

UNITED

WORKERS UNION

**UWU Submission to the
Senate Standing Committee
on Economics:**

***Inquiry into Unlawful
Underpayment of
Employees' Remuneration***

About United Workers Union

United Workers Union (UWU) is a powerful new union with 150,000 workers across the country from more than 45 industries and all walks of life, standing together to make a difference. Our work reaches millions of people every single day of their lives. We feed you, educate you, provide care for you, keep your communities safe and get you the goods you need. Without us, everything stops. We are proud of the work we do—our paramedic members work around the clock to save lives; early childhood educators are shaping the future of the nation one child at a time; supermarket logistics members pack food for your local supermarket and farms workers put food on Australian dinner tables; hospitality members serve you a drink on your night off; aged care members provide quality care for our elderly and cleaning and security members ensure the spaces you work, travel and educate yourself in are safe and clean.

Executive Summary

UWU welcomes the opportunity to make a submission to the *Senate Standing Committee on Economics Inquiry into Unlawful Underpayment of Employees' Remuneration* on behalf of the tens of thousands of UWU members who have experienced wage theft in its many forms. Wage theft has become the 'new normal' in many of the industries UWU represents, highlighting a significant problem in the Australian economy. Wage theft is rife across a diverse range of industries including food and beverage production, early childhood education, security, horticulture and supermarket supply chains, and cleaning. Every year, thousands of the lowest paid workers in the country experience wage theft. For many this can mean the difference between getting by or experiencing financial hardship.

The workers that UWU represents are particularly vulnerable to wage theft. For example migrant workers on insecure visa arrangements, young workers who are paid cash in hand, and workers in industries where subcontracting is common are at high risk of wage theft. UWU has been assisting these members tackle wage theft for many years and we have unique insights and authority to comment on the issue. UWU makes the following key points in this submission:

- UWU knows that the most effective and sustainable solution to wage theft is unionised workplaces and recommends first and foremost that unions are empowered to investigate, prevent and prosecute wage theft. Promoting workplace cultures of transparency and worker voice is essential to ensuring wage theft practices can not take root. Workers must feel safe to join their union and speak out when minimum legal standards are flouted.
- UWU recommends that senators consider the cost of wage theft to Australia's society and individual workers, as well as the economy.

- Migrant workers are particularly vulnerable to wage theft due to a lack of knowledge of their working rights in Australia, not having English as a first language, and insecure visa status. More than any other group, unions are on the frontline working with migrant workers to ensure workplace rights are upheld, and advocating for a right to stay for exploited migrants who are already victims of wage theft.
- UWU advocates that victims of wage theft are not further disadvantaged by unfair taxation treatment when their stolen wages are repaid. No worker should be worse off than if they had received the wages owed to them at the correct time.
- UWU recommends introducing a National Labour Hire Licensing scheme. State-level labour hire licensing schemes in Victoria and Queensland are already working to improve the employment practices of labour hire companies. A national scheme must replicate and scale up the best-practice aspects of both state schemes.
- UWU advocates amending procurement policies so that breaches of the *Fair Work Act* (2009) resulting in worker exploitation are noted on a public register, and disqualify a business from tendering for government contracts.
- UWU supports a package of reforms to the existing legal framework that includes the criminalisation of wage theft and the following measures:
 - Significant wage theft should not be excused, simply because it is said to be a “one off”;
 - Restrictive or confusing legal distinctions between employees and other workers should not be permitted to act as a defence to criminal wage theft;
 - The formulation of any wage theft criminal test must be based on an objective standard;
 - The offence must capture the behaviour of the key corporate actors whose conduct drives the unlawful behaviour;
 - Wage theft criminal offences must extend to the falsification of worker records and the failure to keep worker entitlements;
 - Unions must have expanded right of entry powers to uncover and address wage theft;
 - The recovery of worker entitlements must be easier – simple, affordable and accessible;
 - Courts should have a broader range of powers to deal with wage theft behaviour; and
 - Workers must be able to collectively bargain for improved workplace standards with the controlling economic entities across industries and along supply chains.

