



Submission to the Wage Theft Inquiry

Submission by the Australian Council of Trade Unions to
the Senate Standing Committees on Education and
Employment - Education and Employment References
Committee Inquiry into Wage Theft

ACTU Submission, 1 May 2026
ACTU D. No 32 /2026

ACTU
australian council of trade unions

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About the ACTU

The Australian Council of Trade Unions (ACTU) is Australia's peak national body of unions, founded in 1927. Our 37 affiliated unions and trades and labour councils represent nearly 2 million members across all industries and occupations. With this movement, the ACTU has a long and proud history of winning for working people, which it continues to build upon.

The ACTU has played the leading role in advocating for, and winning the improvement of working conditions, including on almost every Commonwealth legislative measure concerning employment conditions and trade union regulation. The ACTU has also appeared regularly before the Fair Work Commission and its statutory predecessors, in numerous high-profile test cases, as well as annual national minimum and award wage reviews.

The ACTU welcomes the opportunity to make this submission to the Senate Education and Employment References Committee's Inquiry into Wage Theft. We note that the criminal offence of intentional underpayment introduced by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Cth) (**Closing Loopholes Act**) is currently the subject of the independent review of that legislation being conducted by Ms Susan Booth,¹ to which we have also made a submission.²

¹ [Review of the Closing Loopholes Acts - Department of Employment and Workplace Relations, Australian Government.](#)

² ACTU, *Submission to Review of the Closing Loopholes Acts*, ACTU D No. 17/2026, 6 March 2026.

Introduction & Overview

The Terms of Reference for this Inquiry are as follows:

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.

Prior to the introduction of s.327A through the Closing Loopholes Act, the wage theft framework under the *Fair Work Act 2009* (Cth) (**FW Act**) consisted of civil liability provisions (including powers for the courts to impose civil penalties and order repayment of underpaid wages).

After more than a decade of increasing exposure of cases of widespread underpayments by employers across Australia,³ and the introduction of criminal liability for wage theft in Victoria⁴ and Queensland,⁵ the Albanese Government created the offence of intentional underpayment under federal law through new s.327A with effect from 1 January 2025.⁶

Under s.327A(1) and (3) an employer commits an offence if they are required to pay an amount to an employee under the FW Act or an award or enterprise agreement, and intentionally engages in conduct resulting in a failure to pay the required amount in full on or before the day that payment is due. The “amount” can include not only wages but also superannuation contributions due to an employee.

However under s.327A(2), the offence does not apply to certain payments owing to an employee who is a “national system employee” only because of a state referral of power, i.e. non-payment of superannuation, long service leave or payments related to the taking of leave for jury service, emergency services duties or by reason of being a victim of a crime.

Prosecutions for the wage theft offence can be brought by the Commonwealth Director of Public Prosecutions (**CDPP**) or the Australian Federal Police (**AFP**), within 6 years of the commission of the offence (s.327C). The penalties include up to 10 years’ imprisonment and/or fines of up to \$1.65

³ See for example The Senate, *Systemic, sustained and shameful: Unlawful underpayment of employees’ remuneration*, Report of the Economics References Committee, March 2022; Tess Hardy, John Howe and Melissa Kennedy, ‘Criminal Liability for “Wage Theft”: A Regulatory Panacea?’ (2021) 47:1 *Monash University Law Review* 174.

⁴ *Wage Theft Act 2020* (Vic), repealed by the *Wage Theft Amendment Act 2025* (Vic).

⁵ *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* (Qld).

