

Wage theft inquiry

Timeline for departmental submission

Date	Action	Comment
31 March 2026	Submission outline drafting	<i>Seeking input from WCS</i>
1 April – 2 April 2026	Submission drafting	<i>Leveraging input from WCS</i>
7 April 2026	Engage with FWO and CL Review Secretariat	
7 April 2026	Submission to internal stakeholders (WRL) for input/review	
9 April 2026	Covering brief and DEWR submission to Lavinia for clearance	
10 April 2026	Liz to update MO during catch-up on approach	<i>Notes provided in Liz's points for MO meeting</i>
10 April 2026	To Liz for clearance by COB	
14/15 April 2026	To Greg for clearance (14 April PM preferred)	
16 April 2026	To Secretary for review/visibility	<i>If timing is too tight the Secretary's Office are comfortable being ccd in when it goes to the Minister</i>
17 April 2026	To Minister for noting	<i>Short turnaround approved by DLO</i>
23 April 2026	Submissions due to Senate Committee	

Departmental submission to be short (2-5 pages) and cover:

- Flat, factual overview of the wage theft provisions and their current operation (WCS)
 - o Explanation of the FWO's role
 - o Commencement date of the wage theft offence

- Context of wage theft provisions – what the amendments sought to do (EM), part of a larger package of measures designed to address wage underpayments (changes to the civil penalty regime)
- Relevant data (WCS/FWO) – including FWO info on investigations?
- Note separate CL Review is reviewing operation of amendments including the criminal and civil changes – note submissions published

High-level outline of the proposed submission

- Overview of wage theft provisions and their current operation
 - o The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* amended the *Fair Work Act 2009* (Fair Work Act) to introduce a criminal offence for intentional underpayment of employees' wages and certain entitlements (wage theft offence).
 - o The wage theft offence commenced on 1 January 2025 and applies to intentional underpayments occurring on or after this date.
 - o How the wage theft provisions at sections 327A to 327C of the *Fair Work Act 2009* operate, including:
 - which employers/employees
 - which payments are included/excluded
 - requirement for 'intent' – doesn't include honest mistakes
 - extension of liability
 - relevant penalties.
 - o Safe haven – wage theft provisions are designed to encourage employers to self-disclose conduct which may amount to wage theft. Self-disclosure pathways to avoid prosecution, include:
 - Voluntary Small Business Wage Compliance Code
 - Cooperation agreements
 - o The Fair Work Ombudsman (FWO) is primarily responsible for investigating the wage theft criminal offence. The FWO will refer matters to the Commonwealth Director of Public Prosecutions (CDPP) or the Australian Federal Police (AFP) for consideration, and prosecution where appropriate.
- Purpose and context of wage theft provisions
 - o The purpose is to encourage employer compliance with Fair Work Act obligations to pay employee wages and entitlements by providing a greater deterrent to non-compliant conduct.
 - o The Migrant Workers' Taskforce (Recommendation 6) and the Senate Inquiry into Unlawful Underpayment of Employees' Remuneration (Recommendation 1), recommended the introduction of a wage theft offence.
 - o Wage theft offence formed part of a package of measures designed to address wage underpayments including, civil penalties for wage underpayments.
 - o FWO's broader role in relation to wage underpayments – outline broader strategy (compliance and enforcement only one element).
- Relevant data – WCS to advise

- Note separate Closing Loopholes Review is reviewing operation of amendments including the criminal and civil changes – submissions have been published

s 22(1)

From: s 22(1)
Sent: Monday, 13 April 2026 5:34 PM
To: s 22(1) ; s 22(1)
Cc: s 22(1) ; s 22(1) ; s 22(1) ; FOGARTY,Anthony;
s 22(1) ; s 22(1) ; s 22(1) ; s 22(1) ; s 22(1)
Subject: RE: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Thanks s 22(1) we very much appreciate your quick review and your feedback!

We'll flag this with our SES and suggest pairing back the content on the FWO's role to avoid being too duplicative of your submission.

Cheers
s 22(1)

From: s 22(1)
Sent: Monday, 13 April 2026 4:23 PM
To: s 22(1) ; s 22(1)
Cc: s 22(1) ; s 22(1) ; s 22(1) ; FOGARTY,Anthony ; s 22(1) ; s 22(1) ;
s 22(1) ; s 22(1) ; s 22(1)
Subject: RE: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Hi all,

Thanks again for consulting with us. We have now reviewed the updated draft submission and included some comments in the attached for your consideration.

In a nutshell, and given the shift in focus of DEWR's submission, we suggest that detailed information on the FWO's role, strategic enforcement approach and activities could be pulled back or removed - we expect to cover off on this thoroughly in the FWO's submission. s 22(1)(a)(ii)

We have not consulted more broadly with our criminal investigations or legal counterparts on this draft in the timeframes, but we will share this draft and our response with them and let you know if they identify any red lines.

s 22(1) and I are happy to discuss further if you have any questions.

Thanks,
s 22(1)

 s 22(1) (she / her) | A/g Director

Workplace Relations Policy
FAIR WORK OMBUDSMAN

T: s 22(1)
E: s 22(1) [@fwo.gov.au](mailto:s 22(1)@fwo.gov.au)

From: s 22(1)
Sent: Monday, 13 April 2026 11:40 AM
To: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
s 22(1) @dewr.gov.au; FOGARTY,Anthony <Anthony.Fogarty@fwo.gov.au>; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au
Subject: RE: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Excellent, thanks ^{s 22(1)} We are taking a look now and will come back with any red lines.

Cheers,
s 22(1)

 s 22(1) (she / her) | A/g Director

Workplace Relations Policy
FAIR WORK OMBUDSMAN

T: s 22(1)
E: s 22(1) @fwo.gov.au

From: s 22(1) @dewr.gov.au
Sent: Monday, 13 April 2026 11:10 AM
To: s 22(1) @fwo.gov.au; s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
s 22(1) @dewr.gov.au; FOGARTY,Anthony <Anthony.Fogarty@fwo.gov.au>; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au
Subject: RE: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Thanks ^{s 22(1)} s 22(1)(a)(ii)

This draft is currently with our AS, and we are hoping the FWO-related content is close to final.

Always happy to chat.

Cheers
s 22(1)

From: s 22(1) @fwo.gov.au
Sent: Monday, 13 April 2026 11:00 AM
To: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
s 22(1) @dewr.gov.au; FOGARTY,Anthony <Anthony.Fogarty@fwo.gov.au>; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au
Subject: RE: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Hi s 22(1) (and ^{s 22(1)} and team!)

s 22(1)(a)(ii) Thank you for sharing the latest draft of DEWR's submission and for highlighting the changes for us.

To help us determine what level of clearance / consultation to undertake on our side, can I check where you are at in your clearance process and whether you expect that the FWO-related content in this draft is close to final?

Thanks, and happy to have a chat if that's easiest!
s 22(1)

 s 22(1) (she / her) | A/g Director

Workplace Relations Policy
FAIR WORK OMBUDSMAN

T: s 22(1)
E: s 22(1) [@fwo.gov.au](mailto:s 22(1)@fwo.gov.au)

From: s 22(1) [@dewr.gov.au](mailto:s 22(1)@dewr.gov.au)
Sent: Monday, 13 April 2026 10:38 AM
To: s 22(1) [@dewr.gov.au](mailto:s 22(1)@dewr.gov.au); s 22(1) [@fwo.gov.au](mailto:s 22(1)@fwo.gov.au)
Cc: s 22(1) [@dewr.gov.au](mailto:s 22(1)@dewr.gov.au); s 22(1) [@dewr.gov.au](mailto:s 22(1)@dewr.gov.au);
s 22(1) [@dewr.gov.au](mailto:s 22(1)@dewr.gov.au); FOGARTY,Anthony <Anthony.Fogarty@fwo.gov.au>; s 22(1) [@fwo.gov.au](mailto:s 22(1)@fwo.gov.au); s 22(1) [@fwo.gov.au](mailto:s 22(1)@fwo.gov.au); s 22(1) [@fwo.gov.au](mailto:s 22(1)@fwo.gov.au); s 22(1) [@fwo.gov.au](mailto:s 22(1)@fwo.gov.au);
Subject: RE: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Hi team,

We are seeking your review of the revised DEWR submission by COB today 13 April, if possible. Please note our changes are highlighted in the submission.

As ^{s 22(1)} and ^{s 22(1)} discussed on Friday, we've expanded the civil remedy framework content, emphasised the FWO's voluntary compliance work and noted their education role more broadly (referencing the EAS). We're also keen for your review to ensure the content is accurate.

 [DRAFT DEWR Submission - Wage Theft Inquiry - April 2026.docx](#)

Please reach out with any questions.

Cheers,

s 22(1)

s 22(1)

From: s 22(1) @fwo.gov.au
Sent: Wednesday, 8 April 2026 3:40 PM
To: s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; @dewr.gov.au;
s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; FOGARTY,Anthony
<Anthony.Fogarty@fwo.gov.au>; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au
Subject: RE: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Hi ^{s 22(1)} and team,

Thank you for sending through an early draft of DEWR's submission to the Wage Theft Inquiry. We appreciate the opportunity to review.

With thanks to the FWO team, we have collated some suggestions in comments and track changes for DEWR's consideration - s 22(1)(a)(ii)

Please don't hesitate to reach out if you have any questions or require any further information from us. I'd be very happy to discuss any of our comments or suggestions.

Thanks again,
s 22(1)

 s 22(1) (she / her) | A/g Director

Workplace Relations Policy
FAIR WORK OMBUDSMAN

T: s 22(1)
E: s 22(1) @fwo.gov.au

From: s 22(1) @dewr.gov.au
Sent: Tuesday, 7 April 2026 6:21 PM
To: s 22(1) @fwo.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1)
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@fwo.gov.au
Subject: RE: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Hi s 22(1)

Just attaching the latest version of our draft for your review please. This supersedes the previous version we circulated at 5pm.

Always happy to chat.

Cheers

s 22(1)

From: s 22(1)

Sent: Tuesday, 7 April 2026 5:00 PM

To: s 22(1)

@fwo.gov.au>

Cc: s 22(1)

@dewr.gov.au>; s 22(1)

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@fwo.gov.au>

Subject: Seeking FWO review by 3pm Wed 8 Apr: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Hi s 22(1)

As discussed, please find attached an early draft of our submission for your review by 3pm tomorrow (Wed 8 Apr) if possible.

Specifically, we'd be grateful for your review and any updates to:

- **the 'FWO's role' section (pages 4-5)** which we've tried to capture at a very high level – we're particularly keen for your review of the characterisation of the number of FWO investigations on foot and referrals
- **the 'safe haven' section (page 5)**, including how the FWO's role is described
- **the 'purpose and context' section (page 6)**, specifically the last paragraph of the FWO's broader role in addressing underpayments.

Always happy to chat.

Cheers

s 22(1)

s 22(1) (he/him)

Workplace Justice Reform

s 22(1)

s 22(1)

From: s 22(1) [@fwo.gov.au](mailto:s22(1)@fwo.gov.au)>
Sent: Tuesday, 7 April 2026 12:07 PM
To: s 22(1) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au)>
Cc: s 22(1) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au)>; s 22(1) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au)>;
s 22(1) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au)>; s 22(1) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au)>; s 22(1)
[@fwo.gov.au](mailto:s22(1)@fwo.gov.au)>; s 22(1) [@fwo.gov.au](mailto:s22(1)@fwo.gov.au)>; s 22(1)
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[@fwo.gov.au](mailto:s22(1)@fwo.gov.au)>
Subject: Wage Theft Inquiry Submissions [SEC=OFFICIAL]

Hi ^{s 22(1)}

Thanks for reaching out about DEWR's submission to the Senate's Wage theft inquiry this morning – it was lovely to catch up!

s 22(1)(a)(ii)

We would be happy to cast an eye over any aspects of DEWR's submission relating to the FWO that you are able to share with us this week, and will keep you in the loop on how our submission is shaping up - particularly in relation to any data that we end up using.

s 22(1)(a)(ii)

Thanks again, and happy to chat at any point!
s 22(1)

 s 22(1) (she / her) | A/g Director

Workplace Relations Policy
FAIR WORK OMBUDSMAN

T: s 22(1)
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GPO Box 9887 Melbourne VIC 3000 | **Kulin Nation** - s 11C(1)(a) 414 La Trobe Street, Melbourne VIC 3000



The Fair Work Ombudsman acknowledges the Traditional Custodians of Country throughout Australia and their continuing connection to land, waters, skies and community. We pay our respect to them, their cultures, and Elders past, present and future.



The Fair Work Ombudsman is a place where people of LGBTQIA+ communities are welcomed and supported.

s 22(1)

From: BRAYSHAW,Elizabeth
Sent: Thursdav. 16 April 2026 9:56 AM
To: s 22(1) ; GRACIK-ANCZEWSKA,Lavinia; s 22(1)
Subject: RE: CL review submission - a couple of additional thoughts [SEC=OFFICIAL]
Attachments: Attachment A - DEWR Submission - Wage Theft Inquiry (April 2026).docx - draft2.docx

Helps if I give uou the right version

I think it was in the first section

From: s 22(1) @dewr.gov.au>
Sent: Thursday, 16 April 2026 9:34 AM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; s 22(1) @dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>
Subject: RE: CL review submission - a couple of additional thoughts [SEC=OFFICIAL]

Thanks Liz!

I'm chatting to the FWO very shortly. I can't see any reference in the version you attached to the CL Review, but we're happy to pop that content back in.

I'll let you know how we get on with the FWO. s 22(1)(a)(ii)

Cheers

s 22(1)

From: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Sent: Thursday, 16 April 2026 8:26 AM
To: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>
Subject: CL review submission - a couple of additional thoughts [SEC=OFFICIAL]

Hi

I sent the wage theft submission back last night

I had a couple of extra thoughts last night about the wage theft submission – the highlighted sections are my additions – with Payman's submission, I think we do put in a reference to the CL review

I also want to check in with the FWO including on how they might be explaining the budget

Apologies for these but just wanting to think how best to frame our efforts

Regards

Liz

Elizabeth Brayshaw
 First Assistant Secretary

Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone S 47F(1) | Mobile S 47F(1)
Elizabeth.brayshaw@dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

Thu, 16 Apr at 3:47 pm

Hi s 22(1), sent you the draft DEWR submission for the wage theft inquiry for your visibility (due to the Senate Committee on 23/4). Let me know if you have any queries or wish to discuss.
Lavinia



Australian Government

Department of Employment and Workplace Relations

IS26-000005

Standard Brief

To **Minister for Employment and Workplace Relations**

Action required **For Noting**

SUB | Inquiry into Wage Theft

Timing Please action by **22 April 2026**, to enable the department to lodge its submission by the Committee's deadline of 23 April 2026.

Recommendation:

- | | |
|---|-------------------------------|
| 1. That you note the Department of Employment and Workplace Relations' submission to the Senate Education and Employment References Committee Inquiry into wage theft. | Noted / Please discuss |
|---|-------------------------------|

Minister Rishworth

Date: / /2026

Comments:

Clearing Officer

s 47F(1)

16 / 04 / 2026
Elizabeth Brayshaw, First Assistant Secretary
Entitlements Safeguards Division, Workplace Relations Group
Mob: s 47F(1)

Contact Officer

Lavinia Gracik-Anczewska
Assistant Secretary, Workplace
Exploitation Branch WR |
Entitlements Safeguards
Ph: s 47F(1)
Mob: s 47F(1)

Minister Rishworth

Date: / /2026

Comments:

Executive summary:

1. The Senate Education and Employment References Committee (Committee) is conducting an inquiry into:
 - a. 'The extent to which the wage theft framework under the *Fair Work Act 2009*, 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.'

2. We intend to provide a submission to support the Committee's inquiry, draft at **Attachment A**.
3. s 22(1)(a)(ii)

Submissions are due by 23 April 2026. No dates for public hearings have been scheduled at this stage.

Key points:

4. On 24 March 2025, the Senate agreed to Senator Payman's motion for the matter to be referred to the Committee for inquiry, with the committee due to report by 18 June 2026.
5. The department's submission (**Attachment A**) covers:
 - a. information on the purpose and current operation of criminal wage theft provisions, which commenced on 1 January 2025
 - b. the broader civil remedy framework and the FWO's graduated enforcement framework to deter and sanction non-compliance with workplace obligations,
 - c. information about the independent review of the Closing Loopholes legislation, and
 - d. a brief overview of the FWO's role, noting the FWO intends to cover this in its submission.

s 22(1)(a)(ii)

Public sensitivities:

7. Senator Payman has previously asked questions of the department and the FWO at Senate Estimates hearings, tabled several questions on notice and sought an Order for the Production of Documents.
 - a. On 3 February 2026, the Senate agreed to Order for the Production of Documents No. 313 moved by Senator Payman in relation to wage theft investigations and proceedings. The department tabled a response on 18 March 2026 providing one in-scope document on behalf of the FWO (**MB26-000071** refers).
 - b. The most recent replies tabled by the department and the FWO to Senator Payman's questions on notice were **SQ25-001830**, **SQ25-000837** and **SQ25-000001**. Those responses noted at that point in time, no proceedings had commenced and the department did not hold information on investigations.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Consultation: Yes

12. Internal: Workplace Relations Legal Division and Parliamentary and Governance Branch.

13. External: The FWO.

Legal advice / Legislative impacts: Nil.

Financial impacts: Nil.

Background:

14. The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* introduced a new criminal offence (the wage theft offence) for intentional underpayment of employees' wages, which commenced on 1 January 2025.

15. The wage theft offence was recommended by several inquiries, including the *Migrant Workers' Taskforce* and the *Senate inquiry into Unlawful Underpayment of Employees' Remuneration*. Prior to the commencement of the wage theft offence, there were no criminal sanctions for underpayments under the Fair Work Act. Sanctions for underpayments were limited to civil penalties under civil remedy provisions, including for contraventions of the National Employment Standards, modern awards, or enterprise agreements.

s 22(1)(a)(ii)

Attachments:

A: Draft submission for the Senate inquiry into wage theft

s 22(1)(a)(ii)

s 22(1)

From: s 22(1)
Sent: Friday, 17 April 2026 3:31 PM
To: s 22(1)
Cc: s 22(1); s 22(1); s 22(1); s 22(1); FOGARTY,Anthony; s 22(1);
s 22(1); s 22(1); s 22(1); s 22(1)
Subject: RE: For FWO info/red lines by Mon 20 Apr: Wage Theft Inquiry Submission [SEC=OFFICIAL]

Hi s 22(1)

Thanks for the chat this morning, and for looping us in on the final version of DEWR's submission.

I have forwarded your submission to the FWO SES who are likely to be appearing at an inquiry hearing if/when it goes ahead. We don't anticipate any red-lines but will let you know if I hear anything back from that group.

s 22(1)(a)(ii)
s 22(1)

 s 22(1) (she / her) | A/g Director

Workplace Relations Policy
FAIR WORK OMBUDSMAN

T: s 22(1)
E: s 22(1) @fwo.gov.au

From: s 22(1) @dewr.gov.au>
Sent: Friday, 17 April 2026 9:27 AM
To: s 22(1) @fwo.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>;
s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; FOGARTY,Anthony
<Anthony.Fogarty@fwo.gov.au>; s 22(1) @fwo.gov.au>; s 22(1)

s 22(1) @fwo.gov.au; s 22(1) @fwo.gov.au; s 22(1)
@fwo.gov.au; s 22(1) @fwo.gov.au

Subject: For FWO info/red lines by Mon 20 Apr: Wage Theft Inquiry Submission [SEC=OFFICIAL]

Hi s 22(1)

Thanks again for your team's advice on the FWO-related aspects of our submission!

Please find attached our final submission which is with the Minister for noting prior to lodgement with the Committee next week.

As discussed yesterday, the submission now includes:

- less detail on the FWO's role (per your advice) – this is now combined at the end of the submission with a section that also covers the civil remedy framework
- an extra sentence on how the FWO assesses compliance with the Voluntary Small Business Wage Compliance Code
- 2024-25 FWO performance data and a reference to FWO performance reporting via annual reports.

That said, if you identify any red line concerns with any of the content of the submission, please let us know by Monday 20 April.

Always happy to chat, and thanks again for your quick review of previous drafts!

Cheers

s 22(1)

s 22(1) (he/him)
Workplace Justice Reform
s 22(1)

s 22(1)

**Pages 20-26 removed under section 22(1)(a)(ii) of the
*Freedom of Information Act 1982.***

**These pages contain information that would reasonably
be regarded as irrelevant to the request for access.**

s 22(1)

From: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>

Sent: Thursdav, 16 April 2026 3:44 PM

To: s 22(1) <@dewr.gov.au>

Cc: DLO Rishworth <s 47E(d) <@dewr.gov.au>; MANNING,Gregory <Gregory.Manning@dewr.gov.au>; Deputy Secretary - Workplace Relations <s 47E(d) <@dewr.gov.au>; BRAYSHAW,Elizabeth <Elizabeth.Bravshaw@dewr.gov.au>; s 22(1) <@dewr.gov.au>; s 22(1) <@dewr.gov.au>

Subject: Wage theft inquiry - DEWR submission - IS26 000005 [SEC=OFFICIAL]

Hi s 22(1)

Please find **attached** for your early visibility the department's draft submission to the Senate Education and Employment References Committee's [wage theft inquiry](#).

This will follow in PDMS tomorrow (Friday 17 April), alongside a noting brief for the Minister (**IS26-000005**). We are seeking the Minister's noting by Wednesday 22 April to enable us to lodge the submission by the Committee's deadline of Thursday 23 April.

The department's submission provides:

- information on the purpose and current operation of criminal wage theft provisions, which commenced on 1 January 2025
- the broader civil remedy framework and the FWO's graduated enforcement framework to deter and sanction non-compliance with workplace obligations,
- information about the independent review of the Closing Loopholes legislation, and
- a brief overview of the FWO's role, noting the FWO intends to cover this in its submission.

s 22(1)(a)(ii)

We expect the inquiry to hold hearings in May 2026 and for the department and the Fair Work Ombudsman to be called. We will continue to provide relevant updates to you on this inquiry, including visibility of FWO's submission once finalised.

Please let us know if you have any questions.

Thanks
Lavinia

Lavinia Gracik-Anczewska (*she/her*)
Assistant Secretary

Workplace Exploitation Branch
Entitlements Safeguards Division, Workplace Relations Group
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EA contact: S 22(1) [@dewr.gov.au](mailto:S22(1)@dewr.gov.au); ph: S 22(1)



The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

s 22(1)

From: HALLAS,Emma
Sent: Friday, 17 April 2026 5:07 PM
To: GRACIK-ANCZEWSKA,Lavinia
Cc: s 22(1) ; s 22(1) ; s 22(1) ; s 22(1) ;
s 22(1) ; s 22(1) ; s 22(1) ; s 22(1) ; s 22(1)
Subject: RE: Seeking WRL red line check by Mon 20 Apr: DEWR submission - wage theft inquiry [SEC=OFFICIAL]

Hi Lavinia and team

We have not identified any red lines to be addressed in the revised draft.

Thanks very much for continuing to keep us in the loop.

We look forward to continuing to work with you in relation to the department's response to the inquiry.

Kind regards

Emma Hallas

Senior Executive Lawyer|Assistant Secretary

Employment Standards and Institutions Branch

Workplace Relations Legal Division

Australian Government Department of Employment and Workplace Relations

Mobile|s 47F(1)

dewr.gov.au

I work flexibly and may send emails after hours. Unless clearly marked, I do not expect you to read or respond to my email until the next business day.

Working on Ngunnawal country



The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing and their cultures, and Elders past, present and emerging.

From: s 22(1)
Sent: Friday, 17 April 2026 8:57 AM
To: HALLAS,Emma ; s 22(1) ; s 22(1)
Cc: s 22(1) ; s 22(1) ; s 22(1) ; s 22(1) ; s 22(1) ; s 22(1) ;
GRACIK-ANCZEWSKA,Lavinia
Subject: Seeking WRL red line check by Mon 20 Apr: DEWR submission - wage theft inquiry [SEC=OFFICIAL]

Good morning Emma, s 22 and s 22

Thanks so much for your engagement and advice as we've worked up the wage theft submission for the Senate's inquiry!

We have now sent our submission, following further revision through clearance, to the Minister for noting by Wednesday 22 April. As the submission has been adjusted in a couple of areas, we are keen to ensure you have the opportunity to identify any further red lines prior to lodgement with the Committee next week. We'd be grateful if you were able to flag any concerns by Monday 20 April, so we can flag this with the MO in a timely manner.

The key changes (tracked into the attached copy) include:

- reducing the length of the FWO content (following FWO feedback, FWO will cover this in their submission)
- revised overview of the FW Act's compliance and enforcement framework with references to s539 and 327A (p1)
- more information on the criminal wage theft offence's intent (p2)
- reference to the Criminal Code and additional point on intention as the relevant fault element (p2)
- reduced content on application of the offence (p3)
- combined FWO and civil remedy framework content (p4-5).

We'll also be in touch for your review once we've worked up a draft brief to support SES appear before the inquiry. At this stage, no hearing dates have been confirmed.

Always happy to chat.

Cheers

s 22(1)

From: HALLAS, Emma <Emma.Hallas@dewr.gov.au>

Sent: Monday, 13 April 2026 7:49 PM

To: s 22(1) <@dewr.gov.au>

Cc: s 22(1) <@dewr.gov.au>; s 22(1)

<@dewr.gov.au>; s 22(1)

<@dewr.gov.au>; s 22(1)

<@dewr.gov.au>; s 22(1)

<@dewr.gov.au>; s 22(1)

<@dewr.gov.au>; s 22(1)

<@dewr.gov.au>; s 22(1)

<@dewr.gov.au>; GRACIK-ANCZEWSKA, Lavinia

<Lavinia.Gracik-Anczewska@dewr.gov.au>

Subject: Cleared: DEWR submission - wage theft inquiry OOB Tue 14 April [SEC=OFFICIAL]

Dear ^{s 22(1)} and team

We have now had the opportunity to review the amended sections and consider there to be no redline issues from our perspective. We agree with the inclusion of the civil remedy framework as it provides necessary context for the broader framework.

We have no further comments or changes to make.

Thanks again for the opportunity to review.

Kind regards

Emma

Emma Hallas

Senior Executive Lawyer|Assistant Secretary

Employment Standards and Institutions Branch
Workplace Relations Legal Division
Australian Government Department of Employment and Workplace Relations

Mobile|S 47F(1)

dewr.gov.au

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Working on Ngunnawal country



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s 22(1)

From: s 22(1) @dewr.gov.au
Sent: Monday, 13 April 2026 10:33 AM
To: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
@dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
@dewr.gov.au; s 22(1) @dewr.gov.au
Subject: FOR REVIEW [COB 13/04]: DEWR submission - wage theft inquiry [SEC=OFFICIAL]

Hi team,

We are seeking your review of the revised DEWR submission by COB today 13 April, if possible. Please note our changes are highlighted in the submission.

Specifically, we are interested in WRL’s review of the:

- 1. Expanded technical sections on the criminal offence's operation and liability with a focus on ease of understanding
- 2. New civil remedy content

 [DRAFT DEWR Submission - Wage Theft Inquiry - April 2026.docx](#)

Please reach out with any questions.

Cheers,

s 22
...

From: s 22(1) @dewr.gov.au
Sent: Thursday, 9 April 2026 10:30 AM

To: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1)
@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1)
@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1)
@dewr.gov.au>

Subject: RE: [For WRL Review] - DEWR submission - wage theft inquiry - COB today if possible [SEC=OFFICIAL]

Hi s 22(1) Emma and team

Thanks so much for your input!

We'll let you know if we have any questions.

Kind regards
s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Wednesday, 8 April 2026 3:55 PM
To: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1)
@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1)
@dewr.gov.au>; s 22(1) @dewr.gov.au>; HALLAS,Emma
<Emma.Hallas@dewr.gov.au>
Subject: RE: [For WRL Review] - DEWR submission - wage theft inquiry - COB today if possible [SEC=OFFICIAL]

Hi s 22(1) and s 22(1)

This is now SESB1 cleared, with the minor changes included in this version:  [DRAFT DEWR Submission - Wage Theft Inquiry - April 2026 \(002\).docx](#)

Happy to discuss

s 22(1)

s 22(1)

Phone s 22(1) | Mobile s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Wednesday, 8 April 2026 11:32 AM
To: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1)
@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1)
@dewr.gov.au>; s 22(1) @dewr.gov.au>; HALLAS,Emma
<Emma.Hallas@dewr.gov.au>
Subject: RE: [For WRL Review] - DEWR submission - wage theft inquiry - COB today if possible [SEC=OFFICIAL]

Hi s 22

I've attached our current version, with the FWO for review by 3pm this arvo. It'd be great if Emma has a chance to review it today if at all possible.

Always happy to chat.

Cheers
s 22(1)

From: s 22(1) @dewr.gov.au
Sent: Wednesday, 8 April 2026 11:23 AM
To: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; HALLAS,Emma
<Emma.Hallas@dewr.gov.au>
Subject: RE: [For WRL Review] - DEWR submission - wage theft inquiry - COB today if possible [SEC=OFFICIAL]

Thanks s 22(1)

I understand that we're no longer doing parallel SES clearance, so is there a version I can send to Emma earlier?

Thanks

s 22(1)

s 22(1)

Phone s 22(1) | Mobile s 22(1)

From: s 22(1) @dewr.gov.au
Sent: Wednesday, 8 April 2026 11:15 AM
To: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; CS 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; HALLAS,Emma
<Emma.Hallas@dewr.gov.au>
Subject: RE: [For WRL Review] - DEWR submission - wage theft inquiry - COB today if possible [SEC=OFFICIAL]

Thanks so much for reviewing, s 22(1)

We're starting to pull together issues to address in SES briefing ahead of any potential appearance at the inquiry s 47C(1)

On timing for Emma's clearance, we're planning on sending the submission to Lavinia tomorrow morning for clearance by tomorrow. Would that timing work if we also sought Emma's clearance in parallel?

Cheers
s 22(1)

From: s 22(1) @dewr.gov.au
Sent: Wednesday, 8 April 2026 11:12 AM
To: s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; HALLAS,Emma <Emma.Hallas@dewr.gov.au>
Subject: RE: [For WRL Review] - DEWR submission - wage theft inquiry - COB today if possible [SEC=OFFICIAL]

Hi s 22(1)

Could I just follow up on SESB1 clearance for this submission – is there a proposed time scheduled for this?

Thanks

s 22(1)

s 22(1)

Phone s 22(1) | Mobile s 22(1)

From: s 22(1)

Sent: Tuesday, 7 April 2026 5:16 PM

To: s 22(1) @dewr.gov.au

Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au; HALLAS, Emma <Emma.Hallas@dewr.gov.au>

Subject: RE: [For WRL Review] - DEWR submission - wage theft inquiry - COB today if possible [SEC=OFFICIAL]

Hi s 22(1)

Thanks for the opportunity to comment. Our comments are attached. As you can see, some are legal and there are several of an editorial nature as well. Because of complexity with state referrals, I would defer to s 22(1) team on the points that touch on the referrals (particularly coverage of state and local governments).

My only other suggestion would be to spill out the concurrent reforms to the civil penalties framework as well (there should be examples of this in cleared estimates content).

s 47C(1)

Emma has asked to clear the content as well – could we have some more time to allow for SESB1 clearance?

Many thanks

s 22(1)

s 22(1)

Phone s 22(1) | Mobile s 22(1)

From: s 22(1) @dewr.gov.au

Sent: Tuesday, 7 April 2026 12:22 PM

To: s 22(1) @dewr.gov.au

Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au

Subject: [For WRL Review] - DEWR submission - wage theft inquiry - COB today if possible [SEC=OFFICIAL]

Hi s 22 and team

I hope you had a great long weekend!

Please find attached the current draft of the DEWR submission to the Wage Theft Inquiry. We're intending to ensure the draft submission is short and factual, so that it provides relevant information to the Inquiry. We'd be grateful for your review by **COB today** (if possible), particularly of the content included in the application section.

Please let us know if you'd like to discuss or have any questions.

Kind regards
s 22(1)

s 22(1)
Policy Officer

Workplace Justice Reform | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone s 22(1)
dewr.gov.au

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Senate Estimates briefing, order for production of documents and QoNs

1. [Wage theft offence summary](#) – SE briefing October 2025
2. [Response to the order of 3 February 2026 \(313\) relating to the Fair Work Act - Wage theft investigations and proceedings](#)
3. [SQ26-000005](#) - Wage theft enforcement referrals, resourcing and outcomes (Senator Payman, 2025-26 Additional Estimates. NB. this is the FWO's response, it's with the MO and is likely to be tabled soon)
4. [SQ25-001830](#) – Unreported wage theft (Senator Payman, 2025-26 Supplementary Budget Estimates)
5. [SQ25-000837](#) – Wage theft findings and investigations (Senator Payman, 2025-26 Supplementary Budget Estimates)
6. [SQ25-000001](#) – The new criminal offence for wage theft and how many investigations have occurred (Senator Payman, 2024-25 Additional Estimates)
7. [SQ24-002056](#) – Consultation process for criminalisation of wage theft provisions (Senator Cash, 2024-25 Supplementary Budget Estimates)

Departmental papers / briefing

3. [DEWR Consultation Paper](#) – Criminalising wage theft and civil penalties reform
4. [Departmental Briefing](#) – Closing Loopholes Review – 4 December 2025
5. [Wage Theft Offence – Intentional Conduct](#)
6. [Talking Points](#) – Fair Work Legislation Amendment (Closing Loopholes) Bill – Wage theft
7. [Wage theft - Q&As](#) - encompassing amendments – 4 Dec 2023

Reports

8. University of Melbourne, Centre for Employment and Labour Relations Law, [Underpaid and Overlooked: The Wage Theft Crisis Facing Young Workers in Australia](#), July 2025
9. [NTEU Wage theft report](#), November 2023
10. McKell Institute, [Unfinished Business, The Ongoing Battle Against Wage Theft](#), August 2023
11. Migrant Worker Justice Institute, [International Students and Wage Theft in Australia](#), June 2020
12. [Report of the Migrant Workers' Taskforce](#), March 2019

Wage theft inquiries and government responses

13. Senate Economics References Committee Inquiry report, [Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration](#), March 2022
14. [Government Response to the Senate Committee Report into unlawful underpayment of employees' remuneration](#), April 2023

15. Senate Education and Employment References Committee Inquiry report, [Wage theft? What wage theft?! The exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies](#), November 2018
16. [Government Response to the Senate Committee Report into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting companies](#), July 2024

Relevant media

s 47C(1)

18. The Australian, [Payman wins test of wage theft law](#), 10 April 2026

s 47C(1)

20. Seven News Toowoomba, [Television transcript - Voluntary Small Business Compliance Code](#), 8 January 2025

21. The Australian, ['Paying staff wrongly' 20 per cent of employers fear new workers law](#), 3 January 2025

22. ABC News, [Australian bosses on notice as 'deliberate' wage theft becomes a crime](#), 30 December 2024

s 47C(1)

Academic articles

24. Tess Hardy, [Criminalisation of wage theft under the Fair Work Act](#), Australian Journal of Labour Law, 2024

Archived: Tuesday, 21 July 2026 10:30:02 AM
From: [BRAYSHAW,Elizabeth](#)
Sent: Sunday, 19 April 2026 2:14:08 PM
To: s 22(1)
Cc: [GRACIK-ANCZEWSKA,Lavinia](#); s 22(1); s 22(1); s 22(1)
Subject: RE: Wage theft inquiry - List of key documents [SEC=OFFICIAL]
Sensitivity: Normal
Attachments: [Wage Theft Offence - Intentional Conduct.docx](#); [Case studies about deliberate-serious wage underpayment - updated 21022025 \(002\).docx](#);

Thanks s 22(1)

I have had a look through a number of these materials. And I am sure you guys will have a view on what to incorporate – the following were my initial thoughts

I think it would be good to have the following covered – as a starting point these can just be headings – interested in factual info, 3-4 bullet points for different issues and it would be good to just have in one document at this stage and then can work out how we split it up

- Govt intention of the measure – what they intended and how it forms part of the graduated enforcement framework
s 47C(1)
- 1-2 page that goes to the elements of the offence and how it operates
- Summary of the penalties for wage theft, and then on civil penalties for underpayments
 - And a point that notes their interaction ie cant be punished twice , conduct of proceedings
- FWO's role including funding, guidance etc
- Closing Loopholes Review – public information on what it has done, submissions received
- Response to criticism that there has been zero return and its not effective in assisting compliance/Is it getting worse?
- Explanation of what was provided under Qons etc and attach the materials to that
- What would say know if asked about prevalence of wage theft

It would also be good to have a copy of media articles and commentary, s 47C(1)

And if there are any issues arising in the submissions made (could we also look at setting up a summary of submissions table – comfortable this should be key subs) – and it would be good if s 22(1) can set up a folder with

the submissions received to date.

s 47C(1)

Regards
liz

From: s 22(1) @dewr.gov.au>
Sent: Friday, 10 April 2026 5:11 PM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: Wage theft inquiry - List of key documents [SEC=OFFICIAL]

Hi Liz

To assist with early preparation ahead of a possible hearing on the Senate Inquiry into wage theft, the team has **collated a list of documents for you** (saved in [this folder](#)) with key documents set out below. Please let us know if there is anything you would like further at this stage.

The team is separately progressing an outline of briefing to support SES attendance at inquiry hearings. We're **keen for your early steer** on this should you have any initial thoughts on preferred approach.