Wage theft has become a low-risk business decision

UWU strongly argues that worker exploitation and wage theft has become a low-risk decision for many Australian businesses and is indeed regarded as a 'cost of doing business' (Terms of Reference A). Australians expect businesses to pay their workers fairly and justly. Businesses that use wage theft as a core part of their business are stealing and are undermining Australian law and community standards. Many businesses are doing so because of a lack of enforcement, scrutiny and deterrence measures. Current laws are not being adequately enforced and punishment is too light. Business owners do not consider the Fair Work Ombudsman's (FWO) activities as a deterrent. Scrutiny and accountability are just too low. The FWO has only 300 inspectors for over 11 million workers in over 2 million workplaces and laws restrict union access in high-risk industries where casual contracted work is systematic.¹ Low union density breeds a culture of low expectations that make cash-in-hand and underpayment seem acceptable. The lengthy and complex legal processes required to prosecute wage theft are also highly problematic and put workers in vulnerable financial and legal positions.

Moreover, weak laws and regulation around sub-contracting, sham-contracting, labour hire, franchisors and phoenixing ensure businesses can get away with worker exploitation. Businesses often outsource hiring arrangements, resulting in subcontracting or labour hire arrangements that see wages as low as a reported \$4.60 an hour.² Sham contracting is used by employers to disguise employment relationships as independent contracting arrangements. This is usually done for the purposes of avoiding responsibility for employee entitlements and is highly problematic. This practice occurs often in horticulture, security and cleaning – all industries that UWU represents. There are also inadequate protections for whistle-blowers that make it difficult for migrant workers to speak out about wage theft. When workers are actually brave enough to speak up, the legal process for getting justice is too complex, costly and slow. A justice system where you have to wait years to get your wages back is no justice at all.

The cost of wage theft to Australia's economy and society

In relation to point B of the Terms of Reference UWU welcomes the committee's acknowledgement of the scale and cost of wage theft in, and to, the Australian economy. In Queensland alone, the Government found that almost \$2.5 billion was being stolen from

¹ Howe, J. (2016) 'New visas threaten Australian jobs', The Sydney Morning Herald, 6 June 2016, accessible at: <http://www.smh.com.au/comment/new-visas-threaten-australian-jobs-20160606-gpachab.html>

² <https://accr.org.au/2019/07/23/accr-nuw-report-shows-supermarkets-must-do-more-to-manage-exploitation-in-farm-supply-chains/>

Queensland workers every year.³ Industry Super Australia found that almost \$6 billion in superannuation theft occurred in 2016-2017 so it makes sense that the ACTU is estimating that between \$6 and \$12 billion is being stripped from the economy every year.⁴ It is clear that the cost to the economy is significant. Wage theft is now extremely well-documented in a number of academic studies, state and federal parliamentary inquiries, as well as submissions and reports.⁵ The extent of the problem does not need to be reiterated, instead UWU recommends senators focus on the significant cost of wage theft to individual workers and its impact on Australian society. Wage theft is more than a cost to the economy, it is about a fundamental threat to Australia's social contract, and it is a driver of social inequality in a country where this is already increasing. Wage theft mocks the notion of a 'fair day's pay for a fair day's work', condemns workers to poverty by regressively transferring wealth from workers to employers and undermining workers' retirement savings scheme, destroys workers' trust in the rule of law, is unfair on law-abiding employers, and robs governments of tax revenue.

Unions are the answer to wage theft

UWU firmly believes that in contrast to complex and individualistic legal processes, unions create a culture of compliance, where workers themselves can collectively prevent wage theft. Unions are the best means of identifying, uncovering, and preventing wage and superannuation theft (Terms of Reference C). As noted above, the alternatives are costly and complex legal processes or Fair Work Ombudsman (FWO) surveillance which can never reach the majority of Australian workplaces and relies heavily on individuals reporting underpayments.

The UWU believes the only way to eradicate wage theft in all its forms is for workers to exercise their right to freedom of association - the right to freedom of association with others, including the right to form and join trade unions. This is a protection so basic that it is often overlooked, but it remains the case that workers in workplaces with high union membership density are almost never exploited. Workers in such workplaces are aware of their rights, are actively involved in bargaining with their employers over their conditions of work, and are empowered to hold their

³ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1921.pdf>

⁴ See here for submissions https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Underpaymentofwages/Submissions

⁵ Government inquiries alone include a 2017 federal senate inquiry into corporate avoidance of the *Fair Work Act* with a whole chapter dedicated to wage theft (https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/AvoidanceofFairWork/Report); inquiries and reports by the Western Australian and Queensland Governments (https://www.commerce.wa.gov.au/sites/default/files/atoms/files/report_of_the_inquiry_into_wage_theft_0.pdf and <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1921.pdf>); moves by the Victorian Government towards criminalising wage theft (see here <https://engage.vic.gov.au/wage-theft>) and more focused federal senate inquiries on wage theft in the cleaning industry (see https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/ExploitationofCleaners).

employers to account over any breaches. In fact, their capacity to do so means such breaches are less likely to occur in the first place.