⁶ See Tess Hardy, ‘Criminalisation of Wage Theft under the Fair Work Act: A New Dawn for Deterrence?’ (2024) 37 *Australian Journal of Labour Law* 218.

million for individuals and fines of up to \$8.25 million for corporations (or 3 times the underpayment amount if that would be greater) (s.327A(5)-(7)). Under the new provisions, it is:

... possible for anyone who self-reports conduct that may amount to the commission of a wage theft offence to reach a 'cooperation agreement' with the FWO (Pt 5-2 Div 3 Subdiv DD). The effect of such an agreement is to provide a 'safe harbour' and prevent subsequent prosecution, although civil remedies may still be sought (s 717A). Small business employers may also escape prosecution by complying with a Voluntary Small Business Wage Compliance Code declared by the Minister (s 327B) ...⁷

In addition to the imposition of criminal liability for wage theft under the Closing Loopholes Act, the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth) (**Closing Loopholes No. 2 Act**) significantly increased the maximum penalties available for contraventions of civil penalty provisions relating to underpayment of employees' wages and entitlements.

The ACTU has welcomed this strengthening of the enforcement framework through the hybrid approach of civil and criminal penalties and other changes.⁸ We have repeatedly expressed support for the criminalisation of wage theft, while also highlighting the need for registered employee organisations to have a strong role in assisting workers in the detection and remedying of underpayments.⁹

In our submission to the Closing Loopholes Review, the ACTU stated that:

In our view the new criminal offence is an appropriate measure to combat wage theft, but given that it has only been in effect since 1 January 2025, it is too early to assess its effectiveness in deterring employers from engaging in wage theft.¹⁰

That remains the ACTU's position. This submission focuses on the following three issues:

1. The ongoing evidence that wage theft remains a widespread and systemic problem in Australia.
2. The FWO's role in enforcement of the new criminal offence.
3. Trade union efforts to combat wage theft, and barriers that workers continue to face in obtaining access to justice in wage recovery matters.

⁷ Andrew Stewart et al, *Creighton and Stewart's Labour Law*, Federation Press, 7th edition, 2025, [19.58]. See also [Voluntary Small Business Wage Compliance Code - Fair Work Ombudsman](#).

⁸ ACTU, *Submission to Review of the Closing Loopholes Acts*, ACTU D No. 17/2026, 6 March 2026, pages 66-67.

⁹ See for example ACTU, *Submission on DEWR Consultation Paper: Compliance and Enforcement – Criminalising Wage Theft*, May 2023, pages 3-4.

¹⁰ ACTU, *Submission to Review of the Closing Loopholes Acts*, ACTU D No. 17/2026, 6 March 2026, page 13.

We conclude the submission with some brief Recommendations.

1. Wage theft remains a widespread and systemic problem

This inquiry was triggered by the news in Senate Estimates back in February 2026 that the FWO had not yet referred any matters to authorities for prosecution under the new wage theft laws.¹¹ Andrew McKellar, the head of the Australian Chamber of Commerce and Industry (ACCI), remarked at the time that this was evidence that claims of widespread wage theft were wrong: “Now we find in practice that actually there is not a crime wave taking place, as was asserted.”¹²

That a government agency has yet to use its relatively new powers, says nothing about the breadth and depth of wage theft in this country. Several recent reports and studies have reaffirmed the pervasive nature of wage theft and its detrimental effects on vulnerable groups of workers in particular. A Melbourne Law School study published in mid-2025, based on a survey of 2,814 workers, found that wage exploitation was rife among young workers:

Overall, we found that 33% of respondents were likely underpaid, receiving \$15 per hour or less. At the time of writing, the adult minimum wage is \$24.95/hour. 43% had been required to complete additional work outside of their usual responsibilities without pay. Other instances of exploitation were shown to be commonplace among young workers: 36% had been forbidden to take breaks they were entitled to; 35% had their timesheet hours reduced by their employer; 34% were not paid for work during a trial period; 24% had not been paid superannuation; 9.5% received food or products in lieu of money; and 8% had been forced to return some or all of their pay to their employer.¹³

These findings echoed those in the ACTU’s own analysis of the wage data of young workers in the ABS Characteristics of Employment Survey (August 2024), which showed that:¹⁴

- Nearly 1 in 5 workers (19%) under the age of 25 are paid less than the legal minimum rate of pay.

