

The Senate

Education and Employment
References Committee

Wage theft

© Commonwealth of Australia

ISBN 978-1-76093-942-7 (Printed version)

ISBN 978-1-76093-942-7 (HTML version)

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Chapter 1

Introduction

1.1 On 24 March 2026, the Senate referred the following matter to the Senate Education and Employment References Committee, for inquiry and report by 18 June 2026:

The extent to which the wage theft framework under the *Fair Work Act 2009*, and the operation of subsection 327A(1), has led to a decrease in the incidence of wage theft in Australia, and any other related matter.

1.2 The committee advertised the inquiry on its website and invited submissions by 23 April 2026. The committee received 30 submissions, which are listed at Appendix 1.

1.3 The committee held one public hearing, in Canberra on Monday 4 May 2026. A list of hearing witnesses is available in Appendix 2.

1.4 Links to public submissions, Hansard transcripts of evidence and other information published by the committee for this inquiry are available on the committee's [website](#).

1.5 This report comprises three chapters:

- This chapter, which provides an overview of the criminal wage underpayment regulatory system;
- Chapter Two, which outlines key issues raised in evidence; and
- Chapter Three, which contains the committee's view on issues raised and recommendations.

1.6 The committee thanks the individuals and organisations who contributed to the inquiry by providing written submissions, giving evidence at the public hearing and responding to questions on notice.

Defining wage 'theft'

1.7 The term 'wage theft' is not a defined concept in the *Fair Work Act*.¹ The term 'wage theft' is often used to refer to both deliberate and unintentional forms of underpayment, although not all commentators agree that 'wage theft' should be used to refer to unintentional underpayment.²

¹ Fair Work Ombudsman, *Submission 8*, p. 2.

² Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 32; Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, pp. 37, 41.

- 1.8 The *Fair Work Act 2009* contains a range of civil remedies, including civil penalties and, as of 1 January 2025, criminal penalties to address intentional underpayment of wages and entitlements.³
- 1.9 This report uses the term wage underpayment, except when the term wage theft is used by submitters or witnesses.
- 1.10 The committee was informed that wage underpayment continues to be an issue, particularly in some industries. The Fair Work Ombudsman has received the most requests for assistance with underpayment of wages or entitlements in the 2025–26 financial year in accommodation and food services, construction, and health care and social assistance.⁴ Other industries evidence to the inquiry indicated are particularly affected included the following:
- The security industry.⁵
 - The cleaning industry.⁶
 - The university sector.⁷
- 1.11 Some evidence emphasised that particular cohorts may be disproportionately affected by wage underpayment, including:
- Women, because of their concentration in low-paid, insecure and award-reliant roles, particularly in retail, hospitality, healthcare and community services;⁸
 - Young workers, who 'are consistently identified as the cohort most exposed to wage theft', with a third likely underpaid and a quarter not paid compulsory superannuation;⁹
 - International students, who may be unable to earn enough within the maximum number of hours they are legally allowed to work and may have

³ Department of Employment and Workplace Relations, *Submission 11*, p. 1.

⁴ Mr Anthony Fogarty, Executive Director, Policy, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, pp. 37–38.

⁵ Mr Andrew Bourke, *Submission 5*, pp. 1, 3. However, the Australian Security Industry Association Ltd informed the committee that the majority of cases it helps its members with concern underpayments that are not deliberate. See Mr Bryan de Caires, Chief Executive Officer Australian Security Industry Association Ltd, *Proof Committee Hansard*, 4 May 2026, p. 1.

⁶ Mr Andrew Bourke, *Submission 5*, p. 1.

⁷ National Tertiary Education Union, *Submission 10*, pp. 1, 3. Some concerns alleged that casual employees are not allocated sufficient time for activities such as marking, while other concerns raised included why some university policies require academics to be working for two years at the level above them before they are eligible for promotion. See Dr Jessica Harris, Private capacity, and Dr Kathleen Smithers, Private capacity, *Proof Committee Hansard*, 4 May 2026, pp. 23–24.

⁸ Working Women's Centre Victoria, *Submission 23*, pp. 4, 5; Working Women's Centre NSW, *Submission 24*, pp. 1–2, 9; Victorian Women Lawyers, *Submission 25*, [p. 3].

⁹ Shop, Distributive and Allied Employees' Association, *Submission 12*, pp. 2, 5.

fear of retaliation from employers and limited understanding of workplace rights;¹⁰ and

- Migrant workers, because of visa insecurity, language barriers and fear of engaging with authorities, with some research suggesting that over two thirds of migrant workers experience some form of exploitation.¹¹

The regulatory framework

1.12 The Office of the Fair Work Ombudsman is responsible for promoting and monitoring compliance with workplace laws, inquiring into and investigating breaches, and taking appropriate enforcement action. The *Fair Work Act* provides the Fair Work Ombudsman with a graduated framework designed to deter, prevent and address wage underpayment.¹²

1.13 The Fair Work Ombudsman is responsible for investigations related to the wage underpayment criminal offence, and for referring appropriate matters to the Commonwealth Director of Public Prosecutions (CDPP). Referrals to the CDPP can only occur if the Fair Work Ombudsman considers there is sufficient evidence to prove the offence and that prosecution is in the public interest, with regard to matters outlined in their Compliance and Enforcement Policy.¹³

1.14 The Fair Work Ombudsman can also refer matters to the Australian Federal Police where appropriate, such as instances requiring further investigative assistance.¹⁴

1.15 Factors set out in the Fair Work Ombudsman's Compliance and Enforcement policy that they consider when using their compliance and enforcement powers include:

- The impact on the Fair Work Ombudsman's resources and costs;
- The compliance history, sophistication and financial position of the person alleged to have committed the offence;
- The impact of the alleged contraventions; and

¹⁰ Mr Andrew Bourke, *Submission 5*, p. 1.

¹¹ Australian Nursing and Midwifery Federation, *Submission 13*, pp. 8–9; Working Women's Centre Victoria, *Submission 23*, pp. 4, 5; Working Women's Centre NSW, *Submission 24*, pp. 5–6, 8; Mr Mathew Kunkel, Chief Executive Officer, Migrant Workers Centre, *Proof Committee Hansard*, 4 May 2026, pp. 15–16.

¹² Department of Employment and Workplace Relations, *Submission 11*, p. 1.

¹³ Department of Employment and Workplace Relations, *Submission 11*, p. 4; Fair Work Ombudsman, *Submission 8*, p. 4.

¹⁴ Department of Employment and Workplace Relations, *Submission 11*, p. 4; Fair Work Ombudsman, *Submission 8*, p. 4.

- Whether litigation will reduce the likelihood that others will engage in similar behaviour.¹⁵
- 1.16 The policy stipulates that 'not all conduct potentially amounting to a criminal underpayment offence or a related offence must result in a referral to the CDPF'.¹⁶
- 1.17 The Fair Work Ombudsman has other compliance powers related to wage underpayment, including issuing compliance notices that underpayments must be rectified, commencing litigation and applying to a court for an order against the alleged wrong-doer. Such instances may include pecuniary penalty orders, which provide for civil penalties to be paid to the Commonwealth or, if appropriate, to an impacted party, including organisations. Employees and employee organisations are also able to take civil action to address underpayments.¹⁷
- 1.18 The Fair Work Ombudsman was provided \$49.5 million over four years from 2023–24 to fulfil its new role as the investigatory agency for the wage underpayment offence. It has established a new unit specifically for its criminal investigations.¹⁸ This funding supports:
- Specially trained Fair Work Inspectors who undertake criminal investigations, which must be segregated from civil investigations;
 - Legal support;
 - Evidence management staff to manage physical and digital evidence and prosecution disclosure requirements;
 - Expert forensic technology and data analysis;
 - Calculations support to determine underpayment amounts;
 - Investigation costs related to witnesses (e.g. transcription and translation), evidence gathering and execution of search warrants;
 - Technology operating costs associated with a secure protected environment; and
 - Ongoing costs associated with staffing, equipment and property.¹⁹
- 1.19 The Fair Work Ombudsman has established a Criminal Investigations Branch to support the implementation of the new criminal jurisdiction and to lead the

¹⁵ Fair Work Ombudsman, *Compliance and Enforcement Policy*, April 2025, pp. 1, 16.

¹⁶ Fair Work Ombudsman, *Compliance and Enforcement Policy*, April 2025, p. 20.

¹⁷ Department of Employment and Workplace Relations, *Submission 11*, pp. 4–5.

¹⁸ Department of Employment and Workplace Relations, *Submission 11*, p. 4.