Workplace unionism creates a 'virtuous circle' of legal compliance, worker engagement and mutual striving for high standards. Such cultures of compliance are decentralised and self-sustaining; they do not require external surveillance by state agencies or complaints-based detection strategies. By coming together and taking action, unions can transform the working lives of working people.

For example, Maryanne worked for a food manufacturing company in Queensland. She went from casual to permanent and felt loyalty to the company. However, after becoming permanent, she was told she no longer needed to clock on and off which meant there was no record of her very long hours. After a couple of 23 hour work days, she joined her union and was empowered to talk to her manager and recover almost \$36,000 of overtime wages. Similarly, Ngor Kuany was a security guard who worked for MA Security. He was required to work 24 hour shifts with a flat rate of pay of \$19.25. Ngor was not paid any shift loadings or penalty rates. Employers who avoid paying basic employee entitlements are participating in wage theft and when workers join their union like Ngor did, they can take action. The union estimates Ngor is owed \$55,000 and is taking steps to recover his stolen wages.⁶

Crucially, unions also allow workers to speak out. UWU members often experience threats of deportation, sacking and legal action for exposing wage theft but with the full weight of their union behind them, they can win back stolen wages. For example, a group of Ni-Vans workers in Shepparton via the Seasonal Worker Program were picking tomatoes through labour hire agency Agri Labour. Workers were paid \$8-12 per hour in dangerous conditions. Tomatoes were sprayed with chemicals that resulted in workers experiencing bleeding episodes. The workers brought their concerns to their union who helped them take action by lodging a complaint with the Fair Work Ombudsman against Agri Labour. As a result, Agri Labour was suspended from the Federal Government Seasonal Worker Program.⁷

Another example is UWU member Putri Nazeri who travelled from Malaysia to work in New South Wales and Victoria picking oranges and broccolini on farms that supply Woolworths and Coles. She was paid \$12.50 cash in hand and had accommodation and transport expenses deducted from her pay. She moved to a unionised workplace, joined her union and received her correct pay and entitlements. Putri spoke at the Woolworths AGM in November 2018, with the

⁶ <https://www.theage.com.au/national/victoria/from-dawn-til-dawn-security-guard-feels-stiffed-by-marathon-shift-20191208-p53hza.html>

⁷ <https://www.abc.net.au/news/2018-05-23/government-suspends-labour-hire-firm-amid-underpayment-claims/9788742>

support of her union and fellow workers, and asked Woolworths to clean up their supply chain and end exploitation.⁸

An FWO audit conducted in the contract cleaning industry found that 33% of cleaning businesses underpay their workers.⁹ Subcontracting, sham contracting and labour hire are all rife in the cleaning industry and many of our cleaning members are also migrants, who like farm workers, are especially vulnerable to wage theft. The nature of contract cleaners as a highly dispersed and 'hidden workforce' means that the true extent of exploitation cannot be determined with precision. Contraventions of the *Cleaning Services Award 2010* in retail cleaning are extremely common, with the frequency of breaches becoming exponentially higher once a second-tier or more of subcontracting is introduced. Most cleaners working in supply chains are not receiving payslips, are paid a flat cash rate for all hours worked (and so are not paid minimum wages, part-time allowances, night shift, weekend or public holiday penalty rates), do not receive overtime, do not receive superannuation, and are often unable to provide a clear indication of the business which has employed them.

WAGE THEFT IN RETAIL CLEANING CAN OCCUR IN THE FOLLOWING WAYS:

- ❑ Below-award ordinary hourly rates of pay as low as half the legal minimum
- ❑ No penalty rates for weekend and public holiday work
- ❑ Unpaid overtime
- ❑ Non-payment or underpayment of superannuation
- ❑ Denial of sick leave, with workers having to make up any hours they miss due to illness
- ❑ Non-payment of entitlements upon change of contract
- ❑ Cash-back scams, where workers may be paid the correct rate into their bank account, but have to withdraw cash and return it to their employer, and
- ❑ Sham contracting, often at below-Award rates made even lower once the absence of entitlements (e.g. paid leave and superannuation).