¹¹ Ewin Hannan, “Business blasts Labor’s ‘zero return’ \$49m wage theft laws funded by taxpayers”, *The Australian*, 13 February 2026

¹² Ibid.

¹³ 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, Centre for Employment and Labour Relations Law, Melbourne Law School, July 2025, page 3; see further pages 12-17.

¹⁴ See [ACTU Research Note Young Workers and Wage Theft \(17 April 2025\).pdf](#).

- About 30% of 18 year olds in casual work are paid at least \$1.50 an hour less than the applicable junior rate, adding up to \$1,560 in underpayments each year for someone working 20 hours a week.
- Workers aged 24 years and younger were 3.9 times more likely to be paid under the applicable legal minimum than workers aged 25 years and over.
- This data is likely to be a significant underestimate of the extent of wage theft among young workers, for example because the analysis uses absolute minimum rates of pay whereas the majority of young workers are entitled to higher rates of pay through entitlements such as overtime and penalty rates.

The McKell Institute’s 2023 “Unfinished Business” Report extrapolated FWO audit data to find that “more than \$874 million is not paid to Australian workers, affecting about 1.38 million workers or 11.5 per cent of the Australian workforce.”¹⁵ The McKell Report also presented qualitative data in the form of direct accounts from workers who had experienced wage theft, including the following:

Jordan worked from his school days to his mid-20s for a major fast-food chain, rising from a junior crewmember to management. He said the internal structures of encouraging young workers to stay on as managers helped entrench a culture allowing the business to avoid paying staff for hours worked beyond their shifts. "I got over-used as a manager and would still be there doing stuff two hours after work... it's like they keep you there and make you a manager so they can keep on exploiting you."¹⁶

Steph was ... offered a position after a successful trial with a gym, however, the job offer was withdrawn when she pointed out the \$21 dollar pay rate was below the \$27 award for that position. "After I emailed them, they told me I wouldn't be suitable for the position. I was gutted, and frustrated, but I wasn't surprised." Steph said a lot of workers in the fitness industry were casual, making them vulnerable to manipulation through fear of losing shifts.¹⁷

“The pay was irregular, I was always asking them to pay me because I needed to pay my bills. They would tell me they needed to be paid by other builders first. In August 2022, they fired the other staff because they couldn’t afford to keep us all on, and asked me to stay, and promised from then on I would get paid on time. I waited patiently, months passed and I was begging for my wages. I held back from quitting because it was my first job, I needed it to get my permanent residency. By March this year, they owed me \$10,000. I quit, it was too much for me to work without getting paid.”

(Sindhura, a migrant worker in the engineering industry in Victoria)¹⁸

¹⁵ Rebecca Thistleton, *Unfinished Business: The Ongoing Battle Against Wage Theft*, McKell Institute Victoria, August 2023, page 32.

¹⁶ Ibid, page 40.

¹⁷ Ibid, page 43.

¹⁸ Ibid, page 49.

These recent research sources suggest that a robust regulatory framework to prevent, and address the consequences of, widespread wage theft, including a new federal criminal offence is sorely needed.

2. The FWO's role in wage theft prosecutions

The FWO is responsible for carrying out investigations into whether the offence of intentional underpayment under s.327A has been committed. The FWO will then decide whether to refer a matter to the CDPP or AFP for potential prosecution in accordance with its Compliance and Enforcement Policy, which states that:

Conduct will only be referred to the CDPP or AFP if we consider that we have gathered sufficient evidence to prove that a criminal underpayment offence or related offence has been committed. ...

