Working Women's Centre NSW
Women's Legal Service NSW

Committee Secretariat
Senate Education and Employment Committees
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Parliament House
Canberra ACT 2600

By email: eec.sen@aph.gov.au

Dear Committee Secretariat,

WWC NSW Response to the Wage Theft Framework Inquiry

1. We thank the Senate Education and Employment References Committees for the opportunity to respond to the Wage Theft Framework Inquiry.

About the Working Women's Centre NSW

2. The Working Women's Centre NSW (**WWC NSW**) at the Women's Legal Service NSW (**WLS NSW**) provides advice, support and representation to women who are experiencing issues related to employment, such as discrimination, sexual harassment, unfair dismissal, unpaid wages or superannuation, and difficulty accessing flexible work arrangements or family and domestic violence leave. We advocate for gender equality and safety in the workplace, and economic security for women throughout NSW and Australia.

Acknowledgements

3. We acknowledge the Traditional Custodians of the lands on which we live and work across NSW. We pay our respects to Elders past and present. This is, was and always will be Aboriginal land. We also acknowledge the many women who have been subjected to gender-based violence and workplace exploitation with whom we work and whose voices and experiences inform our advocacy in the hope for positive change.

Opening comments

4. The national Community Legal Centres (**CLCs**) Employment Law Network reports that that underpayments are one of the most common employment law issues faced by CLC clients across the country. This is prevalent concern for many of our clients,

women who are disproportionately likely to experience workplace exploitation, be employed in insecure work and encounter barriers to accessing remedies.

5. Where underpayment may occur by honest mistake or recklessness, employers engage in wage theft by deliberately withholding pay or entitlements owed to employees. Wage theft has a significant impact on workers and their families. It causes financial stress, strains physical and mental health, and in severe cases causes or exacerbates poverty.[1] The withholding of superannuation contributions has adverse long-term implications for retirement, worsening intersectional disparities in superannuation balances at the end of one's working life.

6. In January 2025, we welcomed the introduction s 327A of the *Fair Work Act 2009* (Cth) (**FWA**) that made the intentional underpayment of wages and entitlements owed under the FWA, a modern Award or an Enterprise Agreement a criminal offence. The criminalisation of intentional wage theft sends an important policy message about how seriously this issue is being taken. These new provisions are an effective tool to deter employers and encourage proactive compliance, however, it is unrealistic to hope that a single reform will eliminate wage theft as a broad scale problem.

Wage theft remains persistent despite criminalisation

7. The below data from JobWatch, an employment rights CLC assisting workers in Victoria, Queensland and Tasmania, tracks the volume of underpayment-related assistances provided by their Telephone Information Service from 2022 to 28 April 2026. This data set suggests there has been no decrease in the percentage of underpayment-related matters since wage theft was criminalised at the beginning of 2025.

[1] Parliament of Australia, *Systemic, Sustained and Shameful: Unlawful Underpayment of Employees' Remuneration* (Senate Committee Report, March 2022) 35 <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024434/toc_pdf/Systemic,sustainedandshameful.pdf;fileType=application%2Fpdf>.

JobWatch Telephone Information Service (TIS) Assistances related to underpayments trends 2022-2026

Calendar year	TIS assistances related to underpayments	Total TIS assistances	Percentage (%)
2022	2,025	14,784	13.7
2023	2,135	16,797	12.7
2024	1,326	12,319	10.8
2025	1,902	15,870	12.0
2026 to 28 April	635	4,790	13.3

8. Despite the introduction of s 327A in the FWA, wage theft remains one of the most prevalent issues faced by our client base. Working women are particularly vulnerable to wage theft due to higher rates of precarious and casual work.[2] This vulnerability compounds for women with disability, First Nations women, young women, older women and women from culturally and linguistically diverse backgrounds.[3] Women are also disproportionately impacted by superannuation theft, with one in four women having super owed to them. Over the past decade, working women across Australia have missed out on $15.5 billion in unpaid superannuation contributions.[4]

9. Anecdotally, WWC NSW solicitors have not seen a change in the frequency of underpayment matters since the criminalisation provisions came into effect on 1 January 2025. For our clients, underpayments and wage theft often arise alongside other workplace claims such as sexual harassment and discrimination.

