as students and migrants. In Victoria, it is estimated that 79 per cent of employers in the hospitality industry did not comply with the national award wage system from 2013 to 2016. Nationwide, it is estimated that one in two hospitality workers are being underpaid, with similar figures reported for the retail, beauty and fast food sectors. Wage theft is often accompanied by employers deliberately failing to keep or falsifying records.

Effectively combating wage theft is a challenge for all governments, and we must do more to hold employers to account and ensure workers are not being exploited.

Any legislative reform needs to be appropriately crafted and supported to successfully respond to wage theft. In particular, it is important to strengthen enforcement of workplace laws by increasing the resourcing capabilities of enforcement agencies like the Fair Work Ombudsman (FWO).

The Victorian Government is committed to criminalising wage theft

In line with our core commitment to promoting the rights of working people, the Victorian Government is taking action to hold employers to account for wage theft and to assist workers in recovering the entitlements owed to them. In May 2018, the Victorian Government committed to addressing the serious issue of wage theft by introducing criminal offences and simplifying the process for workers to recover unpaid entitlements.

Enactment of new criminal offences

The Victorian Government commitment is to introduce a new offence targeting employers who deliberately withhold employee entitlements. We are also introducing criminal offences that target employers who deliberately fail to keep, or falsify, employee entitlement records as a way to avoid paying employee entitlements. These new offences are intended to capture deliberate underpayments, and not those employers who make honest mistakes or inadvertently underpay employees.

Under our laws, wage theft offenders will be liable to up to 10 years imprisonment or fines of up to \$198,264 for individuals or \$991,320 for companies. To ensure employers do not benefit by attempting to hide wage theft through a failure to keep or falsify records, the record keeping offences will be punishable by the same penalty. The penalty is tough but reflects the seriousness of the crime and will protect workers from exploitation.

Investigation and prosecution of the new offences

The new wage theft offences will be investigated and prosecuted by the Victorian Wage Inspectorate. The Wage Inspectorate will be provided with strong investigative and enforcement powers as well as specialised industrial relations knowledge to ensure that the new laws are effective.

We are working to ensure the scheme put in place to combat wage theft is robust, the scope is appropriate, and the penalties act as a significant deterrent, reflecting the seriousness with which the Victorian Government views this conduct.

Recovery of unpaid entitlements

To make it easier for employees to recover their unpaid entitlements, we are also improving the claims process in the Magistrates' Court of Victoria by making it faster, cheaper and easier for workers to get the money they are owed from employers.

The Victorian Government supports improving the Fair Work system for workers

While the FWO has powers to investigate and enforce civil penalties under the *Fair Work Act 2009*, this does not always result in employers being held sufficiently to account.

The Victorian Government is hosting a series of consultation forums with victims of wage theft, employer groups and unions to discuss our proposed reforms. Throughout these forums, victims have told us their stories of being exploited by employers, not knowing their rights and feeling afraid to speak up. They have also expressed the need for stronger enforcement and a more proactive approach from the FWO to monitor compliance, so the burden is not always on employees.

We wish to draw your attention to the following experiences shared by vulnerable workers at our consultation forums:

- A young female worker shared her experience of wage theft in the hospitality industry. While working for a bar on Lygon Street, Carlton, she was paid \$13 an hour as a supervisor. The employer did not provide payslips. She expressed frustration to the Fair Work Ombudsman who were unable to assist because she could not provide payslips or any record of the wage theft.
- A male migrant worker on a subclass 457 temporary worker visa detailed his 11 years of intimidation and wage theft while working in the hotel industry. The worker was reliant on

his employer because of a sponsorship arrangement for his 457 visa. The employer underpaid him, paid him irregularly and refused to give him payslips. The employer regularly threatened him with revoking the sponsorship arrangement if he complained. He said his dream was to gain residency to settle in Australia and that his employer made it difficult for him to achieve this.

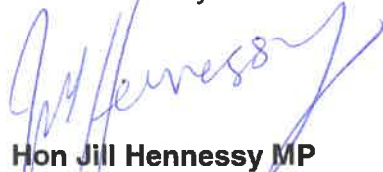
- A young male student spoke about when he worked for a franchise. He was required to complete a two month training course before he could start work. He was not paid at all during this two month period. After he completed the training he started work for the franchise but was only paid \$100 a week.

We encourage you to reflect on the issues raised by these vulnerable workers as you consider legislative reform to combat wage theft.

Strong implementation of proposed wage theft laws will be critical to ensuring they effectively operate as a deterrent and adequately protect workers.

The Victorian Government would like to see broad consultation and cooperation, with a working group established which includes all States and Territories to develop a nationally consistent approach to wage theft, reflective of the objectives contained in the Inter-Governmental Agreement for a National Workplace Relations System for the Private Sector.

Yours sincerely



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