¹⁹ Fair Work Ombudsman, *Submission 8*, p. 5; see also *Proof Committee Hansard*, 4 May 2026, p. 36.

criminal investigation function going forward. The budgeted average staffing level for the Criminal Investigations Branch as at 31 December 2025 was 16.7.²⁰

- 1.20 The Fair Work Ombudsman informed the committee that in the majority of cases, it 'encourages voluntary compliance through advice, education and dispute assistance services'. Enforced 'compliance is reserved for the most serious and systemic contraventions. In such cases and where it is in the public interest', the Fair Work Ombudsman may commence civil proceedings to seek financial penalties, or referring matters for potential criminal prosecution. The Fair Work Ombudsman stated that a 'key purpose of enforced compliance is to address and deter serious forms of non-compliance and promote compliance with workplace laws more generally'. In particular, 'enforcement tools, including litigation, are primarily used when cooperative or voluntary approaches have failed or are inappropriate'.²¹
- 1.21 The Fair Work Ombudsman stated that it 'has also undertaken significant work to educate the community about the Offence to contribute to its deterrent effect', including a multi-channel communications campaign, website content, presentation and tailored guidance material and resources.²²
- 1.22 Besides the introduction of the criminal wage underpayment in subsection 327A of the *Fair Work Act* (outlined below), other recent changes to the compliance framework in the Act include:
- A significant increase in civil penalties for certain civil remedy contraventions, including breaches of the National Employment Standards and modern awards;
 - A lowered threshold of 'recklessness' for 'serious contraventions'; and
 - Strengthened penalties for failure to comply with a compliance notice.²³
- 1.23 The Australian National Audit Office conducted an audit on the effectiveness of the Office of the Fair Work Ombudsman's Regulatory Functions in 2024–25, released in April 2025, several months after the introduction of the criminal wage underpayment offence. The audit found the Fair Work Ombudsman was 'largely effective in the exercise of its regulatory functions', its 'arrangements to encourage voluntary compliance and detect non-compliance with the *Fair Work Act* are largely effective' and its 'arrangements to enforce compliance with the *Fair Work Act* are largely effective'.²⁴

²⁰ Fair Work Ombudsman, *Submission 8*, pp. 5, 6.

²¹ Fair Work Ombudsman, *Submission 8*, pp. 1–2.

²² Fair Work Ombudsman, *Submission 8*, p. 6.

²³ Fair Work Ombudsman, *Submission 8*, pp. 2–3.

²⁴ Australian National Audit Office, *Submission 16*, [p. 79].

Subsection 327A(1) of the *Fair Work Act*

1.24 Subsection 327A(1) of the *Fair Work Act* formed part of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023. The bill passed both houses on 7 December 2023 and received royal assent on 14 December 2023. The subsection has been in force since 1 January 2025. In short, the subsection provides for a criminal wage underpayment offence:

327A Offence—failing to pay certain amounts as required

- (a) An employer commits an offence if:
- (a) the employer is required to pay an amount (a **required amount**) to, on behalf of, or for the benefit of, an employee under:
 - (i) this Act; or
 - (ii) (ii) a fair work instrument; or
 - (iii) (iii) a transitional instrument (as continued in existence by Schedule 3 to the Transitional Act); and
 - (b) the required amount is not an amount covered by subsection (2); and
 - (c) the employer engages in conduct; and
 - (d) the conduct results in a failure to pay the required amount to, on behalf of, or for the benefit of, the employee in full on or before the day when the required amount is due for payment.²⁵

1.25 In limited circumstances, the following are excluded from being classed as an offence under s327A(1):

- a contribution payable to a superannuation fund for the benefit of the employee; or
- referable to the employee taking a period of long service leave; or
- referable to the employee taking a period of paid leave that the employee was entitled to take by reason of being a victim of crime; or
- referable to the employee taking a period of paid leave that the employee was entitled to take because the employee attended for service on a jury, or for emergency services duties.²⁶

1.26 Absolute liability (in other words, a person or organisation is held responsible without any need to prove fault, negligence or intention) applies to paragraphs (1)(a) and (b). For paragraphs (1)(c) and (d), the fault element is intention.²⁷

1.27 The relevant fault element is intent, and the prosecution must prove that an employer intended to underpay an employee.²⁸ The offence does not apply to

²⁵ *Fair Work Act 2009*, ss 327A(1).

²⁶ Where either the employee is a national system employee only because of section 30C or 30M, or the employer is a national system employer only because of section 30D or 30 N (*Fair Work Act 2009*, ss 327A(2)).

²⁷ *Fair Work Act 2009*, ss 327A(3).

²⁸ Department of Employment and Workplace Relations, *Submission 11*, p. 2.

accidental or inadvertent underpayments or underpayments based on a genuine mistake by an employer.²⁹

- 1.28 According to the Department of Employment and Workplace Relations, the 'aim of the offence is to encourage compliance. While intended to be used as a last resort for the most serious offending, these criminal penalties will make business think more carefully about meeting their workplace obligations' and provide general and specific deterrence. In particular, the 'new offence was designed to complement the civil remedy framework which is available to address other forms of underpayment or non-compliance including genuine mistakes'.³⁰
- 1.29 There are a number of exceptions to the criminal wage underpayment offence, in line with certain powers that the states have not fully transferred to the Commonwealth. These exceptions include:
- Superannuation;
 - Long service leave;
 - Paid leave that an employee was entitled to take because of being a victim of crime; and
 - Paid leave that an employee was entitled to take because of jury duty or emergency services duties.³¹

Penalties

- 1.30 Individuals convicted of the wage underpayment offence will be subject to a maximum of 10 years' imprisonment, and/or a maximum fine of the greater of:
- Three times the amount of the underpayment, if the court can determine that amount; or
 - For an individual: 5,000 penalty units (\$1,650,000); or for a body corporate: 25,000 penalty units (\$8,250,000).³²

Safe harbour options

- 1.31 Employers are encouraged to self-disclose underpayments to the Fair Work Ombudsman through several pathways under the *Fair Work Act*. The Fair Work Ombudsman must not refer employers for criminal prosecution for wage underpayment if certain requirements under these pathways are met. The safe harbour mechanisms operate only in relation to criminal prosecution, and not

²⁹ Fair Work Ombudsman, *Submission 8*, p. 4.

³⁰ Department of Employment and Workplace Relations, *Submission 11*, p. 2.

³¹ Department of Employment and Workplace Relations, *Submission 11*, p. 3.

³² Department of Employment and Workplace Relations, *Submission 11*, p. 3.

other enforcement action, such as commencing civil penalty litigation or entering into an enforceable undertaking.³³

Voluntary Small Business Wage Compliance Code Declaration 2024

1.32 The Voluntary Small Business Wage Compliance Code provides a pathway for small business employers to self-disclose underpayments to the Fair Work Ombudsman.³⁴

1.33 The Code stipulates that small business employers are compliant if their failure to pay a required amount was not intentional. Relevant matters to determine whether such action was not intentional include the employer:

- Making reasonable efforts to ascertain correct rates of pay and entitlements for the employee;
- Making reasonable efforts to stay up to date with the employer's obligations relating to the payment of applicable amounts to, on behalf of, or for the benefit of, the employee;
- Considering and relying on information about the employee that the employer reasonably believed was accurate (such as the employee's role, duties, classification, relevant qualifications, age, hours of work and location of work) in relation to the payment of applicable amounts to, on behalf of, or for the benefit of, the employee;
- Seeking information or advice from reliable sources in relation to the payment of applicable amounts to, on behalf of, or for the benefit of, the employee;
- Providing information that the employer reasonably believed was accurate in seeking that information or advice;
- Taking reasonable steps to rectify the failure to pay the applicable amount after becoming aware of the failure; and
- Cooperating with any relevant inquiry or investigation by the Fair Work Ombudsman after becoming aware of the failure to pay the applicable amount.³⁵

Cooperation agreements

1.34 Employers are also able to enter into cooperation agreements with the Fair Work Ombudsman. While the agreement is in force, the Fair Work Ombudsman must

³³ Fair Work Ombudsman, *Submission 8*, p. 4.

³⁴ Department of Employment and Workplace Relations, *Submission 11*, p. 2.

³⁵ Voluntary Small Business Wage Compliance Code Declaration 2024, ss 6(3). See also Department of Employment and Workplace Relations, [The new wage theft criminal offence will commence on 1 January 2025](#), 16 December 2024 (accessed 1 April 2026).

not refer to the conduct that is subject to the agreement for criminal prosecution. Agreements generally would require the underpayments to be rectified.³⁶

Potential interaction with the Criminal Code

1.35 The Revised Explanatory Memorandum for the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 stipulates that the criminal offence 'applies to intentional conduct'.³⁷ According to the Fair Work Ombudsman, the criminal offence 'doesn't include honest mistakes'.³⁸

1.36 However, as outlined in Chapter Two, some evidence expressed concerns that under subsection 12.3 of the *Criminal Code Act 1995*, intentionality may be attributed to a body corporate employer if it 'expressly, tacitly or impliedly authorised or permitted' an offence (including a corporate culture that directs, encourages, tolerates or leads to non-compliance with the relevant provision).

Submitters argued that this may allow intention to be imputed to an employer that did not in fact set out to underpay, undercutting the intention-based design of the offence.³⁹

1.37 Guidance issued by the Attorney General's Department on the Commonwealth Criminal Code explains that if intention is a fault element of an offence, the fault element may be attributed to a body corporate if the body corporate expressly, tacitly or impliedly authorises or allows the offence. Under s 12.3 of the Criminal Code, this may be established through factors related to corporate culture, not just direct orders from an individual. Factors relevant to proving that corporate culture influenced intent include:

(a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the body corporate; and

(b) whether the employee, agent or officer of the body corporate who committed the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the body corporate would have authorised or permitted the commission of the offence.⁴⁰

Actions since the provision came into effect

1.38 As of 4 May 2026, the Criminal Investigations Branch of the Fair Work Ombudsman had assessed 39 matters. Of those 39, it had commenced four full

³⁶ Department of Employment and Workplace Relations, *Submission 11*, p. 4.