For example, for two years a group of Karen Refugees from Burma who were permanent part-time school cleaners in Canberra had their wages stolen. These cleaners were not paid correctly for school holiday work, nor were they paid annual leave loadings. Some of the cleaners were

⁸ <https://www.smh.com.au/business/companies/woolies-to-be-grilled-on-farm-exploitation-at-agm-20181120-p50h76.html>

⁹ FWO (2016) 'Cleaning industry compliance needs to improve', Media Release, 13 May 2016, accessible at: [Cleaning industry compliance needs to improve - Media Releases](#)

owed almost \$25,000 and the union took action in the federal court and won. The union has since supported our Karen Refugee members to set up their own cleaning company, Harmony Community Cleaning. The ACT Territory Government also took action against dodgy subcontracting and wage theft rife in the cleaning industry when they brought school cleaning back-in house under government control this year. When unions act, governments can follow and prevent wage theft. Another example is ISS cleaning, one of the biggest cleaning companies in Australia and the world, which failed to pay over \$9000 in long service and annual leave payments to a cleaner for 10 years of service. After union action, and ISS's initial offer to pay less than what was owed, the worker was paid their stolen wages in full.

Like long service and annual leave, businesses also steal wages from workers in the form of redundancy payments. For example, G8, the largest for profit early education and care provider in Australia with almost 500 centres, did not pay redundancy to over 180 early childhood educators after the sale of 16 of their centres. The union won back over \$830,000 for these workers in 2017. Unionised workplaces are the answer to not only preventing wage theft, but recovering stolen wages.

Another example is Gumnut Childcare Centre in the regional NSW town of Lithgow where approximately 20 early childhood educators have not been paid superannuation for two years. These workers, with the full support of their union, are collectively taking action against their employer to recover their stolen wages. Over \$5 billion of superannuation is stolen from workers every year and this is just one example of that.¹⁰ Unionised workplaces are key to tackling wage theft in superannuation.

Migrant workers are particularly vulnerable to wage theft due to a lack of knowledge of their working rights in Australia, not having English as a first language, and insecure visa status. Other particularly vulnerable workers include women, young people and geographically isolated workers. But legal wage rates should be respected for all workers, regardless of age, gender or migration status. Unions are the first, and in many cases the only group, fighting on the frontline to protect exploited migrant workers, including a right of stay for exploited migrants who are already victims of wage theft.¹¹

Workers at Della Rosa in Victoria recently launched Federal Court action against the company alleging 21 workers were underpaid nearly \$1million in total over a number of years. Workers

¹⁰ <https://www.lithgowmercury.com.au/story/6342418/ato-asked-to-investigate-alleged-failure-to-pay-gumnut-staff-superannuation/>

¹¹ For specific UWU recommendations on how to address worker exploitation and ensure justice for migration workers see UWU's submission to the Select Committee on Temporary Migration here: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Temporary_Migration

claim they were not paid overtime, public holiday rates and shift loading for early starts and late finishes. Many workers also alleged racial vilification by supervisors and management. Much of the workforce is from India and working in Australia on permanent and temporary visas.¹² The union and workers protested outside the head office of Della Rosa. The company has not responded and workers are awaiting the outcome of the court case.

There is also widespread and systematic wage theft in hospitality where many of our younger and migrant members work. Most recently, Josh Bornstein, Head of Employment Law for Maurice Blackburn lawyers, compiled a 14 page report for the Fair Work Ombudsman in which he estimates the Rockpool Group owes its employees \$10 million in stolen wages, across its more than 80 restaurants across Australia. The impact of this systematic type of wage theft on Chef Rohit Karki is telling. Rohit was excited to commence work at Rockpool's Crown Casino restaurant for celebrity chef Neil Perry in Melbourne in 2012. Once Rohit's visa sponsorship commenced in 2013 his workplace conditions quickly deteriorated and he was left fearful of losing his visa if he spoke up.

Rohit says, "With a name such as Neil Perry, everyone dreamed to work in a prestigious place like Rockpool." But, Rohit was soon working extreme hours, regularly spending 70 hours a week in the restaurant, with some shifts running 20 hours and earning just \$12 an hour. He says, "I used to come home tired and knackered, they used to roster me on for two doubles in a row, so I had to just lie down on the pastry bench, I did that for more than a year."