List of key documents – Wage theft framework

Senate Estimates briefing, order for production of documents and QoNs

1. [Wage theft offence summary](#) – SE briefing October 2025
2. [Response to the order of 3 February 2026 \(313\) relating to the Fair Work Act - Wage theft investigations and proceedings](#)
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5. [SQ25-000837](#) – Wage theft findings and investigations (Senator Payman, 2025-26 Supplementary Budget Estimates)
6. [SQ25-000001](#) – The new criminal offence for wage theft and how many investigations have occurred (Senator Payman, 2024-25 Additional Estimates)
7. [SQ24-002056](#) – Consultation process for criminalisation of wage theft provisions (Senator Cash, 2024-25 Supplementary Budget Estimates)

Departmental papers / briefing

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9. [NTEU Wage theft report](#), November 2023
10. McKell Institute, [Unfinished Business, The Ongoing Battle Against Wage Theft](#), August 2023
11. Migrant Worker Justice Institute, [International Students and Wage Theft in Australia](#), June 2020
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Wage theft inquiries and government responses

13. Senate Economics References Committee Inquiry report, [Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration](#), March 2022
14. [Government Response to the Senate Committee Report into unlawful underpayment of employees' remuneration](#), April 2023
15. Senate Education and Employment References Committee Inquiry report, [Wage theft? What wage theft?! The exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies](#), November 2018
16. [Government Response to the Senate Committee Report into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting companies](#), July 2024

Relevant media

17. The Australian, [Payman wins test of wage theft law](#), 10 April 2026
18. Seven News Toowoomba, [Television transcript - Voluntary Small Business Compliance Code](#), 8 January 2025
19. The Australian, ['Paying staff wrongly' 20 per cent of employers fear new workers law](#), 3 January 2025
20. ABC News, [Australian bosses on notice as 'deliberate' wage theft becomes a crime](#), 30 December 2024 s 47C(1)

Academic articles

22. Tess Hardy, [Criminalisation of wage theft under the Fair Work Act](#), Australian Journal of Labour Law, 2024

Many thanks
s 22(1)

s 22(1)
Assistant Director

Workplace Justice Reform | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone s 22(1) | s 22(1) @dewr.gov.au

Wage Theft Offence – Intentional Conduct

- The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* amended the *Fair Work Act 2009* to introduce a criminal offence for intentional underpayment of employees' wages and certain entitlements (the 'wage theft offence').
- Subsection 327A(1) of the *Fair Work Act* sets out the elements of the wage theft offence. Absolute liability applies to paragraphs (1)(a) and (b) and the fault element for paragraphs (1)(c) and (d) is intention.

Offence – failing to pay certain amounts as required

(1) An employer commits an offence if:

(a) the employer is required to pay an amount (a required amount) to, on behalf of, or for the benefit of, an employee under:

(i) this Act; or

(ii) a fair work instrument; or

(iii) a transitional instrument (as continued in existence by Schedule 3 to the Transitional Act); and

(b) the required amount is not an amount covered by subsection (2); and

(c) the employer engages in conduct; and

(d) the conduct results in a failure to pay the required amount to, on behalf of, or for the benefit of, the employee in full on or before the day when the required amount is due for payment.

- For paragraph 327A(1)(c), the prosecution must prove beyond reasonable doubt that the defendant intentionally engaged in the relevant conduct. A failure to make a payment, for example, due to a banking error would not be caught by the wage theft offence.
- For paragraph 327A(1)(d), the prosecution must prove beyond reasonable doubt that the defendant intended that their conduct would result in a failure to pay the required amount to, on behalf of, or for the benefit of, the employee in full on or before the day when the required amount is due for payment.
- For there to be an offence, the person must mean to bring about the result (that is, a failure to pay the required amount) or be aware that result will occur in the ordinary course of events.
- This makes clear that underpayments that are accidental, inadvertent, or based on a genuine mistake are not caught by the wage theft offence. For example, if an employer genuinely misclassifies an employee and pays them an hourly rate of \$25 per hour instead of \$30 per hour (for the correct classification), the resulting failure to pay the required amount (\$30 per hour) was not intentional and would not be caught by the offence.
- If, however, an employer paid an employee \$10 per hour, knowing it was below the minimum wage, the resulting failure to pay the required amount (whatever it may be) would be intentional, and caught by the wage theft offence. Exact knowledge of the required amount (to a dollars and cents value) is not required to establish the offence.

Case studies about deliberate/serious wage underpayment (updated 21 February 2025)

Note:

- care should be taken to avoid saying these matters would be captured by the wage theft offence – the offence does not operate retrospectively, and liability is a matter for the courts.
- the findings in these cases were only to the civil standard of proof (balance of probabilities) rather than the criminal standard of proof (beyond reasonable doubt), and
- in several of the cases, it wasn't necessary for the court to make findings about whether the underpayment was intentional (although in some of them, the court did consider whether the contraventions were 'serious contraventions', which required proof that the person 'knowingly' breached their obligations).

7-Eleven franchisees

- Note: 7-Eleven, the franchisor entity, was not the employer of the underpaid workers and was not found to have contravened the Fair Work Act. The cases discussed below relate to employees of franchisees.
- Case details:
 - At the time of the Migrant Workers' Taskforce report, 7-Eleven was the largest convenience and independent petrol retailer, and the third largest private company in Australia, with approximately 650 corporate and franchised stores across the country.
 - Around 20,000 thousand people were employed across the franchises at the time of the underpayments, with the typical employee being a male international student visa holder.
 - In April 2016, the FWO released a report in relation to its findings to an investigation into the 7-Eleven franchise network. It disclosed concerning levels of systemic non-compliance, including instances of deliberate falsification of records in order to disguise underpayment of wages, paying unlawful flat rates to workers, and operating unlawful cash-back schemes.
 - Between September 2015 and February 2020, 7-Eleven back-paid \$173,610,752 in wages, interest and superannuation to 4,043 current and former franchisee employees.
 - The FWO brought 11 cases against 7-Eleven franchisees, resulting in more than \$1.8 million in penalties being awarded against them.
 - In one case, the operator of a Brisbane 7-Eleven store was found to have underpaid 12 employees by a total of over \$82,000 in 2013 and 2014. Federal Circuit Court judge Michael Jarrett found the 7-Eleven franchisee had shown 'contemptuous disregard' for Australian workplace laws and had sought to deceive the Fair Work Ombudsman.

Background:

- [FWO media release](#).
- [7-Eleven partnership improves compliance - FWO](#).
- [Report of the Migrant Workers' Taskforce](#).
- [A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven](#).

IE Enterprises

- Case citation: Fair Work Ombudsman v IE Enterprises Pty Ltd [\[2021\] FCA 60](#).
- Penalty: \$256,000 (\$215,000 against IE Enterprises and \$41,000 against its owner/manager).
- Case details:
 - In 2021 the Federal Court of Australia found that IE Enterprises, which operated 'Uncle Toys' pop-up stores in Melbourne, had deliberately underpaid 8 migrant workers between October 2017 and January 2018.
 - The Federal Court of Australia ordered IE Enterprises to back-pay 8 employees a total of \$21,748.

- o The court found the underpayments were ‘deliberate and systematic and had a significant impact on the relevant employees’.
 - The court also found that the serious contraventions were ‘undertaken in full knowledge that Uncle Toys was breaching its obligations under the [Fair Work] Act and Award.’
- o IE Enterprises paid 8 casual workers as little as \$6.70 an hour, and did not pay some employees for some hours worked. The affected employees were visa holders.
- o The company had been the subject of complaints going back to 2013 and had been provided educational materials and fact sheets by the Fair Work Ombudsman in 2015 and issued with a formal letter of caution in 2016.

Background:

- [FWO media release](#).

De Costi Seafoods Pty Ltd (subsidiary of Tassal)

- Case citation: *The Australian Workers Union v De Costi Seafoods Pty Ltd (No 2)* [2023] FedCFamC2G 102.
- Penalty: \$60,000 paid to the applicant.
- Case details:
 - o In 2015, Tassal (when it acquired De Costi Seafoods) engaged an external industrial relations consultant to review employment arrangements at its Lidcombe processing facility. The external consultant identified that early starters were not being paid overtime, but after seeking oral legal advice, determined that it was not contrary to the award and De Costi did not change its payment arrangements for its employees.
 - o During site visits to the Lidcombe facility, the Australian Workers’ Union (AWU) identified employees who were not paid overtime for hours worked before 6am as required by the 2010 and 2020 Seafood Processing Award.
 - o AWU wrote to De Costi Seafoods about this issue on 9 September 2019; lodged a FWC dispute on 31 October 2019; and commenced proceedings on 20 April 2020 on behalf of two employees who worked early shifts on the production line at the Lidcombe facility.
 - o On 18 March 2022 the Federal Circuit and Family Court of Australia found that De Costi Seafoods had not paid the workers overtime for hours they worked before 6am in contravention of the Award. The two employees’ underpayments totalled \$21,942.34. On 16 February 2023, the Court ordered a penalty of \$60,000.
 - o In the seven months following the judgment (to October 2022) De Costi Seafoods identified and backpaid 230 employees a total of \$1,589,694.10 in overtime rates for shifts worked before 6am.
 - o **Judge Obradovic found (paragraphs 64 – 117 of the 16 February penalty judgment):**
 - **The conduct engaged in by De Costi was long-standing and the need for general deterrence was readily apparent; the Award terms breached were in place to protect vulnerable and low-paid workers.**
 - **De Costi’s interpretation of the Award was unwarranted on a plain reading of the relevant Awards.**
 - **De Costi relied on the advice of an external consultant and did not obtain its own written legal advice at the time, despite being aware there may be an issue with employees not being paid their minimum entitlements.**
 - **De Costi chose not to pay its employees overtime rates for the early hours they were working, even though it knew it might have an obligation to do so, according to an interpretation of the award that was to its benefit and not the benefit of its employees.**

- De Costi maintained its erroneous position despite the issue being raised by the AWU in 2019.
- It was clear that as early as July 2015, Tassal, and as such De Costi Seafoods, was aware that there was an issue with the payment of overtime in respect of employees who commenced work prior to 6am, as it had been alerted to this through its external consultant.
- The conduct was deliberate, and senior management was involved.

Background:

- [AWU media release](#).

Sushi Bay

- Case citation: Fair Work Ombudsman v Sushi Bay Pty Ltd (in liq) (No 3) [\[2024\] FCA 869](#).
- Penalty: \$15,300,000 (split between five respondents)
- Case details:
 - This underpayments case primarily involved migrant workers/temporary visa holders from Korea. The workers were underpaid more than \$650,000.
 - The employer had a history of prior contraventions (warnings provided and penalties imposed in 2019). FWO had been monitoring Sushi Bay since 2009.
 - Workers were employed by different entities within the broader Sushi Bay corporate group at restaurants in New South Wales, Canberra, and Darwin.
 - All entities were controlled by a single sole director, Rebecca Shin. Ms Shin approved the payroll policies that led to the systematic underpayments. She then attempted to conceal the contraventions by providing false records to the FWO.
 - **Justice Katzmann stated that it was necessary “to send a strong signal to employers in the industry that conduct of this kind is unacceptable and will not be tolerated. [The penalties must] make it crystal clear to Ms Shin and other people and companies who employ staff that contraventions of the kind the respondents committed are both unacceptable and economically irrational.”**

Background

- [FWO media release](#).

Blue Sky Kids Land

- Case citation: *Fair Work Ombudsman v Blue Sky Kids Land Pty Ltd (in liq) (No 4)* [\[2024\] FCA 1475](#).
- Penalty: \$5,146,100 (split between four respondents).
- Case details:
 - This case involved the exploitation of primarily Chinese migrant workers, employed by a children’s clothing chain with stores in Sydney, Newcastle and Canberra.
 - Four employees were paid as little as \$10 an hour (less than half the award rates) with no annual leave or superannuation. The underpaid amounts ranged from \$18,434.84 up to \$51,105.51 (inc. superannuation) and accounted for up to 60% of what the workers were entitled.
 - Fair Work Inspectors were blocked from entering premises. Staff were threatened with termination of their employment if they spoke out. Timesheets were deleted in an attempt to cover up the contravening conduct.
 - There was a suspected history of similar conduct. Prior warnings were issued by the FWO. The underpayments continued while litigation was on foot.

Background

- [FWO media release](#).

DTF World Square

- Case citation: *Fair Work Ombudsman v DTF World Square Pty Ltd (in liq) (No 4)* [2024] FCA 341.
- Penalty: \$4,090,716 (split between five respondents)
- Case details:
 - This case involved migrant worker exploitation in the restaurant industry and the use of false records. The Employers (2 entities) operated a chain of popular Taiwanese restaurants in NSW and Victoria.
 - The Employees (17 in total) were mostly migrants from Indonesia or China on student or employer-sponsored visas. They were underpaid \$157,025.
 - The conduct was found to be deliberate. Some contraventions were found to be 'serious contraventions' because they were part of a systematic pattern of conduct. The maximum available penalties were therefore ten times the usual amount.
 - **Justice Katzmann stated: "It goes without saying that the respondents' conduct was extremely serious. This was not merely deliberate wrongdoing. It was deceitful and unscrupulous. It involved a calculated scheme to rob employees of their hard-earned wages and deceive the authorities..."**

Background:

- [FWO media release](#).

85 Degrees Coffee Australia

- Case citation: *Fair Work Ombudsman v 85 Degrees Coffee Australia Pty Ltd* [2024] FCA 576.
- Penalty: \$1,440,000.
- Case details:
 - The employees in this case were primarily vulnerable young workers and/or temporary visa holders. They were underpaid between \$239 to \$15,198 each.
 - The case involved the repeat of similar offending conduct for which 85 Degrees was previously fined \$475,200 in its capacity as an employer. In this matter, 85 Degrees was held liable for conduct occurring after that for which it was fined, and in its capacity as a responsible franchisor.
 - After being investigated by the FWO (for conduct that eventually resulted in the \$475,200 fine), 85 Degrees transitioned its business structure from that of direct employment to franchisee/franchisor.
 - The franchise system replicated many of the non-compliant practices that 85 Degrees had in place when it was the employer. This then resulted in its franchisees committing the same contraventions.
 - Underpayments totalled \$32,321.19 and arose from various failures by eight franchisees to pay minimum wages, casual loadings, penalty rates, overtime and allowances required by the General Retail Industry Award 2010. Franchisees also failed to provide proper records and payslips.
 - Higher penalties were imposed primarily in response to the poor history of compliance (Enforceable Undertaking entered into in 2015 and ignored, and \$475,200 in penalties handed down previously in *FWO v 85 Degrees Coffee* [2022] FCA 1317).

Background:

- [FWO media release](#).

Foot and Thai Massage Pty Ltd

- Case citation: *Fair Work Ombudsman v Foot & Thai Massage Pty Ltd (in liquidation) (No 8)* [2024] FCA 483.
- Penalty: \$966,890 (\$778,100 against the company, \$150,140 against its owner/director, \$38,650 against the workers' supervisor)
- Case details:
 - The case involved 'systematic exploitation' of 7 Filipino migrant workers and temporary visa holders employed as massage therapists at a parlour in Canberra.
 - Between June 2012 and February 2016, the workers (who spoke limited English) were underpaid a total of \$971,092, and subjected to coercion, discrimination and adverse action. The workers were threatened with having their families killed if they complained.
 - **Justice Katzmann found that the director had hired the workers, set their wages and conditions, and managed the business of Foot and Thai Massage Pty Ltd. Justice Katzmann found that the director was involved in the contraventions, stating "He was the person who decided to underpay the massage therapists, the person who required them to work unreasonable hours, and the person who threatened them and took other adverse action against them".**
 - **Justice Katzmann found that the conduct was deliberate, "extremely serious" and involved "systematic exploitation" of vulnerable visa holders who were in a precarious position as their continuing residence in Australia depended on their continuing employment. Further, Justice Katzmann stated: "The overwhelming majority of the contravening conduct was deliberate and intentional, rather than inadvertent or careless."**

Background

- [FWO media release](#)

KLM Foods Pty Ltd

- Case citation: *Fair Work Ombudsman v KLM Foods Pty Ltd* [2025] FedCFamC2G 140.
- Penalty: \$162,172.36 (\$135,143.63 against the company, \$27,028.73 against the sole director)
- Case details:
 - The operator of two Tasmanian petrol stations was fined for underpaying four migrant workers.
 - In addition to being underpaid minimum wages, overtime rates, and other penalty rates, the company and its director breached the Fair Work Act by requiring one of the workers to then make an unlawful cashback payment of \$6,353.
 - KLM Foods also knowingly provided workers with false pay slips and knowingly provided the FWO with false timesheets.
 - **Justice Blake found : "the conduct of the Respondents was deliberate and that means there is a real need for specific deterrence in this case".**

Background

- [FWO media release](#).

Archived: Tuesday, 21 July 2026 4:49:43 PM
From: s 22(1)
Sent: Tuesday, 21 April 2026 1:16:57 PM
To: s 22(1)
Cc: s 22(1); s 22(1); [HALLAS,Emma](#); s 22(1); s 22(1); [GRACIK-ANCZEWSKA,Lavinia](#); s 22(1); s 22(1)
Subject: RE: Seeking WRL advice by 12pm Tue 21 Apr: MO request: DEWR Submission - Inquiry into Wage Theft [SEC=OFFICIAL]
Sensitivity: Normal

Thanks s 22 (and s 22(1) very much appreciated!

We'll let you know if the MO has any further queries.

Cheers
s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Tuesday, 21 April 2026 1:11 PM
To: s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; HALLAS,Emma <Emma.Hallas@dewr.gov.au>; s 22(1) @dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: FW: Seeking WRL advice by 12pm Tue 21 Apr: MO request: DEWR Submission - Inquiry into Wage Theft [SEC=OFFICIAL]

Hi s 22(1)

Please see draft text, cleared by the WRL coverage team (thanks to s 22 and team).

s 22(1)

.....

In short, we would explain the carve out for the wage theft offence as follows:

- The wage theft offence, and specifically the carve out in s 327A(2) of the Fair Work Act, reflects the limits of the Commonwealth's power to legislate in respect of certain matters that were reserved for state and territory regulation.
- When states (excluding Western Australia) referred their workplace relations powers to the Commonwealth for the purposes of the Fair Work Act, some matters were reserved for state and territory regulation (see s 27(2) Fair Work Act), including:
 - superannuation
 - long service leave, except in relation to an employee who is entitled under Division 9 of Part 2 - 2 to long service leave
 - leave for victims of crime
 - attendance for service on a jury, or for emergency service duties.
- The states did not refer their powers for these matters to the Commonwealth, and continue to regulate them (mostly) at the state level.
- The Fair Work Act is underpinned by the corporations power, territories power and the inherent power to regulate itself in the Constitution. This means the Commonwealth can regulate employment conditions for most employees, including those employed by constitutional corporations and those working in territories. The Fair Work Act is also supplemented by the referrals of workplace relations powers by states (excluding Western Australia) to the Commonwealth. This means the Fair Work Act also extends to employees of sole traders or partnerships and some

state and local governments (commonly referred to as ‘referral employees’).

- However, due to the scope of these referrals, the Commonwealth is unable to regulate the matters listed above for referral employees. This means that the wage theft offence does not apply to referral employees in respect of the confined entitlements listed above.

From: s 22(1) @dewr.gov.au
Sent: Monday, 20 April 2026 11:10 AM
To: s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; GRACIK-ANCZEWSKA,Lavinia @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
<Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) @dewr.gov.au
Subject: Seeking WRL advice by 12pm Tue 21 Apr: MO request: DEWR Submission - Inquiry into Wage Theft [SEC=OFFICIAL]

Hi s 22

Thanks for the chat just now!

As discussed, we’ve just received a request from the Minister’s office for advice on the “*state referral powers re criminal wage theft provision - some more explanatory detail on this via email if possible*” (DLO email [below](#)). We’d be most grateful for your **advice on how best to explain to the MO how state referrals function regarding the criminal offence by 12pm tomorrow (Tue 21 Apr) if possible**. This’ll allow us time to get this to the MO by mid-afternoon tomorrow as requested.

For your reference, I’ve [attached](#) the version of the submission sitting with the Minister for noting prior to departmental lodgement of the submission.

Always happy to chat.

Cheers
s 22(1)

s 22(1) (he/him)
Workplace Justice Reform
s 22(1)

From: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>
Sent: Monday, 20 April 2026 10:07 AM
To: DLO Rishworth <s 47E(d) @dewr.gov.au>; s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Subject: RE: MO request: DEWR Submission - Inquiry into Wage Theft [SEC=OFFICIAL]

Thanks s 22(1) we will pull this information together in consultation with the FWO by 3pm tomorrow.

Kind regards,
Lavinia

Lavinia Gracik-Anczewska
AS, Workplace Exploitation Branch
s 47F(1)

From: DLO Rishworth <s 47E(d) @dewr.gov.au>
Sent: Monday, 20 April 2026 9:53 AM
To: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>
Cc: DLO Rishworth <s 47E(d) @dewr.gov.au>
Subject: MO request: DEWR Submission - Inquiry into Wage Theft [SEC=OFFICIAL]

Good morning Lavinia,

S 22 is requesting some information in relation to the department's submission to the Inquiry into Wage Theft:

- Number of investigations which are resolved by FWO via cooperative agreement & compliance with small business code & pursued via civil remedies (broken down as a percentage/ proportion of investigations).
- **State referral powers re criminal wage theft provision - some more explanatory detail on this via email if possible.**

Grateful if we could please receive this by 3pm tomorrow.

Many thanks,
S 22

S 22(1) | Departmental Liaison Officer
Workplace Relations | Office of the Hon Amanda Rishworth MP
Australian Government Department of Employment and Workplace Relations
M: S 22(1) | E: S 47E(d) [@dewr.gov.au](mailto:S22(1)@dewr.gov.au)
[Please note I am located and work from Adelaide, SA – Kurna Country]



The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

Archived: Tuesday, 21 July 2026 10:38:11 AM
From: s 22(1)
Sent: Tuesday, 21 April 2026 2:01:39 PM
To: s 22(1)
Cc: s 22(1); s 22(1); [GRACIK-ANCZEWSKA, Lavinia](#); [FOGARTY, Anthony](#)
Subject: RE: Seeking FWO advice by 12pm Tue 21 Apr: FWO investigation data s 22(1)
Sensitivity: Normal

s 22(1)

Hi s 22(1)

Thanks for reaching out to us on this request and apologies for the delay in getting back to you. We have set out a proposed response to the MO's query below:

- Noting that the FWO's criminal jurisdiction is relatively new and applies prospectively, to date no small businesses employers have requested access to protection under the Voluntary Small Business Wage Compliance Code and no employers have sought to enter into a cooperation agreement with the FWO.
- Of interest, the FWO continues to see a high-volume of self-reports (where businesses and/or their representatives willingly report non-compliance issues to the FWO) which is increasing year-on-year. For example, the FWO received 92 self-reports in the first half of FY25-26 (tracking towards double the rate of self-reports received by the FWO in FY21-22) and 162 self-reports for the whole of FY24-25, compared with 127 self-reports in FY23-24. These increases in self-reports could indicate that the commentary around and implementation of the criminal wage theft amendments (and the communication and education activities undertaken by the FWO) are having a deterrent effect and that businesses are actively seeking to identify and fix workplace relations issues.

s 22(1)(a)(ii)

We hope this information is of assistance. Please feel free to give me a call to discuss further if you'd like.

Kind regards,
s 22(1)

 s 22(1) (she / her) | A/g Director

Workplace Relations Policy
FAIR WORK OMBUDSMAN

T: s 22(1)

E: s 22(1) [@fwo.gov.au](mailto:s 22(1)@fwo.gov.au)

s 22(1)

s 22(1)

From: s 22(1) <@dewr.gov.au>
Sent: Monday, 20 April 2026 10:41 AM
To: s 22(1) <@fwo.gov.au>
Cc: s 22(1) <@fwo.gov.au>; s 22(1) <@dewr.gov.au>; GRACIK-
ANCZEWSKA, Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; FOGARTY, Anthony <Anthony.Fogarty@fwo.gov.au>
Subject: Seeking FWO advice by 12pm Tue 21 Apr: FWO investigation data s 22(1)

s 22(1)

Hi s 22(1)

s 22(1)(a)(ii)

As flagged via teams, we've just received a request from the Minister's office for advice on the "number of investigations which are resolved by FWO via cooperative agreement & compliance with small business code & pursued via civil remedies (broken down as a percentage/ proportion of investigations)."

s 22(1)(a)(ii) we'd be most grateful for your advice on this request by 12pm tomorrow (Tue 21 Apr) to allow us time to get this to the MO by mid-afternoon tomorrow as requested.

Always happy to chat.

Cheers
s 22(1)

s 22(1) (he/him)
Workplace Justice Reform
s 22(1)

s 22(1)

Archived: Tuesday, 21 July 2026 10:54:46 AM
From: [DLO Rishworth](#) [DLO Rishworth](#)
Sent: Tuesday, 21 April 2026 2:50:24 PM
To: s 22(1)
Cc: [DLO Rishworth](#) [GRACIK-ANCZEWSKA,Lavinia](#); s 22(1); [DLO Rishworth](#)
Subject: RE: MO request: DEWR Submission - Inquiry into Wage Theft [SEC=OFFICIAL]
Sensitivity: Normal

Hi s 22(1)

Wonderful! Thank you very much to the team for pulling this together so quickly, appreciate the work that goes into these requests.

I have passed this on to s 22 – she may reach out directly if there are any further questions.

Cheers,
 s 22(1)

s 22(1) | Departmental Liaison Officer | Workplace Relations | Office of the Hon Amanda Rishworth MP
 M: s 22(1) | E: s 47E(d) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au)

From: s 22(1) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au)
Sent: Tuesday, 21 April 2026 2:40 PM
To: DLO Rishworth <s 47E(d) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au)>
Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) [@dewr.gov.au](mailto:s22(1)@dewr.gov.au); [@dewr.gov.au](mailto:s22(1)@dewr.gov.au);
Subject: RE: MO request: DEWR Submission - Inquiry into Wage Theft [SEC=OFFICIAL]

Hi s 22(1)

Please find responses to s 22(1) queries below. We've drawn on the FWO's advice to inform the response to s 22(1) first question.

s 22(1)(a)(ii)

Number of investigations which are resolved by FWO via cooperative agreement & compliance with small business code & pursued via civil remedies (broken down as a percentage/ proportion of investigations).

- The FWO has advised that, noting that the criminal jurisdiction is relatively new and applies prospectively, to date no small businesses employers have requested access to protection under the Voluntary Small Business Wage Compliance Code and no employers have sought to enter into a cooperation agreement with the FWO.
- The FWO noted that they continue to see a high-volume of self-reports (where businesses and/or their representatives willingly report non-compliance issues to the FWO) which is increasing year-on-year.
 - For example, the FWO received 92 self-reports in the first half of FY25-26 (tracking towards double the rate of self-reports received by the FWO in FY21-22) and 162 self-reports for the whole of FY24-25, compared with 127 self-reports in FY23-24.
 - The FWO advised that these increases in self-reports could indicate that the commentary around and implementation of the criminal wage theft amendments (and the communication and education activities undertaken by the FWO) are having a deterrent effect and that businesses are actively seeking to identify and fix workplace relations issues.

State referral powers re criminal wage theft provision - some more explanatory detail on this via email if possible.

- The wage theft offence, and specifically the carve out in s 327A(2) of the [Fair Work Act 2009](#) (Fair Work Act), reflects the limits

of the Commonwealth's power to legislate in respect of certain matters that were reserved for state and territory regulation.

- When states (excluding Western Australia) referred their workplace relations powers to the Commonwealth for the purposes of the Fair Work Act, some matters were reserved for state and territory regulation (see s 27(2) Fair Work Act), including:
 - superannuation
 - long service leave (except in relation to an employee who is entitled under Division 9 of Part 2-2 to long service leave)
 - leave for victims of crime
 - attendance for jury service, or for emergency service duties.
- The states did not refer their powers for these matters to the Commonwealth, and continue to regulate them (mostly) at the state level.
- The Fair Work Act is underpinned by the corporations power, territories power and the inherent power for the Commonwealth to regulate itself in the Constitution. This means the Commonwealth can regulate employment conditions for most employees, including those employed by constitutional corporations and those working in territories.
 - The Fair Work Act is also supplemented by the referrals of workplace relations powers by states (excluding Western Australia) to the Commonwealth. This means the Fair Work Act also extends to employees of sole traders or partnerships and some state and local governments (commonly referred to as 'referral employees').
 - However, due to the scope of these referrals, the Commonwealth is unable to regulate the matters listed above for referral employees. This means that the wage theft offence does not apply to referral employees in respect of the confined entitlements listed above.

Always happy to chat.

Cheers

s 22(1)

s 22(1) (he/him)
Director (a/g) | Workplace Justice Reform
Entitlements Safeguards Division
s 22(1)

s 22(1)

Archived: Tuesday, 21 July 2026 10:26:15 AM
From: s 22(1)
Sent: Wednesday, 22 April 2026 9:45:13 AM
To: [CARR, Henry](#)
Cc: [GRACIK-ANCZEWSKA, Lavinia](#); s 22(1); s 22(1); s 22(1);
s 22(1); s 22(1); s 22(1)
Subject: Seeking Henry's review by 10am (sorry!): DRAFT FWO submission - Wage Theft Inquiry [SEC=OFFICIAL]
Sensitivity: Normal
s 22(1)(a)(ii); s 22(1)(a)(ii)
Attachments: ;[Draft DEWR Submission - Wage Theft Inquiry \(April 2026\).docx](#) ;RE MO request
DEWR Submission - Inquiry into Wage Theft SECOFFICIAL.msg ;

Hi Henry

s 22(1)(a)(ii)

Background

s 22(1)(a)(ii)

The department's submission (also **attached**) was developed in consultation with the FWO and is currently sitting with the MO for the Minister's noting by tomorrow (22 Apr). The department's submission provides:

- information on the purpose and current operation of criminal wage theft provisions, which commenced on 1 January 2025
- the broader civil remedy framework and the FWO's graduated enforcement framework to deter and sanction non-compliance with workplace obligations,
- information about the independent review of the Closing Loopholes legislation, and
- a brief overview of the FWO's role, noting the FWO covers this in more detail in its submission.

For your reference, I've **attached** advice we sent to the MO yesterday on FWO investigations data and constitutional

limitations on the wage theft offence.

Please let me know if you have any questions.

Cheers
s 22(1)

s 22(1)(a)(ii)

s 22(1)

From: s 22(1)
Sent: Thursday, 23 April 2026 2:50 PM
To: s 22(1)
Cc: s 22(1) ; s 22(1) ; s 22(1) ; s 22(1)
Subject: RE: Materials on wage theft - policy placemats s 22(1)

s 22(1)

Thanks, s 22(1) This will be useful for SES briefing for the public hearings of the Senate wage theft inquiry.

Cheers,

s 22(1)

s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Thursday, 23 April 2026 2:42 PM
To: s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: FW: Materials on wage theft - policy placemats s 22(1)

s 22(1)

FYI

s 22(1)

A/g Principal Economist / A/g Director

Office of the Chief Economist

Labour Market Analysis and Advice Section

Australian Government Department of Employment and Workplace Relations

Phone: s 22(1)

Website: dewr.gov.au



s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Friday, 17 April 2026 6:12 PM
To: s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>;

s 22(1) [@dewr.gov.au](#)>; s 22(1) [@dewr.gov.au](#)>; s 22(1)
[@dewr.gov.au](#)>; s 22(1) [@dewr.gov.au](#)>; s 22(1)
[@dewr.gov.au](#)>

Subject: RE: Materials on wage theft - policy placemats s 22(1)

s 22(1)

Hi s 22

Please see below updated estimates for the proportion of employees paid under the National Minimum Wage.

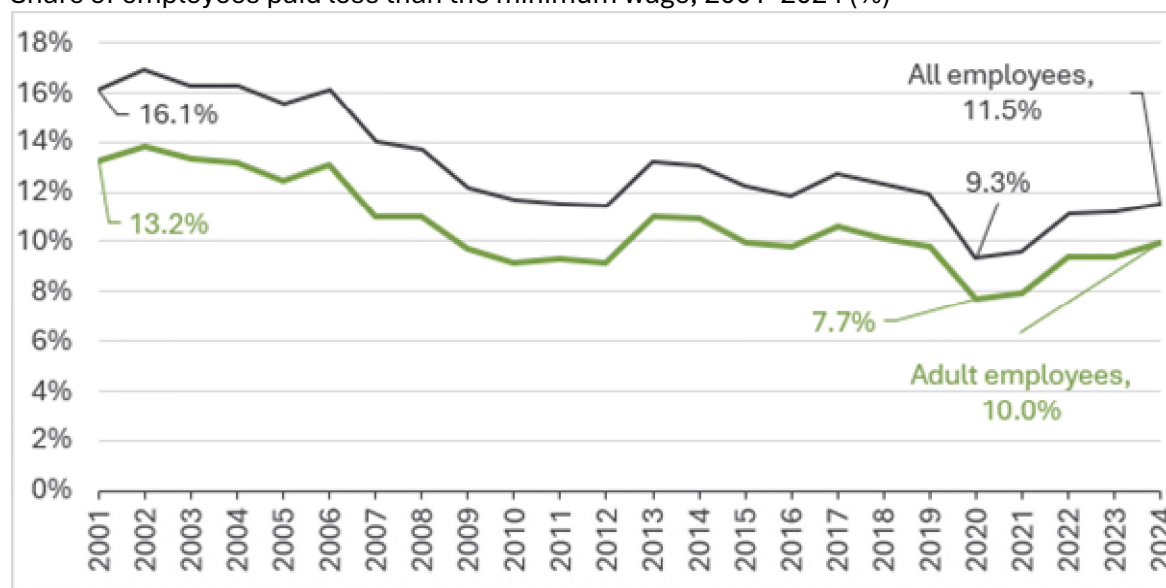
There are considerable revisions to the 2022 HILDA data, which now shows an increase from 2021 to 2022 instead of a substantial fall in the information we previously provided. We also updated our calculation to better align with the junior rates across the time series. However, this has only had a minimal effect on the information provided.

The latest data from HILDA (2024) shows the incidence of being paid under the National Minimum Wage (NMW) has increased since the beginning of COVID:

- **11.5 per cent of all employees** appeared to be receiving less than the NMW in 2024, compared to 11.2 per cent in 2023 and 11.1 per cent in 2022.

s 47C(1)

Chart 1: The incidence of being paid under the National Minimum Wage has risen from a trough in COVID
Share of employees paid less than the minimum wage, 2001–2024 (%)



Source: DEWR analysis, HILDA Waves 1–24.

Note:

1) These estimates of workers receiving less than the National Minimum Wage underestimates the actual number due to: the inclusion of payments such as penalty rates in the earnings data used which is not included in the National Minimum Wage; it excludes employees that are short stay (less than 12 months) migrants who are more vulnerable and likely to be

exploited; and does not consider the various awards and collective agreements minimum rates of pay which are above the National Minimum Wage.
s 47C(1)

Please let me know if you have any questions.

Thanks,
s 22
/s/

s 22(1)
A/g Director

Economics Branch
Office of the Chief Economist
Australian Government Department of Employment and Workplace Relations
Phone s 22(1)
dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

s 22(1)

s 22(1)(a)(ii)

**Pages 61-68 removed under section 22(1)(a)(ii) of the
*Freedom of Information Act 1982.***

**These pages contain information that would reasonably
be regarded as irrelevant to the request for access.**

s 22(1)

From: s 22(1)
Sent: Thursday, 30 April 2026 3:24 PM
To: s 22(1)
Cc: DEWR - External budgets EWR; s 22(1) ; s 22(1) ; s 22(1)
Subject: RE: Wage Theft Inquiry Budget Handling s 22(1)

s 22(1)

Thanks for the review, s 22(1)

Cheers,

s 22
 ...

s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Thursday, 30 April 2026 2:06 PM
To: s 22(1) @dewr.gov.au>
Cc: DEWR - External budgets EWR <s 47E(d) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: FW: Wage Theft Inquiry Budget Handling s 22(1)

s 22(1)

Hi s 22(1)

Our minor edits in **green** and comments in **blue**:

s 47C(1)

Regards

s 22(1)
 Assistant Director

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s 22(1)

From: s 22(1) @dewr.gov.au
Sent: Wednesday, 29 April 2026 10:13 AM
To: DEWR - External budgets EWR <s 47E(d) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au>
Subject: Wage Theft Inquiry Budget Handling s 22(1)

s 22(1)

Hi team,

We are finalising SES talking points for the public hearing for the Senate wage theft inquiry next Monday (4 May).
We have limited time to settle agreed handling. s 47C(1)

The costing agreement explains what the prediction is based upon on page 6 (attached).

Could you please review the proposed handling below and confirm you are comfortable with it? In particular, please confirm:

- whether any additional caveats or wording are needed.