10. We continue to see some employers, particularly in feminised industries, utilising underpayment of both wages and entitlements as a standard business model. By structuring shifts to avoid providing breaks and penalty rates, withholding superannuation contributions and making employees work unreasonable additional hours without overtime, employers boost profits through the systemic exploitation of workers.

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[2] Above n 1, 30.
[3] John Howe and Tom Dillon, '*Underpaid and Overlooked: The Wage Crisis Facing Young Workers in Australia'* (Final Report of the Fair Day's Work Project, July 2025). The survey of young workers across Australia that informed this report found that one-third reported wage theft or financial exploitation.
[4] Super Members Council, *Mind the Gap: How Unpaid Super Is Deepening Retirement Inequality for Women* (Report, 27 August 2025) <https://smcaustralia.com/wp-content/uploads/2025/08/Mind-the-gap-report_SMC-2025-August.pdf>.

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Case study 1 - non-payment of wages

Julia* commenced work in a marketing role for a construction company. After working for two weeks, Julia made multiple enquiries with the company when it failed to pay her wages. The owner of the company told Julia that there were issues with the bank processing her payments and promised her that they would go to the bank that day to process the payments over the counter. Julia requested receipt of payment which she never received. After working for five weeks with no pay, Julia decided to stop work and told the owner that she would resume work once she was paid. Julia knew that other workers had also been unpaid.

WWC NSW sent a letter of demand to the company seeking Julia's unpaid wages and entitlements. The company has since gone into liquidation, which means Julia can no longer bring a claim against the company to recover her unpaid wages and entitlements.

Instead, we have to rely on the more uncertain accessorial liability provisions to bring a claim directly against the directors or people involved with knowledge of the underpayment.

**Not her real name*

Case study 2 – practices in rostering and meal breaks

Aditya* is a disability support worker whose employer schedules her for up to seven broken shifts in one day. This requires her to travel to seven different locations to attend client homes. Crucially, it means she is only paid for the shifts and not for the time in between. Her tea breaks and meal breaks are often scheduled in the last 30 minutes of her shift, meaning she often doesn't get the chance to eat or have a rest until the end of her working day.

Additionally, there have been numerous instances where she has worked through her meal break due to client delays, had insufficient travel time between clients, or received last-minute scheduling changes from the employer. This means she works more than 8 hours without having a meal break. This effectively renders the operation of overtime provisions redundant.

**Not her real name*

Case study 3 – unreasonable additional hours
Robyn* worked as a boat hostess. She was contracted to work on a full-time basis for 38 ordinary hours per week. She regularly worked up to 70 or 80 hours per week but was only paid for 38 hours. She has sent her employer a letter of demand seeking payment of overtime, but her employer has argued that her salary compensates her for all other entitlements she is owed under any award or the NES, and that she is therefore not entitled to overtime.

WWC NSW is assisting her to make a claim in court to argue that her hours were not reasonable by looking at the ten factors set out in section 62(3) of the FW Act to determine reasonableness in this context.

**Not her real name*

The disproportionate impact of wage theft on migrant workers

11. Many of our clients are migrant workers. One in six migrant workers are paid less than national minimum wage.[5] Recent migrants are up to 40% more likely to experience wage theft than long-term residents. The *Wage Theft in Australia: Findings from the National Temporary Migrant Work Survey* (**The Wage Theft Survey**) found that 30% of temporary migrants surveyed were earning less than $12 per hour.[6]

12. Workers with employment-reliant temporary visa conditions are inherently vulnerable to workplace exploitation. Employers use a variety of scare tactics to silence temporary migrant workers from reporting underpayments and exploitation, including threats of dismissal and reports to the Department of Home Affairs.[7] For many, the risk of losing employment and a pathway to permanent residency does not outweigh the low likelihood of recovery. When wage theft goes unreported, exploitative employers remain undetected and continue to withhold pay and entitlements with

[5] Nassim Khadem, 'One in Six Migrant Workers Are "Exploited", but Many Australians Are Also Paid below the National Minimum Wage', *ABC News* (23 May 2023) <https://www.abc.net.au/news/2023-05-23/one-in-six-migrant-workers-paid-below-the-national-minimum-wage/102383332>.
[6] Migrant Justice Institute, *Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia* (Report, 2016) <https://www.migrantjustice.org/survey2016>.
[7] WEstjustice Community Legal Centre, Migrant Employment Legal Service and Redfern Legal Centre International Student Service NSW, *Submission to the Senate Standing Committee on Economics: Inquiry into Unlawful Underpayment of Employees' Remuneration* (6 March 2020) 25 <https://rlc.org.au/sites/default/files/attachments/WEstjustice_MELS_RLCISS_CLC_JointSubmission.pdf>.

impunity.