³⁷ Revised Explanatory Memorandum, Fair Work Legislation Amendment (Closing Loopholes) Bill 2023, p. 2; Australian Industry Group, *Submission 18*, p. 7.

³⁸ Fair Work Ombudsman, [Criminalising wage underpayments and other issues](#), 16 December 2024 (accessed 26 May 2026); Australian Industry Group, *Submission 18*, p. 7.

³⁹ Australian Industry Group, *Submission 18*, pp. 7–10.

⁴⁰ Attorney-General's Department, [The Commonwealth Criminal Code: A Guide for Practitioners: 12.3 Fault elements other than negligence](#) (accessed 26 May 2026).

investigations into suspected criminal conduct related to the wage underpayment offence, with three ongoing matters. A further seven matters are currently in the assessment phase. The Fair Work Ombudsman had not yet made any referrals to the CDPP or AFP related to the offence.⁴¹

1.39 The Fair Work Ombudsman informed the committee that it 'is not unusual for new penalty regimes to take time to reach the courts, particularly in the criminal context... [I]nvestigations of potential criminal conduct are typically more time and resource-intensive due to the more stringent procedural and evidential requirements'. However, it noted that in its experience, 'new civil provisions can also take time to reach the courts'. Of note, it submitted that 'there is often significant effort and investment made in investigating matters that ultimately do not meet the threshold to proceed to court, for reasons specific to the circumstances of each investigation and in accordance with' its Compliance and Enforcement Policy.⁴²

1.40 The Fair Work Ombudsman (FWO) stated that over the last five years, it 'has increasingly seen many larger corporates, not-for-profits and other businesses self-report underpayments. It reported that it had received an average of 3.5 businesses coming forward per week in the first half of 2025–26, compared with an average of 3.1 per week in 2024–25. Its view was:

The continued high volume of self-reports indicates that businesses are actively seeking to identify and fix issues and supports the FWO's proposition that the majority of businesses want to make things right when mistakes happen. The FWO's observation is that the existence of the new criminal offence appears to be encouraging some businesses to take active steps to increase compliance (even in the absence of identified concerns), self-report underpayments to the FWO and put practices in place to prevent underpayments from reoccurring.⁴³

Superannuation

1.41 Superannuation is largely regulated under separate Commonwealth legislation, particularly the Superannuation Guarantee, which is regulated by the Australian Taxation Office (ATO) rather than forming a wage underpayment offence investigated by the Fair Work Ombudsman.⁴⁴ The ATO estimated a gap of around 6 per cent of the estimated theoretical Super Guarantee liability for the 2022–23 financial year. In other words, there is a 6 per cent gap (around \$6.2

⁴¹ Ms Michelle Carey, Group Manager, Regulatory Transformation, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, p. 37; Fair Work Ombudsman, *Submission 8*, p. 7; Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, p. 40.

⁴² Fair Work Ombudsman, *Submission 8*, p. 8.

⁴³ Fair Work Ombudsman, *Submission 8*, p. 3.

⁴⁴ See Australian Taxation Office, [Super guarantee](#), 17 April 2026 (accessed 15 May 2026).

billion) between the ATO's estimate of superannuation that should have been collected on behalf of employees, and the amount that was actually collected. Issues the ATO identified as potentially driving the gap include late lodgement, Super Guarantee underpayment and incorrect application of the law.⁴⁵

- 1.42 Currently, employers are required to pay super contributions at least every three months. If contributions are late, additional charges apply. From 1 July 2026, employers will be required to pay superannuation contributions at the same time as they pay employees' wages. Employees covered by the National Employment Standards are able to take court action under the *Fair Work Act* to recover unpaid superannuation, unless the ATO has already commenced proceedings in relation to that superannuation.⁴⁶

Statutory review of the Closing Loopholes Acts

- 1.43 An independent statutory review of the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* and the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* commenced on 15 December 2025. The review was due to report to the Minister for Workplace Relations and Employment by 15 June 2026.⁴⁷ Preliminary findings and draft recommendations were due to be provided to the Minister by 15 May 2026, and the draft report was published for stakeholder comment on 18 May 2026.⁴⁸
- 1.44 The review is considering the operation of the amendments made by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* and the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*, including:
- Whether the operation of the amendments is appropriate and effective;
 - Identifying any unintended consequences of the amendments; and
 - Whether any further amendments to the *Fair Work Act 2009*, or any other legislation, are needed to improve the operation of the amendments or rectify any unintended consequences that are identified.⁴⁹
- 1.45 Of relevance for this inquiry, the draft report of the review concluded that there were insufficient 'early indicators of possible effectiveness or unintended consequences' with regards to the criminal offence. As such, the draft report recommended:

⁴⁵ Australian Taxation Office, [Latest estimate and trends for the super guarantee gap](#), 3 November 2025 (accessed 15 May 2026).

⁴⁶ Fair Work Ombudsman, [Tax and superannuation](#) (accessed 15 May 2026).

⁴⁷ Department of Employment and Workplace Relations, *Submission 11*, p. 1.

⁴⁸ Department of Employment and Workplace Relations, [Review of the Closing Loopholes Acts](#), 23 March 2026 (accessed 15 May 2026).

⁴⁹ Department of Employment and Workplace Relations, [Review of the Closing Loopholes Acts](#), 23 March 2026 (accessed 15 May 2026).

The government should undertake a targeted early review of the operation of the wage theft offence and changes to the civil penalties framework within 1 year of publication of this report, (which will be approximately 2 and a half years after the offence commenced). The review should consider the operation of the offence provisions and the appropriateness of the Fair Work Ombudsman's powers, as well as the Voluntary Small Business Wage Compliance Code and cooperation agreement provisions.

The early review should:

- assess the effectiveness and timeliness of the criminal wage theft offence and civil penalty regime in deterring and remedying underpayments
- examine unintended consequences for employees and employers
- assess requirements for further legislative or administrative refinements about evidence, interagency data-sharing and prosecutorial pathways
- review the adequacy of resourcing, capability, interagency coordination and infrastructure supporting enforcement
- consider interactions with other workplace relations reforms including changes to the civil penalty framework, and any impediments to recovery of underpayments
- consider whether unions could work with the Fair Work Ombudsman to identify criminal wage theft and underpayment.⁵⁰

1.46 The draft report further proposed the Fair Work Ombudsman be required to annually report on its activities relating to wage theft and civil remedies for underpayment, including investigations, referrals for prosecution, civil proceedings for underpayments, and systemic underpayment and wage theft compliance issues identified through the Fair Work Ombudsman's work.⁵¹

⁵⁰ Susan Booth, *Closing Loopholes: An Independent Statutory Review – Draft Report*, 15 May 2026, p. 21.

⁵¹ Susan Booth, *Closing Loopholes: An Independent Statutory Review – Draft Report*, 15 May 2026, pp. 22, 248.

Chapter 2

Issues raised

- 2.1 This chapter provides an overview of the issues raised in evidence to the inquiry, focusing particularly on views about the effectiveness of the wage underpayment framework in the *Fair Work Act 2009* and the operation of the criminal offence as outlined in subsection 327A(1).
- 2.2 The chapter also discusses concerns submitters and witnesses raised about the following areas:
- Whether there is a need for subsection 327A(1);
 - Intentional versus unintentional conduct;
 - Late payments;
 - Complexity of the industrial relations system and how this contributes to wage underpayment;
 - Issues with enforcement of the wage underpayment framework;
 - Superannuation;
 - Pathways for migrant workers in particular to recover unpaid wages and entitlements; and
 - The effectiveness of existing pathways for employees to recover wages.
- 2.3 The committee's views on these matters are set out in Chapter Three.

Challenges with measuring effectiveness

- 2.4 Associate Professor Tess Hardy and Professor John Howe submitted that it 'is notoriously difficult, if not impossible, to accurately measure the incidence of wage theft'. In particular, there are challenges with detecting some of the most egregious conduct, a lack of data, and even if an underpayment has been identified, the data generally does not reveal the knowledge or intention of the alleged wrongdoer.¹ Associate Professor Hardy reiterated her view at the public hearing that 'criminal sanctions only get you so far when it comes to deterrence'. She further informed the committee:

The research and evidence certainly suggest that there are other ways, which are possibly less appealing from a political point of view, that actually serve deterrence purposes very well, and that's increasing the perceived risk that you're going to be detected. If you are detected, you have a perceived risk that a sanction—even a modest sanction, such as a small fine—will be

¹ Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, p. 2.

imposed. The evidence suggests that that's the better way to deliver deterrence....²

- 2.5 They flagged 'a growing evidence base that wage underpayment, and other contraventions of monetary obligations, continues to be a significant problem in Australia'. However, they also pointed to an 'absence of any reliable baseline data measuring the incidence of wage theft prior to the commencement of the criminal wage theft offence', arguing that as a result, 'it is not possible to determine whether the criminal wage theft offence has led to any decrease in the incidence of wage theft'.³
- 2.6 Associate Professor Hardy and Professor Howe highlighted that some research questions the assumptions underpinning deterrence, submitting that 'many studies have found that compliance (or non-compliance) may be driven or perpetuated by a range of different drivers', including social norms, lack of awareness of relevant laws, or a lack of necessary resources to ensure compliance. However, they also acknowledged that 'the introduction of significant penalties – both civil and criminal – can have deterrence effects in and of themselves', noting that 'it is the belief that duty-holders have of the likelihood and degree of punishment which is crucial in shaping compliance decisions'.⁴
- 2.7 They conducted a 2025 survey themselves to examine business awareness of, and responses to, FWO enforcement activities. The most common response was businesses had reviewed their systems to ensure compliance. Almost 90 per cent of businesses surveyed identified reputational concerns as an important factor in encouraging changes to their compliance procedures, while 64 per cent identified additional penalties for serious contraventions as either important or extremely important in prompting changes to their compliance procedures.⁵
- 2.8 Associate Professor Hardy and Professor Howe concluded that the FWO's approach 'appears to be largely in line with best practice models of enforcement, including responsive regulation and strategic enforcement'. They were of the view that 'a regulatory mix, which includes, but is not confined to, criminal prosecution for wage theft, arguably provides the most effective avenue for promoting compliance'.⁶
- 2.9 Associate Professor Hardy and Professor Howe argued that amending elements of the criminal wage underpayment offence in s 327A prior to any judicial

² Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 29.

³ Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, p. 3.

⁴ Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, pp. 3–4, 5.

⁵ Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, p. 4.

⁶ Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, p. 5.

consideration of the offence and its application to wage underpayment 'is premature and unjustified'.⁷

- 2.10 As noted in Chapter One, the Australian National Audit Office conducted an audit on the effectiveness of the Office of the Fair Work Ombudsman's Regulatory Functions in 2024–25, released in April 2025, several months after the introduction of the criminal wage underpayment offence. The audit found the Fair Work Ombudsman was 'largely effective in the exercise of its regulatory functions', its 'arrangements to encourage voluntary compliance and detect non-compliance with the *Fair Work Act* are largely effective' and its 'arrangements to enforce compliance with the *Fair Work Act* are largely effective'.⁸

Effectiveness of the criminal wage underpayment framework

- 2.11 The primary question before this committee was whether the criminal wage underpayment framework under the *Fair Work Act*, and the operation of subsection 327A(1), has led to a decrease in the incidence of wage underpayment in Australia.

Too early to tell

- 2.12 The Fair Work Ombudsman noted that there are challenges with measuring the impact of the criminal offence on the incidence of wage underpayment, given the term 'wage theft' is often applied to a range of underpayment scenarios, and data on rates of non-compliance with workplace laws is not readily available. They informed the committee that 'it's probably too soon to make an objective assessment as to whether or not the introduction of the offence itself has led to a decrease in the incidence of wage theft'. However, they did point to anecdotal evidence suggesting 'employers are really investing in trying to make sure that they are getting payments to their employees right'.⁹
- 2.13 The Fair Work Ombudsman stated that 'it is not unusual where there is the commencement of a new provision... for there to be a period of time before a matter progresses to a referral', particularly in the context of the *Fair Work Act*. They further pointed to Victoria, telling the committee that after a wage theft offence was introduced there, 'it was some 17 months before those proceedings were commenced. Importantly as well, there wasn't the interposing of a referral to the [Commonwealth Director of Public Prosecutions] or the [Australian Federal Police] to actually commence those proceedings'.¹⁰

⁷ Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, p. 6.

⁸ Australian National Audit Office, *Submission 16*, [p. 79].

⁹ Fair Work Ombudsman, *Submission 8*, p. 8; Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, p. 35.

¹⁰ Ms Michelle Carey, Group Manager, Regulatory Transformation, and Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, pp. 37, 39.

- 2.14 The Fair Work Ombudsman also noted 'an uptick' in businesses self-reporting underpayments, and viewed this as evidence 'that employers are investing to make sure that they are doing the right thing and paying their employees correctly'. They reported that this uptick was on track to be almost double the average number of self-reports the Fair Work Ombudsman received in 2021 per week.¹¹
- 2.15 The Fair Work Ombudsman told the committee that access to Single Touch Payroll data would 'make a big difference' and give them 'real-time ability to see how employees are being paid'.¹² Single Touch Payroll requires employers to report salaries and wages, PAYG withholdings and superannuation liability information to the Australian Taxation Office, when they run their payroll.¹³
- 2.16 Some submitters and witnesses considered that it is too early to draw any conclusions about the effectiveness of subsection 327A(1).¹⁴ For example, the Western NSW Community Legal Centre submitted that 'given the relatively recent commencement of the criminal provisions on 1 January 2025, it is not yet possible to meaningfully assess whether these reforms have resulted in a measurable reduction in the incidence of wage theft'. However, they noted that in their experience, 'wage underpayment continues to arise in practice, particularly for vulnerable workers'.¹⁵
- 2.17 The Australian Industry Group acknowledged that no criminal matters had been referred before they made their submission, submitting that it 'is therefore not yet possible to analyse the operation of the wage theft amendments or to evaluate their appropriateness or effectiveness in statistical or evidential terms'. They called for the criminal amendments to 'be repealed in their entirety'.¹⁶

Partly effective

- 2.18 Working Women's Centre Victoria considered that the introduction of criminal wage underpayment provisions 'may have increased awareness among some employers and prompted greater attention to compliance... particularly in higher-risk sectors'. Their lawyers reported that 'referencing potential criminal

¹¹ Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, p. 38.

¹² Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, p. 41.

¹³ Australian Taxation Office, [What STP is](#), 1 September 2021 (accessed 19 May 2026).

¹⁴ For example, Dr Kathleen Smithers, Associate Professor Jess Harris, Professor Troy Heffernan, Dr Sarah Gurr and Mr Sean Groth, *Submission 6*, p. 1; Australian Council of Trade Unions, *Submission 22*, p. 7.

¹⁵ Western NSW Community Legal Centre, *Submission 4*, p. [1].

¹⁶ Australian Industry Group, *Submission 18*, p. 10.

consequences in a Letter of Demand can strengthen its impact and signal the seriousness of non-compliance'. However, they suggested 'this effect may diminish over time'.¹⁷

- 2.19 Working Women's Centre Victoria argued that the 'high evidentiary threshold, reliance on worker reporting and limited enforcement capacity mean that most wage underpayment will continue to go undetected and unprosecuted – particularly for migrant workers who may be unable to safely come forward'. Working Women's Centre Victoria were of the view that criminalisation by itself 'is not sufficient to address the systemic nature of wage theft', and 'complementary structural reforms to improve reporting, enforcement and accessible recovery pathways' are needed.¹⁸
- 2.20 The National Tertiary Education Union (NTEU) observed that 'there has been little to no utilisation of s 327A since it commenced operation'. They acknowledged that the subsection 'has likely had some deterrence effect insofar as NTEU has detected decreases in reported wage theft'; however, 'systemic underpayments remain endemic to the higher education sector'. In particular:
- we consider that section 327A serves the broader and important purpose of deterrence and has, inter alia, likely contributed to a reduction in the occurrence of wage theft, at least in the higher education sector.¹⁹
- 2.21 Conversely, the Australian Security Industry Association Ltd suggested that criminalisation is not entirely a deterrent 'because you have to make sure that people know what their mistakes are before criminalisation... If they don't know, they're going to make them, irrespective of the criminalisation deterrent'.²⁰
- 2.22 The Australian Nursing and Midwifery Federation (ANMF) considered that the 'wage theft laws have likely had a positive effect in that employers may have improved their practices in terms of avoiding unintentional underpayments, and others may be less likely to engage in intentional underpayments to avoid criminal liability'. However, the ANMF argued that 'there is no evidence that underpayments and wage theft practices have been eradicated since 1 January 2025'.²¹

¹⁷ Working Women's Centre Victoria, *Submission 23*, p. 7.

¹⁸ Working Women's Centre Victoria, *Submission 23*, pp. 4, 7.

¹⁹ National Tertiary Education Union, *Submission 10*, pp. 1, 5.

²⁰ Ms Maria Rigas, Senior Workplace Relations Advisor, Australian Security Industry Association Ltd, *Proof Committee Hansard*, 4 May 2026, p. 5.

²¹ Australian Nursing and Midwifery Federation, *Submission 13*, p. 6.

Limited effectiveness

- 2.23 Some submitters considered that the criminalisation of wage underpayment has not translated into meaningful improvements for workers or enforcement outcomes.²²
- 2.24 Working Women's Centre NSW reported that data from JobWatch, an employment rights community legal centre assisting workers in Victoria, Queensland and Tasmania, indicate there has been no decrease in the percentage of underpayment-related matters since wage underpayment was criminalised in early 2025. They reported that according to their NSW solicitors, there had been no change in the frequency of underpayment matters in this time.²³
- 2.25 The United Firefighters Union of Australia raised concerns about the effectiveness of subsection 327A(1) in the year it has been in effect. They pointed to reporting indicating that 'it has only led to a handful of investigations and no prosecution of wage theft offences', arguing that these 'do not reflect a monumental reduction in wage theft in Australia'. The Union considered 'current laws need reform to ensure they are effective in prosecuting the thousands of instances of wage theft that we know to be occurring in Australia year on year', calling for specific focus on 'whether the high standard for prosecution is a determinative factor in limiting the law's effectiveness'.²⁴
- 2.26 The SDA argued that the 'magnitude and persistence of recoveries' of unpaid wages 'indicate that underpayment remains routine in many sectors', arguing that 'the criminalisation of wage theft on 1 January 2025 does not yet appear to have changed employer behaviour'. They acknowledged, however, 'that these provisions, in legislative terms, are relatively new'.²⁵
- 2.27 The Victorian Trade Hall Council and the Young Workers Centre were of the view that 'the way the wage theft is currently drafted is not having the desired deterrent effect'. They called for the intentional fault element to be replaced with dishonesty, or for a recklessness-based offence to be introduced. They also

²² See also the Shop, Distributive and Allied Employees' Association (SDA), who submitted that 'the criminalisation of wage theft has not yet led to a material reduction in underpayment', particularly in certain sectors. The SDA was of the view that the requirement for proof of intentional or reckless conduct 'creates a high evidentiary threshold that is poorly suited to the most common forms of underpayment' (Shop, Distributive and Allied Employees' Association, *Submission 12*, pp. 2, 5–6, 13).