We would appreciate your advice by **COB tomorrow (Thursday 30 April)**. Apologies for the short notice.

s 47C(1)

Kindly,

s 22(1)

Workplace Compliance Section | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone S 22(1)

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s 22(1)

Archived: Monday, 20 July 2026 10:56:07 AM
From: s 22(1)
To: s 22(1)
Cc: s 22(1)
Subject: FW: Wage Theft Inquiry on Monday s 22(1)
Importance: Normal
Sensitivity: None
Attachments: s 22(1)(a)(ii) ; ; FW_ Seeking WRL advice by 12pm Tue 21 Apr_ MO request_
 DEWR Submission - Inquiry into Wage Theft [SEC=OFFICIAL].msg

Hi s 22
 ^^`

I've suggested a couple of minor edits below. The **attached** that s 22
 ^^` sent back to the Policy team is also on point and sets
 out the issue in a bit more detail. It may be a bit too detailed for Monday, but it was prepared for the MO and s 11C(1)(a) has cleared
 it.

s 22(1)(a)(ii)

Cheers

s 22
 ^^`

s 22(1) (she/her)
 Principal Government Lawyer

Coverage and Contractors Team
 Bargaining and Coverage Branch | Workplace Relations Legal Division
 Australian Government Department of Employment and Workplace Relations
 Ph: s 22(1) | M: s 22(1)
dewr.gov.au

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If I can assist with any **adjustments**, please let me know.

From: s 22(1) @dewr.gov.au>
Sent: Friday, 1 May 2026 10:46 AM
To: s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: Wage Theft Inquiry on Monday s 22(1)

s 22(1)

Hi s 22
 ^^`

As discussed, Emma is appearing at the wage theft inquiry on Monday. Below is an exert from the TPs policy prepared on coverage for the wage theft measure. Noone expects the questioning will get to this level of detail. Nevertheless, grateful if you could please review for anything redline today and send through any additional off the shelf TPs or products you guys have about coverage which you think might help Emma understand how it all works ahead of the hearing to give her some comfort.

Really appreciate your help as always.

s 47C(1)

s 22

s 22(1)

Principal Government Lawyer

Forms of Work, Unfair Dismissal and National Employment Standards Team | Employment Standards and Institutions Branch

Workplace Relations Legal

Australian Government Department of Employment and Workplace Relations

Phone S 22(1)

Mobile S 22(1)

dewr.gov.au

s 22(1)(a)(ii)

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s 22(1)

s 22(1)

From: s 22(1)
Sent: Monday, 4 May 2026 8:39 AM
To: BRAYSHAW,Elizabeth; GRACIK-ANCZEWSKA,Lavinia
Cc: s 22(1)
Subject: RE: wage theft inquiry - complexity of the system [SEC=OFFICIAL]

Thanks Liz

We'll check in with ECD and get some points this morning.

Cheers

s 22(1)

From: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Sent: Sunday, 3 May 2026 2:30 PM
To: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1)
 @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>
Subject: wage theft inquiry - complexity of the system [SEC=OFFICIAL]

Hi

Reading AI Group submission, just wanted to check on how we handle complexity of system – ACCI or others may raise tomorrow

Who would be best placed to update points around complexity of the system – is SCHADS award Anshu? And what has happened out of the FWC Modern Awards Review

I have asked Bridie if she has the points re: DEWR's underpayment

The following were in the Bill's debate folder

What is the government doing to address the complexity of awards?

- The Government is delivering on its commitments, including those made to members of the crossbench through passage of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, by supporting a targeted review of modern awards.
- The Commission has confirmed that the Modern Awards Review will invite parties to advance proposals to make modern awards easier to use, while not reducing entitlements for employees. This process will focus on the seven most-commonly used awards covering retail, hospitality, childcare, clerical, social, community and disability services.
- The President has consulted with stakeholders on a timeline for the review. Proposals to make awards easier to use will be considered from December 2023 to April 2024. The Commission intends to issue a report finalising the review by the end of June 2024.
- Complementary to the review, the Department of Employment and Workplace Relations is scoping and researching how regulatory technology might increase the usability of the workplace relations system, including the awards system.
- The Fair Work Ombudsman is experienced in providing education, advice and assistance to employers of all sizes on how to comply with workplace laws. This is one of the Ombudsman's

functions under the Fair Work Act, and the Government funds the Fair Work Ombudsman to perform this function.

- The Fair Work Ombudsman provides information and resources to assist employers to determine the correct pay and conditions for their workers. These educational resources will be updated to reflect changes in the law.

Why is the Government introducing criminal penalties when the majority of underpayments occur due to the complexity of the industrial laws?

- The Government recognises that most employers are doing the right thing, and where underpayments occur they can result from honest mistakes. Employers that make a genuine effort to meet their obligations will not be prosecuted under these new laws, which only criminalise intentional underpayments.
- The Migrant Workers' Taskforce and the recent Senate inquiry into the unlawful underpayment of employees' remuneration heard evidence of widespread, deliberate wage theft, particularly of vulnerable workers.
- Stamping out this practice will not only help get workers their correct entitlements, but will also benefit honest employers by levelling the playing field, and ensuring they are not competing with businesses who are ripping off employees.

Elizabeth Brayshaw

First Assistant Secretary

Entitlements Safeguards Division

Australian Government Department of Employment and Workplace Relations

Phone S 47F(1) | Mobile S 47F(1)

Elizabeth.brayshaw@dewr.gov.au

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s 22(1)

From: BRAYSHAW,Elizabeth
Sent: Monday, 4 May 2026 8:52 AM
To: HALLAS,Emma; GRACIK-ANCZEWSKA,Lavinia
Cc: s 22(1) ; s 22(1) ; s 22(1) ; s 22(1) ;
s 22(1) ; s 22(1)
Subject: RE: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Thanks Emma

Let's find a time to chat this morning – I'll get s 22(1) to look at options for a time that works for you and Lavinia

From: HALLAS,Emma <Emma.Hallas@dewr.gov.au>
Sent: Monday, 4 May 2026 8:37 AM
To: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Subject: RE: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Thanks Lavinia and Liz. s 22(1) has raised a good point about whether we have identified technical issues currently being considered in the CLR and whether we take the line that those issues are matters currently being considered by the (other review) and we do not wish to pre-empt the findings of the independent reviewer.

I think this is a sensible approach, given where the review is at, but think it would be useful to know which technical elements we have identified.

Happy to discuss further when we chat.

Emma Hallas

Senior Executive Lawyer|Assistant Secretary

Employment Standards and Institutions Branch
Workplace Relations Legal Division
Australian Government Department of Employment and Workplace Relations

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dewr.gov.au

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Working on Ngunnawal country



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From: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>

Sent: Sunday, 3 May 2026 10:12 PM

To: HALLAS,Emma <Emma.Hallas@dewr.gov.au>; BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>

Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;

s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au

Subject: RE: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Hi Emma and Liz

I had a similar list of follow-up queries to discuss tomorrow as per Liz's list **below**, with a few related queries added in blue.

s 47C(1)

Cheers

Lavinia

Lavinia Gracik-Anczewska

AS, Workplace Exploitation Branch

s 47F(1)

From: HALLAS,Emma <Emma.Hallas@dewr.gov.au>

Sent: Sunday, 3 May 2026 8:20 PM

To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>

Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1)

@dewr.gov.au; s 22(1) @dewr.gov.au

Subject: RE: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Thanks Liz. Your responses look fine from my perspective. I am just testing some of the corporate criminal responsibility aspects and the interaction with the Criminal Code with the team and will come back to you in morning.

Kind regards

Emma Hallas

Senior Executive Lawyer|Assistant Secretary

Employment Standards and Institutions Branch
Workplace Relations Legal Division
Australian Government Department of Employment and Workplace Relations

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dewr.gov.au

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From: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>

Sent: Sunday, 3 May 2026 2:20 PM

To: HALLAS,Emma <Emma.Hallas@dewr.gov.au>

Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1)
<@dewr.gov.au>

Subject: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Hi Emma

Hope you are going ok - we will touch base tomorrow on the wage theft inquiry as we had a good chat with the FWO and line of where DEWR and FWO would respond to issues.

there were a couple of items which I wanted to check in with you from the submissions – and I have drawn some responses from the debate folder prepared when the Closing Loopholes Bill was going through.

AI Group submission – they don't currently look like they are appearing

- Late payments should not be covered (draft response below from Bill debate folder)
 - Parliament has previously considered and rejected limiting the offence to systematic patterns of conduct. Excluding late payments would also create practical problems including defining when lateness becomes non-payment. In any event, both the FWO and CDPP emphasise that criminal referrals and prosecutions are reserved for the most serious conduct, guided by public interest factors such as the nature and gravity of the alleged contraventions, which provide additional safeguards.

- Criminal corporate responsibility and suggesting that it inappropriately provides for negligence-based culpability (para 50) – **if this came up, would you handle?**
- s 47C(1)

Law Council submission – they are not appearing but just wanted to check understanding

- Recommends the Committee seek to clarify whether the wage theft offence applies to a failure to pay contractual entitlements as under s 323 of the Fair Work Act – **(draft response below is from Bill debate folder)**
 - o **The offence does not apply to contractual entitlements beyond what an employee is entitled under a FW instrument (NES, modern awards or enterprise agreement).**
 - o **It is not consistent with Cth criminal practice to criminalise breaches of arrangements under employment contracts.**
 - o **Civil enforcement options would be available.**
- Recommends the Committee consider whether s 327C(2) ought to be amended to provide greater clarity to the commencement of the limitation period, noting the offence provides that proceedings for the wage theft offence may be commenced within six years after the commission of the offence – ie how will continuing failures be handled?
s 47C(1)
- Queries whether the safe harbour provisions provide the intended level of protection from prosecution, noting whilst the FWO may be prohibited from making referrals if it is satisfied that a small business employer complied with the Voluntary Small Business Wage Compliance Code, another person (employee or union) is not restricted from doing so, and could the DPP/AFP
s 47C(1)

SDA submission (who are appearing)

The SDA submission recommends restoring the right for registered orgs to inspect time and wages records and conduct spot checks. **The following is mentioned the debate folder**

Should unions have the power to conduct investigations and commence prosecutions? / Will this give unions 'police powers' on wage theft? (media team)

- o The Fair Work Ombudsman and Australian Federal Police will be empowered to investigate criminal underpayment.
- o Only the Commonwealth Director of Public Prosecutions and Australian Federal Police will be able to commence prosecutions.
- o Public prosecutors are best placed to conduct complex criminal trials, including jury trials.
- o This is consistent with key Commonwealth laws, such as the Corporations Act and the Competition and Consumer Act.
- o Under the Fair Work Act, unions have powers of entry, inspection and enforcement that enable them to investigate suspected contraventions of the Fair Work laws and instruments, and seek wage redress for their members.
- o These existing right of entry provisions under the Fair Work Act seek to balance the rights of unions to represent members, and the rights of employers to go about their business without undue inconvenience.

What about private prosecutions?

- o Public prosecutors are best placed to conduct complex criminal trials, including jury trials.
- o This is consistent with key Commonwealth criminal laws that include offences, such as the Corporations Act and the Competition and Consumer Act.
- o Individuals and employee organisations will still be able to bring proceedings for civil contraventions of the FW Act.

Elizabeth Brayshaw

First Assistant Secretary

Entitlements Safeguards Division

Australian Government Department of Employment and Workplace Relations

Phone S 47F(1) | Mobile S 47F(1)

Elizabeth.brayshaw@dewr.gov.au

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Education and Employment References Committee – Wage theft

Technical or drafting issues raised in the submissions

Stakeholder submission	Technical or drafting issue	TP's
Australian Industry Group	- The wage theft offence was introduced on the basis that it would only apply to “intentional conduct”. <i>Absolute liability</i> applies to s 327A(1)(a) and (b) (s 6.2 Criminal Code) <i>Intention</i> is the fault element for s 327A(1)(c) and (d) (s 5.2 Criminal Code) - However, under s 12.3(1) of the Criminal Code, if ‘intention’ is a fault element, it must be attributed to a body corporate employer if it “expressly, tacitly or impliedly authorised or permitted the offence”. - The means by which such an authorisation or permission may be established include proving: - that the board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence - that a high managerial agent intentionally, knowingly or recklessly carried out the relevant conduct, or expressly tacitly or impliedly authorised or permitted the commission of the offence - that a corporate culture existed that directed encouraged, tolerated or led to non-compliance with the relevant provision - that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision (s 12.3(2) Criminal Code).	- The whole of government policy regarding the criminal liability of corporations is set out in the Criminal Code. s 47C(1) - Corporations, by their nature, are not capable of having an ‘intention’. - The provisions of the Criminal Code overcome this by attributing liability to corporations in specified circumstances.

	• A ‘due diligence’ defence can be made out where a corporation is able to prove it exercised due diligence to prevent the conduct, authorisation or permission. AiG submits that this means liability for a corporate employer largely depends on whether it had adequate governance, payroll controls, training, auditing and escalation pathways. ○ This is inconsistent with the policy objective of targeting <i>intentional</i> non-compliance. • The AiG also notes that the ‘due diligence’ defence only applies to the high managerial agent attribution set out in s 12.3(2)(b) (s 12.3(3)). AiG submits that the ‘due diligence’ framework should be extended by additionally requiring proof of intention through board/high managerial agent authorisation when considering if a corporation has or does not have a compliant corporate culture. Alternatively, the ‘due diligence’ defence should be extended to culture-based attribution.	
	• Section 327A is drafted broadly to capture deliberate non-payment, but also intentional <i>late</i> payment. • AiG submits this creates a significant compliance and governance problem for employers and “blurs the boundary” between genuinely criminal conduct and deliberate withholding of entitlements. ○ This is triggered by the drafting of “the conduct results in a failure to pay the required amount... on or before the day when the required amount is <i>due for payment</i>” (s 327A(1)(d)) ○ AiG submits that the provision should instead be formulated on the premise of the required amount being “<i>never paid</i>” to the employee.	s 47C(1)
Law Council of Australia	• Section 327A is formulated as an employer committing an offence where they are required to pay an amount under “this Act”.	s 47C(1)

	• There is authority that s 323 (method and frequency of payment) includes the payment of entitlements, e.g. bonuses and commissions, under a contract of employment. • The Law Council submits it should be clarified whether the wage theft offence would apply to a failure to pay contractual entitlements.	s 47C(1)
	• Subsection 327C(2) provides for proceedings to be commenced within 6 years of the offence being commissioned. • There is established authority that says a failure to ‘pay an amount’ is a continuing offence for as long as it remains unpaid, and that the statutory limitation period starts when the amount is <i>paid</i>. • It should be clarified whether the wage offence is intended to operate in this way.	s 47C(1)

		s 47C(1)
	• Section 327B(2) prohibits the FWO from referring offences under s 327A(1) to the DPP or the AFP if it is satisfied a small business employer complied with the Voluntary Small Business Wage Compliance Code. ○ This does not prohibit another person (e.g. an employee or a union) from referring the conduct, nor prohibit the DPP or the AFP from commencing proceedings for a wage theft offence. ○ It should be clarified whether the provisions are intended to operate this way.	s 47C(1)

Archived: Tuesday, 21 July 2026 10:57:26 AM
From: [BRAYSHAW,Elizabeth](#)
Sent: Monday, 4 May 2026 10:39:35 AM
To: [HALLAS,Emma](#)
Cc: [S 22\(1\)](#) [GRACIK-ANCZEWSKA,Lavinia](#)
Subject: RE: For urgent action tomorrow: Wage theft inquiry - couple of issues [SEC=OFFICIAL]
Sensitivity: Normal

Thanks Emma

We have suggested we change time so we can hear more of the hearing – I think we have a meeting at lunch

I think it would be good to have a chat about this suggestion around 'late payment' and 'corporate criminal resp' – just listing to Australian security industry industry

From: HALLAS,Emma <Emma.Hallas@dewr.gov.au>
Sent: Monday, 4 May 2026 10:28 AM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>
Subject: FW: For urgent action tomorrow: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Hi both

Please see below, further amendments to the points raised by Liz and happy to speak to the further queries in our catch up.

Kind regards

Emma Hallas
 Senior Executive Lawyer|Assistant Secretary

Employment Standards and Institutions Branch
 Workplace Relations Legal Division
 Australian Government Department of Employment and Workplace Relations

Mobile|S 47F(1)

[dewr.gov.au](#)

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From: [S 22\(1\)](#) [@dewr.gov.au](#)>
Sent: Monday, 4 May 2026 9:58 AM
To: HALLAS,Emma <[Emma.Hallas@dewr.gov.au](#)>; [S 22\(1\)](#) [@dewr.gov.au](#)>
Subject: RE: For urgent action tomorrow: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Hi Emma

Pls see additional text in purple text.

S 22

S 22(1)
 Phone S 22(1) | Mobile S 22(1)

From: HALLAS,Emma <[Emma.Hallas@dewr.gov.au](#)>
Sent: Sunday, 3 May 2026 8:19 PM
To: [S 22\(1\)](#) [@dewr.gov.au](#)>; [S 22\(1\)](#) [@dewr.gov.au](#)>
Subject: For urgent action tomorrow: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Hi both

For urgent action first thing tomorrow and before 10am. Can you please review the below and provide any further points that haven't been covered by Liz.

Can you also please address the highlighted bit.

Kind regards

Emma Hallas
Senior Executive Lawyer|Assistant Secretary

Employment Standards and Institutions Branch
Workplace Relations Legal Division
Australian Government Department of Employment and Workplace Relations

Mobile|S 47F(1)

dewr.gov.au

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From: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Sent: Sunday, 3 May 2026 2:20 PM
To: HALLAS,Emma <Emma.Hallas@dewr.gov.au>
Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; S 22(1) <@dewr.gov.au>
Subject: Wage theft inquiry - couple of issues [SEC=OFFICIAL]

Hi Emma

Hope you are going ok - we will touch base tomorrow on the wage theft inquiry as we had a good chat with the FWO and line of where DEWR and FWO would respond to issues.

there were a couple of items which I wanted to check in with you from the submissions – and I have drawn some responses from the debate folder prepared when the Closing Loopholes Bill was going through.

AI Group submission – they don't currently look like they are appearing

- Late payments should not be covered (draft response below from Bill debate folder)
 - Parliament has previously considered and rejected limiting the offence to systematic patterns of conduct. Excluding late payments would also create practical problems including defining when lateness becomes non-payment. If an employee steals from an employer, it does not stop being theft just because the employee has repaid the employer. The same applies here.
 - In any event, both the FWO and CDPP emphasise that criminal referrals and prosecutions are reserved for the most serious conduct, guided by public interest factors such as the nature and gravity of the alleged contraventions, which provide additional safeguards.
- Criminal corporate responsibility and suggesting that it inappropriately provides for negligence-based culpability (para 50) – if this came up, would you handle?
 - The whole of government policy regarding the criminal liability of corporations is set out in the Criminal Code.
 - Corporations, by their nature, are not capable of having an 'intention'. The provisions of the Criminal Code overcome this by attributing liability to corporations in specified circumstances - the offence provision does not use the fault element of negligence, so the provisions of the Criminal Code dealing with attributing liability for corporate negligence do not apply.

Law Council submission – they are not appearing but just wanted to check understanding

- Recommends the Committee seek to clarify whether the wage theft offence applies to a failure to pay contractual entitlements as under s 323 of the Fair Work Act – (draft response below is from Bill debate folder)
 - The offence provision applies in relation to payments that are required under the Act, including s 323. Section 323 requires payment to be made in full, without any unlawful deductions (which may include an amount payable under a contract).
 - This means that a case could potentially be made for wage theft if there is an underpayment for purposes of s 323. This has not been tested by a court.
 - The offence does not otherwise apply to contractual entitlements beyond what an employee is entitled under a FW instrument (NES, modern awards or enterprise agreement).
 - It is not consistent with Cth criminal practice to criminalise breaches of arrangements under employment contracts.

- Civil enforcement options would be available.
- Recommends the Committee consider whether s 327C(2) ought to be amended to provide greater clarity to the commencement of the limitation period, noting the offence provides that proceedings for the wage theft offence may be commenced within six years after the commission of the offence – ie how will continuing failures be handled?
 - The provisions have not been tested by a court. However, we would expect the provisions to work in the same way as the long-established limitation provision for civil contraventions currently applies. That is, a charge cannot be brought for an underpayment that has occurred outside the 6-year limitation period. There is no reason to believe that they would not operate as intended at this stage.
 - The department will monitor the operation of these provisions to ensure they operate as intended.
 - Decisions about how charges are laid, including the number of charges and how they are particularised, will be a matter for the prosecutor and will depend on the circumstances of each case.
 - The nature and extent of breaches will be fact specific and would also be a matter for the FWO to consider in the context of chain of evidence.
 - Separately, the common law principle of totality will require a judge who is sentencing an offender for a number of offences to ensure that the aggregation of the sentences is appropriate for total criminality involved. In this way, the Court will be able to balance the sentence or penalty appropriately to the crime.
- Queries whether the safe harbour provisions provide the intended level of protection from prosecution, noting whilst the FWO may be prohibited from making referrals if it is satisfied that a small business employer complied with the Voluntary Small Business Wage Compliance Code, another person (employee or union) is not restricted from doing so, and could the DPP/AFP
 - The FWO is the regulatory body primarily responsible for investigating alleged wage theft, so it is appropriate that these provisions apply to the FWO, not others. Criminal investigations are resource-intensive, and evidentiary standards are very high, making competent referrals from other bodies unlikely (although not impossible).
 - Practically, it is possible that a party other than the FWO could refer a matter to the AFP/DPP. However, this would require the DPP/AFP to assess the merits of the case, in line with the prosecution policy and would need to take into account the public interest – this would likely include whether the FWO had referred the matter to the AFP/DPP due to the Code.

SDA submission (who are appearing)

The SDA submission recommends restoring the right for registered orgs to inspect time and wages records and conduct spot checks. The following is mentioned the debate folder

Should unions have the power to conduct investigations and commence prosecutions? / Will this give unions 'police powers' on wage theft? (media team)

- The Fair Work Ombudsman and Australian Federal Police will be empowered to investigate criminal underpayment.
- Only the Commonwealth Director of Public Prosecutions and Australian Federal Police will be able to commence prosecutions.
- Public prosecutors are best placed to conduct complex criminal trials, including jury trials.
- This is consistent with key Commonwealth laws, such as the Corporations Act and the Competition and Consumer Act.
- Under the Fair Work Act, unions have powers of entry, inspection and enforcement that enable them to investigate suspected contraventions of the Fair Work laws and instruments, and seek wage redress for their members.
- These existing right of entry provisions under the Fair Work Act seek to balance the rights of unions to represent members, and the rights of employers to go about their business without undue inconvenience.

What about private prosecutions?

- Public prosecutors are best placed to conduct complex criminal trials, including jury trials.
- This is consistent with key Commonwealth criminal laws that include offences, such as the Corporations Act and the Competition and Consumer Act.
- Individuals and employee organisations will still be able to bring proceedings for civil contraventions of the FW Act.

Elizabeth Brayshaw
First Assistant Secretary

Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone S 47F(1) | Mobile S 47F(1)
Elizabeth.brayshaw@dewr.gov.au

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing connection to land, waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

s 22(1)

From: s 22(1)
Sent: Monday, 4 May 2026 11:07 AM
To: s 22(1)
Cc: MADDOCK,Alanna; s 22(1) ; DE SILVA WIJEYERATNE,Anshu; GRACIK-ANCZEWSKA,Lavinia; s 22(1) ; s 22(1) ; s 22(1)
Subject: RE: Seeking complexity TPs by 11:30am: briefing for inquiry appearance today [SEC=OFFICIAL]

Thanks s 22(1) much appreciated!

From: s 22(1) @dewr.gov.au>
Sent: Monday, 4 May 2026 10:14 AM
To: s 22(1) @dewr.gov.au>
Cc: S 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; DE SILVA WIJEYERATNE,Anshu <Anshu.DeSilvaWijeyeratne@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: FW: Seeking complexity TPs by 11:30am: briefing for inquiry appearance today [SEC=OFFICIAL]

Hi s 22(1)

Please find attached an updated placemat on complexity in the WR framework we have prepared for upcoming estimates. The attachments provide specific examples raised by employer groups by way of background/context.

Please let me know if you need anything further and happy to discuss.

Kind regards

s 22(1)

s 22(1)
 Director
 Awards Policy | Safety Net Branch
 Employment Conditions Division
 Australian Government Department of Employment and Workplace Relations
dewr.gov.au

Please note that I job share with s 22(1) s 22(1)(a)(ii)

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: s 22(1) @dewr.gov.au>
Sent: Monday, 4 May 2026 8:59 AM
To: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Cc: MADDOCK,Alanna <Alanna.Maddock@dewr.gov.au>; s 22(1) @dewr.gov.au>; DE SILVA WIJEYERATNE,Anshu <Anshu.DeSilvaWijeyeratne@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia

Subject: Seeking complexity TPs by 11:30am: briefing for inquiry appearance today [SEC=OFFICIAL]

Hi all

Hope you had a good weekend!

Ahead of Liz and Lavinia appearing at the [Senate inquiry on wage theft](#) today, we are seeking your input this morning on current points about WR system complexity. Sincere apologies for the short timeframe but we're seeking any updates to the points below by 11:30am today if possible.

Consistent with Ai Group's longstanding position, their submission to the inquiry ([attached](#)) recommends the government repeal the criminal wage theft offence, pending a rationalisation and simplification of the WR system, particularly in relation to employees' entitlements and award obligations.

Previous, outdated points are below (note these were part of the debate folder and not points for use by departmental officials).

What is the government doing to address the complexity of awards?

- The Government is delivering on its commitments, including those made to members of the crossbench through passage of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, by supporting a targeted review of modern awards.
- The Commission has confirmed that the Modern Awards Review will invite parties to advance proposals to make modern awards easier to use, while not reducing entitlements for employees. This process will focus on the seven most-commonly used awards covering retail, hospitality, childcare, clerical, social, community and disability services.
- The President has consulted with stakeholders on a timeline for the review. Proposals to make awards easier to use will be considered from December 2023 to April 2024. The Commission intends to issue a report finalising the review by the end of June 2024.
- Complementary to the review, the Department of Employment and Workplace Relations is scoping and researching how regulatory technology might increase the usability of the workplace relations system, including the awards system.
- The Fair Work Ombudsman is experienced in providing education, advice and assistance to employers of all sizes on how to comply with workplace laws. This is one of the Ombudsman's functions under the Fair Work Act, and the Government funds the Fair Work Ombudsman to perform this function.
- The Fair Work Ombudsman provides information and resources to assist employers to determine the correct pay and conditions for their workers. These educational resources will be updated to reflect changes in the law.

Why is the Government introducing criminal penalties when the majority of underpayments occur due to the complexity of the industrial laws?

- The Government recognises that most employers are doing the right thing, and where underpayments occur they can result from honest mistakes. Employers that make a genuine effort to meet their obligations will not be prosecuted under these new laws, which only criminalise intentional underpayments.
- The Migrant Workers' Taskforce and the recent Senate inquiry into the unlawful underpayment of employees' remuneration heard evidence of widespread, deliberate wage theft, particularly of vulnerable workers.
- Stamping out this practice will not only help get workers their correct entitlements, but will also benefit honest employers by levelling the playing field, and ensuring they are not competing with businesses who are ripping off employees.

Always happy to chat.

Cheers

s 22(1)

s 22(1) (he/him)
Workplace Justice Reform
s 22(1)

Topic	Complexity in the WR Framework
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Assistant Secretary	s 22(1)
----------------------------	---------

Key points

Fair Work framework

- The National Employment Standards (NES), Modern Awards and the National Minimum Wage (NMW) form the safety net of minimum terms and conditions of employment for national system employees.
- The workplace relations framework is designed to be a simple layered structure comprising of:
 - o The NES as the foundation, which are a set of universal minimum standards enshrined in legislation.
 - o Modern awards, which build on the NES to set minimum wages and conditions of employment for specific industries and occupations. The independent Fair Work Commission is responsible for making, varying and revoking modern awards, either on their own initiative or on application by employers or employees they or their representatives.
 - o Enterprise agreements which are negotiated and agreed between the employers and employees and their representatives at the enterprise-level.
- The framework settings are settled, with each component having an important role that has evolved over time.
- Modern awards and enterprise agreements are important in determining how the minimum standards in the NES interact with payments, penalties and other monetary entitlements.
 - o For example, modern awards include terms dealing with arrangements for when work is performed, overtime and penalty rates, and industry-specific redundancy schemes.

The FWC has done significant work to simplify awards since modernisation

- The Commission has undertaken plain language redrafting of 118 awards, as part of the 4-yearly review of modern awards, and conducted the Modern Awards Review 2023-24, where it invited parties to make proposals on how to make the most commonly used awards easier to use.
- These endeavours to simplify awards have made it clear that complexity means different things to different stakeholders.
 - o For example, summary tables of rates of pay were inserted into many awards as part of the plain language redrafting of awards. While some stakeholders view these tables as inserting complexity and onerous detail into awards, others view them as providing clarity.

- The government has supported processes to simplify awards, including the Modern Awards Review 2023-24, and in doing so has made clear its position that award simplification should not be at the expense of employee entitlements.

Background

There are diverging views on framework complexity

- Employer groups generally argue that the workplace relations framework should be less prescriptive to enable, rather than restrict, flexibility.
- Unions have generally opposed employer proposals on the basis that they would reduce worker entitlements and note that the framework must contain a necessary level of detail to protect worker entitlements.
- See **Attachment A** for examples of framework complexity raised in submissions to the NES inquiry.
- See **Attachment B** for examples of modern award complexity raised by stakeholders.

Modern Awards Review 2023-24

- Following publication of the Final Report on 18 July 2024, the Commission initiated 6 own-motion matters to address priority issues emerging from the Review:
- **Retail Award matter – awaiting decision.** In August 2024, the Commission commenced a review of the Retail Award, as this award attracted the most proposals for change in the making awards easier to use stream of the Review and is the most commonly used award. The Commission joined this matter to applications from employers to add exemption rates clauses into the award.
- **Develop a working from home model clause in the Clerks Award – awaiting decision.** This matter, which commenced in August 2024, arose from the work and care stream of the Review.
- **Review of the Amusement, Events and Recreation Award – awaiting decision.** This matter, arising from the arts and culture stream of the Review is considering whether the Amusement Award clearly and adequately establishes minimum terms of employment for arts workers.
- **Establish a standard model for part-time employment – early stages.** This matter arose from the job security stream.
- The Commission has also concluded a review of fixed-term contract provisions in higher education awards (complete, arising from the job security stream) and variations to clarify coverage of arts workers in the Live Performance Award (complete, arising from the arts and culture stream).

Last Cleared By	
Date Last Cleared	XX.05.2026
Division	Safety Net Branch WR Employment Conditions

Attachment A: Stakeholder submissions to the NES Inquiry on Framework Complexity

Issue	Example	Analysis
Clarify interactions between the NES and other workplace instruments	- Employer groups recommend clarifying interactions between the NES and other instruments, such as modern awards and enterprise agreements, to enable employers to confidently navigate their workplace relations obligations. - The Chamber of Commerce and Industry WA (submission 23) recommend removing modern award terms that reproduce NES entitlements and rely on the NES exclusively. Australian Industry Group (submission 113) recommend moving rules clarifying when it is appropriate for an employer to direct employees to take annual leave from awards to the NES. - The National Farmers Federation (submission 25) recommend establishing strict interactions rules such as a hierarchy of WR instruments (such as award terms always superseding NES terms when there is doubt).	- The role of modern awards is to sit above or complement the NES to set minimum wages and conditions of employment at an industry or occupation level. This is why the Fair Work Act allows awards to supplement or modify NES entitlements to better suit industry need. - Similarly, enterprise bargaining allows employers, employees and their representatives to agree tailored settings that are right for their workplace, so long as the agreement leaves the employees better off overall.
Ordinary hours definition	- Stakeholders have called for a consistent definition of ordinary hours in the NES to ensure employment practices such as averaging of hours can operate. - For example, the Minerals Council of Australia (submission 60) recommends that where an employee has agreed to a full-time roster that exceeds 38-hours, these hours are treated as ‘reasonable additional hours.’ - Employer groups argue that the current set of factors that determine if an overtime request is ‘reasonable’ is ambiguous. If an employer requires overtime to deliver their work, they want certainty that they can request additional hours from their employees. They argue that when an employee agrees to work additional hours above their ordinary hours, that should constitute a reasonable request (as the employee agreed to it).	- While the NES does not set ordinary hours, it interacts with ordinary hours when setting the parameters for maximum weekly hours. - Under the NES (section 62), the maximum weekly hours for a full time employee are 38 hours and for employees other than full-time, the lesser of 38 hours or the employee’s agreed ordinary hours. - Employers may request their employees to work ‘reasonable additional hours’ and the NES provide the circumstances where employees may refuse such a request. - Modern awards and enterprise agreements can vary ordinary hours according to industry need. - For example, the Retail Award contains extended ordinary hours to enable late night shopping. - Clarifying how ordinary hours operate in the NES would limit existing flexibility in these instruments.
Annualised Salaries	- Employer groups are seeking legislative reform to permit using set-off arrangements to pay annualised salaries. They argue arrangements for annualised wage arrangements in awards have onerous record keeping and reconciliation processes that contribute to “technical non-compliance”. - Specifically, Business Council of Australia (submission 40) and Mineral Council of Australia (submission 60) seek an amendment to the NES to permit the payment of an annualised wage instead of hourly rates/penalty rates. Australian Chamber of Commerce and Industry (submission 74), Australian Industry Group (submission 113) and Australian Resources & Energy Employer Association (submission 70) have also called for reform.	These submissions respond to a 5 September 2025 Federal Court decision in proceedings brought by the Fair Work Ombudsman (FWO) and class action litigators against Coles and Woolworths, which is likely to impact employer practices around using employment contracts to pay annualised salaries.
Allow IFAs to vary NES entitlements	Ai Group (submission 113) recommend legislative reform to: - enable Individual Flexibility Arrangements (IFAs) to vary NES entitlements. - create an IFA mechanism for award- and agreement-free workers in the NES. - Specifically, Ai Group note that the ability to change public holidays and vary maximum working hours are common requests from members and their employees. - FWC research indicates that changes to working hours are the most common use of IFAs. - From the General Manager’s report into individual flexibility arrangements under section 653 of the Fair Work Act 2009, February 2025, 53% of respondents surveyed reported that they made an IFAs that modified start times and 43% modified end times.	- All awards and enterprise agreements must include a flexibility clause allowing the creation of IFAs, as per sections 144 and 202 of the Fair Work Act. - Under awards, IFAs can vary working hours, overtime rates, penalty rates, allowances or leave loadings. For registered agreements, the flexibility clause in the agreement will say what can be changed. IFAs cannot exclude the NES. - IFAs must leave the employee better off overall than original instrument (award or agreement), but there is no formal process of review or registration of IFAs by the FWC.
Express leave accrual in terms of hours instead of days	- Following the high court decision in <i>Mondelez</i>, stakeholders have expressed that personal/carer’s leave accrual, currently expressed in days, remains ambiguous in the Fair Work Act for non-full-time workers or it can be difficult to calculate pro-rata accrual for small business employers. Business Council of Australia (submission 40), Mineral Council of Australia (submission 60) and Australian Industry Group (submission 113) note the ambiguity in personal/carer’s leave and recommend changing it to hourly accrual. - Modern awards and enterprise agreements entitlements are not always expressed in terms of hours worked.	- These requests respond to a 2020 High Court decision in <i>Mondelez v AMWU</i>, where the Court ruled personal/carer’s leave accrues pro-rata based on an employee’s working pattern, not as 10 calendar days. - The High Court defined ‘a day’ in the Fair Work Act as one-tenth of an employee’s ordinary hours in each two-week period. - The reference in the NES to ‘a day’ has been complicated by some leave accruing pro-rata and other leave, such as paid family domestic violence leave, accruing as a number of calendar days in full each year regardless of the working pattern of the employee. - Employer submissions argue this ruling should be formalised in legislation to avoid misinterpretation of the leave accrual in the future.
Industry specific redundancy schemes inconsistencies	- Submissions from Master Plumbers Australia (submission 48), the Housing Industry Association (submission 26) and an unnamed individual (submission 36) note that industry-specific redundancy schemes in awards do not interact with some provisions in the NES. - Specifically, section 120 and 121 of the Fair Work Act do not apply. These sections, respectively: - allow employers to make applications to the FWC to reduce redundancy pay in specific circumstances, and - exempt small business from aspects of the redundancy pay entitlement.	- Under section 141 of the Fair Work Act, modern awards can include industry-specific redundancy schemes if the scheme was included in the award as part of the award modernisation process or if an award includes such a scheme and the FWC makes or varies another award so that it covers some or all of the employees covered by the scheme. 5 modern awards, including the Plumbing and Fire Sprinklers Award, contain these schemes. - The Commission considered the scheme in the Plumbing and Fire Sprinklers Award in the 4-yearly review of modern awards ([2018] FWCFB 6019), finding there was no basis for its removal.