In determining whether to refer conduct ... , the FWO will consider the public interest factors [which guide when it commences civil litigation, e.g. seriousness of the contraventions, characteristics of the persons who allegedly committed and those affected by the contraventions] Referrals will generally be reserved for the most serious conduct, including whether there is a greater need for specific or general deterrence than civil litigation.¹⁹

On receiving a referral, the CDPP will decide whether there is sufficient evidence for – and the public interest supports – criminal proceedings in accordance with the Commonwealth Prosecution Policy.²⁰

The ACTU is not aware of any prosecutions having been commenced for the offence of intentional underpayment under s.327A. Nor do we have any information about investigations by the FWO which may lead to a referral of a matter to the CDPP or AFP for prosecution, other than the FWO's confirmation in Senate Estimates at the end of 2025 that it had two active investigations under way.²¹

The FWO was allocated \$49.5 million over four years in the 2023-24 budget to support its work in relation to criminal wage theft investigations. According to the FWO's 2024-25 Annual Report, it appears that at least some of that funding was used for the following purposes:

¹⁹ FWO, *Compliance and Enforcement Policy*, page 20.

²⁰ *Ibid*, page 21.

²¹ Senator Fatima Payman, *Submission to Inquiry into the Wage Theft Framework*, Submission 3, undated, page 2.

In the lead up to the commencement of the criminal underpayment offence taking effect on 1 January 2025 we:

- *created a new Criminal Investigations Branch within the FWO*
- *identified and implemented new physical and technology infrastructure to undertake criminal investigations*
- *developed processes and policies*
- *delivered staff training.*

In addition, we have established inter-agency arrangements, including with the AFP, CDDP and Services Australia. These relationships are essential to conduct high quality criminal investigations in accordance with legislative requirements.

The FWO has undertaken significant work to educate the community about the criminal underpayment offence. This has included a multi channel communications campaign, website content, presentations and the development of tailored guidance materials.²²

We make no comment on whether the FWO should have already carried out more investigations and made referrals for prosecution of the offence of intentional underpayment. It is also arguably too early to know if the recent criminalisation of wage theft has had a significant deterrence effect on employers, regardless of the lack of prosecutions to date.

These issues could, however, be examined as part of a wider independent review of the work of the FWO in the very near future. In 2023 the Government commissioned KPMG to conduct a review of the FWO, focusing on its operations and activities, considering optimal resource allocation in the context of the Government's commitment to budget repair and responsible spending. That Review did not consider the FWO's effectiveness in delivering its primary functions and obligations, nor the suitability of the functions that have been assigned to the agency.²³

Given the continual evidence of the scale of wage theft and the recent increase in civil penalties and the addition of criminal liability to the range of functions over which the FWO has oversight, a further and broader review some time in the next 6-12 months would be timely. It could also address the question of the extent to which the laws now in place, and the FWO's approach to enforcing them, deter employers from engaging in wage theft.

²² FWO, *Annual Report 2024-25*, page 23.

²³ KPMG, *Review of the Office of the Fair Work Ombudsman: Final Report*, 7 December 2023, page 1.

3. Trade union efforts to combat wage theft & improving access to justice in wage recovery

Union successes in combating wage theft

Even if the FWO were effectively using its new powers in relation to the criminal underpayment offence, the depth and breadth of wage theft mean that other solutions and reforms are necessary. In this regard, trade unions play a vital role in combatting wage theft but with a fraction of the resources of the FWO, and nearly entirely funded by workers themselves, particularly the low paid.

For example, in its submission to this inquiry, the Shop Distributive and Allied Employees Association (**SDA**) states that according to the FWO's Annual Report for 2023-24:

In that year, the FWO reported conducting 4,035 investigations in response to requests for assistance involving workplace disputes, resulting in the recovery of \$15.4 million in underpaid wages. Of that amount, \$5.6 million was recovered for 3,056 workers in the fast food, restaurant and café sectors. The retail sector also accounted for 11% of all anonymous reports of suspected breaches made to the FWO. By comparison, the SDA recovered more than \$20 million in unpaid wages for its members in the same year. While the FWO reported total recoveries of \$473 million across 2023–24, most of that figure appears to have arisen from self-reporting by large corporate employers. Whilst these recoveries are significant for the workers concerned, they must be assessed against the broader scale of wage theft across the economy.²⁴