Rohit complained about his treatment in 2018 after reading media reports about his employer exploiting workers. In October 2018 Rockpool told the media they would be paying \$1.6 million back to workers, acknowledging systemic underpayment. After complaining, Rohit was bullied by a senior chef and pressured into resigning. He decided he could no longer cope and left the job in March 2019.

Rohit is now suing Rockpool for wage theft in the Federal Court, and is being represented by Maurice Blackburn Lawyers with the support of UWU's Hospo Voice. Rohit will be fighting Rockpool for his entitlements under the Award, contraventions of the *Fair Work Act* and for compensation.¹³

The above examples show a pattern of workers emboldened and supported by their union, standing up and taking action to recover stolen wages. They worked collectively. They supported each other. They took action. They got results. Unionised workplaces are the answer to

¹² <https://www.sbs.com.au/news/migrant-workers-accuse-pizza-maker-of-1-million-wage-theft>

¹³ <https://www.sbs.com.au/language/english/rohit-karki-sues-rockpool-group-alleging-underpay-and-bullying>

preventing wage theft. However, unions need better organising rights in high risk industries, like the ones UWU represents, and an ability to inspect records of former employees, non-member records and super payments to continue their work in preventing, identifying and uncovering wage theft. Moreover, UWU of course advocates that victims of wage theft are not further disadvantaged by unfair taxation treatment when their stolen wages are repaid (Terms of Reference D). No worker should be worse off than if they had received the wages owed to them at the correct time.

Reforming the practices that make wage theft easy

Problematic practices and a lack of regulation around supply chains; labour hire; sub- and sham-contracting; migrant workers; and procurement all make wage theft part of doing business in Australia (Terms of Reference E & G). In fact, the failure to properly regulate labour hire providers and the lack of effective mechanisms to address wage theft has enabled a culture of lawlessness to become entrenched across large segments of the Australian economy, affecting all workers in these industries, and rendering migrant workers particularly vulnerable. In order to protect workers, direct employment relationships are always preferable and in an economy where this has been discouraged, strong regulation of supply chains must be paramount. UWU recommends introducing a National Labour Hire Licensing scheme. State-level labour hire licensing schemes in Victoria and Queensland are already working to improve the employment practices of labour hire companies. A national scheme must replicate and scale up the best-practice aspects of both state schemes.

Sham contracting arrangements fundamentally undermine workers' rights and conditions. The UWU recommends measures to reduce the incidence of sham contracting, such as restricting ABN eligibility for international students in at-risk industries, a statutory presumption in favour of an employment relationship, and a statutory definition of the employee/contracting relationship. Regulation that protects workers at changes of contract is also key to tackling wage theft.

UWU also recommends that procurement laws should be amended to make due diligence to prevent exploitation in supply chains a pre-condition for getting government contracts. Breaches to the *Fair Work Act* resulting in worker exploitation should be noted on a public register and should disqualify a business from tendering for government contracts. For example, the ACT government has changed procurement practices by introducing a 'Secure Local Jobs Code'.¹⁴ Businesses tendering for construction, cleaning, security or traffic management work, or for contracts worth more than \$200,000, need to meet workplace standards in the Secure Local Jobs Code and have a Secure Local Jobs Code Certificate. They also need to complete

¹⁴ <https://www.procurement.act.gov.au/supplying-to-act-government/securelocaljobs>

a Labour Relations, Training and Workplace Equity Plan if the value of work is more than \$25,000.

In response to the endemic wage theft in the cleaning industry, UWU helped set up and works with the Cleaning Accountability Framework (CAF), a certification body which tackles subcontracting and wage theft in the supply chain. The Australian Government should introduce CAF certification requirements for all Commonwealth leased office property. Implementing this procurement rule will lift labour standards for cleaners Australia-wide, providing a powerful form of protection against underpayment to tens of thousands of vulnerable workers. It will also send a strong signal to the market that compliance with labour standards is non-negotiable when conducting business with Government.

Effective wage theft criminalisation legislation

Significant changes are required to the existing legal framework to deter wage theft, and assist workers with the recovery of underpayments (terms of reference point j). Wage theft is not isolated or inadvertent; it is a rampant, systematic employer practice.¹⁵ In many industries covered by UWU, it is the prevailing business model. Under the current system, it is too easy for employers to underpay workers, and too costly and difficult for workers to recover money. Thus, the UWU supports a package of reforms to the existing legal framework that includes the criminalisation of wage theft and the following measures:

- ② **Significant wage theft should not be excused, simply because it is said to be a “one off”:**

Wage theft is often, but not always, systematic. Both systematic and one-off instances of wage theft should be criminalised, with higher penalties for employers engaging in systematic conduct.