Attachment B: Examples of award complexity raised by stakeholders

Issue	Example	Context
Delineation between awards and NES	• Business Council of Australia (submission 40 to the NES Review) argue the “interaction between modern awards and the NES is rarely intuitive, requiring detailed technical analysis”. ◦ This reflects their submission to the Modern Awards Review 2023-24 where they suggested there may be opportunity for clearer delineation between what is regulated by awards and what is regulated by the NES. (Business Council of Australia submission to the MAR, 22 December 2023) • HR Nicholls (submission 52 to the NES Review) argue no clear boundary distinguishes what should be in the NES compared to awards and this has led “to the now uncontrollable expansion of the prescriptive nature of awards”.	• The role of modern awards is to sit above or complement the NES to set minimum wages and conditions of employment at an industry or occupation level. This is why the Fair Work Act allows awards to supplement or modify NES entitlements to better suit industry need. •
Number of pay points and triggers for different payments / length	• HR Nicholls (submission 52 to the NES Review) argue “the seven most common awards have an average of 36 classifications each and if extrapolated out, we would have a separate wage for every 3,347 employees in Australia. This heavy reliance on narrowly defined classifications adds incredible layers of complexity to Australia’s wage structure”. • HR Nicholls tie this criticism to the Federal Court’s decision in Coles and Woolworths litigation. In response to that decision, the Australian Retailers Association noted that the “994 different pay rates across almost 100 pages” of the Retail Award make the award difficult for employers to understand. (Statement on Federal Court decision concerning underpayment of salaried workers under the General Retail Industry Award 2010, 5 September 2025)	• Summary tables of pay rates were inserted into many awards as part of the plain language redrafting undertaken in the 4 yearly review of modern awards. These were included following a Citizen Co-Design process. • The FWC has noted “the simplification process has extended the length of some modern awards, as complex clauses are ‘unpacked’ into subclauses and expressed in plain language. The insertion of schedules of hourly rates and examples have also added to the length of some modern awards, while ensuring that information about minimum entitlements is provided in a simple and accessible form” [2020] FWCFB 810, [9].
Record keeping requirements	• Several employer groups, including Business Council of Australia (submission 40), Mineral Council of Australia (submission 60), and the Australian Resources & Energy Employer Association (AREEA) (submission 70) criticise record-keeping obligations in awards as being onerous and contributing to “technical non-compliance”.	• Awards form part of the minimum safety net of entitlements. • The Fair Work Regulations prescribe record-keeping requirements, and these may be supplemented by modern awards. • In contemporary considerations of award terms that substitute employee entitlements (e.g. annualised wage arrangements cases), the Commission has required record keeping as a means of assessing whether an employee is worse off under a substitution term.
Award coverage – getting your award right in the first place	• Australian Resources & Energy Employer Association (AREEA) (submission 70) argues that modern awards and their classification structures were designed for stable, single industry workplaces and are not reflective of operations in the energy sector where employees perform mixed duties that could fall across multiple awards. Recommends simplification and modernisation of award coverage and classifications and clearer statutory guidance on award coverage. • This mirrors research conducted for the 4 yearly review of modern awards which found a “key challenge for these small business operators was that there did not seem to be a modern award that clearly represented the type of activities of their employees” who are “often required to multi-task and do not fit into neat or clear categories.” Sweeney Research, A Qualitative Research Report on: Citizen Co-Design with Small Business Owners (13 August 2014)	• Modern awards are industry and occupation based. All awards contain a coverage clause that sets out who is covered. • The Fair Work Ombudsman, as the national workplace relations regulator, provides advice, education and assistance on modern awards. This includes the ‘Find my award’ tool and the Pay and Conditions Tool (PACT) to help identify which award may apply.
Interpretation – archaic language, not simple to follow	• AREEA (submission 70) argue that inconsistent terminology across awards, for example, different definitions of shiftwork and continuous shiftworker across the Mining, Electrical, Manufacturing awards can produce materially different outcomes for employees in comparable roster arrangements.	• Modern awards, as industry and occupation based instruments, are tailored to suit the needs of the particular industry they cover. • The Fair Work Commission completed a process of modernising and simplifying the language of modern awards in the plain-language redrafting matter. • From 2015 to 2023 the FWC redrafted 118 awards to use consistent formatting and language.
Understanding changing obligations	• Australian Meat Industry Council (submission 61) argue a “challenge for business is the regulatory uncertainty that arises in circumstances where modern awards are increasingly complex, subject to unpredictable review (including cases initiated by the Fair Work Commission on its own motion) and to proceedings being initiated subsequent to the exercise of modern awards powers by the Fair Work Commission.” • Similar concerns were raised in the Chamber of Commerce and Industry WA’s submission to the Modern Awards Review 2023-24 where it noted “maintaining compliance requires continuous monitoring and understanding of changes within these awards, which can be particularly burdensome for smaller enterprises lacking dedicated expertise or resources in this field.” (Chamber of Commerce and Industry WA submission to the MAR, 20 December 2023)	• The Fair Work Ombudsman, as the national workplace relations regulator, has a key role in supporting employers to understand and comply with their relevant obligations, and employees to understand their entitlements.

s 22(1)

From: s 22(1)
Sent: Monday, 4 May 2026 7:20 AM
To: s 22(1); s 22(1)
Cc: HALLAS, Emma; s 22(1); s 22(1); s 22(1)
Subject: RE: Wage theft inquiry public hearing - Mon 4 May - Senate Education and Employment References Committee [SEC=OFFICIAL]

Thanks s 22(1) Have the SES considered a 'first response' for technical questions on subs that have already been put to the Closing Loopholes review, along the lines of, this is a matter currently being considered by the (other review) and we do not wish to pre-empt the findings of the independent reviewer.

s 22(1)

s 22(1)
 Phone s 22(1) | Mobile s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Friday, 1 May 2026 4:42 PM
To: s 22(1) l@dewr.gov.au>
Cc: HALLAS, Emma <Emma.Hallas@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: RE: Wage theft inquiry public hearing - Mon 4 May - Senate Education and Employment References Committee [SEC=OFFICIAL]

Hi s 22(1)

Please see here for updated briefing materials ahead of Monday's hearing: [Public Hearing Brief - Wage Theft Inquiry.docx](#) noting that Liz and Lavinia will review in detail over the weekend.

We would be looking to defer to WRL should there be any questions around technical issues including corporate criminal responsibility and issues raised by the Law Council in their submission (noting they were not invited to appear at the hearing).

We have developed a [summary of submissions](#) to the inquiry in case useful for your team.

Many thanks
 s 22(1)

From: s 22(1)
Sent: Thursday, 30 April 2026 4:35 PM
To: s 22(1) @dewr.gov.au>
Cc: GRACIK-ANCZEWSKA, Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; HALLAS, Emma <Emma.Hallas@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: RE: Wage theft inquiry public hearing - Mon 4 May - Senate Education and Employment References Committee [SEC=OFFICIAL]

Hi s 22(1)

Thanks once again for your team's review of these points. We'll be sure to share updated materials once finalised on our end.

Many thanks

s 22(1)

s 22(1)

From: s 22(1)

Sent: Thursday, 30 April 2026 11:57 AM

To: s 22(1) @dewr.gov.au

Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; HALLAS,Emma

<Emma.Hallas@dewr.gov.au>; s 22(1) @dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au; s 22(1)

@dewr.gov.au

Subject: RE: Wage theft inquiry public hearing - Mon 4 May - Senate Education and Employment References Committee [SEC=OFFICIAL]

Hi s 22(1)

Just an update on this request. We've made some minor comments and the TPs are now with s 22(1) for clearance.

The main change probably relates to the update on the vic wage theft offence, and a clarification on the Qld offence. s 42(1)

s 22(1)

s 22(1)

From: s 22(1) @dewr.gov.au

Sent: Wednesday, 29 April 2026 1:45 PM

To: s 22(1) @dewr.gov.au

Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; HALLAS,Emma
<Emma.Hallas@dewr.gov.au>; s 22(1) @dewr.gov.au

Subject: RE: Wage theft inquiry public hearing - Mon 4 May - Senate Education and Employment References Committee [SEC=OFFICIAL]

Hi s 22(1)

Please find attached a draft of our briefing for Liz and Lavinia ahead of Monday's hearing.

We are aiming to provide this to Liz by COB today and would be grateful for your team's review and any comments ahead of this if possible.

Very happy to discuss.

Many thanks
s 22(1)

s 22(1)
Assistant Director

Workplace Justice Reform | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone s 22(1) | s 22(1) @dewr.gov.au

From: HALLAS, Emma <Emma.Hallas@dewr.gov.au>
Sent: Tuesday, 28 April 2026 1:51 PM
To: GRACIK-ANCZEWSKA, Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; BRAYSHAW, Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; KERR, Stuart <Stuart.Kerr@dewr.gov.au>
Cc: Deputy Secretary - Workplace Relations <s 47E(d) @dewr.gov.au>; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au>
Subject: Re: Wage theft inquiry public hearing - Mon 4 May - Senate Education and Employment References Committee [SEC=OFFICIAL]

Thanks Lavinia. s 22(1)

I don't imagine there will be much for us in WRL to speak to given the scope of the inquiry but will prepare act

Team - may you please prepare a brief with relevant TPs by cob Thursday. Thank you.

From: GRACIK-ANCZEWSKA, Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>
Sent: Tuesday, April 28, 2026 12:23 pm
To: BRAYSHAW, Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; KERR, Stuart <Stuart.Kerr@dewr.gov.au>; HALLAS, Emma <Emma.Hallas@dewr.gov.au>
Cc: Deputy Secretary - Workplace Relations <s 47E(d) @dewr.gov.au>; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au>
Subject: FW: Wage theft inquiry public hearing - Mon 4 May - Senate Education and Employment References Committee [SEC=OFFICIAL]

Hi Liz, Stuart and Emma

As per below, the wage theft hearing is scheduled for **Monday 4 May from 3:50-430pm** – grateful if you could confirm availability and who should attend from WRL.

Thanks
Lavinia

Lavinia Gracik-Anczewska
AS, Workplace Exploitation Branch
s 47F(1)

From: DEWR - Committee Inquiries <S 47E(d) @dewr.gov.au>
Sent: Tuesday, 28 April 2026 12:03 PM
To: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; CARR,Henry <Henry.Carr@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Cc: DEWR - Secretary Office <s 47E(d) @dewr.gov.au>; Deputy Secretary - Workplace Relations <s 47E(d) @dewr.gov.au>; DEWR - Committee Inquiries <s 47E(d) @dewr.gov.au>
Subject: FW: Wage theft inquiry public hearing, Senate Education and Employment References Committee [SEC=OFFICIAL]
Importance: High

Dear Lavinia and team,

Hearing Request | 4 May 2026

Can you please **ASAP** if DEWR officers (names/ positions) are available to attend in-person or via WebEx for this date and time:

- Date: Monday 4 May 2026
- Time: 3.50 – 4.30 pm (panel appearance; indicative timing only, TBC)
- Location: Committee Room 2R1, Parliament House, Canberra, and via videoconference

Kind regards, s 22

Committee Inquiries Team

s 22(1)	s 22(1)
s 22(1)	s 22(1)
s 22(1)	s 22(1)
s 22(1)	s 22(1)

s 47E(d) @dewr.gov.au
Parliamentary Services | Parliamentary and Governance Branch
Finance Governance and Enterprise Services | Corporate and Enabling Services Group
Australian Government Department of Employment and Workplace Relations
For more information on Estimates, please visit our [Intranet Page](#)

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Committee, EEC (SEN) <eec.sen@aph.gov.au>
Sent: Tuesday, 28 April 2026 11:46 AM
To: DEWR - Committee Inquiries <S 47E(d) @dewr.gov.au>
Cc: Committee, EEC (SEN) <eec.sen@aph.gov.au>
Subject: Wage theft inquiry public hearing, Senate Education and Employment References Committee

Good morning,

The Senate Education and Employment References Committee will be holding a public hearing into the extent to which the [wage theft](#) framework under the *Fair Work Act 2009*, 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.

While the program is yet to be finalised, I wanted to provide you with early notice, as the committee is likely to invite the Department of Employment and Workplace Relations to give evidence. The indicative details are as follows:

- Date: Monday 4 May 2026
- Time: 3.50 – 4.30 pm (panel appearance; indicative timing only, TBC)
- Location: Committee Room 2R1, Parliament House, Canberra, and via videoconference

If representatives are available to attend, could you please let us know whether they would attend in person or remotely, and complete a [Hansard witness form](#) for each witness.

Kind regards,

s 22(1)

s 22(1) | Principal Research Officer

s 11C(1)(a)

Senate Committee Office

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I acknowledge the traditional Custodians of Country throughout Australia and pay my respect to the elders, past and present, of all Australia's Indigenous peoples.

Index for Wage Theft Inquiry Hearing - 4 May 2026

1. Hearing Briefing	Comments	PRINTED Y/N
Public Hearing Briefing		N
Attachment A – Information provided in Questions on Notice		N
Attachment B – Summary of wage theft inquiry submissions		N
2. Wage theft framework		
Senate Estimates briefing, order for production of documents and QoNs		
Wage theft offence summary – SE briefing October 2025		Y
Response to the order of 3 February 2026 (313) relating to the Fair Work Act - Wage theft investigations and proceedings		Y
SQ26-000005 - Wage theft enforcement referrals, resourcing and outcomes (Senator Payman, 2025-26 Additional Estimates. NB. this is the FWO's response, it's with the MO and is likely to be tabled soon)		Y
SQ25-001830 – Unreported wage theft (Senator Payman, 2025-26 Supplementary Budget Estimates)		Y
SQ25-000837 – Wage theft findings and investigations (Senator Payman, 2025-26 Supplementary Budget Estimates)		Y
SQ25-000001 – The new criminal offence for wage theft and how many investigations have occurred (Senator Payman, 2024-25 Additional Estimates)		Y
SQ24-002056 – Consultation process for criminalisation of wage theft provisions (Senator Cash, 2024-25 Supplementary Budget Estimates)		Y
3. Departmental papers / briefing		
DEWR Consultation Paper – Criminalising wage theft and civil penalties reform		Y
Departmental Briefing – Closing Loopholes Review – 4 December 2025		Y
Wage Theft Offence – Intentional Conduct		Y
Talking Points – Fair Work Legislation Amendment (Closing Loopholes) Bill – Wage theft		Y
Wage theft - Q&As - encompassing amendments – 4 Dec 2023		Y
4. Reports		
University of Melbourne, Centre for Employment and Labour Relations Law, Underpaid and Overlooked: The		Y

Wage Theft Crisis Facing Young Workers in Australia , July 2025		
NTEU Wage theft report , November 2023		Y
McKell Institute, Unfinished Business, The Ongoing Battle Against Wage Theft , August 2023		Y
Migrant Worker Justice Institute, International Students and Wage Theft in Australia , June 2020		Y
Report of the Migrant Workers' Taskforce , March 2019 (note 141 pages)		Y
5. Wage theft inquiries and government responses		
Senate Economics References Committee Inquiry report, Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration , March 2022 (182 pages)		Y
Government Response to the Senate Committee Report into unlawful underpayment of employees' remuneration , April 2023		Y
Senate Education and Employment References Committee Inquiry report, Wage theft? What wage theft?! The exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies , November 2018 (116 pages)		Y
Government Response to the Senate Committee Report into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting companies , July 2024		Y
6. Relevant media		
The Australian, Payman wins test of wage theft law , 10 April 2026		
Seven News Toowoomba, Television transcript - Voluntary Small Business Compliance Code , 8 January 2025		
The Australian, 'Paying staff wrongly' 20 per cent of employers fear new workers law , 3 January 2025		
ABC News, Australian bosses on notice as 'deliberate' wage theft becomes a crime , 30 December 2024		
7. Academic articles		
Tess Hardy, Criminalisation of wage theft under the Fair Work Act , Australian Journal of Labour Law, 2024		
8. Inquiry Submissions		
Inquiry submissions		
1. Submission - Mr Michael Sanderson (individual).pdf		Y
2. Submission - Auctioneers and Valuers Association of Australia.pdf		Y
3. Submission - Senator Fatima Payman.pdf		Y
4. Submission - Western NSW Community Legal Centre.pdf		Y

5. Submission - Mr Andrew Bourke (individual).pdf		Y
6. Submission - Dr Smithers et al (academics).pdf		Y
7. Submission - Portable (organisation).pdf		Y
8. Submission - Fair Work Ombudsman.pdf		Y
9. Submission - United Firefighters Union.pdf		Y
10. Submission - National Tertiary Education Union.pdf		Y
<i>Note Submission #11 is the department's submission which is provided in section 1 of the briefing pack</i>		
12. Submission - Shop, Distributive and Allied Employees' Association.pdf		Y
13. Submission - Australian Nursing and Midwifery Federation.pdf		Y
14. Submission - Association for Good Government.pdf		Y
15. Submission - Law Council of Australia.pdf		Y
16. Submission - Australian National Audit Office.pdf (note 151 pages)		
17. Submission - Associate Professor Tess Hardy and Professor John Howe.pdf		Y
18. Submission - Australian Industry Group.pdf	NEW	N
19. Submission - Australian Retail Council.pdf	NEW	N
20. Victorian Trade Hall Council and the Young Workers Centre	NEW	N

Wage theft inquiry brief

Senate Education and Employment References Committee

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The extent to which the wage theft framework under the *Fair Work Act 2009*, 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.

1. Key points

- The department has overarching policy responsibility for the Fair Work Act, which includes a graduated enforcement framework designed to address the full spectrum of non-compliance with workplace obligations. This includes civil and criminal penalty provisions for certain types of non-compliance, including wage underpayment.
- Since 2009, the Fair Work Act's civil compliance framework has operated to deter and address non-compliance, including wage underpayment. This has included the substantial recovery of unpaid entitlements by the Fair Work Ombudsman (FWO), the independent workplace regulator.
 - Since its enactment in 2009, the FWO has recovered in excess of \$2.6 billion in unpaid wages and entitlements for more than 1.4 million workers nationwide.
- The Australian Government introduced the new criminal wage theft offence to provide a greater deterrent and a proportionate response to employers who intentionally underpay their workers, with the potential for serious penalties, including imprisonment. The offence commenced on 1 January 2025.
 - While intended to be used as a last resort for the most serious offending, these criminal penalties will make businesses think more carefully about meeting their workplace obligations and provides a deterrent to deliberate underpayment.
- The criminal wage theft offence applies to national system employers who intentionally engage in conduct that results in an underpayment. The offence does not apply to inadvertent mistakes or miscalculations.
- The department continues to monitor the Fair Work Act's compliance framework, and specifically the impact of recent reforms, including by engaging regularly with the FWO on their compliance and enforcement activities.
- The department also monitors the impact of recent legislative changes through formal review processes.
 - The independent statutory review of the Closing Loopholes legislation is underway and is considering the new criminal wage theft offence as well as the civil remedy framework reforms made by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.
 - The Review's draft report is due to Minister Rishworth by **15 May 2026** and must be published for stakeholder consultation.
 - The Review's final report is due to Minister Rishworth by **15 June 2026** and required to be tabled in both houses within 15 sitting days.

Wage theft

['Wage theft' is not a defined term in the Fair Work Act.]

- Under the Fair Work Act, workers are entitled to be paid for all time spent working and other employee entitlements such as leave payments.

- o Employers must follow certain rules, including pay frequency, providing pay slips, and maintaining records.
- The Fair Work Act governs the employee and employer relationship and provides a safety net of minimum entitlements.
 - o Employees must be paid at least their minimum pay rates and entitlements, and the Fair Work Act sets out these requirements as well as the consequences for employers that do not comply with their workplace obligations.
 - o For example, breaches of the National Employment Standards, a modern award or an enterprise agreement are subject to civil penalties for non-compliance.
 - o Deliberate breaches of payment obligations, including where an employer intentionally underpays an employee, can attract a criminal penalty if relevant thresholds are met.
- We continue to monitor the operation of the wage theft offence. This has been part of the Closing Loopholes review which is due to report by 15 June 2026.

The prevalence of wage underpayment in Australia

- Several inquiries and reports have found that wage underpayments and worker exploitation continues to be an issue in Australian workplaces. This includes the Migrant Workers' Taskforce Report (2019), the Senate inquiry into Unlawful Underpayment of Employees' Remuneration (2022) and the Fair Work Ombudsman's (FWO) Horticulture Compliance Report (2025).
- Measuring prevalence is difficult because underpayments are not consistently reported by the offending employers or impacted workers, and many measures do not track whether underpayment was intentional.
 - o Underpayments can be unreported or underreported, including in circumstances where workers are reluctant to come forward. The Migrant Workers' Taskforce Report found that vulnerable migrant workers can be reluctant to contact government agencies for help, fearing negative consequences such as visa cancellation, detention or removal from Australia, or loss of their job.
- The department's analysis of the latest data from the 2024 Household, Income and Labour Dynamics in Australia (HILDA) Survey (Department of Social Services) suggests 11.5% of all employees appeared to be receiving less than the National Minimum Wage in 2024 (an increase from 11.2% in 2023 and 11.1% in 2022).
 - o This is likely to be an underestimate the extent of underpayments, because many employees are entitled to more than the National Minimum Wage through awards and enterprise agreements, including penalty rates and overtime.

The offence's effectiveness

- The criminal offence is intended as a last resort for the most serious offending, designed to sit within a graduated enforcement framework, with civil remedies remaining

available for most matters, including to address genuine mistakes and non-intentional non-compliance.

- The offence commenced on 1 January 2025 and is designed to provide a greater deterrent and a proportionate response to employers who intentionally underpay their workers.
 - Over a longer period of time, we expect there will be more information available on the operation of the offence.
- The FWO is actively assessing matters and has commenced criminal investigations under the new criminal jurisdiction.
 - New penalty regimes, especially criminal offences, can take time to reach the courts. Criminal investigations often take more time and resources due to more stringent procedural and evidential requirements, including a higher threshold for a successful prosecution.

Number of criminal wage theft referrals to the CDP

[Detailed questions about referrals should be directed to the FWO, as the primary investigative agency for the wage theft offence.]

- Since 1 January 2025, the FWO's Criminal Investigations Branch has assessed 39 matters and commenced 4 investigations into suspected criminal conduct as defined in the wage theft.
- Currently, the FWO has 3 ongoing operations investigating suspected criminal conduct as defined in the criminal wage offence, and 7 matters under assessment to consider progression to criminal investigation.

Funding for the new offence

- In the 2023-24 Mid-Year Economic and Fiscal Outlook (MYEFO), 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 offence.
 - This funding includes \$49.5 million (including capital funding of \$8.3 million) over 4 years (\$11.0 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.
- Adequate resourcing is important to ensure the offence is enforced and achieves deterrence, noting criminal prosecutions require a higher standard of proof.
- Funding also supports guidance and education, so employers and workers understand the new framework and pathways, including the voluntary code and cooperation agreements.

Partial offsets in the 2023-24 MYEFO

- The 2023-24 MYEFO *[extract below]* also noted the costs to support the wage theft offence were to be partially offset using expected non-tax revenue of \$22.6 million over 3

years from 2024-25 (\$8.0 million per year ongoing) recovered from anticipated penalties against those convicted of wage theft offences.

- These figures were based on the best available information at the time for future recoveries relating to the wage theft offence.
- 2023-24 MYEFO extract:

- \$55.0 million over four years from 2023-24 (and \$12.5 million per year ongoing) to introduce a criminal offence for employers who intentionally underpay their workers and for matters of non-compliance to be investigated by the Fair Work Ombudsman and referred to the Commonwealth Director of Public Prosecutions where appropriate. These costs will be partially offset from expected non-tax revenue of \$22.6 million over three years from 2024-25 (and \$8.0 million per year ongoing) recovered from anticipated penalties against those convicted of wage theft offences.

Threshold for the criminal offence

- The department consulted on options for a criminal offence for wage underpayment as part of its public consultation paper in 2023. The options included a knowledge-based offence, a recklessness-based offence and a tiered approach incorporating both thresholds.
- Informed by stakeholder feedback, the government set the threshold of the wage theft offence at intentional underpayment. The offence supplements the Fair Work Act's civil compliance framework by providing the option for criminal penalties for the most egregious cases of non-compliance.
- In addition to the new offence, the government made complementary amendments to strengthen the Fair Work Act's civil remedy provisions in 2024, including a new threshold for 'serious contraventions'. 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'.

2. Criminal wage theft offence

- The *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* amended the Fair Work Act to introduce a criminal offence for the underpayment of wages and certain entitlements by employers and individuals.
- The offence only applies to underpayments from 1 January 2025. It does not apply where underpayments are accidental, inadvertent or based on a genuine mistake.
- The offence forms part of the graduated enforcement framework designed to address the full spectrum of non-compliance with workplace obligations including wage underpayment.

Intent of the criminal offence

- The purpose of the wage theft offence is to encourage employer compliance with Fair Work Act obligations to pay employee wages and entitlements by providing a greater deterrent to non-compliant conduct.
- While intended to be used as a last resort for the most serious offending, the potential for criminal penalties will make businesses think more carefully about meeting their workplace obligations.
- The criminal offence was designed to complement the existing civil remedy framework in the Fair Work Act, which is available to address other forms of underpayment or non-compliance including genuine mistakes.
- In the [Second Reading Speech](#) on 4 September 2023, the then Minister for Employment and Workplace Relations, the Hon Tony Burke MP, stated that *“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.”*

Elements of the offence

- The primary operative provisions for the wage theft offence are at sections 327A to 327C of the Fair Work Act:
 - o Subsection 327A(1) criminalises intentional wage theft and outlines a range of conduct that would constitute an offence, including failure to pay the required amount to an employee. This also extends to unlawful requirements to spend or repay money (subsection 327A(4)).
 - The offence only captures intentional underpayments. It does not apply where the underpayment is accidental, inadvertent or based on a genuine mistake by an employer.
 - Intention is the relevant fault element (section 5.2 of the *Criminal Code*). For a successful prosecution, 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.

- o Section 327B makes provision for the Voluntary Small Business Wage Compliance Code, which provides a pathway to encourage small business employers to self-disclose underpayments to the FWO *[more detail on page 8]*.
- o Section 327C specifies how proceedings for the offences may be commenced. In addition to employers, accessories (including individuals or other corporate entities) can also be prosecuted under ‘related offence provisions’ *[see below]*.

Coverage

[Technical questions on coverage should be referred to WRL, including how the offence relates to the Criminal Code.]

- The offence covers most entitlements payable under the Fair Work Act (National Employment Standards) or fair work instruments (such as modern awards or enterprise agreements).
- To ensure the government meets its election commitment to be a model employer, the Fair Work Act provides for liability for the wage theft offence to be extended to the Commonwealth in its role as an employer (but not other Australian governments).
- A body corporate may be held liable based on the actions of employees and/or agents or officers acting within authority or a failure of corporate culture in relation to the non-compliance (Part 2.5 of the Schedule to the *Criminal Code Act 1995*).
- Exceptions apply, relating to limitations on the States’ referral of powers, which exclude the following matters from being covered by the offence for ‘referral employees’ (those covered by the Fair Work Act by virtue of States’ referral of powers to the Commonwealth):
 - o superannuation
 - o long service leave
 - o paid leave that the employee was entitled to take by reason of being a victim of crime
 - o 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 apply to non-referral employees.

Criminal penalties

- The wage theft offence carries a maximum of 10 years’ imprisonment (which can only apply to an individual), and/or a maximum fine of the greater of:
 - o 3 times the amount of the underpayment, if the court can determine that amount, or
 - o for an individual: 5,000 penalty units (\$1,650,000); or for a body corporate: 25,000 penalty units (\$8,250,000).

- Where an employer is found guilty of committing 2 or more offences that arose out of a course of conduct, for the purposes of sentencing, the person will be taken to be guilty of a single offence.
- The value of a Commonwealth penalty unit (currently \$330) is scheduled to be increased on 1 July 2026, with the amount to be determined as set out in [section 4AA of the Crimes Act 1914](#).

3. Fair Work Ombudsman's role in relation to the criminal offence

[Detailed questions on the FWO's role and operations should be referred to the FWO.]

- The FWO is primarily responsible for investigating the criminal offence. The FWO will then refer matters to the Commonwealth Director of Public Prosecutions (CDPP) for consideration, and prosecution where appropriate.
- The CDPP will then consider if there is sufficient evidence to prove the offence and whether it is in the public interest to prosecute. Matters may also be referred to the Australian Federal Police, as appropriate, including where further investigative assistance is required.
- The FWO was provided \$49.5 million over 4 years from 2023-24 to undertake its role as investigatory agency for the criminal offence. Following an investigation, if it considers there is sufficient evidence to prove the offence and a prosecution is in the public interest, having regard to considerations outlined in the FWO's Compliance and Enforcement Policy, the matter may be referred.
- The FWO has [published information](#) on the criminal offence as part of its education role, to inform businesses, workers and the community.

'Safe harbour' provisions

- In response to stakeholder feedback, the government introduced 2 pathways to encourage employers to self-disclose underpayments to the FWO: the [Voluntary Small Business Wage Compliance Code](#) and [cooperation agreements](#).
- If certain requirements are met in relation to these provisions, the FWO must not refer employers for criminal prosecution.
- These 'safe harbour' mechanisms only operate in relation to possible criminal prosecution, and do not prevent the FWO from taking other enforcement action as appropriate in relation to an underpayment, such as entering into an enforceable undertaking.
- An employee or employee organisation may also take civil action in relation to a contravention.

Voluntary Small Business Wage Compliance Code

- The government developed a [Voluntary Small Business Wage Compliance Code](#) in consultation with business and employee groups.
- The Code provides clarity and certainty for small businesses about how to comply with their wage obligations under the Fair Work Act.
- If the FWO is satisfied that a small business employer has complied with the Code in relation to an underpayment (by demonstrating that an underpayment was not intentional), the FWO must provide written notice to the employer that they will not be referred for prosecution.

Cooperation agreements

- An employer who realises they have may have made a mistake can report an underpayment that could expose them to the wage theft offence to the FWO.
- The FWO may agree not to refer that employer's conduct for prosecution by entering into a cooperation agreement with the employer after considering a list of mandatory factors.
 - These factors include the nature of the underpayment, level of detail disclosed by the employer, the employer's willingness to co-operate in investigatory and rectification activities and the employer's history of compliance.
- Entry into a cooperation agreement does not prevent the FWO from considering civil enforcement options if necessary, including civil penalty litigation.
- The FWO can also cancel a cooperation agreement in situations where the employer has not complied with the agreement or has provided false and misleading information.

Intersections with other agencies

- The FWO works closely with other Commonwealth and state and territory regulators where jurisdictions intersect, including through intelligence sharing, joint investigations and enforcement activities. At Commonwealth level, this includes:
 - the Australian Federal Police as the lead regulator on modern slavery and human-trafficking
 - Australian Border Force as the regulator on exploitation linked to visa and sponsorship non-compliance tied to the Migration Act.

4. Civil remedy framework

- In addition to the criminal offence, the FWO has a range of powers to investigate allegations of wage underpayments and pursue a range of civil remedies under the Fair Work Act.
 - This is relevant to considering the broader framework to address wage underpayment which can range from inadvertent through to serious and systemic underpayments, and wage theft.

- The Fair Work Act allows eligible courts to make a wide range of orders if a person is found to have contravened a civil penalty provision.
 - o These include breaches of the National Employment Standards, modern awards, and enterprise agreements, as well as breaches of record-keeping and pay slip requirements.
 - o An affected party, such as the FWO or an employee, can apply to a court for an order against the alleged wrong-doer when a civil remedy provision is contravened.
 - o Civil penalty orders can include pecuniary penalty orders, which provide for a civil penalty to be paid to the Commonwealth or, where appropriate, for the penalty to be redirected to an impacted party, including organisations.
- Higher civil penalties can apply for ‘serious contraventions’: when a court finds that a person/business knew they were contravening an obligation under workplace laws or were reckless as to whether the contravention would occur.

Closing Loopholes amendments to civil remedy provisions

- The criminal wage theft offence was introduced alongside [amendments to strengthen the Fair Work Act’s civil remedy provisions](#) to address underpayments.
- The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* included amendments to the Fair Work Act that:
 - o increased the maximum civil penalty for a contravention related to an underpayment for a non-small business employer
 - o introduced 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’
 - o increased penalties for non-compliance with a compliance notice.
- Alongside the criminal wage theft offence, these amended civil remedy provisions form a graduated enforcement framework to address the full spectrum of non-compliance with workplace obligations.

Civil penalty amounts

- Civil penalty amounts ordered by a court can be up to:
 - o for an individual: \$19,800 per contravention; \$198,000 per contravention for ‘serious contraventions’ as defined
 - o for a company with fewer than 15 employees: \$99,000 per contravention; \$990,00 per contravention for ‘serious contraventions’
 - o for a company with 15 or more employees: \$495,000 or for contraventions relating to an underpayment, the greater of \$495,000 or 3 times the

underpayment amount per contravention; \$4,950,000, or for contraventions relating to an underpayment, the greater of \$4,950,000 or 3 times the underpayment amount per contravention for some 'serious contraventions'.

Decisions to undertake criminal or civil investigations

[Detailed questions should be referred to the FWO.]

- The FWO uses its publicly available [Compliance and Enforcement Policy](#) to determine the most appropriate enforcement action in each case.
 - In general, investigators prefer to make an election at the start of a case to determine whether they will pursue a civil investigation or criminal investigation.
 - The decision to initiate a criminal investigation, and prepare a brief of evidence, may also involve input from the Commonwealth Director of Public Prosecutions.
- It is possible to pursue both criminal prosecutions and civil proceedings in relation to a particular matter, with strict information barriers between the criminal process and civil process.
- If a person has been convicted of the wage theft offence, civil proceedings may still be commenced, for example, to seek compensation. However, a court cannot order a civil penalty against that person for substantially the same conduct (section 552 of the Fair Work Act).
- It is not intended that a person be punished twice for the same conduct under both Commonwealth and State laws. All jurisdictions have arrangements that protect against 'double punishment' whether under their general Crimes Acts, Criminal Codes or the common law.

5. Closing Loopholes Review

- The Closing Loopholes Review is currently underway and is considering the criminal wage theft offence. As part of its Terms of Reference the review must:
 - consider whether the operation of the amendments is appropriate and effective
 - identify any unintended consequences of the amendments
 - consider whether further amendments to the Fair Work Act, or any other legislation, are necessary to improve the operation of the amendments or rectify any unintended consequences that are identified.
- The Review commenced on 15 December 2025. The call for public submissions opened on 18 December 2025 and closed 3 March 2026.
 - 75 stakeholder submissions to the Closing Loopholes Review have been published on the [department's website](#).
- The preliminary findings and draft recommendations of the review are due to the Minister by **15 May 2026** and will be published for stakeholder comment.

- A final report will be delivered to the Minister on or before **15 June 2026**. The Minister must table the final report in each House of the Parliament within 15 sitting days of receipt.

6. Background

Wage theft legislation in states and territories

- In 2020, Victoria implemented its own state-specific wage theft offence. On 12 December 2025, those laws were repealed, with the Victorian Government explaining they were untenable after the Commonwealth wage theft laws commenced.
- In 2020, Queensland amended its Criminal Code as it relates to stealing to include employers who intentionally fail to make payment of wages or entitlements as they become payable to employees.

Consultation

- In 2023, stakeholders were consulted on the wage theft offence as part of the Closing Loopholes Bill.
- Union representatives supported criminalising wage theft but also wanted to see more done in assisting workers get their underpaid entitlements back quickly.
- Employer representatives were concerned about the impact on small businesses and advocated for a small business code. Employer groups also considered the criminal offence should only apply to deliberate underpayment.

7. Attachments

- **Attachment A** – Supplementary briefing
- **Attachment B** – Information provided in Questions on Notice
- **Attachment C** – Summary of submissions to the inquiry

Attachment A

Supplementary wage theft inquiry briefing

Right of entry/power to conduct investigations

The [SDA submission](#) recommends restoring the right for registered organisations to inspect time and wages records and conduct spot checks.

Power to conduct investigations and make referrals for prosecutions

- The Fair Work Ombudsman and Australian Federal Police will be empowered to investigate criminal underpayment.
- Only the Commonwealth Director of Public Prosecutions and Australian Federal Police will be able to commence prosecutions.
 - o Public prosecutors are best placed to conduct complex criminal trials, including jury trials.
- This is consistent with key Commonwealth laws, such as the Corporations Act and the Competition and Consumer Act.
- Under the Fair Work Act, unions have powers of entry, inspection and enforcement that enable them to investigate suspected contraventions of the Fair Work laws and instruments, and seek wage redress for their members.
 - o These existing right of entry provisions under the Fair Work Act seek to balance the rights of unions to represent members, and the rights of employers to go about their business without undue inconvenience.
 - o Additionally, individuals and employee organisations will still be able to bring proceedings for civil contraventions of the FW Act.

Recent 'right of entry' reforms ([factsheet](#))

- The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* amended the Fair Work Act's right of entry provisions to enhance the ability of entry permit holders to enter a workplace to investigate suspected wage underpayments.
 - o The amendments provide that an entry permit holder can apply to the Fair Work Commission for an exemption certificate, waiving the usual 24-hour notice period for entry to workplaces, but only where the Commission is satisfied there is a suspected underpayment of wages affecting a member of the registered organisation, and reasonably believes that advance notice of entry would hinder an effective investigation into the suspected contravention.
 - o Existing right of entry safeguards under the Act continue to operate, including restrictions on the unauthorised use or disclosure of information and the prohibition on hindering or obstructing any other person.
- These reforms are being considered by the Closing Loopholes Review.

Law Council of Australia – coverage, commencement and safe harbour

The Law Council of Australia's [submission](#) recommends the Committee seek to clarify whether the wage theft offence applies to a failure to pay contractual entitlements as under s 323 of the Fair Work Act.

- The offence provision applies in relation to payments that are required under the Act, including s 323. Section 323 requires payment to be made in full by the required due date, without any unlawful deductions (which may include an amount payable under a contract).
- This means that a case could potentially be made for wage theft if there is an underpayment for purposes of s 323. This has not been tested by a court.
- The offence does not otherwise apply to contractual entitlements beyond what an employee is entitled under a Fair Work instrument (NES, modern awards or enterprise agreement).
- It is not consistent with Commonwealth criminal practice to criminalise breaches of arrangements under employment contracts. Civil enforcement options would be available.

The Law Council also recommends the Committee consider whether s 327C(2) ought to be amended to provide greater clarity on the commencement of the limitation period, noting the offence provides that proceedings for the wage theft offence may be commenced within 6 years after the commission of the offence – i.e. how will continuing failures be handled?