²³ Working Women's Centre NSW, *Submission 24*, pp. 2, 3.

²⁴ United Firefighters Union of Australia, *Submission 9*, pp. 2, 3.

²⁵ Shop, Distributive and Allied Employees' Association, *Submission 12*, p. 4.

raised the proposal of automatic disqualification of convicted company directors from being able to manage corporations.²⁶

Value for money

2.28 Others questioned whether wage underpayment investigations are achieving value for money.²⁷ The Australian Chamber of Commerce and Industry (ACCI) pointed to the limited number of investigations undertaken since the offence commenced (four full investigations, and no referrals to the CDPP or AFP as at the date of the hearing) in questioning whether the resources allocated to the criminal function, including the \$49.5 million in funding and the budgeted staffing level of 16.7, 'represent... general value for money to the Australian taxpayer'.²⁸ In ACCI's view, the Commonwealth could find 'better ways ... to spend \$50 million and better ways for the [Fair Work Ombudsman] to deploy the expertise of the 16.7 people' engaged in that function.²⁹

Strengthened civil powers

- 2.29 Associate Professor Hardy was of the view that there is 'scope for further expansion of the compliance notice regime', arguing that there 'really hasn't been much discussion around the extent to which inspectors should be authorised to issue a compliance notice which requires rectification of the underpayment or an audit of the workforce to ensure that no underpayments are occurring' for other workers besides those who have complained. Further, 'there is also scope for thinking about to what extent inspectors should be authorised to issue penalties associated with those compliance notices' and 'for compliance notices to be strengthened in some way', given 'compliance notices do no more than require the employer to rectify the underpayment which should have been paid in the first place'.³⁰
- 2.30 She noted that 'it's not uncommon for employers to not cooperate when a compliance notice is issued or to drag out the investigation or proceedings by not responding'. She proposed penalties for no responses or late payments,

²⁶ Victorian Trade Hall Council and the Young Workers Centre, *Submission 20*, pp. 7–8.

²⁷ Senator Fatima Payman, *Submission 3*, pp. [2–3].

²⁸ Mr Shaun Schmitke, Head, Workplace Relations Policy, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 4 May 2026, p. 15.

²⁹ Mr Shaun Schmitke, Head, Workplace Relations Policy, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 4 May 2026, p. 20.

³⁰ Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 30.

along with strengthened powers for inspectors and others authorised to issue compliance notices by attaching penalties in appropriate circumstances.³¹

Need for subsection 327A(1)

2.31 Some evidence questioned the need for the subsection 327A(1). The Auctioneers and Valuers Association of Australia (AVAA) suggested that despite subsection 327A(1) introducing a criminal offence, 'it operates within a broader compliance framework in which most underpayments continue to be addressed through civil remedy provisions'.³²

2.32 The AVAA did not support the current framing and operation of subsection 327A(1), informing the committee that they had no evidence 'that underpayment is a systemic issue within the auction and valuation sectors'. In particular:

While there may have been some uplift in overall awareness of compliance obligations, this does not alter the underlying position that the framework has been introduced in the absence of a clearly identified problem in our sector and without addressing the more fundamental issue of complexity in the modern award system.³³

2.33 The AVAA argued that this 'complexity poses a significant risk of inadvertent error, even when employers act in good faith and seek compliance'. They also suggested that 'criminalisation may undermine businesses' willingness to voluntarily identify and correct mistakes'.³⁴

2.34 Others, however, were in favour of the criminal offence. For example, the Australian Higher Education Industrial Association was of the view that deliberate 'and intentional underpayment of Australian workers should properly be a criminal offence'.³⁵

Intentional versus unintentional conduct

2.35 The Fair Work Ombudsman (FWO) told the committee that 'the offence does not capture inadvertent conduct, mistakes or accidents. It relates to where an employer has engaged in conduct to intentionally underpay their workers'.³⁶

³¹ Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 30.

³² Auctioneers and Valuers Association of Australia, *Submission 2*, p. 1.

³³ Auctioneers and Valuers Association of Australia, *Submission 2*, pp. 1–2.

³⁴ Auctioneers and Valuers Association of Australia, *Submission 2*, pp. 2, 3.

³⁵ Australian Higher Education Industrial Association, *Submission 26*, p. 1.

³⁶ Ms Megan Cooper, Executive Director, Criminal Investigations, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, p. 40.

- 2.36 However, the AVAA suggested the current legislation may not clearly distinguish between intentional and unintentional conduct. They considered that criminal 'penalties should be clearly confined to conduct involving intentional or knowing non-compliance with statutory obligations' and 'not extend, in practice or perception, to situations where underpayments arise from genuine mistakes, misunderstandings, or administrative shortcomings'. They called for 'greater clarity in regulatory guidance and enforcement practice' to 'help ensure that this distinction is consistently applied and understood'.³⁷
- 2.37 The Australian Security Industry Association reported that in most cases where they assist their members, 'underpayments are not deliberate, but they arise from ambiguity in the system, contested interpretations, payroll systems that have limitations in tracking this, and an ongoing evolution of industrial instruments'. They expressed concern that 'the current criminal framework risks blurring the line between intentional theft and compliance failure, particularly through the broad attribution of intention to corporations based on culture or systems deficiencies'.³⁸
- 2.38 Conversely, the Western NSW Community Legal Centre considered that the 'focus on intentional conduct appropriately distinguishes between deliberate underpayment and inadvertent error', while acknowledging that 'the practical effectiveness of subsection 327A(1) depends on the ability of workers to identify and report underpayment, access legal advice and effectively navigate enforcement processes'.³⁹
- 2.39 Dr Kathleen Smithers, Associate Professor Jess Harris, Professor Troy Heffernan, Dr Sarah Gurr and Mr Sean Groth argued that subsection 327A(1) 'creates a high evidentiary threshold to recognise wage theft, which may limit the application of this clause in sectors where underpayment arises through diffuse and institutionalised practices rather than clearly identifiable and deliberate acts'. They suggested that in the higher education sector in particular, 'many forms of underpayment arise in ways that are difficult to characterise as deliberate breaches'; rather, 'they are embedded in organisational practices that position unpaid labour as voluntary, expected, or necessary for career progression'.⁴⁰

³⁷ Auctioneers and Valuers Association of Australia, *Submission 2*, p. 3.

³⁸ Mr Bryan de Caires, Chief Executive Officer, and Ms Maria Rigas, Senior Workplace Relations Advisor, Australian Security Industry Association Ltd, *Proof Committee Hansard*, 4 May 2026, p. 1.

³⁹ Western NSW Community Legal Centre, *Submission 4*, p. [2].

⁴⁰ Dr Kathleen Smithers, Associate Professor Jess Harris, Professor Troy Heffernan, Dr Sarah Gurr and Mr Sean Groth, *Submission 6*, pp. 1–2.

- 2.40 The Australian Higher Education Industrial Association called for a clear distinction between intentional criminal conduct and compliance error to be maintained.⁴¹
- 2.41 The Australian Industry Group noted that according to the Revised Explanatory Memorandum for the legislation introducing the criminal offence, the offence would only apply to intentional conduct and, according to the Fair Work Ombudsman, this does not include honest mistakes. However, they pointed to section 12.3(1) of the Criminal Code, submitting that “‘intention” may be attributed to a body corporate employer if it “expressly, tacitly or impliedly authorised or permitted the offence’. The Australian Industry Group also flagged that the Attorney General’s Department has noted that in instances involving corporate culture, fault can be imputed where a corporation has a corporate culture that directs, encourages, tolerates or led to non-compliance, or fails to create or maintain a culture that required compliance.⁴²
- 2.42 The Australian Industry Group concluded that as it currently stands, liability for a corporate employer for the wage underpayment offence (specifically in terms of senior management) could be interpreted as ‘largely [depending] on whether it had adequate governance, payroll controls, training, auditing and escalation pathways’. They argued:
- This systems-based focus is inconsistent with the stated object of the criminal offence and its intention-focused drafting. Instead, it appears to instead inappropriately provide for negligence-based culpability framework.⁴³
- 2.43 As such, the Australian Industry Group called for the link between ‘intention’ and deliberate authorisation to ‘be tightened and the due diligence framework [to] be extended so that any culture-based attribution does not operate as a back door negligence standard’. They further suggested this ‘could be achieved by additionally requiring proof of intention through board/high managerial authorisation when considering if an organisation has or does not have a compliant corporate culture’. Alternatively, they suggested that ‘if culture-based attribution remains available as a basis to impute intention’, a clear due-diligence offence should be applied to the relevant sections of the Criminal Code ‘so that corporations making genuine attempts to build and maintain compliance systems are not treated as having an “intended” underpayment if the culture is deficient despite their best endeavours’.⁴⁴

⁴¹ Australian Higher Education Industrial Association, *Submission 26*, pp. 9–10.