One-off instances of wage theft can still represent a substantial loss for workers, especially low paid workers. As noted above G8, a large early childhood education provider, did not pay redundancy to over 180 early childhood educators. It could be argued this was a ‘one off’, but the workers lost (and then won back, via the union) over \$830,000. This demonstrates that even one-off instances of wage theft can be significant, and that employers should not be protected from penalties on the excuse that ‘*it only happened once.*’

- ② **Restrictive or confusing legal distinctions between employees and other workers should not be permitted to act as a defence to criminal wage theft**

¹⁵ Commonwealth of Australia, 2017, Senate Standing Committees on Education and Employment, Report: Corporate Avoidance of the Fair Work Act, [6.48] - [6.49].

Significant cases of wage theft have been exposed involving attempts to defend exploitative conduct through the use of complex legal distinctions between “employment” and other forms of worker engagement.

For example, in 2017, a cleaning contractor at the Cadbury chocolate factory in Hobart sacked half their cleaning workforce and hired new workers who had recently arrived from Sri Lanka on sham contracts. These new workers were coerced onto ABNs by the cleaning company, at \$17.50 an hour - almost \$8 per hour less than the casual Award rate. Being on an ABN the workers didn't accrue any leave, had to pay their own tax and insurances, and they couldn't afford workers' compensation. Although the new workers were afraid to raise concerns or issues with their new employer, existing union cleaners, caterers and security guards at the factory encouraged them to join the union, stand together to stop sham contracting. Together these union members took the issue to Cadbury management, who directed the cleaning company to fix it immediately. Within 24 hours, cleaning company management flew to Hobart and offered full employment to the Sri Lankan cleaners on the Award, with all the protections and entitlements offered to other members at the site, as well as committing to an ongoing audit of all their operations.

Sham contracts, and other similar arrangements, should not act as a barrier to the prosecution of wage theft. UWU supports a formulation of wage theft criminalisation which relies on a broad definition of “employment” to ensure that the offence will capture exploitative work arrangements that are constructed to avoid liability, such as sham contracting or franchising arrangements.

② **The formulation of any wage theft criminal test must be based on an objective standard**

A wage theft offence that requires a subjective consideration of the state of mind of the alleged offender may often be pointless. While some employers still engage in flagrant, brazen wage theft exploitation, more often the behaviour will sit within some kind of construct designed to obfuscate or disguise the behaviour as inadvertence or wilful blindness.

The best way to ensure a wage theft offence operates on the conduct it intends to discourage is to make it a strict liability offence (which still leaves open defences such as mistake).

If a higher standard of fault were used, such as dishonesty, the standard must be constructed based on an objective test founded on the standards of reasonable people (regardless of what the accused says they knew or didn't know).

② **The offence must capture the behaviour of the key corporate actors whose conduct drives the unlawful behaviour**

Most Australian workers are employed by corporations. The individuals who are driving the use of wage theft (many of whom are well known) should not be permitted to hide behind a corporate veil, and avoid responsibility for their criminal conduct. Many of these individuals (while not themselves the “legal” employer of the workers involved) are responsible for creating and directing the culture that has encouraged or condoned wage theft occurring within their businesses.

UWU supports:

- The use of an attribution model of liability which means the conduct of an officer or the directors of a corporation to be attributed to the corporation; and
- The use of provisions similar to section 550 of the *Fair Work Act* so that company directors, company officers, human resources officers and professional advisors who have knowingly been involved in wage theft can be held responsible.
- Broader provisions to extend liability in a supply chain context such as those recommended by the ACTU to extend liability for wage theft and other contraventions to principal and other contractors in supply chains, except where certification is provided.

☐ **Wage theft criminal offences must extend to the falsification of worker records and the failure to keep worker entitlements**

A policy which purports to be genuinely aimed at tackling wage theft, but does not deal with some of the most common contrivances used to avoid detection – like the falsification of worker records or dealing with workers “off the books” (where no records are kept) is a sham.

UWU believes it is crucial that an offence which criminalises wage theft behaviour is accompanied by complementary offences relating to the creation of false records or the false alteration of records, and where the worker records required to be kept by the *Fair Work Act* (already mandated as civil penalty provisions) are not kept, as part of the dishonest attempt to withhold wages and entitlements from workers.