- The provisions have not been tested by a court. However, we would expect the provisions to work in the same way as the long-established limitation provision for civil contraventions currently applies. That is, a charge cannot be brought for an underpayment that has occurred outside the 6-year limitation period. There is no reason to believe that they would not operate as intended at this stage.
- The department will monitor the operation of these provisions to ensure they operate as intended.
- Decisions about how charges are laid, including the number of charges and how they are particularised, will be a matter for the prosecutor and will depend on the circumstances of each case.
- The nature and extent of breaches will be fact specific and would also be a matter for the FWO to consider in the context of chain of evidence.
- Separately, the common law principle of totality will require a judge who is sentencing an offender for a number of offences to ensure that the aggregation of the sentences is appropriate for total criminality involved. In this way, the Court will be able to balance the sentence or penalty appropriately to the crime.

The Law Council queries whether the safe harbour provisions provide the intended level of protection from prosecution, noting while the FWO may be prohibited from making referrals if it is satisfied that a small business employer complied with the Voluntary Small Business Wage

Compliance Code, another person (employee or union) is not restricted from doing so, and could the CDPP/AFP.

- The FWO is the regulatory body primarily responsible for investigating alleged wage theft, so it is appropriate that these provisions apply to the FWO, not others. Criminal investigations are resource-intensive, and evidentiary standards are very high, making competent referrals from other bodies unlikely (although not impossible).
- Practically, it is possible that a party other than the FWO could refer a matter to the AFP/CDPP. However, this would require the CDPP/AFP to assess the merits of the case, in line with the prosecution policy and would need to take into account the public interest – this would likely include whether the FWO had referred the matter to the AFP/CDPP due to the Code.

Coverage of late payments and corporate criminal responsibility

Ai Group's [submission](#) argues that late payments should not be covered by the offence.

- Parliament has previously considered and rejected limiting the offence to systematic patterns of conduct.
- Excluding late payments would also create practical problems including defining when lateness becomes non-payment.
- If an employee steals from an employer, it does not stop being theft just because the employee has repaid the employer. The same applies here.
- In any event, both the FWO and CDPP emphasise that criminal referrals and prosecutions are reserved for the most serious conduct, guided by public interest factors such as the nature and gravity of the alleged contraventions, which provide additional safeguards.

Corporate criminal responsibility

- The whole of government policy regarding the criminal liability of corporations is set out in the Criminal Code.
- Corporations, by their nature, are not capable of having an 'intention'. The provisions of the Criminal Code overcome this by attributing liability to corporations in specified circumstances - the offence provision does not use the fault element of negligence, so the provisions of the Criminal Code dealing with attributing liability for corporate negligence do not apply.

Small claims

Small claims review/tribunal

- Work has progressed on several of the review's recommendations, including measures to enhance safeguards for vulnerable workers (Recommendation 6).

- The government is considering the Small Claims Review’s remaining recommendations.
- The government is committed to ensuring that court processes for resolving workplace issues, including small claims matters, are fair and effective.

Small claims background

- The small claims procedure is a legal option for employees to take action when certain disputes cannot be resolved at the workplace level. These claims can be about underpayments up to \$100,000. The small claims procedure aims to settle disputes quickly and fairly, with low costs for parties involved.
- Commencing on 1 July 2023, the government’s *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* progressed 2 key reforms to the small claims procedure:
 - o increasing the monetary cap so that the small claims procedure can be used to recover employment entitlements up to \$100,000 (prior to 1 July 2023, the cap was \$20,000)
 - o confirming that the court can award filing fees as costs to successful applicants.

WR system complexity

- The Fair Work Act’s compliance and enforcement framework is designed to address the full spectrum of non-compliance with workplace obligations, through a range of mechanisms including civil and criminal penalty provisions for certain types of non-compliance, including wage underpayment.
 - o The criminal offence is intended to be used as a last resort for the most serious offending. Employers that make a genuine effort to meet their obligations will not be prosecuted under these new laws, which only criminalise intentional underpayments.
 - o In response to stakeholder feedback, the government introduced 2 pathways to encourage employers to self-disclose underpayments to the FWO: the [Voluntary Small Business Wage Compliance Code](#) and [cooperation agreements](#). If certain requirements are met in relation to these provisions, the FWO must not refer employers for criminal prosecution.
- Several inquiries and reports have found that wage underpayments and worker exploitation continues to be a serious issue in Australian workplaces, especially for vulnerable workers. This includes the:
 - o Migrant Workers’ Taskforce Report (2019), which found that ‘*underpayment of migrant workers is a long-standing problem with significant impacts for affected individuals, the labour market and the community*’.
 - o Senate inquiry into Unlawful Underpayment of Employees’ Remuneration (2022) which found that ‘*collectively a variety of sources indicate that underpayment affects thousands of workers, robbing them—and the Australian economy—of billions of dollars every year*’.

- o FWO's Horticulture Compliance Report (2025) which found '*extreme*' and '*very high*' rates of non-compliance in key agricultural regions in NSW and Victoria.
- The Fair Work Commission, Australia's independent workplace relations tribunal and registered organisations regulator, has undertaken plain language redrafting of 118 awards, as part of the 4-yearly review of modern awards.
 - o The Commission also conducted the Modern Awards Review 2023-24, where it invited parties to make proposals on how to make the most commonly used awards easier to use.
 - o These endeavours to simplify awards have made it clear that complexity means different things to different stakeholders. For example, summary tables of rates of pay were inserted into many awards as part of the plain language redrafting of awards. While some stakeholders view these tables as inserting complexity and onerous detail into awards, others view them as providing clarity.
 - o The government has supported processes to simplify awards, including the Modern Awards Review 2023-24, and in doing so has made clear its position that award simplification should not be at the expense of employee entitlements.
- Under the Fair Work Act, the Fair Work Ombudsman has a statutory role to provide education, advice and assistance on how to comply with workplace laws including employers of all sizes.
 - o The government funds the FWO to perform this function, with the FWO's education and assistance activities including: the Infoline, Employer Advisory Service, and a range of services available on the FWO's website. The FWO's website includes a range of education and compliance tools, including online learning resources, factsheets and guides, and the Pay and Conditions Tool.
 - o The FWO provides information and resources to assist employers to determine the correct pay and conditions for their workers. These educational resources were updated ahead of the offence commencing on 1 January 2025.
- The government is providing \$88.4 million from 2022-23 to 2027-28 for the Productivity, Education and Training (PET) Fund, which supports employer and employee peak bodies to promote workplace relations reforms, including through education and training on new laws.
 - o The PET Fund enhances tripartism across the workplace relations system through increased engagement and ensures employers and employees have access to resources on workplace laws.

Information provided in Questions on Notice

- **SQ26-000005** – FWO wage theft enforcement referrals, resourcing and outcomes (Senator Payman)
 - o The FWO received \$49.5 million over four years from 2023-24 (\$11 million per year ongoing) to take on its new role as the investigatory agency for the wage theft offence.
 - o As at 31 December 2025, the budgeted ASL for the FWO's Criminal Investigations Branch was 16.7.
- **SQ25-001830** – Information DEWR has on unreported wage theft (Senator Payman)
 - o The department has information on unreported wage theft from reports and parliamentary inquiries, as well as information published by the FWO, including information on recovered wages and entitlements published in the FWO's annual report.
- **SQ25-000837** – FWO wage theft findings and investigations (Senator Payman)
 - o Proceedings for an offence against subsection 327A1) can only be commenced by the Director of Public Prosecutions or the AFP (questions related to findings should be addressed to those relevant bodies).
- **SQ25-000001** – The new criminal offence for wage theft and how many investigations have occurred (Senator Payman)
 - o The department does not have an annual estimate of the extent of the underpayment of wages and entitlements in Australia. Determining the full extent of underpayments is challenging for a variety of reasons, including because these underpayments are not consistently reported by the offending businesses or impacted workers.
 - o The government passed reforms to the Fair Work Act aimed at preventing underpayments by creating a greater deterrence to this conduct. These reforms included introducing a criminal offence for wage theft, increasing the maximum civil penalties for contraventions of underpayment related

civil remedy provisions, and changing the threshold of what constitutes a serious contravention.

- **SQ24-002056** – Consultation process for criminalisation of wage theft provisions (Senator Cash)
 - o Consultation on the Closing Loopholes Bill, including the wage theft offence occurred between February – August 2023.
 - o This consultation included: two meetings of the national Workplace Relations Consultative Council, two written submission processes (with more than 160 organisations making over 220 submissions), more than 75 consultation meetings with a range of stakeholders including business groups, employers, small business representatives, unions, academics and civil society.
 - o Consultation on the Voluntary Small Business Wage Compliance Code occurred between May – November 2024. Both employer and employee groups were consulted in the development of the Code.

Attachment C– Summary of wage theft submissions

Submitter		Key points
Senator Fatima Payman (sub. 3)		• States wage theft is a stubborn problem, particularly in the hospitality, retail and higher education sectors. • Notes the Closing Loopholes review but believes the Senate’s inquiry into wage theft is necessary in addition as the Committee will provide multiple perspectives on the issue and will hold public hearings. • Questions the assertion made by Minister Rishworth that the lack of referrals means the new laws are working as intended. NB. The article quotes a spokesperson for Minister Rishworth not the Minister herself. (quoted article - The Australian, Business blasts Labor's 'zero return' 49m wage theft laws funded by taxpayers) • Cites Melbourne University research that one in three workers under 30 is underpaid (Underpaid and Overlooked: The Wage Crisis Facing Young Workers in Australia). • Questions whether the bar is too high for prosecution of the wage theft offence. • Questions whether the high bar and lack of prosecutions to date limits the provision from acting effectively as a deterrent.
Dr Kathleen Smithers et al, group of academics who research and publish about higher education in Australia (sub. 6)		• States it’s too early to draw firm conclusions about the effectiveness of the criminal offence in reducing the overall incidence of wage theft, particularly in sectors like higher education. • Highlights that the high evidentiary threshold for the criminal offence may limit the application of the offence in sectors where underpayment arises through diffuse and institutionalised practices rather than clearly identifiable and deliberate acts.
Associate Professor Tess Hardy and Professor John Howe, Centre for Employment and Labour Relations Law (CELRL), Melbourne University Law		• Notes that the term ‘wage theft’ lacks a settled meaning. • Highlights that the criminal offence in s 327A does not operate in isolation and emphasises the importance of other amendments to the civil compliance and enforcement framework introduced as part of Closing Loopholes reforms. • States that ‘the incidence of wage theft’ is difficult if not impossible to measure. • Highlights there is evidence the wage underpayment and other contraventions of monetary obligations continues to be a significant problem in Australia.

School (sub. 17)		- States deterrence (via criminal penalties) is one way to promote corporate compliance, but that its potential effect is often overstated. Notes a 2025 study of Australian employers in the horticulture and hospitality industries found there are many factors that shape compliance behaviour, which go beyond deterrence-based concerns. - States amending the elements of the criminal wage theft offence (prior to any judicial consideration) is premature and unjustified. - Concludes that in the context of the FWO, a small number of criminal investigations (and prosecutions) is not necessarily inappropriate, as long as it is complementary to the overall regulatory mix deployed by the agency.
Fair Work Ombudsman (sub. 8)		- The FWO utilises a strategic enforcement model, recognising that non-compliance exists on a continuum from inadvertent or unintentional breaches through to egregious and deliberate conduct. - Notes the term 'wage theft' is often applied broadly to a range of underpayment scenarios, this makes it difficult to measure the prevalence or impact of wage theft using a single metric. - States the criminal offence is targeted at the most egregious and intentional underpayment of wages. - Provides an overview of the FWO's work addressing underpayments, funding for the criminal offence, the work to establish the Criminal Investigations branch, the advice and education provided as well as investigations currently underway. - Notes that quantifying the impact of criminal sanctions on wage theft is challenging due to the recency of the legislation, the inexact definition of wage theft and the lack of data to measure rates of non-compliance.
Australian National Audit Office (sub.16)		- Attaches the Auditor-General Report Addressing Superannuation Guarantee Non-Compliance, No.24 2021-22. It found the ATO's activities in addressing Superannuation Guarantee non-compliance are partly effective. It recommends: - implementing a preventative compliance strategy - use of enforcement and debt-recovery powers - enhanced performance reporting. - Attaches the Auditor General Report, Effectiveness of the Office of the Fair Work Ombudsman's Regulatory Functions No.30 2024-25. It found the

		FWO is largely effective in the exercise of its regulatory functions. It recommends the FWO: - o delivers a framework for the implementation and monitoring of regulatory priority areas - o ensures governance bodies perform strategic oversight and consider the efficiency and effectiveness of regulatory activities - o ensures there is adequate documentation, review and quality assurance of investigations.
Australian Chamber of Commerce and Industry (sub. 21)		• Submits there is insufficient evidence to enable any meaningful conclusions to be drawn as to whether the new provisions are working as intended. • Reiterates previous concerns about the potential for a business to be subject to criminal penalties for one-off late or under-payment. • Submits that the Voluntary Small Business Wage Compliance Code does not appear to create any more protection for small businesses than would otherwise be relevant for other businesses. • Queries the grounds used to justify the introduction of the offence, noting the lack of referrals to date.
Auctioneers & Valuers Association of Australia (sub. 2)		• Does not support the current framing and operation of s 327A(1), noting the framework operates in a complex system, particularly for small and medium-sized enterprises (which the auctioneer and valuer industry is characterised by a high proportion of). • Notes the criminal offence operates within a broader compliance framework in which most underpayments continue to be addressed through civil remedy provisions.
Portable, digital product agency (sub. 7)		• Portable have made an app called 'Sweep', which assists workers covered by the Retail Award to determine whether they have been paid correctly. • Notes 'Sweep' is "incubated with support" from DEWR through the Business Research and Innovation Initiative (BRII). • No strong position on the settings/thresholds in s 327A. • Proposes an additional safe harbour pathway to be introduced for employers who can demonstrate they have taken reasonable steps to comply by using a certified compliance platform or by encouraging employees to use a payslip verification tool.
Australian Industry Group (sub. 18)		• States that while it is too early for a proper assessment of the provisions' effect, it is clear changes are necessary. • Recommends the government repeal the offence, pending a rationalisation and simplification of the

		WR system, particularly in relation to employees' entitlements and award obligations. • Submits that having a criminal offence directed at wage underpayments in the 'overly complex' WR environment fails to recognise the 'insurmountable' difficulties faced by employers. • Suggests that criminalising the outcomes flowing from the 'complex and highly burdensome' system of pay obligations risks blurring the line between deliberate wage theft and error. • Suggests the offence should be confined to intentional permanent deprivation of wages or entitlements (or practical equivalent), leaving late payments as still being unlawful and subject to significant penalties in relevant civil remedy provisions. • Recommends any application to late payments be flagged as an issue for ongoing monitoring and potential further consideration.
Australian Retail Council (sub. 19)		• States the timing of the inquiry is premature. • Does not support any changes to the current "cooperation agreement provisions". • Argues the compliance framework does not resolve the structural drivers of payroll non-compliance which include complexity in awards, uncertainty in classification and contested understanding of industrial obligations.
Australian Higher Education Industrial Association (sub. 26)		• States the criminal wage theft provisions in the FW Act are appropriately constructed to target intentional and dishonest conduct and should not be expanded or diluted. • Disputes the characterisation that any underpayments identified in the higher education sector amount to wage theft (disputes the NTEU's claim in its submission, sub 10). • Rejects any proposal to allow unions or other parties to refer wage theft matters to the CDPP or AFP.
Australian Council of Trade Unions (sub. 22)		• Notes the criminal offence is an appropriate measure to combat wage theft but it is too early to assess its effectiveness. • Recommends: - o an independent review of the FWO in 6-12 months - o investigate ways to simplify and streamline judicial processes to reduce time and expense (discusses small claims procedure and the SJBP Review's reiteration of key recs) - o empower the FWC to address and resolve underpayment claims, as a new function that

		could be used prior to a worker and their union issuing proceedings in court.
United Firefighters Union (sub. 9)		- States the lack of active investigations and prosecution does not reflect a reduction in wage theft in Australia. - Recommends the inquiry consider possible reforms to the wage theft provisions in s 327A(1), specifically whether the high standard for prosecution is a determinative factor in limiting the law's effectiveness.
National Tertiary Education Union (NTEU) (sub. 10)		- Notes whilst there has been no utilisation of s 327A, it has likely had some deterrence effect as NTEU has detected decreases in reported wage theft. - Notes tension in the current framework – if employers / individuals are unwilling to self-disclose non-compliance and the FWO will only refer matters for prosecution if they are 'most serious', then the systemic issue of wage theft is unlikely to be resolved. - Recommends a standalone avenue for unions to investigate and refer matters of wage theft under s 327A to the CDPP or AFP.
Shop, Distributive and Allied Employees' Association (sub.12)		- Highlights that across the retail and fast-food sector, underpayment frequently arise as systemic practices – misclassification, incorrect payments, unpaid work and non-provision of breaks. - Argues that a regulator only enforcement model is incapable of policing wage theft at scale. Recommends that enforcement rights for example, to conduct 'spot checks', should be restored to registered organisations. - Argues that the non-payment of superannuation should be treated as wage theft and that the enforcement arrangements between the FWO and the ATO have created enforcement gaps. - Highlights that access to justice is one of the most significant barriers to effective recovery of unpaid wages. Supports the establishment of a small claims tribunal.
Australian Nursing and Midwifery Federation (sub.13)		- Notes with concern that no referrals have been made by the FWO to the appropriate authorities to commence criminal prosecution. - Advocates for the establishment of a Fair Work Court to deal with underpayments. - Raises the issue of employers in the health sector engaging PALM workers and making a range of unlawful deductions. - Recommends amending 327A to include criteria that lift the ordinary wage theft offence into an aggravated offence to which higher penalties apply. These criteria could relate to where there is a particular

		vulnerability in respect of the worker or workers concerned.
Victorian Trades Hall Council and the Young Workers Centre (sub. 20)		• Notes that during the 2023 inquiry into Closing Loopholes, unions, workers and the Victorian Government warned drafting issues could risk the wage theft provisions being too limited to act as a deterrent. • Notes that Victorian wage theft laws included dishonest conduct and established a new regulator to enforce wage requirements and record keeping. • Raises the issue of the FWO's approach to enforcement and use of criminal sanctions to address only the 'most egregious behaviour'. Argues for all incidents of wage theft to be addressed, not only the most unjustifiable. • Recommends amending the fault element of intentionality and replacing it with dishonesty or alternatively introducing a recklessness-based offence. • Recommends that the government disqualify those convicted of wage theft from being able to manage corporations.
Association for Good Government (sub. 14)		• Proposes that the Committee's examination of wage theft should extend beyond conventional forms of employer non-compliance to include structural settings. • Notes the exclusion of land values from standard inflation measures may obscure the extent to which incomes are impacted. • Draws connections between the above issues and the development of work-from-home policies, citing risks for workers where employment costs are shifted into the home.
Law Council of Australia (sub. 15)		• Recommends the Committee seek to clarify whether the wage theft offence applies to a failure to pay contractual entitlements as under s 323 of the Fair Work Act. • Recommends the Committee consider whether s 327C(2) ought to be amended to provide greater clarity to the commencement of the limitation period, noting the offence provides that proceedings for the wage theft offence may be commenced within six years after the commission of the offence. • Queries whether the safe harbour provisions provide the intended level of protection from prosecution, noting whilst the FWO may be prohibited from making referrals if it is satisfied that a small business employer complied with the Voluntary Small Business Wage Compliance Code, another person (employee or union) is not restricted from doing so.

Western NSW Community Legal Centre (sub. 4)		• States it is not yet possible to assess whether the reforms have resulted in a measurable reduction in wage theft. • Notes underpayment issues are still coming up in practice. • Highlights importance of access to justice especially in regional, rural, remote and very remote communities.
Working Women's Centre Victoria (sub. 23)		• Notes the wage theft offence appropriately recognises the seriousness of deliberate underpayment and has contributed to increased awareness and improved compliance in some parts of the labour market. • Notes the offence will not operate as an effective deterrent in isolation, and barriers will result in most wage theft continuing undetected. • Argues the absence of an accessible and effective wage recovery pathway is a 'key limitation of the current framework'.
Working Women's Centre NSW (sub. 24)		• States that new provisions are an effective tool to deter employers and encourage proactive compliance. Argues that it is, however, unrealistic to hope a single reform will eliminate wage theft. • Notes that wage theft remains persistent despite criminalisation. • Recommends: - o expanding access to the Workplace Justice Visa and Strengthening Reporting pilot - o investment in stronger detection of wage theft - o the FWO review its Compliance and Enforcement Policy to consider gender vulnerability - o the establishment of a wage theft tribunal - o stronger enforcement mechanisms for the FWO (e.g. cost penalties for employers who unreasonably refuse to participate) - o better resourcing the FWO to assist workers with underpayment calculations - o expanding the FEG to migrant workers.
Victorian Women Lawyers (sub. 25)		• Argues that a gender-neutral approach to regulating wage theft risks systematically under-detecting payments in feminised, low-paid and precarious industries. • Recommends: - o collection and reporting of gendered data in FWO reports - o opportunities to strengthen proactive compliance and enforcement

		- o simplifying the processing of civil underpayment claims while criminal proceedings are ongoing - o extending support to women and gender diverse people seeking recovery of wages.
Michael Sanderson (sub. 1)		• Notes the difficulty in assessing wage theft prevalence, particularly with many workers feeling they cannot confront employers about wage theft. • Advocates for a federally funded, locally administered 'Job Guarantee' pool to address vulnerabilities and lead to structural reform. • Under this proposed model, workers would not be forced to choose between unlawful work and no work.
Andrew Bourke (sub. 5)		• States that his business has been affected by wage theft (by competitors) in the security and cleaning industries (attached submission to the 2018 Inquiry into wage theft in Queensland). • Argues for Minister responsible for wage theft or a wage theft ombudsman.

Wage theft offence summary

PBS, MYEFO, PAES reference MYEFO 2023–24 page 238

Key points

- The Fair Work Legislation Amendment (Closing Loopholes) Act 2023 amended the Fair Work Act 2009 (Fair Work Act) to introduce a criminal offence for intentional underpayment of employees' wages and certain entitlements (wage theft offence).
- The wage theft offence commenced on 1 January 2025 and applies to intentional underpayments occurring on or after this date.
- The FWO has commenced investigations of the wage theft offence. As at 31 December 2025, there had not been any referrals of matters for consideration or prosecution.

Key facts, figures or dates

Why were these amendments progressed?

- The purpose of the wage theft offence is to encourage employer compliance with Fair Work Act obligations to pay employee wages and entitlements by providing a greater deterrent to non-compliant conduct.
- Several inquiries, including the Migrant Workers' Taskforce (Recommendation 6) and the Senate Inquiry into Unlawful Underpayment of Employees' Remuneration (Recommendation 1), recommended the introduction of a wage theft offence.

What has changed?

- Amendments were made to several parts of the Fair Work Act to enable the wage theft offence, and the primary operative provisions are at sections 327A to 327C.
- The wage theft offence applies to employers who intentionally engage in conduct that results in the underpayment of their employees. It applies to employee entitlements under the Fair Work Act or a fair work instrument (such as a modern award or enterprise agreement), but not to solely contractual entitlements.
- This wage theft offence applies to underpayments consistent with the existing limitations on the States' referral of powers to the Commonwealth that is relied on for the Fair Work Act generally. The states' referral of powers to the Commonwealth relevantly excludes:
 - o Superannuation
 - o Long service leave
 - o Paid leave that the employee was entitled to take by reason of being a victim of crime, and
 - o Paid leave that the employee was entitled to take because the employee attended for service on a jury, or for emergency services duties.
- The wage theft offence does not apply to underpayments in respect of the above matters, if the parties are only national system employees and national system employers due to the states' referral of powers to the Commonwealth. This broadly includes:
 - o Employees in New South Wales, South Australia, Queensland, Tasmania and Victoria who are employed by sole traders, partnerships, other unincorporated entities, or non-trading corporations
 - o Most of the Victorian state government, and
 - o Tasmanian local government employees.
- The wage theft offence carries a maximum of 10 years' imprisonment, and/or a maximum fine of the greater of:

- o 3 times the amount of the underpayment, if the court can determine that amount, or
- o for an individual: 5,000 penalty units (\$1,650,000); or for a body corporate: 25,000 penalty units (\$8,250,000).
- Where an employer is found guilty of committing 2 or more offences that arose out of a course of conduct, for the purposes of sentencing, the person will be taken to be guilty of a single offence.
- The Fair Work Ombudsman (FWO) is primarily responsible for investigating the new criminal offence. The FWO will then refer matters to the Commonwealth Director of Public Prosecutions (CDPP) or the Australian Federal Police (AFP) for consideration, and prosecution where appropriate.
- Liability of bodies corporate: The default provisions in Part 2.5 of the Commonwealth Criminal Code will provide for the criminal liability of bodies corporate.
- Officer liability (as accessories): Default provisions in the Commonwealth Criminal Code will apply to extend liability to ancillary offenders.
- Crown liability: To ensure the Government meets its election commitment to be a model employer, the Fair Work Act provides for liability for the wage theft offence to be extended to the Commonwealth Government in its role as an employer (but not other Australian governments).

Safe haven

- The amendments provide pathways to encourage employers to self-disclose underpayments. In return, employers would not be referred by the FWO for criminal prosecution for wage theft. These pathways include:
 - o The Voluntary Small Business Wage Compliance Code (Code), which outlines that if a small business employer can satisfy the FWO that they have complied with the Code by evidencing that an underpayment was not intentional, the FWO won't refer that underpayment for criminal prosecution, and
 - o The option for the FWO to enter into a cooperation agreement with a person, if the person discloses that they have engaged in conduct that may amount to the commission of the wage theft offence. The FWO may agree not to refer the conduct for prosecution, after assessing the employer against a non-exhaustive list of factors.
- The FWO may still take non-punitive action (such as issuing a compliance notice that workers be re-paid), or it may take civil action, if that is appropriate. An employee or employee organisation may also take civil action in relation to a contravention.

What was the process to develop the Code?

- The FWO developed the Code, with support from DEWR, and in consultation with employee and employer stakeholder groups. The following were the key steps in developing the Code:
 - o In May 2024, the FWO released a consultation paper to a targeted group of stakeholders providing an overview of the Code.
 - o In September 2024, the FWO consulted with a group of employee and employer representatives on a draft of the Code and an accompanying explanatory guide for employers. Amendments to both documents were made to address stakeholder feedback.
 - o In November 2024, the final draft of the Code was presented to the Committee on Industrial Legislation for a final technical consultation ahead of Ministerial consideration and declaration.

- The Code was declared by the Minister for Employment and Workplace Relations on 6 December 2024 and registered on the Federal Register of Legislation on 16 December 2024. The commencement of the wage theft offence was contingent on the declaration of the Code.

How does the wage theft offence interact with State and Territory laws?

- Prior to the commencement of the wage theft offence, the Victorian and Queensland State governments introduced their own criminal offences for underpayment conduct.
- The Australian Constitution provides that when ‘a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid’. This means the wage theft offence takes precedence over the State criminal offences, in the extent to which they are inconsistent.
- The constitutional validity of the State criminal offences has not been tested since the commencement of the wage theft offence. The Victorian State Government has now passed legislation repealing its criminal offence (see the *Wage Theft Amendment Act 2025* (Vic)), though this repeal has not taken effect. There have been no prosecutions under the Queensland State Government criminal offence.

Funding / Expenditure

- \$55.0 million over four years from 2023–24 (and \$12.5 million per year ongoing) was provided to introduce and implement the wage theft offence, on the following basis:

- \$49.5 million over four years from 2023-24 (\$11.0 million per year ongoing) for the FWO to implement its criminal investigations function and investigate the wage theft offence
- \$2.7m over four years from 2023-24 (\$0.8 million per year ongoing) for the CDPP to prosecute the wage theft offence, and
- \$2.8 million over four years from 2023-24 (\$0.7 million per year ongoing) for DEWR to support the introduction and implementation of the wage theft offence.
- These costs are partially offset from expected non-tax revenue of \$22.6 million over three years from 2024–25 (and \$8.0 million per year ongoing) recovered from anticipated penalties against those convicted of wage theft offences.

Media

- No key media that is not already included in other briefing or summary information.

Relevant QoNs and Parliamentary Questions

- Relevant QoNs and Parliamentary Questions are included in **SB25-000388**.

Last Cleared By	s 22(1)
Date Last Cleared	26/09/2025
Division	WR Entitlements Safeguards



Australian Government
Department of Employment
and Workplace Relations

Closing Loopholes Review

Department Briefing

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Glossary

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Term	Definition
s 22(1)(a)(ii)	
FWO	Fair Work Ombudsman
s 22(1)(a)(ii)	
UUER	Unlawful Underpayment of Employees' Remuneration
s 22(1)(a)(ii)	

**Pages 137-205 removed under section 22(1)(a)(ii) of the
*Freedom of Information Act 1982.***

**These pages contain information that would reasonably
be regarded as irrelevant to the request for access.**

Section 4: Protecting workers and strengthening enforcement

4.1 Criminalising wage theft

This measure introduces a new criminal offence (the ‘wage theft offence’) for intentional underpayment of employees’ wages and certain entitlements to deter employers from intentionally not paying or underpaying their employees.

Legislation: *Fair Work Act 2009* – sections 327A, 327B, 327C, 682(1)(da), Part 5-2, Division 3, Subdivision DE

Regulators: Fair Work Ombudsman, Australian Federal Police, Commonwealth Director of Public Prosecutions

History and development

Operation of the law prior to the measure

Prior to the commencement of the wage theft offence, there were no criminal sanctions for underpayments under the FW Act. Sanctions for the underpayment of employee wages and entitlements were limited to civil penalties under various civil remedy provisions in the FW Act.

Purpose of the measure

The measure provides stronger deterrence and addresses that the pre-existing framework and penalties did not do enough to protect workers from underpayments. A ‘double standard’ was also identified in relation to criminal offences for theft that would apply to workers who stole money from their employer.¹⁹⁹

Several inquiries, including the Migrant Workers’ Taskforce²⁰⁰ and the Senate inquiry into Unlawful Underpayment of Employees’ Remuneration (UUER),²⁰¹ recommended the introduction of a criminal offence for wage theft. Both inquiries noted the difficulty in quantifying the extent of underpayments but highlighted significant underpayment cases and the extent of non-compliance with the FW Act in making their recommendations. The UUER inquiry cited reports to indicate that underpayments affected thousands of workers, costing them billions of dollars every year.²⁰² The Migrant Workers’

¹⁹⁹ T Burke, [Albanese Labor Government to criminalise wage theft](#) [media release], Australian Government, 3 September 2023, accessed October 2025.

²⁰⁰ Migrant Workers’ Taskforce, [Report of the Migrant Workers Taskforce](#), March 2019, accessed September 2025. Recommendation 6.

²⁰¹ Economic References Committee, [Systemic, sustained and shameful](#), March 2022, accessed September 2025. Recommendation 1.

²⁰² The UUER inquiry cited a 2020 FWO audit, superannuation underpayment estimates, and reports from the Australian Council of Trade Unions, the McKell Institute, and PwC.

Taskforce Report referred to research on the extent of migrant worker exploitation and compliance activities undertaken by the FWO, including in relation to the FWO's Inquiry into 7-Eleven.²⁰³

Key changes during development of the measure

The following key matters were considered as part of the department's consultation process:

- the conduct covered by the new offence including the relevant fault element (intention)
- the interaction with existing state and territory offences addressing similar conduct, including in Victoria and Queensland
- whether there should be any offence-specific defences
- whether officers of bodies corporate should be liable for the wage theft offence, and
- the appropriate sanctions for the wage theft offence.

During the consultation process, employee groups were generally supportive of the introduction of the wage theft offence, noting the need for a greater deterrence to this conduct and the volume of serious underpayments. Employer groups, including small business organisations such as the Council of Small Business Organisations Australia (COSBOA), were critical of the introduction of an offence.

During parliamentary debate of the Bill, key amendments included:

- bringing underpayments of superannuation into the scope of the proposed wage theft offence (Australian Greens amendment).²⁰⁴
- providing that the new offence would commence on the later of 1 January 2025 or the day after the Voluntary Small Business Wage Compliance Code (the Code) was first declared by the Minister for Employment and Workplace Relations. The amendment provided that the wage theft offence would not commence if the Code was not declared (government amendment).²⁰⁵

Operation and implementation

Application

An employer commits wage theft if the employer is required to pay an amount under the FW Act or a specified instrument and the employer intentionally fails to pay the required amount. The offence does not cover all employee entitlements, consistent with the existing limitations on the states' referral of powers.

Absolute liability applies to whether the required amount has been paid and the fault element for failure to pay is intention.

Liability for the wage theft offence is also extended to bodies corporate (default provisions in Part 2.5 of the *Criminal Code Act 1995* (Criminal Code)) and ancillary offenders (Part 2.4 of the Criminal Code apply). Amendments to the FW Act provide for the wage theft offence to be extended to the Australian Government as an employer (but not other state and territory governments).

²⁰³ FWO, [A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven](#), published April 2016.

²⁰⁴ Sheet [Detail – Crossbench](#), Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, 2.

²⁰⁵ Sheet [ZC255](#), Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, 1.

Commencement

The wage theft offence commenced on 1 January 2025 and applies to intentional underpayments occurring on or after this date. Commencement of the offence was contingent on declaration of the Code by the Minister for Employment and Workplace Relations, which occurred on 6 December 2024.

Obligations on employees and employers

The wage theft offence does not introduce any new obligations on employees or employers.

The FWO and Fair Work Inspectors have powers to require employers to provide information or produce records. These amendments override the existing use and derivative use immunities that apply to records compelled under the FW Act, so the FWO can tender evidence of employee records or pay slips against an employer in proceedings under the wage theft offence, even if they were produced by notice or other coercive process.

Dispute resolution and enforcement

The FWO is responsible for investigating the wage theft offence. Only the Commonwealth Director of Public Prosecutions (CDPP) or the Australian Federal Police (AFP) can commence proceedings.

There is a 6-year limitation period for bringing a proceeding after the commission of the offence. This means that any alleged offending that occurred outside the limitation period (even if it could be said to form part of the same course of conduct) is not covered by the wage theft offence.

The **cooperation agreements framework** provides a person with the opportunity to access ‘safe harbour’ from potential criminal prosecution if they have engaged in conduct that amounts to the possible commission of the wage theft offence and self-reported their conduct to the FWO. If the FWO decides to enter into a cooperation agreement with the person, the FWO must not refer conduct by the person that is covered by the agreement to the CDPP or the AFP for possible criminal prosecution while the agreement is in force. The FWO has published advice on cooperation agreements.²⁰⁶

The measure requires the FWO to publish a **Compliance and Enforcement Policy** (noting this was an existing practice of the agency) and requires the inclusion of guidelines relating to the circumstances in which the FWO will or will not accept or consider accepting enforceable undertakings, or enter or consider entering into cooperation agreements.²⁰⁷

Remedies

Employers convicted of the wage theft offence may be subject to the following penalties:

Category	Condition	Maximum penalty
Body corporate	If court can determine underpayment amount	Higher of: 3 times the amount of the underpayment, or \$8.25 million
	If court cannot determine underpayment amount	\$8.25 million

²⁰⁶ FWO, [A guide to cooperation agreements](#), February 2025, accessed October 2025.

²⁰⁷ FWO, [Compliance and Enforcement Policy](#), April 2025, accessed October 2025.

Individual	Imprisonment option	Up to 10 years imprisonment, pecuniary penalty, or both
	If court can determine underpayment amount	Higher of: 3 times the amount of the underpayment, or \$1.65 million
	If court cannot determine underpayment amount	\$1.65 million

Where an employer is found guilty of committing two or more offences that arose out of a course of conduct, for the purposes of sentencing the person will be taken to be guilty of a single offence. If multiple offences are grouped and penalised as a single offence under the sentencing rule, then the corresponding underpayments are also aggregated for purposes of applying these penalties.

Reparation orders under section 21B of the *Crimes Act 1914* (Crimes Act) apply to underpayments that are the subject of a conviction under the wage theft offence.

Exclusions

If a small business employer underpays an employee but satisfies the FWO that they have complied with the Code by not intentionally underpaying that employee, they cannot be referred for criminal prosecution but may still be liable for civil penalties. The FWO has published guidance.²⁰⁸

Role of Commonwealth agencies, regulators, and tribunals

The FWO developed the Code with support from the department in the period from May to November 2024, during which the agencies conducted targeted consultations with employer and employee groups. Small business was concerned to ensure clear guidance was available.

The government provided \$55.0 million over 4 years in the 2023–24 Budget (and \$12.5 million per year ongoing) to implement the wage theft offence. This included funding to the FWO, CDPP and the department.

The FWO has established a dedicated Criminal Investigations Branch and undertaken significant work to educate the community about the wage theft offence, including developing tailored guidance materials. The FWO's Compliance and Enforcement Policy outlines when the FWO will refer conduct to the CDPP or AFP for prosecution.

Key developments since implementation

Use and impact of the measure

As at 30 September 2025, the FWO has advised there are active investigations under the wage theft offence, but there have not been any referrals of matters for consideration or prosecution.

The FWO has received 118 enquiries relating to the wage theft offence on the following topics:

- Allegation or information (110 enquiries)
- Cooperation agreement (14 enquiries)
- Small Business Code (13 enquiries)

²⁰⁸ FWO, [A guide to paying employees correctly and the Voluntary Small Business Wage Compliance Code](#), December 2024, accessed October 2025.