⁴² Australian Industry Group, *Submission 18*, p. 8.

⁴³ Australian Industry Group, *Submission 18*, pp. 8–9.

⁴⁴ Australian Industry Group, *Submission 18*, p. 9.

Late payments versus wage underpayment

- 2.44 Some submitters questioned whether late payments would be classed as wage underpayment. The Australian Industry Group expressed concerns that section 327A is 'drafted so broadly that it captures not only deliberate non-payment, but also intentional late payment'. They flagged that 'operational timing failures... may occur when wages are delayed for a short period while funds clear', but these could still be captured by the criminal wage underpayment offence.⁴⁵
- 2.45 The Australian Industry Group submitted that, from 'an employer's perspective, a late payment that is followed by full rectification is a temporary deprivation', proposing that 'the criminal offence be confined to intentional permanent deprivation (or its practical equivalent). This would then leave late payment as still being unlawful and subject to significant penalties as a contravention of the relevant civil remedy provisions'.⁴⁶
- 2.46 The Australian Chamber of Commerce and Industry also raised concerns about the criminal provision capturing late payments. They were of the view that 'the provisions, if they are to remain, should be focused on conduct that seeks to intentionally and permanently deprive somebody of a payment to which they are entitled, not merely a late payment'. Mr Shaun Schmitke of the Australian Chamber of Commerce and Industry provided further detail on the Chamber's concerns:
- So if the payroll cycle says that the employee gets paid weekly and, for whatever reason, an employer is prevented from paying that employee on that particular day, whether it's a payroll issue, whether there's some problem with the business—if they have a power cut or something like that—if they're a day late, technically that can trigger the criminal offence under section 327A(1). That is concerning to a lot of employers. The impact of that is that a lot of employers have this heavy cloud hanging over their heads—that one potential late payment could result in them suffering penalties of up to over \$8 million or potentially 10 years in jail. I'm sure the FWO will tell you later today that it's not the intention to capture that conduct. But that's the way the legislation is written at the moment, and that's the concern we have with it.⁴⁷
- 2.47 Mr Schmitke suggested 'there should be some sort of timeframe if an employee is not paid within a particular point in time' and, further, 'there should be an element in the offence that requires there to be an intention of the employer to permanently deprive the employee of that benefit and take something away

⁴⁵ Australian Industry Group, *Submission 18*, p. 9.

⁴⁶ Australian Industry Group, *Submission 18*, p. 9.

⁴⁷ Mr Shaun Schmitke, Head, Workplace Relations Policy, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 4 May 2026, pp. 15, 17.

from them as opposed to delaying it for reasons beyond the employer's control'.⁴⁸

Complexity of the industrial relations system

- 2.48 Some evidence argued that the main cause of underpayments in some sectors is the complexity and ambiguity of awards and enterprise agreements, with even courts and regulators struggling to interpret provisions to determine what entitlements are owed to employees.⁴⁹ For example, the Australian Chamber of Commerce and Industry pointed to 'the increasingly complex, confusing and unwieldy nature of the fair work system and the significant difficulties this creates for business, particularly small business, to achieve and maintain compliance with the law'. Their Head of Workplace Relations Policy suggested there are more than 1,000 permutations of pay that can be made in any one week under the general retail award, 'so it's extraordinarily difficult to comply with'.⁵⁰
- 2.49 Dr Anthony Forsyth from the Australian Council of Trade Unions noted that in cases of government departments and other organisations that have unintentionally underpaid staff, 'these show that even organisations with the best intentions can get things wrong, and there's always some complexity in the interpretation of statutory provisions, the *Fair Work Act*, and the terms of awards and enterprise agreements'. However, he also noted that there are 'many tools available to help businesses ensure they get it right'.⁵¹
- 2.50 Associate Professor Tess Hardy noted that Australia's workplace relations system 'is not the simplest system' compared with other countries. However, she considered 'the complexity is also an important feature of our system in the way in which it ensures protection, particularly for vulnerable workers'. She argued that 'one way to minimise or avoid some of the complexity associated with the modern award system... would be to negotiate an enterprise agreement'. She further argued that in many industries, 'many businesses are able to comply with other complex laws—whether it's tax laws or corporate laws—because they recognise the significance of noncompliance with those laws'.⁵²

⁴⁸ Mr Shaun Schmitke, Head, Workplace Relations Policy, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 4 May 2026, p. 17.

⁴⁹ Australian Higher Education Industrial Association, *Submission 26*, p. 3. See also Auctioneers and Valuers Association of Australia, *Submission 2*, pp. 1, 2.

⁵⁰ Mr Shaun Schmitke, Head, Workplace Relations Policy, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 4 May 2026, pp. 15, 19.

⁵¹ Dr Anthony Forsyth, Senior Legal Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 4 May 2026, p. 13.

⁵² Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, pp. 33, 34.

- 2.51 The Australian Security Industry Association noted that since the closing loopholes amendments, 'the workplace relations environment has become a little bit more complicated, and that's particularly so for the security sector... We have seen that small payroll or classification errors can very quickly escalate into underpayment, despite efforts to comply'. In particular, they flagged that some members 'have felt a bit overwhelmed because obviously there has been a lot of change over the last 18 months'. They reported that in their experience, the majority of underpayments in the security industry arise from confusion or misinterpretation.⁵³
- 2.52 The Australian Industry Group noted that for many employers, including larger organisations, determining rates of pay is not a straightforward exercise, arguing that the 'combination of modern awards, enterprise agreements and legislated entitlements brings about a highly complex and difficult to comply with set of payment rules, with the interpretation of particular entitlements often being contested on the basis that they are ambiguous or uncertain'. They submitted that the 'ABC, leading global charities, our universities, major employers, and even the Department of Employment and Workplace Relations are unlikely to have sought to deliberately deprive their employees, yet each has been embroiled in high profile and significant underpayments'.⁵⁴
- 2.53 In the example of the Department of Employment and Workplace Relations mentioned above, the Department in 2023 underpaid 99 staff and paid around \$200,000 to rectify the issue. The Department self-reported to the Fair Work Ombudsman in 2023. The Department of Finance in 2021 also confirmed that it had underpaid 60 parliamentary employees over four years.⁵⁵
- 2.54 In June 2020, the Fair Work Ombudsman reported that the Australian Broadcasting Corporation (ABC) had entered into an enforceable undertaking with the Fair Work Ombudsman and paid back over \$11.9 million to more than 1,800 current and former casual staff.⁵⁶
- 2.55 The Australian Industry Group argued that the 'workplace relations system is failing when private and public sector organisations are genuinely committed to complying with the law and invest considerable time, effort, and resources to do so, but nonetheless find themselves non-compliant, often due to errors in applying detailed, contestable or obscure legislative, award or agreement obligations'. They suggested that laws 'which cannot reliably be navigated and

⁵³ Mr Bryan de Caires, Chief Executive Officer, Australian Security Industry Association Ltd, *Proof Committee Hansard*, 4 May 2026, pp. 1, 2, 3.

⁵⁴ Australian Industry Group, *Submission 18*, pp. 2, 3, 5.

⁵⁵ ABC News, ['Federal department responsible for workplace and employment conditions admits to underpaying staff'](#), *ABC News*, 26 October 2023 (accessed 26 May 2026).

⁵⁶ Fair Work Ombudsman, [ABC signs Enforceable Undertaking](#), 19 June 2020 (accessed 26 May 2026).

complied with where an organisation genuinely endeavours to do so need to be urgently reviewed', submitting that this inquiry 'is an opportunity to genuinely engage with what leads to underpayments, and whether the criminalisation of a subset of non-compliant activities will likely be an effective or fair solution to the problem'. In particular:

Structural changes to the law need to be considered in order to ensure that our system is actually realistically able to be complied with by all employers.⁵⁷

- 2.56 The Australian Industry Group considered that there is 'no way to reliably ascertain the extent to which non-compliance is a product of the kind of intentional behaviour targeted by the new provisions'. They questioned 'the utility of focussing on the specific and indefensible wrong of calculated or deliberate underpayments, while ignoring the systematic root causes of non-compliance', i.e. a complex workplace relations system. They considered that the 'development of measures to genuinely simplify and modernise our workplace relations system would likely make a far more significant contribution to improved compliance than a new penalty regime'.⁵⁸
- 2.57 In light of the above, the Australian Industry Group asked the committee to recommend that the Australian Government consider repealing the wage underpayment offence, contending that criminalising 'outcomes that inevitably flow from this substantial complexity creates a significant risk of blurring the line between deliberate wage theft and compliance error'.⁵⁹
- 2.58 The Australian Industry Group also pointed to the example of the Fair Work Ombudsman's interpretation of the Social, Community, Home Care and Disability Services (SCHADS) Industry Award 2010 'sleepover provisions'. The Fair Work Commission in 2025 decided to vary the SCHADS Award to provide greater clarity about how sleepover shifts are to be structured and paid.⁶⁰ However, the Australian Industry Group noted that many employers have adopted the Fair Work Ombudsman's 'erroneous interpretation... for fear of being exposed to crippling penalties and underpayment claims if they did not'. They suggested that this 'example demonstrates the risk of only addressing compliance challenges through imposing ever increasing penalties'.⁶¹
- 2.59 The AVAA argued that criminal sanctions do not simplify the 'primary driver of non-compliance', i.e. 'the complexity of the industrial relations system,

⁵⁷ Australian Industry Group, *Submission 18*, pp. 2, 3.