13. Wage theft cannot be prosecuted if it cannot be seen, and it cannot be seen if workers do not feel safe enough to report it. Over 90% of migrant workers who experience wage theft do not report or try to recover their entitlements.[8]

14. The impact of the structural barriers that prevent migrant workers from recovering their entitlements was articulated by Redfern Legal Centre in a submission to the Senate Standing Committee on Economics Inquiry into Unlawful Underpayment of Employees' Remuneration. They stated that:

    "Migrant workers' acceptance of exploitation, their perception of the hurdles of recovering stolen wages, their ongoing fears of removal from Australia, coupled with their anticipation of a poor outcome mean that suggested solutions, like the recent proposed criminalisation do not address the issue at hand – accessing justice with the likelihood of resolve and a clear commitment to this process not impacting on their visa status." [9]

15. The wage theft provisions must be accompanied by a suite of other changes targeted at levelling the playing field for migrant workers.

The importance of expanding the Workplace Justice Visa and Strengthening Reporting Protection pilots

34. The WWC NSW welcomed the implementation of the Workplace Justice Visa (**WJV**) and Strengthening Reporting Protection (**SRP**) pilots. This scheme allows certain temporary visa holders to remain in Australia to pursue workplace exploitation claims, and prevents visa cancellation where a person pursuing a claim has breached a work-related visa condition. To access these protections, workers must have their matters certified by an Accredited Third Party (**ATP**), of which there are just 18 nationally. Only three of those ATPs are CLCs.

35. This scheme provides vital protection for migrant workers and is a positive step towards reducing rates of exploitation. However, we are concerned that the limited list of ATPs may restrict access to those protections. Barriers to accessing legal assistance will continue to adversely impact migrant workers, who cannot safely

[8] Above n 6.
[9] Above n 7, 13.

extricate themselves from exploitative workplaces without the benefit of these protections.

36. Since the pilot began, the WWC NSW have been advocating for the expansion of ATP accreditation to include a broad list of CLCs, Working Women's Centres and unions to ensure migrant workers have a free and accessible entry point to the scheme.

Case study 4 – did not pursue claim due to visa concerns

*Perla was a temporary visa holder who worked long hours in a tobacco shop for 12 months, receiving cash-in-hand. WWC NSW undertook complex underpayment calculations and assessed that our client had been underpaid approximately $500-600 per week, totalling almost $30,000.

Perla's employer threatened to deport her if she took any legal action against him. Perla took these threats seriously and instructed us not to progress any underpayment litigation against her employer.

**Not her real name*

Recommendation 1

We recommend that access to the Workplace Justice Visa and Strengthening Reporting pilot is expanded by extending Accredited Third Party certification to a broader list of Community Legal Centres, Working Women's Centres, and unions.

The new provisions will not be effective without strong compliance and enforcement

37. The FWO indicated around 288,000 wage theft inquiries were received in 2025, with just 6%, (or 18,500) of those becoming fair work disputes between employers and employees.[10] We understand that at the time of writing, the FWO had initiated only two criminal investigations under the wage theft provisions and made no referrals for prosecution to the Australian Federal Police or Department of Public Prosecution.

[10]Commonwealth, *Parliamentary Debates*, Senate, 11 February 2026, 75 (Anna Booth, Fair Work Ombudsman).

38. We are concerned about the low number of formal wage theft investigations when anecdotally CLCs frequently encounter employers who clearly satisfy the intent threshold. We do not believe the reported rates of formal disputes and investigations accurately reflect the scale at which wage theft is occurring.

39. Endemic rates of wage theft indicate that voluntary compliance is ineffectual and in the absence of prosecutions under the wage theft framework, unscrupulous employers will continue to intentionally underpay their employees. Reliance on employers to self-regulate is ineffective when there is little incentive to comply.