The United Workers Union (**UWU**) has also provided us with the following information about its wage recovery efforts on behalf of members:

The UWU represents hundreds of members each year in underpayment (wage theft) matters. The nature of these underpayments varies – from hundreds of dollars to millions of dollars. Underpayments arise in all areas of the UWU's coverage – from aged care, to early childhood education and care, food and beverage manufacturing and many others. In the time period from November 2019 to 30 June 2025, the UWU recovered over \$67 million in unpaid wages, entitlements and penalties for members (this includes matters resolved prior to referral to the UWU's legal team, but where UWU intervention was required). Each year, the UWU's in-house legal team runs over 350 matters in Courts and Tribunals across Australia involving unpaid wages and entitlements for members. The amount recovered by the UWU for members each year is between \$10 million to \$12.5 million.

²⁴ SDA, Submission to the Education and Employment References Committee – Wage Theft Inquiry, 23 April 2026, page 9.

As we have submitted to previous reviews and inquiries, unions have a critical role to play in assisting workers to obtain redress in underpayment cases. For example in our submission to the Australian Government’s review of the FW Act small claims procedure, the ACTU argued that:

Registered employee associations are the only social institution with the motivation – indeed the fundamental obligation – as well as the capacity, scale and the connections to workers to adequately address wage theft. They are also the only social institution with the specialist knowledge and understanding of the systems of work and features of employment in particular industries. For example, registered employee associations will have a deep understanding of piece rates in sectors such as agriculture and horticulture, outwork in the textiles, clothing and footwear industry, haulage rates in road transport, daily hire in construction, and annualised salaries in multiple industries and awards. This specialist knowledge and expertise has been developed by registered employee associations over many decades. The FWO is a generalist regulator and does not have this kind of specialist knowledge, and trying to build it through specialist teams for particular sectors would be inefficient and prohibitively expensive. Further, the FWO is unable to adequately deal with wage theft given its scale and depth.²⁵

Barriers to access to justice in wage recovery

There are several key challenges for workers and their unions in being able to expand upon this important work. Firstly, the time and expense involved in running an underpayment claim is still extensive. This especially includes the detailed and laborious work of compiling evidence of wage theft, where the evidence of hours worked and pay received takes significant time to obtain and analyse. Legal proceedings are also lengthy and can be costly. Finally, the profound power imbalance between employers and employees in many workplaces continues to be the major disincentive to employees having the confidence to bring a claim.

The 2023 McKell Report identified several common barriers faced by workers in taking action to seek redress for wage theft, including the fear of losing shifts, their job or their visa if they spoke out; and:

- *A lag between the time they realised they were being ripped off and confronting employers because of the stressful nature of taking on the boss.*
- *Having their questions and concerns about pay dismissed and not taken seriously. ...*
- *Significant time between making a formal complaint and having a resolution, from several months to several years. ...²⁶*

²⁵ ACTU, *Response to Department of Employment and Workplace Relations Review of the Fair Work Act 2009 Small Claims Procedure*, May 2023, page 16.

²⁶ Rebecca Thistleton, *Unfinished Business: The Ongoing Battle Against Wage Theft*, McKell Institute Victoria, August 2023, page 15.