⁵⁸ Australian Industry Group, *Submission 18*, pp. 10–11.

⁵⁹ Australian Industry Group, *Submission 18*, p. 7.

⁶⁰ For example, Australian Business Lawyers & Advisors, '[Changes to "sleepover" shift rules under SCHADS Award](#)', 16 January 2026 (accessed 26 May 2026).

⁶¹ Australian Industry Group, *Submission 18*, p. 3.

particularly the modern award framework'. As such, the AVAA considered that criminal sanctions 'are unlikely to have materially reduced the incidence of underpayment'. The AVAA suggested simplification of 'the award system, including clearer and more accessible classification structures and guidance on coverage, would materially reduce the risk of error'. They further proposed targeted, sector-specific guidance and strengthening of preventative measures, including education, tools and support for compliance.⁶²

- 2.60 The Australian Retail Council similarly noted that workplace 'regulations, including payroll compliance obligations on Australian employers, are increasingly complex and becoming more so', pointing to complexity and uncertainty as (among) the underlying causes of payroll non-compliance. They submitted that in their 'experience, conduct which is accidental arises in sectors where workplace obligations are unusually complex'. They noted that understandings of industrial settings 'are also often reasonably contested, adding to overall complexity and reducing operational certainty for retailers'.⁶³
- 2.61 The Australian Retail Council pointed out that the 'complexity can also result in overpayments, further illustrating that these issues are often driven by system and framework complexity rather than deliberate misconduct'. They considered that prosecutions and criminal penalties 'alone are unlikely to materially reduce the incidence of payroll errors in practice', arguing that 'a stronger penalty at the back end is not a substitute for a simpler and more workable compliance framework at the front end'. The Council called for 'a reduction in complexity in workplace regulations and a focus on measures that support compliance'.⁶⁴
- 2.62 The Australian Higher Education Industrial Association referred to a recent Federal Court case demonstrating difficulties in applying enterprise agreement provisions in practice, arguing that the 'case serves to reinforce that the primary driver of underpayments within the higher education system is structural complexity and interpretive difficulty – not deliberate or intentional conduct'. They considered that long 'term resolution of underpayments will require simplification of enterprise agreements'. They also called for legislative reform to ensure that 'the Fair Work Commission has clear and effective arbitral capacity to resolve intractable matters where necessary'.⁶⁵

Impact on small businesses

- 2.63 On the matter of the impact of the criminal provision on small businesses, the Australian Chamber of Commerce and Industry considered that the Voluntary

⁶² Auctioneers and Valuers Association of Australia, *Submission 2*, pp. 3, 4.

⁶³ Australian Retail Council, *Submission 19*, pp. 1, 2.

⁶⁴ Australian Retail Council, *Submission 19*, p. 2.

⁶⁵ Australian Higher Education Industrial Association, *Submission 26*, pp. 3, 8.

Small Business Wage Compliance Code Declaration 2024 'does not appear to create any more protection for small businesses than would otherwise be relevant when considered for medium and large size businesses in the context of a criminal prosecution'.⁶⁶ ACCI called for consideration to be given to improving the Code's operation.⁶⁷

- 2.64 The Australian Industry Group, as noted above, pointed to examples of large employers like the Australian Broadcasting Corporation, leading global charities and the Department of Employment and Workplace Relations 'embroiled in high profile and significant underpayments'. The Australian Industry Group argued that for 'each high-profile underpayment matter, there will be far more smaller organisations equally endeavouring to do the right thing and not being able to reliably do so despite their best efforts'.⁶⁸

Enforcement

- 2.65 Some evidence raised concerns about the effectiveness of current enforcement. For example, Mr Michael Sanderson noted that workers 'who cannot afford to leave are more likely to tolerate underpayment, delay complaint[s], accept partial remedies, or remain silent altogether'. In such circumstances, 'the law may condemn wage theft while the labour market quietly reproduces it'.⁶⁹
- 2.66 Working Women's Centre NSW expressed concern about enforcement, submitting that they do 'not believe the reported rates of formal disputes and investigations accurately reflect the scale at which wage theft is occurring'.⁷⁰
- 2.67 Working Women's Centre Victoria submitted that even if 'workers successfully obtain orders, enforcement mechanisms are weak and recovery of unpaid wages is not guaranteed', noting that some employers 'may delay, avoid or fail to comply with orders'. As a result, wage underpayment is 'unlawful but often goes unremedied in practice'. They argued that 'this contributes to a regulatory environment where non-compliance can be perceived as low risk, particularly in sectors characterised by insecure work and limited oversight'. They called for increased 'resourcing for the Fair Work Ombudsman to undertake proactive investigations and enforcement, with a focus on high-risk industries'.⁷¹

⁶⁶ Australian Chamber of Commerce and Industry, *Submission 21*, p. 3.

⁶⁷ Australian Chamber of Commerce and Industry, *Submission 21*, p. 3.

⁶⁸ Australian Industry Group, *Submission 18*, p. 3.

⁶⁹ Mr Michael Sanderson, *Submission 1*, p. 3.

⁷⁰ Working Women's Centre NSW, *Submission 24*, p. 8.

⁷¹ Working Women's Centre Victoria, *Submission 23*, pp. 6, 9. See also Working Women's Centre NSW, *Submission 24*, p. 12.

- 2.68 Associate Professor Hardy considered revoking licences for businesses that have committed an egregious offence or repeatedly done the wrong thing could help contribute to an optimal regulatory environment. She also suggested 'there is more that can be done in relation to the disqualification of directors... A conversation needs to be had around whether those directors should be permitted to continue to open up new businesses and employ people or whether they should be disqualified and who can seek those disqualification orders'. She noted that this power is currently reserved for the Australian Securities & Investments Commission, but questioned 'whether or not there's scope for the Fair Work Ombudsman to be empowered to seek those types of orders'.⁷²
- 2.69 The Western NSW Community Legal Centre called for enforcement mechanisms to be 'accessible and supported by adequate resourcing, including access by employees to free legal assistance'. They also recommended that specific information about wage underpayment be included in the Fair Work Information Statement, which employers are required to give every new employee before, or as soon as possible after they start their new job.⁷³
- 2.70 Portable pointed out that for most affected workers, 'the problem is not that their employer has not been prosecuted. It is that they do not know they have been underpaid in the first place'. In particular, they argued that the fundamental problem is that 'criminal liability for wage theft can only operate as a deterrent or as a remedy if underpayment is first detected, documented, and capable of being attributed to conduct'. They noted that for 'the approximately 2.6 million Australian workers covered by modern awards, that detection infrastructure largely does not exist', arguing that 'addressing this gap should be a priority alongside any refinement of the enforcement mechanism itself'.⁷⁴
- 2.71 The SDA was of the view that 'the workers most at risk of exploitation are the least likely to engage regulators'. In particular, they noted that of the thousands of requests made to the Fair Work Ombudsman a year, only 'a small proportion of matters can progress beyond advice, self-resolution or limited compliance activity' because of the Fair Work Ombudsman's capacity to formally investigate or litigate.⁷⁵
- 2.72 The Australian Nursing and Midwifery Federation suggested ss 327A 'could be amended to outline criteria that lift the ordinary wage theft offence into an aggravated offence to which higher penalties may apply'. They proposed the

⁷² Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 32.

⁷³ Western NSW Community Legal Centre, *Submission 4*, p. [2]; Fair Work Ombudsman, [Fair Work Information Statement](#) (accessed 21 April 2026).

⁷⁴ Portable, *Submission 7*, pp. 2, 3, 4.

⁷⁵ Shop, Distributive and Allied Employees' Association, *Submission 12*, pp. 2, 9.

aggravated offence be framed around vulnerabilities 'that give rise to an assumption that a wage theft, once established, was the byproduct of an employer exploiting that vulnerability', such as migrant status, limited English language proficiency, age and disability.⁷⁶

- 2.73 Working Women's Centre Victoria flagged 'a risk that criminalisation may contribute to overreach in enforcement, particularly if it disproportionately impacts small businesses rather than large corporations'.⁷⁷

Superannuation

- 2.74 Some submitters called for superannuation to be treated as wage underpayment.⁷⁸ The SDA was of the view that the Australian Taxation Office (ATO), which is responsible for administering the Superannuation Guarantee, has enforcement processes that 'are often slow, opaque and largely removed from the workplace relations system. Workers who report unpaid superannuation frequently have... no direct enforcement agency accountable to them as workers rather than taxpayers'. Workers experiencing wage underpayment and superannuation underpayment 'is often forced to navigate two separate regulatory systems... [T]his division discourages reporting, fragments enforcement, and allows interrelated forms of wage theft to persist unchecked'.⁷⁹

- 2.75 Mr Gerard Dwyer, the National Secretary-Treasurer of the SDA, provided the committee with examples of employees raising unpaid superannuation matters with the ATO, and several months passing before they receive acknowledgement, with 'an inordinate amount of time before any sort of action seems to take place'. He noted that during this time, the money has not been accruing interest, and therefore 'retirement savings have suffered during that long period of time'.⁸⁰

- 2.76 The Australian National Audit Office (ANAO) in an audit on addressing Superannuation Guarantee non-compliance in 2021–22, found that the ATO was only partly effective in addressing non-compliance with the Superannuation Guarantee, and in achieving greater employer compliance with Superannuation Guarantee obligations. In particular, they 'have had a small influence on

⁷⁶ Australian Nursing and Midwifery Federation, *Submission 13*, pp. 9–10.