40. For the wage theft provisions to be effective, they must be *enforced* and accompanied by measures that target the systemic issues that allow workplace exploitation to thrive, including establishing more accessible mechanisms of entitlement recovery and increasing resourcing for support services. [11]

The need for proactive detection and recovery strategies

41. Vulnerable workers engaged in low-wage, precarious or unlawful labour arrangements are among the least likely to report their unpaid entitlements.[12] An individual complaint-based approach to compliance and enforcement will not effectively capture the volume of unlawful underpayment that is occurring, especially where the risks of reporting are so significant for the people most affected. To address structural inequality and the often insurmountable barriers to bringing a claim, a proactive and targeted compliance approach is necessary to ensure measures to eradicate wage theft are effective.

42. The FWO indicated they launched just 1500 proactive investigations in 2025. [13] However, research suggests that over two thirds of migrant workers experience some form of exploitation,[14] and with 1.2 million temporary visa holders engaged or seeking to be engaged in employment, this could amount to as many as 720,000

[11] Bassina Farbenblum and Laurie Berg, 'Wage Theft in Silence: Why Migrant Workers Do Not Recover Their Unpaid Wages in Australia' (2018) *University of New South Wales Law Research Series* 1.
[12] Ibid.
[13] Above n 10.
[14] Above n 11.

potential exploitation claims.[15]

43. Industry-specific proactive recovery strategies have been demonstrably effective measures to increase accountability. For example, the FWO's identification of hospitality as a non-compliance focus industry in 2017-2018 led to a 56% increase in court ordered penalties.[16]

44. The FWO *Compliance and Enforcement Policy* appropriately identified the heavily feminised aged care and disability sectors as priority targets. However, gender is not expressly considered a vulnerability under that policy.[17] Without recognition of the gendered manifestations of wage theft and workplace exploitation, enforcement activities will not adequately address the structural inequality that is embedded in our industrial relations landscape. Women working in feminised industries are more likely to have precarious and non-standard work arrangements in sectors that have less favourable entitlements than male-dominated industries. This means that even where compliance mechanisms are successful, the recovered entitlements will vary substantially.

Recommendation 2
We recommend that the Government invests in stronger proactive detection of wage theft and workplace exploitation, and that there is an onus on employers to detect and eradicate the systemic underpayment of workers.

Recommendation 3
We recommend that the Fair Work Ombudsman review its Compliance and Enforcement Policy to explicitly consider gender a vulnerability for the purpose of identifying priority target areas.

[15] Australian Bureau of Statistics, Temporary Visa Holders in Australia, 2021 (28 April 2023) <https://www.abs.gov.au/statistics/people/people-and-communities/temporary-visa-holders-australia/latest-release>.
[16] Above n 7, 14.
[17] Office of the Fair Work Ombudsman, Compliance and Enforcement Policy (January 2025, updated April 2025) 16 <https://www.fairwork.gov.au/sites/default/files/migration/725/complianceand-enforcement-policy.pdf>.

The need for alternate pathways for individual recovery

28. For exploited workers, the process of recovering unpaid wages can be intimidating, complex, and costly. There is no current affordable, timely and accessible pathway through which vulnerable workers can recover entitlements. The primary pathway to recover unpaid entitlements from an employer is through the small claims jurisdiction of the Federal Circuit and Family Court (**FCFCOA**), or through state and territory magistrate courts. In 2024-25, 452 small claims applications were filed in the FCFCOA, an increase of 108% from the previous year.[18] While the increase is positive, we do not believe this figure accurately represents the prevalence of underpaid workers eligible to file claims. We refer to the JobWatch data in paragraph 7 and note that in a similar period, they provided 1902 underpayment related assistances in 2025 in Victoria, Tasmania and Queensland alone.

29. While the FCFCOA is designed to be a 'reasonably informal' jurisdiction, the complexity of small claims proceedings, associated costs and length of proceedings make the jurisdiction particularly inaccessible for migrant workers.[19] Calculating underpayments is a time-consuming process that can take weeks, even with legal assistance and once the underpayment has been established, pursuing a claim can take months. Many migrant workers do not pursue their entitlements as the length of the proceedings may exceed the length of their stay.[20] There are barriers for temporary migrant workers to recover unpaid entitlements when they return to their home country as some foreign jurisdictions do not allow citizens to participate in overseas legal matters.[21]

30. The costs associated with filing a claim also deter workers from pursuing their entitlements. Even when workers pursue claims there is no guarantee they will recover their entitlements.