The Report also found that:

Accessible support can be the difference between workers speaking up and staying silent. The workers we spoke to had the support of unions such as ... United Workers Union, the SDA and also from the Victorian Young Workers Centre. The case studies we spoke to had taken their wage theft complaint all the way through to receiving back pay, some through reaching an agreement with their employer or through the FWO. Anecdotally, we heard that having easy access to free advice and support from union workers throughout the process was why they had felt able and empowered to act, despite fearing recriminations in the workplace.²⁷

The 2025 Melbourne Law School study, which focused on underpayment and other forms of exploitation impacting young workers, identified an “apparent disinclination [on the part of these workers] to seek help from the FWO” which it described as “concerning”.²⁸ It found that workers aged 15-19 are more than twice as likely to seek help from the Fair Work Commission (**FWC**) than the FWO, and recommended that as well as the FWO targeting more of its educational activities towards teenaged workers:

... resources should also be allocated toward the promotion of other avenues of assistance relevant to young workers such as trade unions, community legal centres, the Young Workers Centre and other similar bodies.²⁹

Improving legal procedures to facilitate quicker, low-cost recovery of underpaid wages

As two scholars have recently argued, criminalisation of wage theft “must be accompanied by robust enforcement and suitable civil recovery mechanisms that empower workers who seek to recover their unpaid entitlements.”³⁰

Despite recent reforms, including expansion of the small claims jurisdiction of the federal courts to include claims up to \$100,000,³¹ workers still face considerable obstacles in obtaining access to justice in this area.

²⁷ Ibid.

²⁸ 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, Centre for Employment and Labour Relations Law, Melbourne Law School, July 2025, page 24.

²⁹ Ibid.

³⁰ Irene Nikoloudakis and Stephen Ranieri, ‘Criminalising ‘Wage Theft’ in Australia: A Proposed Regulatory Model’ (2023) 46 *University of NSW Law Journal* 1134, page 1137.

³¹ See FW Act s.548, especially s.548(2) amended by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (**Secure Jobs Better Pay Act**) with effect from 1 July 2023.

Some of the ACTU's affiliated unions report that while practices differ depending on the state in which a claim is initiated, it can take between a year and 1.5 years to get matters – including underpayment claims – to trial in the Federal Circuit and Family Court or the Federal Court. The small claims procedure has improved the situation to some degree, although it can still take around 6 months to have a matter heard and longer for a decision to be handed down.

The Final Report of the independent Review of the Secure Jobs Better Pay Act found that:

While the small claims process is simpler than other legal processes, it is also more formal than mediation and conciliation procedures such as those used by the FWC. Though some of the financial barriers and disincentives have been removed, broader procedural and institutional reform may still be required.³²

The ACTU supports the Review Panel's recommendation that:

Once data on the effects of the increased monetary cap becomes available, the Department of Employment and Workplace Relations should consider whether any additional changes to the small claims procedure under the Fair Work Act 2009 are necessary.³³

Given these barriers the ACTU puts forward the following ideas to improve access to justice.

Firstly, the Fair Work Commission could be better resourced and empowered to play an active role one in resolving underpayment claims. Prior to issuing proceedings for underpayment in a court, a registered employee organisation should have the option of accessing the Fair Work Commission which could have new powers to seek to resolve such claims. This would include giving it the power to obtain documents, including wage and time records from employers, directing employers to produce information in accessible formats (e.g. spreadsheets), and to pay for independent audits, and the calculate the quantum of underpayments, to then conciliate on the basis of those calculations, ahead of underpayment matters being taken to court. A certain threshold of evidence of underpayment would need to have been meet before such powers could be engaged. The FWC could also have broader powers to require parties that participated in or coordinated the underpayment to attend the conciliation in an attempt to reach a solution. Another way to streamline underpayment matters would be to give the FWC and the relevant courts that ability to investigate systematic issues, rather than just the applicant.

³² Emeritus Professor Mark Bray and Professor Alison Preston, *Secure Jobs, Better Pay Review: Report*, 31 March 2025, page 294.

³³ Ibid.

Secondly, the Australian Government should investigate ways to dramatically simplify and streamline judicial processes to reduce the time and expense required to run a claim for underpayments. Having workplace relations matters in the Federal Circuit Court and Federal Court, with limited expertise and extensive delays may not be the answer to ending widespread wage theft.

Recommendations

To make further progress towards ending wage theft:

1. Conduct an independent review of FWO in 6 to 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.

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