☐ **Unions must have expanded right of entry powers to uncover and address wage theft**

Under the *Fair Work Act*, unions have more limited right of entry powers than the FWO. Many workers are reluctant to pursue wage underpayments until they have left their job, often because they are concerned that their employer will take retaliative action against them. Union permit holders have a right under the Act to request or inspect documents of current, but not former, employees and this allows employers to obstruct attempts by unions to recover wages for

members.¹⁶ In addition, unions are limited to inspecting member records that relate to a suspected contravention, not non-members records, except with written permission or a Commission order.¹⁷ Given that wage theft is often systematic, this limitation impedes the ability of unions to uncover the full extent of wage theft.

UWU supports expanding right of entry powers to ensure unions can request and inspect documents of former employees, and readily investigate suspected contraventions for both members and non-members.

2 **The recovery of worker entitlements must be easier – simple, affordable and accessible**

For many Australian workers, the recovery of unpaid entitlements is expensive, time consuming and unwieldy.

The *Fair Work Act* currently includes a “small claims procedure” designed to expedite the recovery of entitlements below \$20,000.

This is not a solution. Very few workers use it. This scheme does not allow for a Court to impose civil penalties that would otherwise apply in a wage theft scenario. This removes a key incentive for a matter to resolve quickly and efficiently and is, in many cases of wage theft, simply not appropriate. Many cases of wage theft involve underpayment totalling more than \$20,000, making this scheme useless for most workers.

UWU believes workers should be able to access specialist courts to recover wages and deal with a range of industrial matters. A model such as the South Australian Employment Tribunal, which operates as a one-stop shop for workers to recover wages and deal with matters such as workers' compensation and industrial disputation has meant a concentration and development of expertise over time, and has resulted in more streamlined, easier to access justice in relation to wage recovery. By way of contrast, in those States where workers have no option other than to delve into multi-jurisdictional Courts such as State Magistrates Courts are often caught in the flood of issues those Courts must deal with, making it unlikely their matter will be dealt with by an expert in the field, and unlikely it will be resolved efficiently and quickly.

Industrial organisations already provide assistance to their members when it comes to recovering wages. Industrial organisations should be given standing to criminally prosecute wage theft, and to be able to seek costs from an employer on a successful prosecution.

¹⁶ Section 481(1) of the Act.

¹⁷ Unless consent is obtained in writing (s482(2A)), or a specific order is made by the Commission (s483AA).

❏ **Courts should have a broader range of powers to deal with wage theft behaviour**

UWU supports recommendations made by the Migrant Taskforce Report, that courts be given “specific power to make additional enforcement orders, including adverse publicity orders and banning orders, against employers who underpay migrant workers”¹⁸.

In particular, we support the idea that the *Fair Work Act* be clarified to ensure Courts understand it is permissible and even, in the right circumstances, appropriate that directors who are involved in the contravention of that legislation or engage in wage theft criminal behaviour are disqualified from holding office.

❏ **Workers must be able to collectively bargain for improved workplace standards with the controlling economic entities across industries and along supply chains**

Decades of neoliberal economic restructuring have increased inequality, removed key workplace protections, eroded workers’ bargaining power, and led to a dramatic rise in the incidence of precarious and insecure work, underemployment, wage theft, and wage stagnation. In several sectors where wage theft is rife, such as horticulture and cleaning, it is powerful actors at the top of a supply chain who exert considerable price pressure on suppliers and labour hire companies further down the chain, creating a market for insecure and underpaid work. For effective collective bargaining to occur, the controlling economic entities must be at the bargaining table.

UWU supports amending the provisions of the *Fair Work Act* to permit for industry wide and supply-chain bargaining.

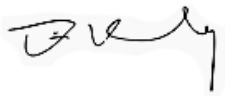
¹⁸ Recommendation 7, Australian Government, *Report of the Migrant Workers Taskforce* March 2019.

Conclusion

Wage theft is now a huge problem in Australia and in many of the industries UWU represents it has become the 'new normal'. Wage theft has become a low risk business decision and anti-worker practices around labour hire, sham-contracting and procurement have made it all too easy to exploit vulnerable workers. But unions and working people are fighting back. By coming together and taking action, unions are the best defence against wage theft. UWU urges the Senate to consider our recommendations to ensure a fair day's pay for a fair day's work for all Australian workers. It's time to take action on wage theft.

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In Unity



Tim Kennedy

National Secretary
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