Prior to the commencement of the wage theft offence, the Victorian and Queensland Governments introduced their own criminal offences for underpayment conduct. The Victorian Government has now passed legislation repealing its criminal offence (*Wage Theft Amendment Act 2025 (Vic)*), though this repeal has not taken effect.²⁰⁹ There have been no prosecutions under the Queensland criminal offence.

Stakeholder views since implementation

The department has received no representations or feedback on the operation of the wage theft offence from stakeholders.

Professor Tess Hardy argues that further changes to the civil remedy framework, including the increase in civil penalties and the redefinition of what constitutes a serious contravention, may be more effective in deterring underpayments than the criminal offence.²¹⁰

Data and evidence sources to track the operation of the measure

Due to the varying factors that lead to and deter an employer from underpaying an employee, it will be difficult to assess the extent of the deterrent effect of the wage theft offence in isolation.

Issues for further consideration

No issues identified at this stage. The FWO will be able to engage with the review on its education efforts and its new dedicated investigation branch.

²⁰⁹ The Wage Theft Amendment Act 2025 (Vic) will commence on a day or days to be proclaimed or, if no proclamation is made before 2 April 2026, on that day.

²¹⁰ T Hardy, [Criminalisation of Wage Theft under the Fair Work Act: A New Dawn for Deterrence](#), *Australian Journal of Labour Law*, September 2024, accessed October 2025. The article reviews the meaning and extent of 'wage theft' and previous responses, considers the new wage theft offence's core elements and features, and sets out major changes to the civil penalty regime.

**Pages 211-270 removed under section 22(1)(a)(ii) of the
*Freedom of Information Act 1982.***

**These pages contain information that would reasonably
be regarded as irrelevant to the request for access.**

Talking Points - *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*– Wage theft

Summary of the amendments

- The amendments introduce a criminal offence for the intentional underpayment of employees' wages and certain entitlements, including superannuation contributions, in line with the Government's election commitment.

Rationale for the amendments

- Wage underpayment continues to feature across a range of Australian workplaces, from small business to large corporations, leaving workers out of pocket and forcing those businesses that follow the law to compete with businesses that have an unfair advantage.
- Underpayment has been the subject of extensive media reporting and several inquiries, including the 2022 Senate inquiry into the unlawful underpayment of employees' remuneration.

Key elements of the amendments

Wage theft

- After it commences, the offence will apply to employers who intentionally engage in conduct (such as failing to input correct hours into payroll software, demanding cash-back from employees or disapplying rules in software) and intend that the conduct results in an underpayment.

- The offence will apply to employee entitlements under the Fair Work Act or a fair work instrument (such as a modern award or enterprise agreement), but not to solely contractual entitlements.
 - o The wage theft offence is designed to address the most serious instances of underpayment, which often impact workers who rely on minimum entitlements in awards or enterprise agreements and rely on the minimum protections offered by the Fair Work Act.
- The wage theft offence will also cover intentional underpayments of superannuation contributions where they are required by the Fair Work Act, a fair work instrument or a transitional instrument, to the extent permitted by the Commonwealth's legislative power.
- The offence will carry a maximum of 10 years' imprisonment, and/or a maximum fine of the greater of:
 - o 3 times the amount of the underpayment, if the court can determine that amount, or
 - o for an individual, 5,000 penalty units (\$1,565,000) / for a body corporate, 25,000 penalty units (\$7,825,000).
- Where an employer is found guilty of committing 2 or more offences that arose out of a course of conduct, for the purposes of sentencing the person will be taken to be guilty of a single offence.

Safe Haven framework

- Criminal sanctions will be reserved for those who intentionally underpay.
- These amendments create additional mechanisms to encourage businesses to come forward and self-disclose if they consider they have underpaid their workers.

- There are already existing pathways for employers to avoid litigation for civil breaches, including by entering into an enforceable undertaking with the Fair Work Ombudsman.
 - o Where the Fair Work Ombudsman has accepted an undertaking from a person, the Ombudsman cannot commence proceedings against the person in respect of the particular contraventions.
- This Act will add to those pathways for possible criminal underpayments.
- First, a Voluntary Small Business Wage Compliance Code will be developed by government in partnership with employer and employee groups to support compliance.
 - o Evidence of compliance with the voluntary Code will ensure that the Fair Work Ombudsman will not refer conduct for criminal prosecution.
 - o Instead, if there are underpayments, the Fair Work Ombudsman may take non-punitive action (such as issuing a compliance notice requiring that workers be paid correctly), or it may take civil action, if that is appropriate.
 - o An employee or employer organisation may also take civil action in relation to a contravention.
- The Bill will also provide another pathway to supporting compliance in the form of a cooperation agreement.
 - o If an employer discloses to the Fair Work Ombudsman that they have engaged in conduct that may amount to the commission of the wage theft offence, the Ombudsman may enter into a cooperation agreement with the employer. The Fair Work

Ombudsman must not refer the conduct for criminal prosecution while a cooperation agreement is in place.

- o These agreements will work towards ensuring employees are repaid quickly while also ensuring that criminal proceedings are used as a measure of last resort.

Crown liability

- To ensure the Government meets its election commitment to be a model employer, the Bill provides for liability for the wage theft offence to be extended to the Commonwealth Government in its role as an employer (but not other Australian Governments).
- Rules for attributing criminal liability will also apply to bodies corporate and the Commonwealth Government.
- Part 2.5 of the Criminal Code attributes liability to bodies corporate. Part 2.5 will be applied to the Commonwealth Government, with appropriate modifications required to take account of the differences between bodies corporate and government entities.

Liability of Bodies Corporates

- The default provisions in Part 2.5 of the Commonwealth Criminal Code will provide for the criminal liability of bodies corporate.

Officer liability (as accessories)

- Default provisions in the Commonwealth Criminal Code will apply to extend liability to ancillary offenders.

- o Part 2.4 of the Commonwealth Criminal Code will apply to the wage theft offence, which means that certain ancillary offenders will be treated as having committed the offence, for example, where they intentionally aid, abet, counsel or procure the commission of the offence.

Funding:

- A strong and visible regulator that is equipped to detect and take action against criminal conduct will be crucial to delivering the benefits of a new offence in deterring underpayments.
- The Government is providing \$32.4 million over four years to implement our commitment to criminalise wage theft.

Commencement:

- The offence will commence on the later of 1 January 2025, or the day after the Voluntary Small Business Wage Compliance Code is first declared by the Minister for Employment and Workplace Relations. The offence will not commence if the Code is not declared. The wage theft offence will apply to intentional underpayments that occur after the offence commences.
- The offence will not commence immediately as the affected agencies – particularly the Fair Work Ombudsman – need time to prepare, including to develop and consult on the Voluntary Small Business Wage Compliance Code.

Transitional arrangements:

- The offence will only apply to conduct occurring after the commencement date.

Consultation:

- The consultation process for the Bill occurred from March 2023.
- These proposals were discussed at a meeting on 16 June 2023 with key stakeholders to discuss the final policy parameters proposed to be taken forward in this Bill. Draft provisions were then discussed during COIL.

Stakeholder views

Union representatives:

- Support criminalising wage theft but would like to see more done in assisting workers get their underpaid entitlements back quickly (such as reforms to the small claims process).

Employer representatives:

- Concern about impact on small businesses; requested and support a small business code to assist those businesses to comply with the law.
- Prefer a single national set of wage theft laws that override existing state and territory laws.
- Consider criminal offences should only apply to deliberate underpayment, and support the safe-haven framework.
- Some consider complexity of the workplace relations system is the primary driver of wage theft, and that criminalisation needs to be limited to only deliberate/dishonest action.

Wage theft

Top 5 Questions

- Q1 What do these amendments do?
- Q2 When do these amendments commence?
- Q3 Why is the Government focusing on criminal penalties? / Shouldn't criminal prosecutions be a last resort anyway? Shouldn't there be a focus on making sure businesses understand the rules to begin with? (media team)
- Q4 What is the government doing to address the complexity of awards?
- Q5 Does the offence have the potential to capture trivial or honest mistakes? / How can the courts tell if a business made an honest mistake or has acted intentionally? (media team)

Additional questions

- Q6 How prevalent is wage theft in the economy?
- Q7 Which employee entitlements will be covered by the wage theft offence?
- Q8 What are the penalties for the offence?
- Q9 Why is the Government introducing criminal penalties when the majority of underpayments occur due to the complexity of the industrial laws?
- Q10 Why is the threshold for establishing the offence set at intention?

Q11 Why didn't the Government just introduce the same test that was agreed between the BCA and ACTU in the 2022 Jobs Summit process?

Q12 What is the Government doing to support employers who are trying to get their obligations right? / Won't this put more pressure on businesses trying to do the right thing? (media team)

Q13 Will contractual entitlements be covered by the offence?

Q14 How does the law currently address situations where an employee "steals" wages from the employer - for example, where an employee falsifies timesheets and is paid for time they have not worked?

Interaction with State laws and jurisdiction

Q15 What about existing state-based criminal offences for wage underpayment? Will the provisions weaken state wage theft laws?

Q16 Could employers in Victoria and Queensland be subject to two separate jurisdictions, two separate prosecution regimes and two separate pieces of litigation or investigation or charges?

Q17 Could an employer be punished twice, under both Commonwealth and State laws, for the same conduct? Will "double jeopardy" protections apply?

Q18 Which courts will have jurisdiction?

Q19 Can civil and criminal proceedings for wage underpayment be held simultaneously?

Crown liability

- Q20 Are Government departments captured by the criminal offence?
- Q21 Are Parliamentarians captured by the criminal offence?
- Q22 Will State and Territory governments be liable for the federal offence?
- Q23 How will the Government pay a pecuniary penalty to itself?
- Q24 With regard to Crown liability for criminal offences, why does the wage theft offence take a different approach to the industrial manslaughter and other WHS Act amendments?

Officer's liability

- Q25 Why doesn't the criminal offence contain accessorial liability provisions so that wage theft laws may be extended to others, like Directors?

Record-keeping misconduct

- Q26 Why isn't there a criminal offence covering record-keeping misconduct? / Does the government have a mandate to implement criminal offences for false pay records? (media team)
- Q27 Will employers be required to comply with requests for employee records, if these documents might incriminate them?

Penalties for the criminal offence

- Q28 Can you give examples of "similar offences" for the purposes of setting a penalty?
- Q29 Are penalties excessive if they're calculated with reference to the amount of underpayment?

Investigations (including criminal process rights)

- Q30 Who may investigate a possible offence?
- Q31 Why can the AFP investigate wage theft offences? Can the AFP and Fair Work Ombudsman investigate the same underpayment?
- Q32 What is the process for electing between civil or criminal investigations?
- Q33 Are civil proceedings an option following a criminal conviction in a related matter?
- Q34 If an employer is convicted of the underpayments criminal offence, could they also be subject to civil penalties for the underpayment?
- Q35 Who will investigate superannuation underpayments?
- Q36 Is the FWO properly funded to administer these laws (i.e. to investigate alleged criminal underpayments)?

Prosecutions

- Q37 Is there a time limit for bringing a prosecution?
- Q38 Who bears the "onus of proof"?
- Q39 Will an employer face a charge for every pay cycle in which an underpayment occurs?
- Q40 Should unions have the power to conduct investigations and commence prosecutions? / Will this give unions 'police powers' on wage theft? (media team)
- Q41 What about private prosecutions?

Q42 Is the CDPP properly funded to prosecute alleged offences?

Wage redress / workers' rights

Q43 Will the court be able to order repayment of wages following a criminal conviction?

Q44 Can compensation orders be made if there is a finding of guilt, but no conviction recorded?

Q45 Will criminal processes delay wage redress?

Q46 What is the Government doing to protect workers who raise concerns in the workplace about underpayments?

Safe harbour for small businesses

Q47 Will there be a 'safe harbour' for small business?

Q48 How will the Voluntary Small Business Wage Compliance code work?

Q49 What if a small business doesn't comply with the Code?

Q50 What else is the Government doing to help small businesses navigate these laws?

Co-operation agreements

Q51 How will co-operation agreements work?

Q52 Why should the Fair Work Ombudsman enter into a co-operation agreement with an employer who has done the wrong thing?

Q53 If the Fair Work Ombudsman enters into a co-operation agreement with an employer, but subsequently discovers evidence of

egregious conduct, can they cancel the agreement in order to pursue a criminal charge?

Q54 Can co-operation agreements cover both an employer and its officers (such as directors or senior managers)?

Q55 If the Fair Work Ombudsman enters into a co-operation agreement with an employer, can they still investigate the employer's directors or refer them for prosecution?

Q56 Would a co-operation agreement prevent the Australian Federal Police from investigating or prosecuting a potential wage theft offence?

Q57 Does a cooperation agreement protect an employer from civil penalties?

Q58 How are co-operation agreements different to enforceable undertakings?

Q59 Will the Fair Work Ombudsman be required to report on how many co-operation agreements it enters into?

Funding

Q60 What funding has been agreed for this measure?

Consultation

Q61 Who was consulted on the Closing Loopholes Bill?

Q62 What changes have been made to this measure following consultation with employers?

Additional Media questions

Q63 Is this a problem that's getting worse?

- Q64 What will this mean for migrant workers, international students or those on temporary visas?
- Q65 Is there any impact on the Pacific Australia Labour Mobility (PALM) Scheme?
- Q66 What are the elements of the offence?
- Q67 Why does absolute liability apply to parts of the offence if it's meant to only cover intentional underpayment?
- Q68 What will be the status of the Victorian offence?
- Q69 Does this Part give delegated legislation powers to the Minister?
- Q70 How were these provisions amended in the House? Why weren't these provisions in the Closing Loopholes Bill on introduction?

Top 5 Questions

Q1 What do these amendments do?

- These amendments will introduce criminal sanctions where a national system employer *intentionally* engages in conduct that results in the failure to pay a required amount to an employee.
- It is already unlawful to underpay workers, and these amendments do not create new entitlements for workers or obligations for employers.
- However, the offence comes down hard on intentional underpayments.
- The offence will not apply to inadvertent mistakes or miscalculations.
- Small business employers that comply with a new voluntary code will not be referred for criminal prosecution where they have engaged in potential wage theft conduct.
 - o Co-operation agreements will also be available under which the Fair Work Ombudsman can agree to not refer persons that self-report potential wage theft conduct for criminal prosecution.
- The maximum penalty will be the greater of:
 - o 3 times the amount of the underpayment (if it can be determined), or
 - o a fine of 25,000 penalty units for bodies corporate (currently \$7.825 million) or, for individuals, a fine of 5,000 penalty units (currently \$1.565 million), and/or
 - o up to 10 years' imprisonment for individuals.
- The Fair Work Ombudsman (FWO) will be primarily responsible for investigating the new criminal offence and referring matters to the Commonwealth Director of Public Prosecutions or the AFP for consideration and prosecution where appropriate.

Criminal wage theft matters will be heard in the Federal Court of Australia or an appropriate state or territory court.

Q2 When do these amendments commence?

- The criminal offence for wage theft will commence on the later of 1 January 2025, or the day after the Voluntary Small Business Wage Compliance Code is first declared by the Minister for Employment and Workplace Relations.
- The offence will not commence if the Code is not declared.
- This commencement will give employers time to ensure they are meeting their obligations and give the relevant agencies time to prepare.
- The new laws only apply to conduct that occurs after the commencement of the legislation.

Q3 Why is the Government focusing on criminal penalties? /**Shouldn't criminal prosecutions be a last resort anyway?****Shouldn't there be a focus on making sure businesses understand the rules to begin with? (media team)**

- Despite recent Government action to address underpayments, non-compliance remains a persistent problem.
- Several inquiries, including the Migrant Workers' Taskforce and the Senate Inquiry into Unlawful Underpayment of Employees' Remuneration, have recommended the introduction of a criminal offence for wage theft.
- The aim is to encourage compliance. While intended to be used as a last resort, these criminal penalties will make businesses think more carefully about meeting their workplace obligations.
- The Government has absolutely no intention of jailing employers that inadvertently underpay workers – and the amendments make that clear. However, for the small minority of employers that intentionally do the wrong thing and that do engage in wage theft of workers, the Government makes no apologies for targeting that unscrupulous conduct.
- Employees that engage in theft from their employer can already face criminal sanctions; the same standard should equally apply to employers that engage in intentional theft from their employees – and that's what these amendments address.

Q4 What is the government doing to address the complexity of awards?

- The Government is delivering on its commitments, including those made to members of the crossbench through passage of the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, by supporting a targeted review of modern awards.
- As part of the Modern Awards Review, the Commission invited parties to advance proposals to make modern awards easier to use, while not reducing entitlements for employees. This process is focusing on the 7 most-commonly used awards covering retail, hospitality, childcare, clerical, social, community and disability services.
- The President has consulted with stakeholders on a timeline for the review. Proposals to make awards easier to use will be considered from December 2023 to April 2024. The Commission intends to issue a report finalising the review by the end of June 2024.
- Complementary to the review, the Department of Employment and Workplace Relations is scoping and researching how regulatory technology might increase the usability of the workplace relations system, including the awards system.
- The Fair Work Ombudsman is experienced in providing education, advice and assistance to employers of all sizes on how to comply with workplace laws. This is one of the Ombudsman's functions under the Fair Work Act, and the Government funds the Fair Work Ombudsman to perform this function.
- The Fair Work Ombudsman provides information and resources to assist employers to determine the correct pay and conditions for their workers. These educational resources will be updated to reflect changes in the law.

Q5 Does the offence have the potential to capture trivial or honest mistakes? / How can the courts tell if a business made an honest mistake or has acted intentionally? (media team)

- The offence will capture only intentional underpayments. Prosecutors will have to show that an employer intentionally engaged in conduct that resulted in the failure to pay workers' entitlements.
- Employers who try to do the right thing, or who inadvertently make a mistake, will not be caught by the offence.
- Courts and juries will consider evidence of an employer's actions and state of mind when deciding whether they acted intentionally. Examples of actions that could indicate intentional underpayment might include ignoring employee complaints of underpayment, falsifying records or refusing to co-operate with the Fair Work Ombudsman.
- In addition to the high threshold for the offence, these amendments introduce new pathways for employers who make honest mistakes and engage with the Fair Work Ombudsman in good faith.
- An employer who realises they have may have made a mistake can report an underpayment to the Fair Work Ombudsman and may be able enter into a cooperation agreement or enforceable undertaking to rectify their mistake, without further enforcement action being taken.
- Further, where a small business has complied with the Voluntary Small Business Wage Compliance Code, the Fair Work Ombudsman will not refer the conduct to the CDPP or the AFP for prosecution under the new criminal wage theft offence.

Additional questions

Q6 How prevalent is wage theft in the economy?

- Several inquiries, including the Migrant Workers' Taskforce and the Senate Inquiry into Unlawful Underpayment of Employees' Remuneration, have found that underpayment continues to be an issue in Australian workplaces.
- Estimates of the prevalence of underpayment vary.
- The Grattan Institute has estimated that between 3 and 9 per cent of employees in Australia are paid less than the National Minimum Wage.
- Department of Employment and Workplace Relations analysis using the latest data from HILDA (2021) shows 10.2 per cent of all employees appeared to be receiving less than the National Minimum Wage.
 - o The number of employees being paid less than their legal entitlements may be significantly higher, as many employees are entitled to more than the National Minimum Wage.
- Over the 2021-22 and 2022-23 financial years, the Fair Work Ombudsman recovered over \$1 billion in unpaid entitlements:
 - o \$532 million for 384,805 workers in 2021-22
 - o \$509 million for 251,475 workers in 2022-23.

Q7 Which employee entitlements will be covered by the wage theft offence?

- The offence will cover most entitlements payable under the Fair Work Act (National Employment Standards) or fair work instruments (such as modern awards or enterprise agreements).
- The Closing Loopholes Bill was amended in the House to extend the wage theft offence to cover intentional underpayment of superannuation contributions, to the extent that the Commonwealth's legislative power allows.
- The offence will not apply to underpayments of:
 - o long service leave
 - o leave for victims of crime
 - o leave for jury or emergency services duties
 - o superannuation contributionsfor employers and employees who are only national system employers or employees because of referrals from the states and territories.
- There are limits on the Commonwealth's constitutional power to legislate with respect to certain entitlements.

Q8 What are the penalties for the offence?

- The penalties for the criminal offence are appropriately high in recognition of the seriousness of intentional underpayment of wages.
- The penalties are also set at a level that is higher than the penalties available under the Fair Work Act civil penalty regime.
- An employer convicted under the criminal offence will face a fine of up to \$7.825 million for a body corporate (or \$1.565 million for individuals). Individuals will also face up to 10 years' imprisonment.
- The maximum period of imprisonment is commensurate with the penalty for general theft and fraud offences.
- The maximum financial penalties have been set with reference to financial penalties for serious offences against other business laws, such as consumer law.
- These penalties reflect the need to punish and denounce the most egregious forms of underpayment and rehabilitate and deter future criminal wrongdoing.

Q9 Why is the Government introducing criminal penalties when the majority of underpayments occur due to the complexity of the industrial laws?

- The Government recognises that most employers are doing the right thing, and where underpayments occur they can result from honest mistakes.
- Employers that make a genuine effort to meet their obligations will not be prosecuted under these new laws, which only criminalise intentional underpayments.
- The Migrant Workers' Taskforce and the recent Senate inquiry into the unlawful underpayment of employees' remuneration heard evidence of widespread, deliberate wage theft, particularly of vulnerable workers.
- Stamping out this practice will not only help get workers their correct entitlements, but will also benefit honest employers by levelling the playing field, and ensuring they are not competing with businesses who are ripping off employees.

Q10 Why is the threshold for establishing the offence set at intention?

- The bar for establishing criminal liability under the offence is appropriately high because of the seriousness of a criminal conviction.
- The fault element for the offence is intention, which means that the person who commits the offence means to underpay their workers. The penalties reflect the seriousness of the offence.
- The offence will not capture unintentional mistakes; the elements of the offence will only be made out if the prosecution establishes the offender's conduct was intentional.
- The criminal offence supplements the existing civil penalties regime, including the serious contraventions regime, under the Fair Work Act – taken together, the framework will address the full range of non-compliant behaviour, from errors through to dishonest and systematic exploitation.

Q11 Why didn't the Government just introduce the same test that was agreed between the BCA and ACTU in the 2022 Jobs Summit process?

- We have consulted widely with employer groups and employee representative groups, including the BCA and the ACTU.
- As part of the 2022 Jobs Summit process, the BCA and ACTU agreed to 'support reform to enforcement mechanisms so that the Act facilitates and supports the identification of non-compliance, and where it is not deliberate and dishonest, facilitates fair and just rectification.' The reforms in this legislation accord with that position, by only criminalising intentional underpayments and leaving honest mistakes to the civil recovery framework.
- 'Dishonesty' is not an element of the wage theft offence for a range of reasons including:
 - o An offence based on intention will cover conduct where the employer knows they are underpaying and doing it on purpose.
 - o We have sought to minimise legal complexity – there are different interpretations of how dishonesty should apply, and which definition of dishonesty should be used.

Q12 What is the Government doing to support employers who are trying to get their obligations right? / Won't this put more pressure on businesses trying to do the right thing? (media team)

- The wage theft offence does not impose any new obligations on employers. Underpaying workers is already against the law – these reforms strengthen the sanctions that can be imposed.
- The Fair Work Ombudsman is experienced in providing education, advice and assistance to employers of all sizes on how to comply with workplace laws. This is one of the Ombudsman's functions under the Fair Work Act, and the Government funds the Fair Work Ombudsman to perform this function.
- The Fair Work Ombudsman provides information and resources to assist employers to determine the correct pay and conditions for their workers. These educational resources will be updated to reflect changes in the law.
- The Government has committed to boost funding for the Fair Work Ombudsman's Employer Advisory Service . The Employer Advisory Service provides eligible small businesses with free, tailored, written advice to help them comply with the law. Small business employers can rely on advice given to them through this service.
- The Fair Work Ombudsman also provides education and assistance to small businesses through its Small Business Helpline and the Small Business Showcase.
- The Government is delivering on its commitments by supporting the Fair Work Commission to conduct a targeted review of modern awards. As part of the review, the Commission has invited parties to advance proposals to make modern awards easier to use, while not reducing entitlements for employees.

Q13 Will contractual entitlements be covered by the offence?

- The wage theft offence will not apply to contractual entitlements beyond what an employee is entitled to under a Fair Work instrument (National Employment Standards, modern awards, or enterprise agreements).
- Employers can be guilty of the offence to the extent that the underpayment relates to an entitlement under a Fair Work instrument. Where an employee has a contract that provides for a greater entitlement than the relevant Fair Work instrument, the offence only applies up to the Fair Work entitlement.
 - The employee may still use the Fair Work Act civil enforcement provisions to recover entitlements that go beyond the relevant instrument.
- It is not consistent with Commonwealth criminal practice to criminalise breaches of arrangements under employment contracts.
- The wage theft offence is designed to address the most serious instances of underpayment, which often impact workers who rely on minimum entitlements in awards or enterprise agreements and rely on the minimum protections offered by the Fair Work Act.
- It is still against the law to fail to pay agreed contractual entitlements, and the introduction of a wage theft offence does not change the existing civil enforcement options for contractual entitlements:
 - Employees who are underpaid safety net contractual entitlements (over and above the Fair Work Act entitlement) may still seek repayment and penalties under the existing civil framework in the Fair Work Act.
 - Employees who are underpaid other contractual entitlements over and above safety net entitlements are still empowered to take private legal action to recover those amounts.

Q14 How does the law currently address situations where an employee “steals” wages from the employer - for example, where an employee falsifies timesheets and is paid for time they have not worked?

- In this situation, an employee may have defrauded their employer by falsifying documents, leading to the payment of wages to which they are not entitled.
- It would be open to the employer to report the conduct to police. The employee could be charged with offences under the relevant State or Commonwealth Criminal Code provisions.
- For example, offences under the Commonwealth Criminal Code relating to obtaining a financial advantage by deception (s134), or general dishonesty (s135) carry a maximum penalty of 10 years’ imprisonment.

Interaction with State laws and jurisdiction

Q15 What about existing state-based criminal offences for wage underpayment? Will the provisions weaken state wage theft laws?

- The Government committed to not water down wage theft laws already passed by the states.
- The wage theft offence has a fault element of intention.
 - The Victorian *Wage Theft Act 2020* criminalises the dishonest withholding of employee entitlements, and
 - the definition of stealing in the Queensland Criminal Code includes the intentional failure to pay an employee.
- On 14 December 2023, the Victorian Government announced it would repeal the Victorian wage theft offences.
- The amendments do not expressly preserve state wage theft laws.
- (See **Q68** on the status of the Victorian offence).

Q16 Could employers in Victoria and Queensland be subject to two separate jurisdictions, two separate prosecution regimes and two separate pieces of litigation or investigation or charges?

- The wage theft offence will apply to all national system employers and national system employees covered by the Fair Work Act across Australia.
- The amendments cover intentional wage theft. The amendments do not expressly preserve state wage theft laws.
 - o On 14 December 2023, the Victorian Government announced it would repeal the Victorian wage theft offences.
- The Fair Work Ombudsman will be able to investigate in line with its existing jurisdiction.
- The Fair Work Ombudsman currently shares information with agencies such as the Australian Taxation Office and Australian Securities and Investments Commission to enable efficient investigation and law enforcement.
- Whether proceedings are commenced is a matter for each agency, however, in states with existing wage theft offences, I expect law enforcement or regulatory agencies will continue to co-operate when investigating potentially criminal underpayment of Fair Work Act entitlements.

Q17 Could an employer be punished twice, under both Commonwealth and State laws, for the same conduct? Will “double jeopardy” protections apply?

- It is not intended that a person be punished twice for the same conduct.
- All jurisdictions have arrangements that protect against ‘double punishment’ whether under their general Crimes Acts, Criminal Codes or the common law.
- Law enforcement agencies will continue to co-operate when investigating potentially criminal underpayment of Fair Work Act entitlements.
- The amendments do not expressly preserve state wage theft laws.

Q18 Which courts will have jurisdiction?

- Most criminal wage theft matters will likely be heard in state and territory courts, as they have existing jurisdiction for Commonwealth criminal offences.
- The Federal Court of Australia will also have jurisdiction to hear criminal matters arising under the Fair Work Act. The choice of court is generally a matter for the prosecutor in each case.

Q19 Can civil and criminal proceedings for wage underpayment be held simultaneously?

- No. The reason why civil and criminal proceedings can't be held simultaneously is because of potential prejudice to the accused because of the differing standards of evidence and procedure rules for different kinds of proceedings.

Crown liability

Q20 Are Government departments captured by the criminal offence?

- The Commonwealth is required to comply with workplace obligations, including with regards to pay, the same as any other employer.
- The Commonwealth may be subject to prosecution for the criminal offence.
 - o New section 794B will provide for the liability of the Commonwealth for the offence for wage theft and related offences.
- These provisions will ensure that the Commonwealth meets its election commitment to be a model employer.

Q21 Are Parliamentarians captured by the criminal offence?

- Yes, Parliamentarians may be liable for the wage theft offence, as either employers (if relevant) or ancillary offenders (for example, if complicit in wage theft) provided they meet the elements of the offence including intention.
- It's important that Members of Parliament are held to the same standard as all other employers.
- Parliamentary workplaces involve several different kinds of employment arrangements. Due to the different ways that staffers and advisors are employed, there will be two ways that a Member of Parliament might be liable for the offence:
 - o As the direct employer of a staffer, committing the wage theft offence as an employer; or
 - o As an ancillary offender involved (aiding, abetting or procuring the commission of an offence) in the commission of an offence by the direct employer, a Commonwealth agency.

Q22 Will State and Territory governments be liable for the federal offence?

- The Crown in respect of the Commonwealth only will be liable for the wage theft offences.
- The Fair Work Act doesn't generally cover the state/territory governments because they did not refer this power to the Commonwealth (with the exception of Victoria).

Q23 How will the Government pay a pecuniary penalty to itself?

- As far as possible, the same rules for attributing criminal liability, and liability for civil penalties, will apply to bodies corporate and the Crown which is appropriate insofar as they are both employers. This also meets our election commitment that the Commonwealth be a model employer.
- The Commonwealth will not be liable to pay a penalty to itself, but will be notionally liable for the penalty. The Finance Minister may give a direction to enable the transfer of money from the account from one Commonwealth agency to another as necessary.

Q24 With regard to Crown liability for criminal offences, why does the wage theft offence take a different approach to the industrial manslaughter and other WHS Act amendments?

- The approach taken for the industrial manslaughter and other WHS Act amendments in this Act is the result of detailed and ongoing consultation undertaken by the Government under the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety.
- The approach taken with respect to the wage theft offence accounts for the different regulatory contexts between underpayment and work health and safety.
 - o The wage theft offence incorporates Part 2.5 of the Criminal Code by reference, while the industrial manslaughter measure adopts the relevant provisions but goes further in several respects, as agreed under the processes of the applicable Intergovernmental Agreement.
- The approach in new section 794AB ensures that the Commonwealth and private sector employers are subject to the same rules of attribution of liability under the Fair Work Act.

Officer's liability

Q25 Why doesn't the criminal offence contain accessorial liability provisions so that wage theft laws may be extended to others, like Directors?

- The criminal offence will extend to accessories.
- The ancillary liability provisions in Part 2.4 of the Commonwealth Criminal Code will apply. This is the standard approach for Commonwealth criminal offences – the Criminal Code provisions apply to all Commonwealth criminal offences, unless expressly excluded.
- Under the Criminal Code regime, ancillary offenders are generally subject to the same maximum penalties as the primary offender, with some exceptions.
- Prosecuting individuals like directors and officers who are complicit in wage theft will provide a strong deterrent against future corporate wrongdoing.

Record-keeping misconduct**Q26 Why isn't there a criminal offence covering record-keeping misconduct? / Does the government have a mandate to implement criminal offences for false pay records? (media team)**

- The availability of civil penalties for record-keeping misconduct, alongside the potential criminal liability for broader intentional conduct that results in an underpayment, means that there is a range of punitive outcomes available to deter non-compliance.
- It is already unlawful for employers to fail to keep records or keep incorrect records, and it is unlawful for employers to make or keep employment records that they know are false or misleading.
-
- Record-keeping misconduct may also be treated as a serious civil contravention attracting even higher penalties in appropriate circumstances.
- Where record-keeping misconduct, such as falsification of records, occurs as part of an employer's deliberate scheme to underpay an employee, the employer's conduct will be subject to the criminal wage theft laws.

Q27 Will employers be required to comply with requests for employee records, if these documents might incriminate them?

- The Fair Work Act confers certain immunities on individuals who are compelled to give self-incriminating evidence (ss 713, 713A). This means that such evidence cannot be used against that individual, in the specified proceedings.
- However, employee records and copies of pay slips are required to be kept or issued under the Fair Work Act.
- The Act will be amended so that these immunities do not cover employee records and copies of pay slips that are required to be kept or issued under the Fair Work Act, with the result that they may be tendered as evidence before a court, including in criminal proceedings.
- Without employee records and pay slips, the Fair Work Ombudsman's ability to investigate and prove the new wage theft offence would be severely curtailed. Given the importance of timely and effective investigations, and the fact that these records are already required to be kept by law, these immunity provisions must be updated to reflect the insertion of new criminal offences in the Fair Work Act.

Penalties for the criminal offence**Q28 Can you give examples of “similar offences” for the purposes of setting a penalty?**

- The objective of introducing criminal penalties is to punish those who intentionally underpay workers and deter others from doing so. The maximum penalty for the wage theft offence is comparable to maximum penalties for similar offences in other Commonwealth laws, such as:
- Corporations Act 2001: The following offences in the Corporations Act have a maximum penalty of 15 years’ imprisonment, or a fine the greatest of 45,000 penalty units; 3 times benefit derived or detriment avoided; or 10% of the annual turnover of the body corporate
 - Subsection 596AB(1) - entering into a relevant agreement or transaction with the intention of avoiding or preventing the recovery of employee entitlements
 - Subsection 1043A(1) - insider trading, and
 - Section 1041A – market manipulation
- Competition and Consumer Act 2010: the following examples of offences in the Competition and Consumer Act and Australian Consumer Law have a maximum penalty of the greatest of: \$50 million; 3 times the value of the benefit obtained; or 30% of the body corporate’s adjusted turnover for the breach period.
 - Subsection 151(1) of the ACL - false or misleading representations about goods or services
 - Subsection 153(1) of the ACL - misleading conduct relating to employment, and
 - Subsection 45AF(1) - giving effect to a cartel provision.

Q29 Are penalties excessive if they're calculated with reference to the amount of underpayment?

- This particular penalty will only be available where the court can make a finding as to the exact value of the underpayment being alleged.
- This penalty is likely only to be used where the maximum penalty available in penalty units (after taking into account grouping of charges) would be less than three times the amount of the underpayment.
- Courts will have regard to the circumstances of the offending and will continue to balance the need for deterrence with the need to ensure penalties are not oppressive.
- The Court also needs to balance the need to encourage compliance with the Act. An insufficient level of penalties means that the consequence of underpaying employees could be seen as an acceptable cost of doing business.

Investigations (including criminal process rights)

Q30 Who may investigate a possible offence?

- The Fair Work Ombudsman and the AFP may investigate a possible offence against the new provisions, using their existing powers. No additional powers have been included for this purpose.
- Employee or employer representatives do not have standing to commence criminal prosecutions.
- The AFP has jurisdiction to investigate and charge Commonwealth criminal offences. However, I expect that the Fair Work Ombudsman will be the main investigating agency, with the AFP investigating in specific circumstances, including where wage theft involves serious or complex fraud against the Commonwealth.

Q31 Why can the AFP investigate wage theft offences? Can the AFP and Fair Work Ombudsman investigate the same underpayment?

- The AFP has jurisdiction to investigate and charge Commonwealth criminal offences. This will include the new wage theft offence.
- The AFP and the Fair Work Ombudsman already share information about potentially criminal activity. It is expected that the Fair Work Ombudsman and the AFP will co-operate and reconcile investigations to ensure investigative resources are being used effectively, and by the agency best-placed to investigate.
- Both the AFP and Fair Work Ombudsman will follow their internal procedures to assess the best investigatory approach for potential criminal underpayment to ensure that their investigatory resources are used efficiently and effectively.

Q32 What is the process for electing between civil or criminal investigations?

- The Fair Work Ombudsman uses its already publicly available compliance and enforcement policy to determine the most appropriate enforcement action in each case.
- The Closing Loopholes Act also introduces a legislative requirement for the Fair Work Ombudsman to publish this policy. I expect the updated policy will include information about the Fair Work Ombudsman's process for determining whether to pursue a civil or criminal investigation.
- In general, investigators prefer to make an election at the start of a case to determine whether they will pursue a civil investigation or criminal investigation.
- The decision to initiate a criminal investigation, and prepare a brief of evidence, may also involve input from the Commonwealth Director of Public Prosecutions.
- It is possible to pursue both criminal prosecutions and civil proceedings in relation to a particular matter, with strict information barriers between the criminal process and civil process.
- If a person has been convicted of the wage theft offence, civil proceedings may still be commenced, for example, to seek compensation. However, a court can't order a civil penalty against that person for substantially the same conduct.

Q33 Are civil proceedings an option following a criminal conviction in a related matter?