[18] Federal Circuit and Family Court of Australia, *Annual Report 2024–25* (Report, 2025) 166 < https://www.fcfcoa.gov.au/sites/default/files/2025-12/federal_circuit_and_family_court_of_australia_annual_reports_2024-25_v2_web.pdf>.
[19] Migrant Justice Institute, *All Work, No Pay: Wage Theft in Australia's Temporary Migration System* (Report, 2024) 24 <https://www.migrantjustice.org/highlights/2024/allworknopay>.
[20] Above n 7.
[21] Ibid.

Case study 5 – cost deterrents to recovery

Ming* is a young woman on a temporary visa who was underpaid approximately $200 as restaurant worker due to incorrect award classification. Her employer had a pattern of misclassifying employees (often migrants) at lower levels under the Award and underpaying them in this way.

We sent a letter of demand but the employer refused to engage. Our client did not pursue a court claim due to the comparative cost between the filing fee and the quantum of the underpayment.

**Not her real name*

Establishing a wage theft tribunal

45. For some workers, particularly those with visa concerns, a FWO complaint is the only option available.[22] The FWO assists in general underpayment claims through facilitating investigation and intervening by way of notifying employers of breaches in law. This is effective in some cases, such as those where the employer was genuinely unaware of the underpayment. However, where employers are intentionally withholding entitlements and refusing to engage, the FWO has limited power to guarantee the recovery of wages. The *Wage Theft Survey* found that for every 100 unpaid migrant workers surveyed between November 2015 and February 2017, three went to the FWO, and of those over half recovered nothing.[23]

46. Establishing a specific wage theft tribunal that facilitates individual wage recovery through mediation and enforcement orders, would provide an alternate, accessible pathway to pursue underpayment claims.

Recommendation 4

We recommend the establishment of a wage theft tribunal to facilitate wage recovery via mediation and enforceable orders.

[22] Above n 7, 41.
[23] Above n 11.

Expanding the FWO's capacity for enforcement

47. Stronger enforcement powers for the FWO that operate alongside the wage theft provisions could encourage compliance by penalising disengaged employers and facilitating effective dispute resolution. For example, previous inquiries have resulted in recommendations to implement cost consequences for employers who unreasonably refuse to participate in a matter. [24]

48. Underpayments are time and resource intensive matters. WWC NSW solicitors can spend weeks calculating underpayments for clients. Resourcing the FWO to increase capacity to assist with underpayment calculations would provide a free and accessible support pathway for workers who are not able to access legal assistance.

Recommendation 5
We recommend the implementation of stronger enforcement mechanisms for the FWO, such as the introduction of cost penalties for employers who unreasonably refuse to participate.

Recommendation 6
We recommend that the FWO is better resourced to assist workers with underpayment calculations.

Expansion of the Fair Entitlements Guarantee to include migrant workers

49. Despite making up a 11% of the Australian labour force,[25] temporary migrant workers are excluded from the Fair Entitlements Guarantee (**FEG**). The Migrant Workers' Taskforce found that unscrupulous employers commonly engage in 'illegal phoenixing' to circumvent obligations to pay employee entitlements, costing over $2.85 billion in 2023.[26] The Government accepted recommendations from the Migrant Workers' Taskforce in 2023 that suggested expansion of the FEG to include

[24] Above n 7, Recommendation 19.
[25] Above n 6.
[26] Unions NSW, *Navigating Unfairness: The Exclusion of Temporary Migrants from the Fair Entitlement Guarantee* (Report, November 2023) 2 <https://www.unionsnsw.org.au/wp-content/uploads/2023/11/navigatingunfairness_web.pdf>.

temporary visa holders, however, no legislative change in that regard has been implemented. [27]

50. Exclusion from the FEG sends a message that temporary visa holders do not deserve equal legal protection, and perpetuates a culture that normalises the exploitation of migrant workers.

Recommendation 7
We recommend that the Fair Entitlements Guarantee be expanded to include migrant workers.

Contact

This submission is the work of Emily Jol, Emily Gray and Sharmilla Bargon. If you would like to discuss any part of this submission further, please contact Sharmilla Bargon at sharmilla.bargon@wlsnsw.org.au.

This submission has been endorsed by:

JobWatch
Employment Rights Legal Centre

[27] Above n 26.