- The Fair Work Act contains rules about the order in which proceedings can happen when they're related to the same conduct.
- If a person has been convicted of the wage theft offence, a court can't order a civil penalty against that person for substantially the same conduct. However, civil proceedings may still be commenced, for example, to seek compensation.
- If civil proceedings have already been started by an individual and a criminal prosecution is then commenced for substantially the same conduct, the civil proceedings will be stayed until the criminal proceedings are complete.
 - o If the person is convicted of the offence, the court will likely order repayment of the unpaid entitlements. If it does not, the civil proceedings for a pecuniary order will be dismissed, but the person can still pursue compensation through civil proceedings.
 - o If the person isn't convicted, the civil proceedings will resume.
- If civil proceedings have completed, criminal proceedings may be commenced for the same conduct, regardless of whether there has already been a compensation or civil pecuniary penalty order.

Q34 If an employer is convicted of the underpayments criminal offence, could they also be subject to civil penalties for the underpayment?

- No. Section 552 of the Fair Work Act ensures that if criminal penalties are imposed for underpaying an employee, civil penalties cannot also be imposed in relation to the same conduct. This protects a person from being penalised twice for the same conduct.
- In addition, the Fair Work Act makes further provision to protect the integrity of criminal law proceedings, by providing for the stay of any related civil penalty proceedings for the same conduct while the criminal proceedings are on foot (see section 553).
- This protection is in addition to any general powers the courts have to control their own proceedings and to protect the integrity of criminal law proceedings, and does not prevent the court from ordering a person to make monetary reparation to any other person in respect of any loss suffered by reason of the offence.

Q35 Who will investigate superannuation underpayments?

- The ATO will retain primary responsibility for ensuring compliance with the superannuation guarantee and associated obligations and investigating suspected underpayments of superannuation guarantee (SG) contributions.
- Inclusion of superannuation in the wage underpayment criminal offence will enable the FWO to include allegations of intentional underpayment of superannuation in its criminal investigations.
- It will complement the FWO's existing standing to initiate civil action to recover unpaid superannuation where it is an entitlement under a modern award, enterprise agreement, NES or other instruments.
- Where an underpayment involves superannuation, the ATO and FWO work collaboratively, with the ATO generally taking responsibility for investigating the SG component of underpayments.
- Pathways to resolve superannuation underpayments will be further supported by the Government's payday superannuation reforms.
 - o From 1 July 2026, employers will be required to pay their employees' superannuation at the same time as their salary and wages.
 - o The Government is also setting targets for the ATO for recovery of payments and providing the ATO with additional resourcing.

Q36 Is the FWO properly funded to administer these laws (i.e. to investigate alleged criminal underpayments)?

- A strong and visible regulator that is equipped to detect and take action against criminal conduct will be crucial to delivering the benefits of the new criminal offence in deterring underpayments.
- The Government is providing \$32.4 million over four years to implement the new criminal offence for wage theft.
- This includes funding for the Fair Work Ombudsman to take on its new role as a criminal investigatory agency.
- Introducing a federal wage theft offence represents a fundamental shift for the Fair Work Ombudsman from being an entirely civil regulator to a regulator with dual criminal and civil functions.
- This funding will be used to establish and maintain technology and business processes to ensure the integrity, security and privacy of evidence gathered in criminal investigations, acquire physical facilities to store criminal investigations, prepare briefs of evidence and engage external forensics experts and legal counsel.
- This funding will also enable the Fair Work Ombudsman to engage 18 staff (18 ASL), including new Fair Work Inspectors to investigate alleged criminal underpayments, legal staff to assist in preparing briefs of evidence, and staff to prepare updated communications and education materials to support workers and employers to understand the new offence framework.

Prosecutions

Q37 Is there a time limit for bringing a prosecution?

- A prosecution of the wage theft offence or related offence must be commenced within 6 years of when the offence was committed. This is the same as the time limit for civil proceedings under the Fair Work Act.

Q38 Who bears the “onus of proof”?

- Consistent with general principles of criminal law, the prosecution must discharge the onus of proof in relation to all elements of the offence.
- As the offence relates to intentional conduct, there is no defence – however, all elements of the offence must be proved beyond reasonable doubt.

Q39 Will an employer face a charge for every pay cycle in which an underpayment occurs?

- Decisions about how charges are laid, including the number of charges and how they are particularised, will be a matter for the prosecutor and will depend on the circumstances of each case.
- Under the new provisions, a person commits an offence if they are required to pay an amount to, on behalf of, or for the benefit of an employee, and intentionally engages in conduct that results in the failure to pay the amount to the employee in full.
- The course of conduct provisions at subsection 327A(8) mean that if a person is found guilty of committing two or more offences, and the aggregated offences occurred as part of a course of conduct by the person, the person will be taken for sentencing purposes to have been found guilty of only one offence.
- The court would determine whether two or more offences arose out of a course of conduct. This is a fact-specific enquiry that can only be undertaken once a person has been found guilty of breaching 2 or more offences.
- A penalty based on the underpayment amount is still available if these course of conduct provisions are applied. The 'underpayment amount' will be the sum of the underpayment amounts (where ascertainable) for each or any of the separate offences for which the person is found guilty.
- Further, the common law principle of totality will require a judge who is sentencing an offender for a number of offences to ensure that the aggregation of the sentences is appropriate for total criminality involved.
- In this way, the Court will be able to balance the sentence or penalty appropriately to the crime.

Q40 Should unions have the power to conduct investigations and commence prosecutions? / Will this give unions 'police powers' on wage theft? (media team)

- The Fair Work Ombudsman and Australian Federal Police will be empowered to investigate criminal underpayment.
- Only the Commonwealth Director of Public Prosecutions and Australian Federal Police will be able to commence prosecutions.
- Public prosecutors are best placed to conduct complex criminal trials, including jury trials.
- This is consistent with key Commonwealth laws, such as the Corporations Act and the Competition and Consumer Act.
- Under the Fair Work Act, unions have powers of entry, inspection and enforcement that enable them to investigate suspected contraventions of the Fair Work laws and instruments, and seek wage redress for their members.
- These existing right of entry provisions under the Fair Work Act seek to balance the rights of unions to represent members, and the rights of employers to go about their business without undue inconvenience.

Q41 What about private prosecutions?

- Public prosecutors are best placed to conduct complex criminal trials, including jury trials.
- This is consistent with key Commonwealth criminal laws that include offences, such as the Corporations Act and the Competition and Consumer Act.
- Individuals and employee organisations will still be able to bring proceedings for civil contraventions of the FW Act.

Q42 Is the CDPP properly funded to prosecute alleged offences?

- The Government is providing \$2.7 million over four years for the Commonwealth Director of Public Prosecutions to provide legal advice and training to the Fair Work Ombudsman, receive briefs of evidence and prosecute wage theft matters.
- This includes funding for approximately 3 staff (3.3 ASL), including staff to provide support and capacity building training to staff of the Fair Work Ombudsman, and staff to receive briefs of evidence and conduct prosecutions.

Wage redress / workers' rights

Q43 Will the court be able to order repayment of wages following a criminal conviction?

- Yes.
- While criminal prosecutions will be the most appropriate enforcement tool in serious cases where there is a need for punishment of and deterrence against egregious underpayment, courts are empowered to order that a person convicted of a federal offence repay a person any loss they suffered by reason of the offence (section 21B of the Crimes Act).

Q44 Can compensation orders be made if there is a finding of guilt, but no conviction recorded?

- Yes, subject to the court's discretion (see section 19B(1)(d) of the Crimes Act).

Q45 Will criminal processes delay wage redress?

- Civil enforcement will continue to be the primary means of enforcement, and this will be sufficient in the great majority of cases.
- There will be no delay in wage redress if:
 - o underpayments are not disputed and rectification is made voluntarily
 - o a defendant is incentivised to make early rectification to mitigate their sentence.
- Any proceedings for a civil penalty provision are automatically stayed if criminal proceedings are commenced or have already commenced against that person for an offence involving conduct that is the same, or substantially the same, as the conduct that contravened the civil penalty provision (see section 553 of the Fair Work Act). This provides fairness to an accused.
- Where criminal prosecution is necessary, prosecutors will be able to seek reparation orders as part of the criminal proceedings, which will help avoid the need for multiple proceedings.

Q46 What is the Government doing to protect workers who raise concerns in the workplace about underpayments?

- The general protections provisions in the Fair Work Act protect workers from adverse action when making enquiries or complaints about their employment, including whether they are being paid correctly.
- The Fair Work Ombudsman provides education and advice on these matters to concerned workers.
- The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amended the general protections in the Fair Work Act to give employees the right to share information about their pay and employment conditions with other employees. From 7 December 2022, new employment contracts can't include pay secrecy terms that prohibit employees from sharing information about their pay and conditions.

Safe harbour for small businesses

Q47 Will there be a 'safe harbour' for small business?

- Small businesses that take reasonable steps to pay their workers correctly will not be caught up in the criminal offence, which requires intentional misconduct. It will not apply to inadvertent mistakes or miscalculations.
- If a small business employer has underpaid an employee but they've satisfied the Fair Work Ombudsman of their compliance with the Voluntary Small Business Wage Compliance Code, the Fair Work Ombudsman must not refer conduct to the Commonwealth Director of Public Prosecutions or the AFP for prosecution.

Q48 How will the Voluntary Small Business Wage Compliance code work?

- A Voluntary Small Business Wage Compliance Code will be developed by the Fair Work Ombudsman in consultation with business and employee groups.
- The wage theft offence cannot commence until the Code is declared.
- The Code will provide clarity and certainty for small businesses about how to comply with their wage obligations under the Fair Work Act. In this way, it can provide 'safe harbour' for small businesses who follow the Code.
- If the Fair Work Ombudsman is satisfied that a small business employer has complied with the Code in relation to an underpayment, the Fair Work Ombudsman will provide written notice to the employer that they won't be referred to the Commonwealth Director of Public Prosecutions or the AFP.
- If a small business employer receives this notice, they also won't need to consider entering into a cooperation agreement with the Fair Work Ombudsman.
- The Code will be a legislative instrument.

Q49 What if a small business doesn't comply with the Code?

- Compliance with the Small Business Code will be voluntary. However, it is designed to benefit small business employers.
- If small business employers choose not to comply with the Code, they could potentially be referred to the CDPP or the AFP for criminal prosecution if they are suspected of intentionally underpaying.

Q50 What else is the Government doing to help small businesses navigate these laws?

- The changes help to level the playing field for the small businesses who are doing the right thing. These reforms will not create any additional regulatory burden on businesses that are already complying with workplace laws.
- The Government is implementing reforms to help small businesses to better understand their workplace obligations, improve compliance and identify and resolve any issues early.
- The Fair Work Ombudsman and the Fair Work Commission will publish information on the reforms to help guide businesses, workers and the community through the changes if they are passed.
- The Government has committed to boost funding for the Fair Work Ombudsman's Employer Advisory Service. The Employer Advisory Service provides eligible small businesses with free, tailored, written advice to help them comply with the law. Small business employers can rely on advice given to them through this service.
- Small business employers are more likely to rely on modern awards to set pay and conditions for their employees.
- The Government is delivering on its commitments by supporting the Fair Work Commission to conduct a targeted review of modern awards.
- As part of the Modern Awards Review, the Commission invited parties to advance proposals to make modern awards easier to use, while not reducing entitlements for employees. This process is focusing on the 7 most-commonly used awards covering retail, hospitality, childcare, clerical, social, community and disability services.

Co-operation agreements

Q51 How will co-operation agreements work?

- The cooperation agreement process will be set out in new sections 717A to 717G of the Fair Work Act.
- If a person (such as an employer) is concerned that they may have made an underpayment that could expose them to the wage theft offence, they may self-report the underpayment to the Fair Work Ombudsman.
- The Fair Work Ombudsman may agree not to refer that employer's conduct for prosecution by entering into a cooperation agreement after considering a list of mandatory factors.
 - o These factors include the nature of the underpayment, level of detail disclosed by the employer, the employer's willingness to co-operate in investigatory and rectification activities and the employer's history of compliance.
- The FWO can cancel a cooperation agreement in situations where the employer has not complied with agreement or has provided false and misleading information (new section 717D).
- A cooperation agreement does not prevent the Fair Work Ombudsman from commencing civil proceedings in relation to the underpayment if appropriate (new section 717G).

Q52 Why should the Fair Work Ombudsman enter into a co-operation agreement with an employer who has done the wrong thing?

- Co-operation agreements complement the existing non-punitive enforcement pathways in the Fair Work Act, including compliance notices and enforceable undertakings.
- Both employers and workers may benefit from an opportunity to self-report and efficiently rectify potentially criminal non-compliance.

Q53 If the Fair Work Ombudsman enters into a co-operation agreement with an employer, but subsequently discovers evidence of egregious conduct, can they cancel the agreement in order to pursue a criminal charge?

- A person who has deliberately done the wrong thing and tried to prevent prosecution by misleading the Fair Work Ombudsman will not be protected by a co-operation agreement.
- If the employer has contravened a term of the agreement or provided false information, the Fair Work Ombudsman may terminate the agreement or apply to a court for orders in relation to the agreement. It would be open to the Fair Work Ombudsman to consider commencing or continuing a criminal investigation into the reported underpayment.
 - Whether a disclosure is complete at the time when the employer approaches the Fair Work Ombudsman will be assessed by the Ombudsman when deciding whether to enter into the agreement, and will be assessed with reference to the extent of the employer's knowledge at the time of the disclosure.
- The Fair Work Ombudsman/an inspector would also reserve the right to commence civil proceedings for any contraventions arising from the reported conduct, if appropriate in the circumstances.

Q54 Can co-operation agreements cover both an employer and its officers (such as directors or senior managers)?

- Yes. Both individuals and bodies corporate can self-report an underpayment to the Fair Work Ombudsman.
- While the content of a co-operation agreement (including who is covered by the agreement) will be a matter for the parties in each particular case, co-operation agreements can apply to both an employer body corporate and its individual officers.

Q55 If the Fair Work Ombudsman enters into a co-operation agreement with an employer, can they still investigate the employer's directors or refer them for prosecution?

- Co-operation agreements can cover employer bodies corporate, individuals (for example, directors or officers), or both.
- If a person is complicit in the commission of a potential wage theft offence (for example, as an ancillary offender) but is not party to a co-operation agreement covering that conduct, the Fair Work Ombudsman will be able to investigate that person's conduct or refer it to the Australian Federal Police or Commonwealth Director of Public Prosecutions if appropriate.

Q56 Would a co-operation agreement prevent the Australian Federal Police from investigating or prosecuting a potential wage theft offence?

- If the Fair Work Ombudsman enters into a co-operation agreement with a person, they will not refer that person's conduct to the Australian Federal Police or the Commonwealth Director of Public Prosecutions.
- These amendments don't give the Australian Federal Police the power to enter, or be parties to, co-operation agreements.
- The Australian Federal Police is an independent statutory agency, and these amendments do not purport to direct its investigations or priorities. These amendments don't prohibit the Australian Federal Police from investigating or prosecuting the new criminal wage theft offence.
- The Fair Work Ombudsman and Australian Federal Police will continue to share information about possible criminal conduct, including potential commissions of the wage theft offence where appropriate, to ensure that their investigatory resources are used efficiently and effectively.

Q57 Does a cooperation agreement protect an employer from civil penalties?

- No. If the Fair Work Ombudsman enters into a cooperation agreement, it agrees not to refer the conduct for criminal prosecution, but it will reserve the right to commence civil proceedings for any contraventions arising from the reported conduct, if appropriate in the circumstances.
 - o It would be open to an employer to seek to enter into an enforceable undertaking with the Fair Work Ombudsman in relation to the civil contraventions, in appropriate cases.

Q58 How are co-operation agreements different to enforceable undertakings?

- An enforceable undertaking (s715) prevents the Fair Work Ombudsman from commencing civil proceedings against a person; a cooperation agreement prevents the Fair Work Ombudsman from referring conduct for criminal prosecution.
- Both options provide a pathway for a person or employer to self-report non-compliance, with the willingness to work with the FWO to rectify an underpayment.
- These amendments also include rules about how enforceable undertakings and co-operation agreements interact.

Q59 Will the Fair Work Ombudsman be required to report on how many co-operation agreements it enters into?

- The Fair Work Act will not require the FWO to report on the number of co-operation agreements it enters into. This will be a matter for the FWO.

Funding

Q60 What funding has been agreed for this measure?

- A strong and visible regulator that is equipped to detect and take action against criminal conduct will be crucial to delivering the benefits of a new offence in deterring underpayments.
- The Government is providing \$32.4 million over four years to implement our commitment to criminalise wage theft.

Consultation

Q61 Who was consulted on the Closing Loopholes Bill?

- The Government undertook a significant public consultation process on the measures in the Closing Loopholes Act, commencing in February 2023.
- We consulted with a range of stakeholders including business groups, employers, small business representatives, unions, academics, State and Territory Governments, and civil society.
- We have also consulted extensively with the Fair Work Ombudsman who will be primarily responsible for the investigation of the new criminal offence.

Q62 What changes have been made to this measure following consultation with employers?

- Feedback provided in consultation meetings and written submissions was carefully considered, and the detail of the measures were developed to reflect that feedback.
- Stakeholder feedback affirmed the wage theft offence should criminalise intentional underpayment, supplementing the existing compliance and enforcement framework in the Fair Work Act with criminal penalties for the most egregious cases of non-compliance.
- In response to other stakeholder feedback from employer groups:
 - o The Fair Work Ombudsman will have the ability to enter into co-operation agreements with people who self-report potentially criminal underpayments, providing an opportunity for employers to work with the Fair Work Ombudsman to rectify underpayments, enabling swifter recovery of entitlements.
 - o a Voluntary Small Business Wage Compliance Code will be developed to give small business employers guidance about compliance with their wage obligations under the Fair Work Act. If a small business employer has underpaid but can demonstrate compliance with the Code, the Fair Work Ombudsman will notify the employer to provide assurance that it will not refer the underpayment for criminal prosecution.
 - o The Fair Work Ombudsman will be required to publish its compliance and enforcement policy. It will also publish, and consult the NWRCC, on guidelines about co-operation agreements and enforceable undertakings.

Additional Media questions

Q63 Is this a problem that's getting worse?

- Estimates of the prevalence of underpayment vary. The Grattan Institute has estimated that between 3 and 9 per cent of employees in Australia are paid less than the National Minimum Wage.
- Department of Employment and Workplace Relations analysis using the latest data from HILDA (2021) shows 10.2 per cent of all employees appeared to be receiving less than the National Minimum Wage.
 - o The number of employees being paid less than their legal entitlements may be significantly higher, as many employees are entitled to more than the National Minimum Wage.
- Evidence considered by the Migrant Workers' Taskforce and the Senate Unlawful Underpayments Inquiry, in addition to the Fair Work Ombudsman's compliance and enforcement statistics, indicate that underpayment is a pervasive and systemic issue in Australian workplaces.
- Over the 2021-22 and 2022-23 financial years, the Fair Work Ombudsman recovered over \$1 billion in unpaid entitlements:
 - o \$532 million for 384,805 workers in 2021-22
 - o \$509 million for 251,475 workers in 2022-23.

Q64 What will this mean for migrant workers, international students or those on temporary visas?

- The new wage theft offence will apply to employers who intentionally underpay workers, regardless of their migration status.
- The *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* amended the Fair Work Act to make it explicit that a migrant working in Australia is entitled to the benefit of the Fair Work Act, regardless of their migration status.
- This includes circumstances where a migrant worker has breached a work-related visa condition, does not have work rights, or does not have the right to be in Australia.
- The compliance and enforcement framework in the Fair Work Act, and penalties for a failure to comply with the obligations set out in the Act, apply to non-compliance that involves or affects migrant workers.

Q65 Is there any impact on the Pacific Australia Labour Mobility (PALM) Scheme?

- Employees participating in the PALM scheme have the same workplace entitlements and protections as all other employees in Australia, including the minimum pay and conditions set out in the Fair Work Act in addition to the conditions required under the PALM scheme program guidelines.
- This means that the new wage theft offence will apply to national system employers who intentionally underpay PALM scheme employees' entitlements owed under the Fair Work Act.

Q66 What are the elements of the offence?

- General principles of criminal responsibility are set out in the Commonwealth Criminal Code.
- Most offences comprise fault elements and physical elements (acts or omissions).
- Paragraphs (a) and (b) of the wage theft offence require the prosecution to prove that a relevant amount was owed to the employee under the Act, an instrument or a transitional instrument and is within the scope of the offence (not being a superannuation entitlement or certain amounts not covered for referral employees).
 - o These are both 'circumstance' physical elements, defined in the Commonwealth Criminal Code as 'circumstances in which conduct, or a result of conduct occurs'.
- Paragraphs (c) and (d) of the offence require the prosecution to prove that the employer engaged in conduct, and that the conduct resulted in a failure to pay the required amount to the employee in full and on time. Paragraph (c) is conduct and paragraph (d) is a result.
- Absolute liability applies to the circumstance that an amount was owed to the employee and that amount is within the scope of the offence.
 - o This means that the prosecution doesn't need to prove the employer's state of mind, for example their knowledge, with respect to these elements, and there is no defence available.
- Intention is the fault element for the conduct and resulting underpayment. This means that the prosecution will need to prove that the employer's conduct was intentional, and that the intended result was that an employee was underpaid.

Q67 Why does absolute liability apply to parts of the offence if it's meant to only cover intentional underpayment?

- The Guide to Framing Commonwealth Offences notes that applying absolute liability to physical elements of an offence is appropriate in certain circumstances, including where elements are objective facts that do not relate to a defendant's culpability.
- Paragraphs (a) and (b) of the offence, being that an amount is owed to an employee and the amount is within the scope of the offence, are the 'objective facts' which are preconditions of the offence (whether an amount was payable).
 - In contrast, paragraphs (c) and (d), being the conduct and resulting underpayment, set out the behaviour and consequences that make up a criminal underpayment.
- An employer's subjective awareness of whether an amount was payable to the employee is more likely to be relevant when considering whether the employer intended for there to be a failure to pay the employee (under paragraph (d) of the offence), rather than when establishing whether the amount was payable to the employee in the first instance (under paragraph (a)).
- Applying absolute liability to the amount payable and scope of the offence and intention to the conduct and resulting underpayment is justified as it strikes a balance between setting a high threshold for criminal liability and ensuring future trials are focused on the substance of what makes an underpayment criminal, that is, that the employer intended their conduct and intended that it result in underpayment.

Q68 What will be the status of the Victorian offence?

- Any person under investigation for wage theft under state laws should seek their own legal advice about those laws.
- The amendments do not expressly preserve state wage theft offences
- On 14 December 2023 the Hon Tim Pallas, Victorian Minister for Industrial Relations, announced that the Victorian Government will repeal the Victorian wage theft offences.

Q69 Does this Part give delegated legislation powers to the Minister?

- Yes. These provisions:
 - o give the Minister the power to declare a Voluntary Small Business Wage Compliance Code and
 - o create regulation-making powers in relation to:
 - other matters the Fair Work Ombudsman must have regard to when deciding whether to enter into a cooperation agreement (paragraph 717B(2)(g))
 - any particular content to be required in cooperation agreements (subsection 717B(3))
 - other grounds the FWO must satisfy herself of before terminating a cooperation agreement (paragraph 717D(1)(c))
 - modifications to the provisions dealing with the liability of Australian Governments under civil remedy provisions in the FW Act (subsection 794A(6))
 - modifications to how Part 2.5 of the Commonwealth Criminal Code applies to the Commonwealth to provide for liability for the wage theft offence (subparagraph 794B(2)(b)(iii)), and
 - modifications to the rules for identifying 'responsible agencies' for the Commonwealth and Australian Governments (subsection 794C(5)).

Q70 How were these provisions amended in the House? Why weren't these provisions in the Closing Loopholes Bill on introduction?

- The provisions were amended so that the wage theft offence also covers intentional underpayments of superannuation contributions, where they are required by the Fair Work Act, a fair work instrument or a transitional instrument.
 - o The wage theft offence will cover superannuation contributions to the extent permitted by the Commonwealth's legislative power (see **Question 7** for what is / is not covered).
 - o All employers will still be required to comply with superannuation obligations they have under taxation law and industrial instruments.
 - o This amendment complemented the Government's reform in the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* to insert a right to superannuation in the National Employment Standards, which comes into effect on 1 January 2024.
- The amendment was made following stakeholder feedback that superannuation should be included in the wage theft offence.
- It was not included in the Closing Loopholes Bill as introduced because there is already a statutory framework administered by the ATO for employers who do not pay superannuation contributions in respect of their employees, including criminal penalties.
 - o The Treasury was consulted on the amendment, being the policy agency responsible for the superannuation framework and the Australian Taxation Office. The Fair Work Ombudsman was closely consulted on the development of the offence and was aware of the government's intention to add superannuation to the offence.

Civil penalty reforms explainer

- The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* included amendments to the Fair Work Act that:
 - o increased civil penalties for wage underpayment-related contraventions by 5 times for non-small business employers.
 - o increased civil penalties for non-compliance with a compliance notice to align with other penalty levels
 - o enabled the maximum penalty for a contravention to be based on the greater of either 3 times the underpayment amount (if this penalty is sought by the applicant) or the maximum penalty (*the ability to seek penalties based on the underpayment amount is intended to further deter large scale underpayments*).
 - o introduced 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’.

Category	Employer type	Previously (to 26 February 2024) (1 Penalty Unit = \$313)	From 1 January 2025 (1 Penalty Unit = \$330)
Maximum penalty for most contraventions (not including underpayment-related breaches)	Individual	60 PUs / \$18,780	60 PUs / \$19,800
	Small body corporate	300 PUs / \$93,900	300 PUs / \$99,000
	Medium or large body corporate	300 PUs / \$93,900	300 PUs / \$99,000
Failure to comply with FWO compliance notice	Individual	30 PUs / \$930	60 PUs / \$19,800
	Small body corporate	150 PUs / \$46,950	300 PUs / \$99,000
	Medium or large body corporate	150 PUs / \$46,950	1,500 PUs / \$495,000
Underpayment-related breaches¹	Individual	60 PUs / \$18,780	60 PUs / \$19,800
	Small body corporate	300 PUs / \$93,900	300 PUs / \$99,000
	Medium or large body corporate	300 PUs / \$93,900	1,500 PUs / \$495,000 or 3x underpayment amount (whichever is higher)
Underpayment-related serious contraventions	Individual	600 PUs / \$187,800	600 PUs / \$198,000
	Small body corporate	3,000 PUs / \$939,000	3,000 PUs / \$990,000
	Medium or large body corporate	3,000 PUs / \$939,000	15,000 PUs / \$4.95 million or 3x underpayment amount (whichever is higher)

¹ Underpayment-related breaches are defined as ‘Selected civil remedy provisions’ in section 12 of the FW Act and include, but are not limited to, contraventions of the NES, Modern Awards, Enterprise Agreements, the prohibition on sham contracting, record-keeping and payslip requirements, unlawful job advertisements and provisions relating to the payment of wages.

- The Fair Work Act allows eligible courts to make a wide range of orders if a person is found to have contravened a civil penalty provision.
 - o These include breaches of the National Employment Standards, modern awards, and enterprise agreements, as well as breaches of record-keeping and pay slip requirements.
 - o An affected party, such as the FWO or an employee, can apply to a court for an order against the alleged wrong-doer when a civil remedy provision is contravened.
 - o Civil penalty orders can include pecuniary penalty orders, which provide for a civil penalty to be paid to the Commonwealth or, where appropriate, for the penalty to be redirected to an impacted party, including organisations.
- Higher civil penalties can apply for 'serious contraventions': when a court finds that a person/business knew they were contravening an obligation under workplace laws or were reckless as to whether the contravention would occur.

s 22(1)

From: s 22(1)
Sent: Wednesday, 6 May 2026 3:30 PM
To: s 22(1); s 22(1)
Subject: For WCS steer: Wage Theft Inquiry - 2 DEWR QoNs [SEC=OFFICIAL]

Hey ^{s 22(1)} and ^{s 22(1)}

Senator Payman has asked 2 QoNs of the department as part of the wage theft inquiry. One relates to previous QoN responses:

1. *In answer to SQ25-000001 of AE24-25, DEWR gave evidence regarding wage theft that "Funding measures include: - 2023-24 Budget - \$49.5 million over four years (\$11.0 million per year ongoing) to implement the new criminal investigation function and enforce the wage theft offence." In answer to SQ26-000005 of AE25-26, the FWO gave evidence that "[t]he FWO did not receive \$49.5 million in the 2023-24 Budget to implement the new criminal investigation function and enforce the wage theft offence. Rather, as part of the 2023-2024 Mid-year Economic and Fiscal Outlook (MYEFO)...\$49.5 million over four years (\$11.0 million per year ongoing) [was allocated] for the FWO to take on its new role as the investigatory agency for the Offence." Is the FWO's evidence correct?*
 1. *If YES: Why did DEWR give incorrect information to the Senate about the origin of budget allocations? When did DEWR become aware of this mistake? Are there any other errors in DEWR's evidence given in SQ25-000001 of AE24-25 that it would like to correct?*
 2. *If NO: Why do DEWR and the FWO not agree on where this funding came from?*

We just checked in with Ext Budgets who have provided an initial steer that the reference in SQ25-000001 to the '2023-24 Budget' for the FWO funding for the wage theft offence should have been '2023-24 MYEFO'. ^{s 34(3)}

We'll draft a QoN response that clarifies which process the funding was published in (2023-24 MYEFO). For the rest of the Senator's question, would it be accurate to note this issue was only identified today as we reviewed the Senator's QoNs?

Always happy to chat.

Cheers
^{s 22(1)}

From: s 22(1)
Sent: Wednesday, 6 May 2026 12:59 PM
To: Deputy Secretary - Workplace Relations <^{s 47E(d)} @dewr.gov.au>
Cc: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: For info: Wage Theft Inquiry - 2 DEWR QoNs [SEC=OFFICIAL]

Hi ^{s 22(1)}

FYI, we've received 2 QoNs from Senator Payman on the wage theft inquiry (highlighted in thread below). They are currently due Wed 20 May. The department's QoNs cover:

- stats/info on prevalence of wage theft (IQ26-000013)

- budget query about FWO funding (IQ26-000014).

s 22(1)(a)(ii)

Based on current deadline, we will progress these to Greg by COB Tue 12 May with the aim to get these to the MO by COB Thu 14 May to allow 5 days for Minister consideration. However, we will loop back with revised timing should the deadline be extended.

Always happy to chat.

Cheers

s 22(1)

From: s 22(1)

Sent: Wednesday, 6 May 2026 11:12 AM

To: DEWR - Committee Inquiries <S 47E(d) @dewr.gov.au>; BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>

Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au;
s 22(1) @dewr.gov.au

Subject: RE: E&E References Committee - Wage Theft Inquiry - Written Questions on Notice [SEC=OFFICIAL]

Thanks s 22(1)

FYI, Liz, Lavinia and team – 2 questions for us (highlighted below) s 22(1)(a)(ii) . Our questions were focused on:

- stats/info on prevalence of wage theft
- budget query about FWO funding.

Always happy to chat.

Cheers

s 22(1)

From: DEWR - Committee Inquiries <S 47E(d) @dewr.gov.au>

Sent: Wednesday, 6 May 2026 10:57 AM

To: s 22(1) @fwo.gov.au; s 22(1) @dewr.gov.au

Cc: DEWR - Committee Inquiries <S 47E(d) @dewr.gov.au>

Subject: FW: E&E References Committee - Wage Theft Inquiry - Written Questions on Notice [SEC=OFFICIAL]

Hi s 22(1) and s 22(1)

s 22(1)(a)(ii) See written QoNs below.

s 22(1)(a)(ii)

s 22(1) – Yours will be register and assigned in PDMS shortly.

Thanks, s 22

Committee Inquiries Team

s 22(1) s 22(1)
s 22(1) s 22(1)

s 22(1) s 22(1)
s 22(1) s 22(1)

s 47E(d) @dewr.gov.au

Parliamentary Services | Parliamentary and Governance Branch
Finance Governance and Enterprise Services | Corporate and Enabling Services Group
Australian Government Department of Employment and Workplace Relations
For more information on Estimates, please visit our [Intranet Page](#)

The Department of Employment and Workplace Relations acknowledges the traditional owners and custodians of country throughout Australia and their continuing waters and community. We pay our respects to them and their cultures, and Elders past, present and emerging.

From: Committee, EEC (SEN) <eec.sen@aph.gov.au>
Sent: Wednesday, 6 May 2026 10:53 AM
To: DEWR - Committee Inquiries <s 47E(d) @dewr.gov.au>
Cc: Committee, EEC (SEN) <eec.sen@aph.gov.au>
Subject: E&E References Committee - Wage Theft Inquiry - Written Questions on Notice [SEC=OFFICIAL]

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good morning team,

Thank you again to the FWO and DEWR representatives that gave evidence on Monday. Senator Payman has some addition written questions on notice, as follows.

s 22(1)(a)(ii)

For DEWR:

1. What statistics and other information can you offer on the prevalence on wage theft in Australia?
2. In answer to SQ25-000001 of AE24-25, DEWR gave evidence regarding wage theft that "Funding measures include: - 2023–24 Budget - \$49.5 million over four years (\$11.0 million per year ongoing) to implement the new criminal investigation function and enforce the wage theft offence." In answer to SQ26-000005 of AE25-26, the FWO gave evidence that "[t]he FWO did not receive \$49.5 million in the 2023-24 Budget to implement the new criminal investigation function and enforce the wage theft offence. Rather, as part of the 2023-2024 Mid-year Economic and Fiscal Outlook (MYEFO)...\$49.5 million over four years (\$11.0 million per year ongoing) [was allocated] for the FWO to take on its new role as the investigatory agency for the Offence." Is the FWO's evidence correct?
 - a. If YES: Why did DEWR give incorrect information to the Senate about the origin of budget allocations? When did DEWR become aware of this mistake? Are there any other errors in DEWR's evidence given in SQ25-000001 of AE24-25 that it would like to correct?
 - b. IF NO: Why do DEWR and the FWO not agree on where this funding came from?

Grateful if responses could please be provided by 20 May 2026. That said, given the questions are quite extensive, please let us know if extra time is required to respond.

Kind regards,

s 22

s 22(1) | Senior Research Officer

Senate Standing Committees on Education and Employment
Committee Office | Department of the Senate

Phone: S 22(1)

www.aph.gov.au/senate

s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Wednesday, 6 May 2026 5:17 PM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: For info: Wage theft inquiry late submissions - ACCI, ACTU, WWC Vic [SEC=OFFICIAL]

Hi Liz and Lavinia

For your reference, the Senate EER Committee has published 3 late submissions on its [website](#) today by:

- ACCI
- ACTU
- WWC Victoria.

Please find the submissions **attached** and a summary below (also included in our comprehensive [submission summary doc](#)).

ACCI

- Submits there is insufficient evidence to enable any meaningful conclusions to be drawn as to whether the new provisions are working as intended.
- Reiterates previous concerns about the potential for a business to be subject to criminal penalties for one-off late or under-payment.
- Submits that the Voluntary Small Business Wage Compliance Code does not appear to create any more protection for small businesses than would otherwise be relevant for other businesses.
- Queries the grounds used to justify the introduction of the offence, noting the lack of referrals to date.

ACTU

- Notes the criminal offence is an appropriate measure to combat wage theft but it is too early to assess its effectiveness.
- Recommends the government:
 - commission an independent review of the FWO in 6-12 months

- investigate ways to simplify and streamline judicial processes to reduce time and expense (discusses small claims procedure and the SJB Review's reiteration of key recs)
- empower the FWC to address and resolve underpayment claims, as a new function that could be used prior to a worker and their union issuing proceedings in court.

WWC Victoria

- Notes the wage theft offence appropriately recognises the seriousness of deliberate underpayment and has contributed to increased awareness and improved compliance in some parts of the labour market.
- Notes the offence will not operate as an effective deterrent in isolation, and barriers will result in most wage theft continuing undetected.
- Argues the absence of an accessible and effective wage recovery pathway is a 'key limitation of the current framework'.

Separately, we're drafting responses to the 2 QoNs received as a priority.

Always happy to chat.

Cheers

s 22(1)

s 22(1)

From: s 22(1) <@dewr.gov.au>
Sent: Friday, 1 May 2026 4:59 PM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>
Cc: s 22(1) <@dewr.gov.au>; s 22(1) <@dewr.gov.au>; s 22(1) <@dewr.gov.au>
Subject: RE: For Liz's review: Briefing and attachments - Wage theft inquiry [SEC=OFFICIAL]

Hi both

It looks like the Committee is still in the process of uploading submissions – One more just in from the  [Victorian Trades Hall Council and Young Workers Centre.pdf](#)

We will keep an eye out for more and advise if any others have gone up on Monday.

Thanks

s 22(1)

From: s 22(1)
Sent: Friday, 1 May 2026 4:49 PM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>

Anczewska@dewr.gov.au>

Cc: s 22(1)

@dewr.gov.au>; s 22(1)

@dewr.gov.au>; s 22(1)

@dewr.gov.au>

Subject: RE: For Liz's review: Briefing and attachments - Wage theft inquiry [SEC=OFFICIAL]

Hi Liz and Lavinia

Confirming we have finalised updates to the  [Hearing Brief](#) following our discussion earlier, as well as to the two attachments:

- [Attachment A](#) – Information provided in Questions on Notice
- [Attachment B](#) – Summary of submissions to the inquiry.

Lavinia – As mentioned, there are two submissions not yet included in your pack:

-  [18. Submission - Australian Industry Group.pdf](#)
-  [19. Submission - Australian Retail Council.pdf](#)

Many thanks
s 22(1)

From: s 22(1)

@dewr.gov.au>

Sent: Thursday, 30 April 2026 6:03 PM

To: BRAYSHAW, Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>

Cc: GRACIK-ANCZEWSKA, Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1)

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@dewr.gov.au>

Subject: For Liz's review: Briefing and attachments - Wage theft inquiry [SEC=OFFICIAL]

Hi Liz

As flagged, the team has very helpfully pulled together the 2 attachments flagged in the  [draft wage theft inquiry briefing](#):

- [Attachment A](#) – Information provided in Questions on Notice
- [Attachment B](#) – Summary of submissions to the inquiry.

We'll update Attachment B as needed tomorrow but it is current as of this evening, where 19 submissions have been published on the [Committee's website](#). As noted in the FWO discussion today, we expect additional submissions to be published in coming days.

Please let us know if you'd like any additional information or updates to the briefing tomorrow, especially following today's chat with the FWO.

Cheers

s 22(1)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Sent: Thursday, 30 April 2026 10:49 AM
To: s 22(1) @dewr.gov.au>
Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: RE: For Liz's review: Briefing - Wage theft inquiry [SEC=OFFICIAL]

Thanks for these

It will be good to have a chat with the FWO about approach to responses

s 22(1)(a)(ii)

From: s 22(1) @dewr.gov.au>
Sent: Wednesday, 29 April 2026 7:35 PM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Cc: GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1)

s 22(1) @dewr.gov.au>; s 22(1)
@dewr.gov.au>; s 22(1)
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@dewr.gov.au>; s 22(1)

Subject: For Liz's review: Briefing - Wage theft inquiry [SEC=OFFICIAL]

Hi Liz

Please find for your review our draft  [briefing for the wage theft inquiry hearing](#) on Monday 4 May. Huge thanks to the team for their quick work to pull this together!

We're expecting comments from WRL tomorrow morning ahead of our chat with the FWO at 12pm. We'll work up some key questions to raise with the FWO tomorrow morning, but broadly, we're keen to discuss the approach to handling key issues including:

- funding (including offsets flagged in the 2023-24 MYEFO)
- defining wage theft
- prevalence of wage underpayment
- the offence's effectiveness.

Always happy to chat.

Cheers
s 22(1)

s 22(1)

s 22(1)

From: s 22(1) @dewr.gov.au
Sent: Friday, 10 April 2026 5:11 PM
To: BRAYSHAW, Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Cc: GRACIK-ANCZEWSKA, Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Subject: Wage theft inquiry - List of key documents [SEC=OFFICIAL]

Hi Liz

To assist with early preparation ahead of a possible hearing on the Senate Inquiry into wage theft, the team has **collated a list of documents for you** (saved in [this folder](#)) with key documents set out below. Please let us know if there is anything you would like further at this stage.

The team is separately progressing an outline of briefing to support SES attendance at inquiry hearings. We're **keen for your early steer** on this should you have any initial thoughts on preferred approach.

List of key documents – Wage theft framework

Senate Estimates briefing, order for production of documents and QoNs

1. [Wage theft offence summary](#) – SE briefing October 2025
2. [Response to the order of 3 February 2026 \(313\) relating to the Fair Work Act - Wage theft investigations and proceedings](#)
3. [SQ26-000005](#) - Wage theft enforcement referrals, resourcing and outcomes (Senator Payman, 2025-26 Additional Estimates. NB. this is the FWO's response, it's with the MO and is likely to be tabled soon)
4. [SQ25-001830](#) – Unreported wage theft (Senator Payman, 2025-26 Supplementary Budget Estimates)
5. [SQ25-000837](#) – Wage theft findings and investigations (Senator Payman, 2025-26 Supplementary Budget Estimates)
6. [SQ25-000001](#) – The new criminal offence for wage theft and how many investigations have occurred (Senator Payman, 2024-25 Additional Estimates)
7. [SQ24-002056](#) – Consultation process for criminalisation of wage theft provisions (Senator Cash, 2024-25 Supplementary Budget Estimates)

Departmental papers / briefing

3. [DEWR Consultation Paper](#) – Criminalising wage theft and civil penalties reform
4. [Departmental Briefing](#) – Closing Loopholes Review – 4 December 2025
5. [Wage Theft Offence – Intentional Conduct](#)
6. [Talking Points](#) – Fair Work Legislation Amendment (Closing Loopholes) Bill – Wage theft
7. [Wage theft - Q&As](#) - encompassing amendments – 4 Dec 2023

Reports

8. University of Melbourne, Centre for Employment and Labour Relations Law, [Underpaid and Overlooked: The Wage Theft Crisis Facing Young Workers in Australia](#), July 2025
9. [NTEU Wage theft report](#), November 2023
10. McKell Institute, [Unfinished Business, The Ongoing Battle Against Wage Theft](#), August 2023

11. Migrant Worker Justice Institute, [*International Students and Wage Theft in Australia*](#), June 2020
12. [*Report of the Migrant Workers' Taskforce*](#), March 2019

Wage theft inquiries and government responses

13. Senate Economics References Committee Inquiry report, [*Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*](#), March 2022
14. [*Government Response to the Senate Committee Report into unlawful underpayment of employees' remuneration*](#), April 2023
15. Senate Education and Employment References Committee Inquiry report, [*Wage theft? What wage theft?! The exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies*](#), November 2018
16. [*Government Response to the Senate Committee Report into the exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting companies*](#), July 2024

Relevant media

17. The Australian, [*Payman wins test of wage theft law*](#), 10 April 2026
18. Seven News Toowoomba, [*Television transcript - Voluntary Small Business Compliance Code*](#), 8 January 2025
19. The Australian, [*'Paying staff wrongly' 20 per cent of employers fear new workers law*](#), 3 January 2025
20. ABC News, [*Australian bosses on notice as 'deliberate' wage theft becomes a crime*](#), 30 December 2024 s 47C(1)

Academic articles

22. Tess Hardy, [*Criminalisation of wage theft under the Fair Work Act*](#), Australian Journal of Labour Law, 2024

Many thanks
s 22(1)

s 22(1)
Assistant Director

Workplace Justice Reform | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone s 22(1) | s 22(1) @dewr.gov.au

Archived: Tuesday, 21 July 2026 10:52:10 AM
From: [BRAYSHAW,Elizabeth](#)
Sent: Friday, 22 May 2026 2:29:57 PM
To: s 22(1)
Cc: s 22(1) ; s 22(1) ; s 22(1) ; s 22(1) ; [GRACIK-ANCZEWSKA,Lavinia](#);
Subject: RE: Seeking clearance of edits/corrections - Wage theft Inquiry—Hansard transcript—Public hearing Canberra, 4 May 2025 [SEC=OFFICIAL]
Sensitivity: Normal

Thanks ^{s 22(1)}

As discussed, confirm the following docs should progress to parliamentary

We are proposing to send:

- [Hansard Draft](#) – minor edits in red on page 39 (minor typographical corrections, capitalisation of ‘Minister’, etc.)
- [Attachment B – Hansard Edits](#) – the minor edits in the above Hansard draft are flagged individually in this spreadsheet
- [Attachment A – Corrections to evidence](#) – one correction to clarify the current maximum penalty for non-compliance with a FWO compliance notice.

I note that you had discussed the correction to Lavinia’s evidence before she went on leave and she was comfortable with proposed approach to correction.

s 22(1)(a)(ii)

Regards
 liz

From: s 22(1) @dewr.gov.au>
Sent: Friday, 22 May 2026 1:12 PM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>;
 s 22(1) @dewr.gov.au>
Subject: RE: Seeking clearance of edits/corrections - Wage theft Inquiry—Hansard transcript—Public hearing Canberra, 4 May 2025 [SEC=OFFICIAL]

Hi Liz

Thanks for the chat on Wednesday!

Just coming back to you on the wage theft inquiry Hansard request, as ^{s 22(1)} is offline today. ^{s 22(1)} has checked with Parliamentary who have confirmed with the Committee Secretariat that no correction letter is required, just the completed correction template.

Please let us know if you have any further feedback on the proposed edits/corrections. Otherwise, we’ll progress these to Parliamentary.

s 22(1)(a)(ii)

Always happy to chat.

Cheers
s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Wednesday, 20 May 2026 9:23 AM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: RE: Seeking clearance of edits/corrections - Wage theft Inquiry—Hansard transcript—Public hearing Canberra, 4 May 2025
[SEC=OFFICIAL]

Good morning Liz,

No worries at all – very happy to have a call to chat through the proposed changes. We will reach out when ^{s 22(1)} is back online later this morning.

Thanks,
s 22
^^

s 22(1)
Senior Policy Officer

Workplace Justice Reform | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

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From: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Sent: Tuesday, 19 May 2026 5:10 PM
To: s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: RE: Seeking clearance of edits/corrections - Wage theft Inquiry—Hansard transcript—Public hearing Canberra, 4 May 2025
[SEC=OFFICIAL]

Hi s 22
^^

Thanks – could we have a chat in the morning just to make sure I understand the proposed amendments

Regards
liz

From: s 22(1) @dewr.gov.au>
Sent: Tuesday, 19 May 2026 4:11 PM
To: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: Seeking clearance of edits/corrections - Wage theft Inquiry—Hansard transcript—Public hearing Canberra, 4 May 2025
[SEC=OFFICIAL]

Good afternoon Liz,

We have reviewed the draft Hansard transcript for the Wage Theft Inquiry and are seeking your clearance of our suggested edits and substantive corrections to evidence as follows. Feedback on the Hansard draft is due Friday 29 May.

Minor Edits

 [Hansard Draft](#) (page 39) – We have made some minor typographical edits (e.g., capitalisation of letters where appropriate). These edits are marked in **red**/track, and are also flagged individually in the [Attachment B – Hansard Edits](#) spreadsheet.

Substantive Corrections

We have drafted [Attachment A – Corrections to evidence](#) in consultation with Parliamentary who advised us on what constitutes a formal correction (a substantive change that alters the meaning of what was said) compared to a minor edit (simply to correct the transcript to align with the evidence provided to the committee). The corrections paper sets out 3 suggested ‘corrections to evidence’, which are also flagged in comments in the  [Hansard Draft](#):

- changing “*Fair Work*” to “*Fair Work Act*” for clarity
- clarifying the recommendations of the Migrant Workers’ Taskforce report in relation to civil and criminal penalties
- clarifying the current maximum penalty for non-compliance with a FWO compliance notice, as the figures cited in the Hansard were correct at the time of commencement of the amendments but have since increased slightly.

Please let us know if you have any questions or concerns.

Warm regards,
s 22

s 22(1)
Senior Policy Officer

Workplace Justice Reform | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
dewr.gov.au

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From: Committee, EEC (SEN) <eec.sen@aph.gov.au>
Sent: Friday, 15 May 2026 3:11 PM
Cc: Committee, EEC (SEN) <eec.sen@aph.gov.au>
Subject: FOR REVIEW: EEC Refs—Wage theft Inquiry—Hansard transcript—Public hearing Canberra, 4 May 2025

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Good afternoon,

Inquiry into Wage theft

Please find attached the proof Hansard transcript for evidence given at the committee’s public hearing in Canberra on **Monday, 4 May 2026**. A copy will also be available shortly on the committee’s [website](#).

Hansard corrections

Please read the proof transcript and note any corrections. Corrections should be restricted to typographical and transcription errors. Suggested changes which alter the sense of the evidence or which are designed to improve style are not permitted. Should you wish to vary what you said to the committee or provide additional information, this can be done by letter or

supplementary submission.

Any corrections should be clearly shown on the transcript in red text and returned to the committee secretariat via email by **Friday, 29 May 2026**.

Questions on notice

If you took any questions on notice during the hearing, the committee requests that you return your answers by **Friday, 22 May 2026**.

If you require an extension of time to answer questions taken on notice at the public hearing, please provide your request to the committee secretariat via email.

Please note it is the committee's preference to receive answers to questions on notice in public and the committee's usual practice is to publish the answers on the committee's webpage. If you would like to request that the committee receive an answer in-confidence, please make this request when providing the answer along with a written rationale for the request. Your request and rationale will then be considered by the committee.

Answers should be provided by email to the committee secretariat at eec.sen@aph.gov.au.

On behalf of the committee, thank you for participating in the inquiry.

Kind regards,
s 22
““

s 22(1) | Administrative Officer

Standing Committees on Education and Employment | Department of the Senate
Phone S 22(1)
www.aph.gov.au/senate



Follow the Senate on social media



The Department of the Senate acknowledges the Ngunnawal and Ngambri people, who are the traditional custodians of the land which Parliament House is situated – an area where people have met for thousands of years.

The painting **Possum and Wallaby Dreaming** was used as the design for the Forecourt Mosaic of Parliament House, created by the late Michael Nelson Jagamara AM, Warlpiri Elder, in 1985. His design depicts the tracks of the ancestral peoples of the red kangaroo, rock wallaby, bush-tail possum, and goanna. Their tracks lead to a central meeting place, as they gather to talk about and enact ceremonial obligations, in the same way that Parliament House is a gathering place.

s 22(1)

From: s 22(1)
Sent: Monday, 25 May 2026 12:06 PM
To: s 22(1) ; s 22(1)
Cc: s 22(1) ; s 22(1) ; s 22(1) ; s 22(1)
Subject: RE: Quick FAS query this morning: HILDA data - Question on Notice - Inquiry into wage theft [SEC=OFFICIAL]

Fantastic, thanks for confirming, s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Monday, 25 May 2026 10:51 AM
To: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>;
s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: RE: Quick FAS query this morning: HILDA data - Question on Notice - Inquiry into wage theft [SEC=OFFICIAL]

Hi s 22(1)

There is no issue with speaking publicly about HILDA data. It is a valid data source and is funded by DSS. We have used HILDA data in the Government Submission to the Annual Wage Review, which is our most high profile publicly released document.

If there are any caveats or concerns about the data or the outputs, we will specify this, as we have done in our responses provided.

Thanks,
s 22(1)

s 22(1)
A/g Director

Economics Branch
Office of the Chief Economist
Australian Government Department of Employment and Workplace Relations
Phone s 22(1)
dewr.gov.au

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From: s 22(1) @dewr.gov.au>
Sent: Monday, 25 May 2026 9:19 AM
To: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>;
s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: Quick FAS query this morning: HILDA data - Question on Notice - Inquiry into wage theft [SEC=OFFICIAL]
Importance: High

Hi s 22(1) and team

Hope you had a good weekend!

Our FAS was keen to check whether we've previously spoken publicly about our use of HILDA data in this way – i.e. in QoNs, at Estimates, in departmental submissions, etc. We'd be grateful for advice ASAP this morning if at all possible.

Always happy to chat.

Cheers
s 22(1)

s 22(1) (he/him)
Workplace Justice Reform
s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Friday, 22 May 2026 4:00 PM
To: s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: RE: Seeking red lines by COB today (if possible) - Question on Notice - Inquiry into wage theft [SEC=OFFICIAL]

Thanks s 22

We're added those words to the response.

Hope you and the team have a great weekend.

Cheers
s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Friday, 22 May 2026 3:03 PM
To: s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: RE: Seeking red lines by COB today (if possible) - Question on Notice - Inquiry into wage theft [SEC=OFFICIAL]

Hi s 22(1)

We just have one suggested very minor tweak to the paragraph, which is highlighted below.

Thanks,
s 22(1)

From: s 22(1) @dewr.gov.au>
Sent: Friday, 22 May 2026 2:44 PM
To: s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: Seeking red lines by COB today (if possible) - Question on Notice - Inquiry into wage theft [SEC=OFFICIAL]

Hi s 22(1)

Thanks so much for providing OCE input into the wage theft QoN.

Could you kindly advise if you have any red line issues with how the information has been presented in the draft response below?

“The department has also produced estimates of the number of workers paid below the National Minimum Wage (NMW), using Household, Income and Labour Dynamics in Australia (HILDA), a household survey. These estimates show that 11.5% of employees appeared to be being paid less than the NMW in 2024-25. Data limitations and differences across sources mean that estimates of below-NMW pay should not be taken as evidence of legal non-compliance and may underestimate the prevalence of underpayments **more broadly.**”

We would appreciate if you could let us know by **COB today** (if possible).

Apologies for the short turnaround and the time it’s taken us to get back to you.

Kind regards
s 22(1)

s 22(1)
Policy Officer

Workplace Justice Reform | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone s 22(1)
dewr.gov.au

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From: s 22(1) @dewr.gov.au
Sent: Monday, 11 May 2026 5:44 PM
To: s 22(1) @dewr.gov.au
Cc: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Subject: RE: [For Review/Input] - Question on Notice - Inquiry into wage theft - COB Monday 11 May [SEC=OFFICIAL]

Hi s 22(1)

Please see below our input to this response. We have done some work around this and think that we should include it in our response, but there are some sensitivities about using these findings, which we have outlined.

s 47C(1)

s 47C(1)

Please let me know if you have any questions.

Thanks,
s 22(1)

s 22(1)
A/g Director

Economics Branch
Office of the Chief Economist
Australian Government Department of Employment and Workplace Relations
Phone s 22(1)
dewr.gov.au

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From: s 22(1) @dewr.gov.au>
Sent: Friday, 8 May 2026 12:31 PM
To: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Cc: s 22(1) @dewr.gov.au>; s 22(1) @dewr.gov.au>
Subject: [For Review/Input] - Question on Notice - Inquiry into wage theft - COB Monday 11 May [SEC=OFFICIAL]

Hi ^{s 22(1)} and s 22(1)

As part of the inquiry into wage theft, Senator Payman provided the department with a written question on notice asking: "What statistics and other information can you offer on the prevalence on wage theft in Australia?"

We have drafted the attached response and would appreciate your review and input by **COB Monday 11 May**. I've also attached the Question on Notice (**SB25-00183**) that's referenced in the response. In this QoN we kept our input short and direct.

Please let us know if you have any questions or would like to discuss.

Kind regards
s 22(1)

s 22(1)
Policy Officer

Workplace Justice Reform | Workplace Exploitation Branch
Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone S 22(1) |
dewr.gov.au

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Archived: Tuesday, 21 July 2026 5:12:41 PM
From: s 22(1)
Sent: Monday, 25 May 2026 4:24:15 PM
To: [BRAYSHAW,Elizabeth](#); s 22(1)
Subject: RE: for info - updates - Senate Committee - wage theft inquiry s 22(1)
Sensitivity: Normal
Attachments: MS26-000345 002 Attachment A - Previous QoN response (SQ25-000001).pdf; MS26-000345 001 Correction of SQ25-000001 - 2024-25 Additional estimates - New criminal wage theft offence.docx; MS26-000345 003 Attachment B - Correction of evidence - SQ25-000001.docx; IQ26-000014 001 Evidence on Wage Theft Funding.docx; IQ26-000013 001 Wage Theft prevalence in Australia.docx;

s 22(1)

Hi Liz

Apologies for the delay – please see attached final IQs and min sub and attachments as already provided to MO via PDMS if you wanted to attach to your email to s 22(1)

I have updated your XXXs in yellow highlight.

s 22(1)

From: BRAYSHAW,Elizabeth <Elizabeth.Brayshaw@dewr.gov.au>
Sent: Monday, 25 May 2026 11:31 AM
To: s 22(1) @dewr.gov.au; s 22(1) @dewr.gov.au
Subject: FW: for info - updates - Senate Committee - wage theft inquiry s 22(1)

s 22(1)

Hi s 22 – once we have the submission and settled the QoNs and submission – I will attach them to this email to s 22(1) – I will give her a call as well given the tight timeframes

s 22 – can you make sure we have a clear understanding of the error, and also confirm we need to correct the evidence in settling the submission – can I ask that you check with ^{s 22(1)} for me as I won't be able to but we don't often correct evidence and from what I can work it seems a timing issue on publication so query

Hi s 22(1)

The department has prepared responses to 2 QoNs we received from Senator Payman as follow up questions from the hearing for the Wage Theft inquiry.

Please find **attached** draft responses. These need to be cleared and submitted to the Committee by **this Friday, 29 May.**

- **IQ26-000013** – responds to the question for statistics and other information the department has on the prevalence of wage theft in Australia
- **IQ26-000014** – seeks clarification from the department about *when* the funding was allocated to the FWO for new criminal wage

theft jurisdictions. The department's previous evidence was that funding was allocated to the FWO to implement the new criminal investigation function and to enforce the wage theft offence was that the funding was in Budget 2023-24 (SQ25-000001) whereas the FWO response to a similar question was that the funding was allocated in MYEFO 2023-24 (SQ26-000005).

- o The FWO's response is the correct answer as the funding was allocated in MYEFO 2023-24. s 47C(1)
s 47C(1)

This was an error and apologies that I didn't pick it up earlier – it was only when we received Senator Payman's questions that we identified this issue.
s 47C(1)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Regards
Liz

s 22(1)

From: BRAYSHAW, Elizabeth
Sent: Friday, 8 May 2026 11:54 AM
To: s 22(1) <@dewr.gov.au>; s 22(1) <@dewr.gov.au>
Cc: DLO Rishworth <s 47E(d) <@dewr.gov.au>; MANNING.Gregorv <Gregory.Manning@dewr.gov.au>; GRACIK-ANCZEWSKA, Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; s 22(1) <@dewr.gov.au>
Subject: for info - updates - Senate Committee - wage theft inquiry

Hi s 22(1) and s 22(1)

As mentioned, the Committee has now published 23 submissions. They are published [here](#), with ACCI, ACTU and Working Women's Centre Vic submissions published after Monday's hearing.

For info, the ACTU submission made 3 recommendations (sub 22, copy **attached to email**).

1. Conduct an independent review of the FWO in 6-12 months with a particular focus on its efforts to combat wage theft
2. Investigate ways to simplify and streamline judicial processes to reduce the time and expense required to run a claim for underpayments
3. Empower the FWC to address and resolve underpayment claims, as a new function that could be used prior to a worker and their union issuing proceedings in court. This would include new powers to obtain employer's wage and time records and require independent audits to establish the quantum of underpayments, to aide resolution at conciliation. It could also include powers to compel certain parties involved in contraventions to attend conciliations.

Next steps for the wage theft inquiry

The Committee has asked a number of follow up questions to witnesses including DEWR (2 QoNs which go prevalence of wage theft, funding to the FWO) s 22(1)(a)(ii)

These responses are due to the committee by 29 May. The department's proposed responses will be with the Minister on 25

May.

The Committee proposes to table its report by 18 June 2026.

Regards
liz

From: BRAYSHAW,Elizabeth
Sent: Friday, 1 May 2026 1:17 PM
To: S 22(1) <[S22\(1\)@dewr.gov.au](mailto:S22(1)@dewr.gov.au)>
Cc: DLO Rishworth <[S47E\(d\)@dewr.gov.au](mailto:S47E(d)@dewr.gov.au)>; S 22(1) <[S22\(1\)@dewr.gov.au](mailto:S22(1)@dewr.gov.au)>; MANNING, Gregory <Gregory.Manning@dewr.gov.au>; GRACIK-ANCZEWSKA,Lavinia <Lavinia.Gracik-Anczewska@dewr.gov.au>; HALLAS,Emma <Emma.Hallas@dewr.gov.au>; S 22(1) <[S22\(1\)@dewr.gov.au](mailto:S22(1)@dewr.gov.au)>
Subject: for info - Senate Committee hearing Monday 4 May - wage theft inquiry

Hi S 22(1)

I mentioned in the MO catch up yesterday that a public hearing for the wage theft inquiry has been listed for Monday – the program has been published and is **attached**.

The Committee has published 19 submissions on its webpage – which generally reflect positions of stakeholders to date. They are published [here](#)

DEWR and FWO will be in the same session and are the last witnesses.

The following attendees will also appear:

- Australian Security Industry Association
- Unions (UWU, SDA, ACTU)
- ACCI and the Migrant Workers Centre
- Dr Smithers and Associate Professor Jess Harris
- Associate Professor Tess Hardy and Professor John Howe (Melbourne Uni)

Please let us know if you have any questions.

Regards
liz

Elizabeth Brayshaw
First Assistant Secretary

Entitlements Safeguards Division
Australian Government Department of Employment and Workplace Relations
Phone S 47F(1) | Mobile S 47F(1)
Elizabeth.brayshaw@dewr.gov.au

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Australian Government

Department of Employment and Workplace Relations

MS26-000345

Standard Brief

To Minister for Employment and Workplace Relations

Action required For Noting

Correction of SQ25-000001 | 2024–25 Additional estimates | New criminal wage theft offence

Timing Please action by **27 May 2026** to facilitate a correction to evidence necessary for the timely lodgement of a response to a Question on Notice from Senator Fatima Payman in the Inquiry into Wage Theft due on 29 May 2026.

Recommendation:

1. That you **note** the Department of Employment and Workplace Relations will table a correction to Question on Notice SQ25-000001, provided at the Additional Estimates 2024–2025, on timing for the publication of the funding for the Fair Work Ombudsman (FWO) in relation to the criminal wage theft offence.

Noted / Please discuss

Minister Rishworth

Date: / /2026

Comments:

Clearing Officer

s 47F(1)

Signature _____ 25 / 05 / 2026
Elizabeth Brayshaw, First Assistant Secretary
| WR | Entitlements Safeguards
Ph: s 47F(1) | Mob: s 47F(1)

Contact Officer

s 22(1)
A/g Assistant Secretary
| WR | Entitlements Safeguards
Ph: s 47F(1)
Mob: s 47F(1)

Executive summary:

1. Following the public hearing of the wage theft inquiry in May 2026, an error was identified in the tabled Question on Notice **SQ25-000001** response (see **Attachment A**) to the Senate Education and Employment Committee (the Committee).
 - a. In response to **SQ25-000001**, the department stated that \$49.5 million over 4 years (\$11 million per year ongoing) was allocated to the FWO in the 2023–24 Budget to implement the new criminal investigation function and to enforce the wage theft offence.

s 47C(1)

2. s 34(3)

s 47C(1)

This distinction

was not identified when the response to **SQ25-000001** was prepared.

3. The department intends to table the correction (**Attachment B**) with the Committee by Thursday 28 May 2026.
 - a. It is necessary to correct the response in **SQ25-000001** prior to the department tabling a response to a related Question on Notice (**IQ26-000014**) from Senator Payman, due by Friday 29 May 2026.

Key points:

4. In the 2023-24 MYEFO, the FWO was allocated \$49.5 million over 4 years from 2023-24 (and \$11 million per year ongoing) to implement the new criminal investigation function and enforce the wage theft offence.
5. In response to a Question on Notice from Additional Estimates 2025–26, the FWO gave evidence to the Committee that the relevant funding was provided in the 2023–24 MYEFO (**SQ26-000005** refers).
6. In responding to a Question on Notice from Senator Payman received in May 2026 in the context of the Committee Inquiry into Wage Theft (**IQ26-000014** refers), the department reviewed the previous Question on Notice response (**SQ25-000001**) and identified the error.
7. The department will provide a response to **IQ26-000014** which will note the correction has been tabled by Friday 29 May 2026.
8. No further corrections to the response in **SQ25-000001** are required.

Public sensitivities:

9. Correcting the previous response to this question will highlight the inaccuracy in the previous answer (**SQ25-000001**) given to the Committee by the department.

s 47C(1)

Consultation: Yes

10. Internal: External Budgets and Parliamentary Services.

Legal advice / Legislative impacts:

11. Nil.

Financial impacts:

12. Nil.

Background:

13. The wage theft inquiry is due to report by 18 June 2026.

Stakeholder implications:

14. Nil.

Attachments:

A: Previous QoN response (SQ25-000001)

B: Correction of evidence (SQ25-000001)

**Pages 385-389 removed under section 22(1)(a)(ii) and
47C of the *Freedom of Information Act* 1982.**

**These pages contain information that would reasonably
be regarded as irrelevant to the request for access or
information subject to deliberative processes.**

I've added the following into the civil remedy section s 22(1) to help illustrate the serious contraventions regime. Any concerns?

Each of the civil remedy provisions are listed in subsection 539(2) of the Fair Work Act. Higher penalties apply for 'serious contraventions': when a court finds that a person/business knew they were contravening an obligation under workplace laws or were reckless as to whether the contravention would occur. Higher penalties for serious contraventions apply to breaches of, for example:

- the National Employment Standards, a modern award or an enterprise agreement
- s 47C(1)
-
- unlawful deductions
- s 47C(1)

s 22(1)

s 22(1)

**Pages 391-398 removed under section 22(1)(a)(ii) of the
*Freedom of Information Act 1982.***

**These pages contain information that would reasonably
be regarded as irrelevant to the request for access.**

13/04 5:11 pm

s 22(1)

Edited

on wage theft, the FWO has suggested that detailed info on the FWO's role, strategic enforcement approach and activities could be pulled back or removed

s 22(1)

s 22(1)

s 22(1)

16/04 9:38 am

Since its establishment in 2009, the FWO has recovered in excess of \$2.6 billion in unpaid wages and entitlements for more than 1.4 million workers nationwide. Over this period the FWO has used the civil compliance framework in the Fair Work Act extensively to address wage underpayments and deter non-compliance.

s 47C(1)

s 47C(1)

16/04 9:46 am

"The FWO was provided \$49.5 million over 4 years from 2023-24 to undertake its new role as the investigatory agency for the wage theft offence. **The FWO has established a new dedicated unit to undertake its criminal investigations**

s 47C(1)

s 47C(1)

- Compliance with the **Voluntary Small Business Wage Compliance Code**. If a small business employer can satisfy the FWO that they have complied with the Code by evidencing that an underpayment was not intentional, the FWO must not refer that underpayment for criminal prosecution

s 47C(1)

s 47C(1)

s 22(1)(a)(ii)

s 47C(1)

s 22(1)(a)(ii)

**Pages 402-403 removed under section 22(1)(a)(ii) of the
*Freedom of Information Act 1982.***

**These pages contain information that would reasonably
be regarded as irrelevant to the request for access.**

**Document 46 removed under sections 22(1)(a)(ii)
(pages 404-405) and 42 (page 406) of the
*Freedom of Information Act 1982.***

**These pages contain information that would reasonably
be regarded as irrelevant to the request for access or
information subject to legal professional privilege.**

DEWR – ESD and WRL teams chat – 4 May 2026

s 47F (1) Internal chat - EERC inquiry

s 22(1) added s 22(1) and 3 others to the chat.

s 22(1) changed the group name to Internal chat - EERC inquiry.

s 22(1)

GRACIK-ANCZEWSKA, Lavinia 4/05 3:38 pm

s 47F (1) What are some examples of **serious** underpayment related contraventions in civil remedy framework?

4/05 3:39 pm

The higher penalties for serious contraventions apply to breaches of:

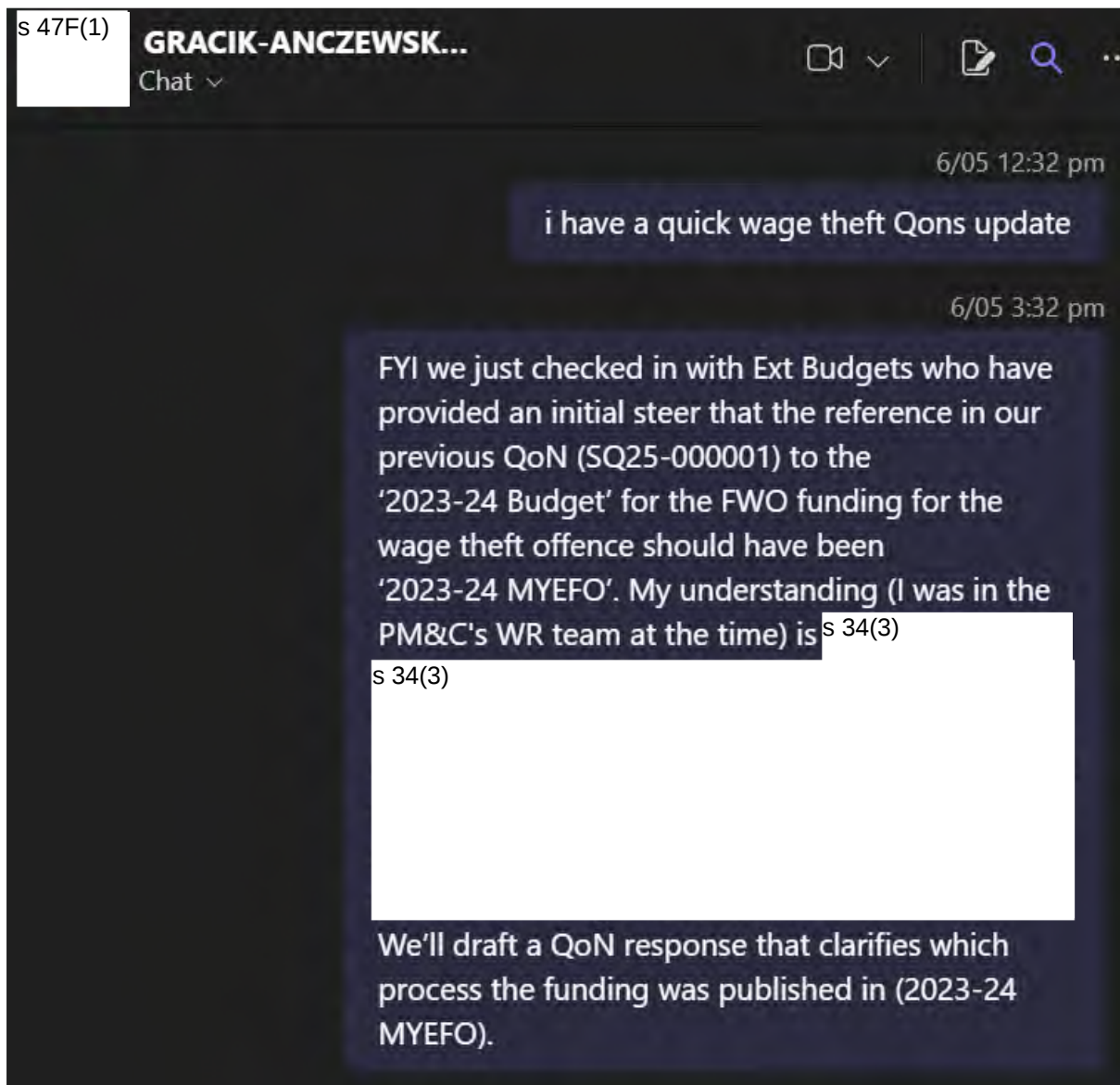
- the [National Employment Standards](#)
- a [modern award](#)
- an [enterprise agreement](#)
- a [workplace determination](#)
- a [national minimum wage order](#)
- an [equal remuneration wage order](#)
- [method and frequency of paying wages](#)
- [unlawful deductions including cashback schemes](#)
- [guarantees of annual earnings](#)
- [record-keeping requirements](#), and
- [pay slip requirements](#).

If someone else was involved in the contravention, and knew it was a contravention, they could also face higher penalties.

provided a court finds that:

- the person or business knew they were contravening an obligation under workplace laws, or
- the person or business was reckless as to whether the contravention would occur.

6 May 2026 – message about incorrect QoN and ERC



s 22(1)

The department has information that is relevant to understanding the prevalence of wage underpayment from reports, parliamentary inquiries, and information published by the Fair Work Ombudsman (FWO). Determining the full extent of wage underpayments in Australia is challenging for a variety of reasons, including because these underpayments are not consistently reported by the offending businesses or impacted workers.

The FWO publishes a range of information and data on wage underpayment, and reports annually on its compliance and enforcement activities, including its activities in priority industries and high-risk sectors. In its 2024-25 annual report, the FWO reported recovery of more than \$358 million in unpaid wages for more than 249,000 workers under its civil regime.

As noted in the department's submission to this inquiry, several inquiries including the Migrant Workers' Taskforce[1] and the Senate inquiry into Unlawful Underpayment of Employees' Remuneration[2] (UUER inquiry) have highlighted significant underpayment cases across a broad range of industries, and the extent of non-compliance with the *Fair Work Act 2009* in making their recommendations. The UUER inquiry cited various sources to indicate underpayments affected thousands of workers, costing them billions of dollars every year.[3]

The department also notes recent surveys regarding wage underpayment. For example, a University of Melbourne survey of young workers (2025) reported that 33% of respondents were likely underpaid.[4] In 2026, the Migrant Justice Institute reported two-thirds of surveyed migrant workers were paid less than they were entitled to under Australian law.[5]

The department has also produced estimates of the number of workers paid below the National Minimum Wage (NMW), using Household, Income and Labour Dynamics in Australia (HILDA), a household survey. These estimates show that 11.5% of employees appeared to be being paid less than the NMW in 2024-25. Data limitations and differences across sources mean that estimates of below-NMW pay should not be taken as evidence of legal non-compliance and may underestimate the prevalence of underpayments more broadly.

[1] Migrant Workers' Taskforce, *Report of the Migrant Workers' Taskforce*, March 2019, p 32-38, 49.
 [2] Economic References Committee (ERC), *Systemic, sustained and shameful*, March 2022, p 8.
 [3] ERC, *Systemic, sustained and shameful*, March 2022, p 8. See: PwC Australia, *Australia matters: navigating Australia's industrial relations*, 2020; McKell Institute Victoria, *Ending wage theft: eradicating underpayment in the Australian workplace*, March 2019.
 [4] John Howe and Tom Dillon, University of Melbourne, *Underpaid and overlooked: the wage crisis facing young workers in Australia*, July 2025, p 3.
 [5] Laurie Berg and Bassina Farenblum, Migrant Justice Institute, *Off the books: inside Australia's hidden system of migrant worker exploitation*, May 2026, p 10.

s 22(1)