⁷⁷ Working Women's Centre Victoria, *Submission 23*, p. 7.

⁷⁸ For example, Shop, Distributive and Allied Employees' Association, *Submission 12*, pp. 5, 6, 8; National Tertiary Education Union, *Submission 10*, p. 12. See also Mr Gerard Dwyer, National Secretary-Treasurer, Shop, Distributive and Allied Employees' Association, *Proof Committee Hansard*, 4 May 2026, p. 8.

⁷⁹ Shop, Distributive and Allied Employees' Association, *Submission 12*, p. 7.

⁸⁰ Mr Gerard Dwyer, National Secretary-Treasurer, Shop, Distributive and Allied Employees' Association, *Proof Committee Hansard*, 4 May 2026, p. 11.

reducing the Superannuation Guarantee gap (an estimate of non-compliance) over time' and compliance 'activities continue to be mainly corrective and reactive'.⁸¹

- 2.77 Associate Professor Tess Hardy noted that 'the ATO has increased its efforts with respect to investigating and enforcing superannuation entitlements'. However, she saw 'the ATO's priorities as being different to those of regulators, which are more concerned with the recovery of employee entitlements... It does seem that dividing responsibilities for the enforcement of those entitlements is duplicative and inefficient'.⁸²
- 2.78 On the matter of superannuation, the Australian Chamber of Commerce highlighted the forthcoming payday super legislation that will take effect on 1 July 2026, suggesting this will 'make a significant difference' and be 'a significant improvement to the way that this problem is dealt with and captured'.⁸³

Migrant workers

- 2.79 As noted elsewhere in this report, migrant workers may be particularly subject to wage underpayment because of visa insecurity, language barriers and fear of engaging with authorities, with some research suggesting that over two thirds of migrant workers experience some form of exploitation.⁸⁴
- 2.80 Proposals put forward to the committee to improve wage underpayment for migrant workers included:
- Improvements in reporting protections, information for workers in a language they can understand; the continuation of the workplace justice visa;⁸⁵ and

⁸¹ Australian National Audit Office, *Submission 16*, [p. 7].

⁸² Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 31.

⁸³ Mr Shaun Schmitke, Head, Workplace Relations Policy, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 4 May 2026, p. 19.

⁸⁴ Australian Nursing and Midwifery Federation, *Submission 13*, pp. 8–9; Working Women's Centre Victoria, *Submission 23*, pp. 4, 5; Working Women's Centre NSW, *Submission 24*, pp. 5–6, 8; Mr Mathew Kunkel, Chief Executive Officer, Migrant Workers Centre, *Proof Committee Hansard*, 4 May 2026, pp. 15–16.

⁸⁵ Mr Mathew Kunkel, Chief Executive Officer, Migrant Workers Centre, *Proof Committee Hansard*, 4 May 2026, pp. 19–20. The workplace justice visa is a temporary visa (under an Australian Government pilot program) allowing workers to remain temporarily in Australia to pursue a workplace exploitation claim even if they've breached a work-related visa condition. See Department of Home Affairs, [Australian Government Endorsed Events \(Workplace Justice Pilot\)](#) (accessed 15 May 2026); Fair Work Ombudsman, [Visa protections – pilot programs](#) (accessed 15 May 2026).

- Information for workers about what they should be paid and what conditions they should expect in a language they understand.⁸⁶

Effectiveness of existing pathways to recover wages

- 2.81 Some evidence flagged issues with existing pathways for wage recovery. For example, Victorian Women Lawyers noted that fees for submitting claims in Court can range up to \$560 for a Fair Work Small Claims Application, suggesting that for women experiencing vulnerability, 'Court processes may be difficult to navigate and compound risks of speaking up due to experiences of underpayment and worker exploitation'. They called for the Commonwealth to 'further simplify, streamline and reduce the costs associated with recovery of underpayments'.⁸⁷
- 2.82 Working Women's Centre Victoria argued that a 'key limitation of the current framework is the absence of an accessible and effective wage recovery pathway', submitting that current processes are 'complex, formal and often costly' and 'inaccessible to many'. They described the small claims proceedings process through the courts as 'often slow, complex and costly... As a result, many workers do not pursue recovery at all'.⁸⁸
- 2.83 As such, they proposed establishing an accessible wage recovery pathway, and called for consideration of establishing an accessible forum to resolve disputes and enable recovery of unpaid wages, whether within the Fair Work Commission or another tribunal-style forum.⁸⁹ Working Women's Centre NSW also proposed establishing a wage underpayment tribunal.⁹⁰
- 2.84 The Australian Council of Trade Unions considered that 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'. They proposed the Australian Government 'investigate ways to dramatically simplify and streamline judicial processes to reduce the time and expense required to run a claim for underpayments'. They also suggested the 'Fair Work Commission could be better resourced and empowered to play an active role in resolving underpayment payments'. They were of the view that before issuing proceedings in a court, 'a registered employee organisation

⁸⁶ Mr Mathew Kunkel, Chief Executive Officer, Migrant Workers Centre, *Proof Committee Hansard*, 4 May 2026, p. 20.

⁸⁷ Victorian Women Lawyers, *Submission 25*, [p. 5].

⁸⁸ Working Women's Centre Victoria, *Submission 23*, p. 6.

⁸⁹ Working Women's Centre Victoria, *Submission 23*, pp. 4, 7, 9.

⁹⁰ Working Women's Centre NSW, *Submission 24*, p. 11.

should have the option of accessing the Fair Work Commission which could have new powers to seek to resolve' underpayment claims.⁹¹

- 2.85 The SDA expressed its support for 'the establishment of an accessible small-claims jurisdiction' for workers to 'pursue unpaid entitlements through a simple, low-cost and timely process'.⁹²
- 2.86 The Australian Nursing and Midwifery Federation suggested that the 'absence of a court with expertise in employment matters is a barrier to workers seeking outcomes for workplace issues, such as underpayments'. They considered that for 'many, elevating a claim to a higher-level court is daunting and likely to deter workers from seeking to redress underpayments'. As such, they proposed the Commonwealth 'establish a Fair Work Court that sits alongside the FWC that has jurisdiction to deal with underpayment matters'.⁹³

Other issues raised

- 2.87 The Law Council of Australia noted that section 323 of the *Fair Work Act 2009* has been held to require the payment of entitlements, including entitlements to bonuses and commissions, under a contract of employment. They suggested that as a result, 'the wage theft offence would appear to apply to a failure to pay contractual entitlements'. The Law Council called for the committee to seek clarification of this position.⁹⁴
- 2.88 In response to a question on notice, the Fair Work Ombudsman explained:

The application and operation of section 323 of the *Fair Work Act 2009* (Cth) will always depend on the particular facts and circumstances. At a general level, in considering what amount was required to be paid by the employer pursuant to section 327A(1), section 323 may operate to bring a contractual entitlement within the criminal offence provision...

As an example, interaction of contractual entitlements may arise in relation to some conduct which could constitute intentional underpayment conduct, for instance unlawful deductions or requirements to spend, which are often a feature of exploitative conduct in relation to vulnerable employee cohorts.⁹⁵

⁹¹ Australian Council of Trade Unions, *Submission 22*, pp. 11, 12. See also Dr Anthony Forsyth, Senior Legal Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 4 May 2026, pp. 7, 12.

⁹² Mr Gerard Dwyer, National Secretary-Treasurer, Shop, Distributive and Allied Employees' Association, *Proof Committee Hansard*, 4 May 2026, p. 8; Shop, Distributive and Allied Employees' Association, *Submission 12*, pp. 3, 14, 15.

⁹³ Australian Nursing and Midwifery Federation, *Submission 13*, p. 8.

⁹⁴ Law Council of Australia, *Submission 15*, pp. 1–2.

⁹⁵ Department of Employment and Workplace Relations and Fair Work Ombudsman—answers to written questions on notice from Senator Payman (received 8 June 2026), [pp. 10–11].

- 2.89 The Law Council flagged a lack of clarity over whether, under the wage theft offence, continuing to fail to pay *after* a payment gives rise to a continuing offence for as long as the amount remains unpaid. They proposed consideration of amendment of subsection 327C(2) 'to provide greater clarity to the commencement of the limitation period'.⁹⁶
- 2.90 The Law Council questioned whether other persons besides the Fair Work Ombudsman could refer an employer to the Director of Public Prosecutions or the Australian Federal Police, even where the employer has entered into a 'safe harbour' cooperation agreement. They called for more clarity on 'the operation of these provisions and whether the safe harbour provides the intended level of protection from prosecution'.⁹⁷

⁹⁶ Law Council of Australia, *Submission 15*, p. 2.

⁹⁷ Law Council of Australia, *Submission 15*, p. 3.

Chapter 3

Committee view

- 3.1 At the outset, the committee observes that the term 'wage theft' is not defined in the *Fair Work Act* 2009 and is applied to conduct of widely differing character; from the deliberate exploitation of workers at one end, to inadvertent underpayment arising from genuine error and the complexity of the system at the other. The word 'theft' connotes deliberate, dishonest wrongdoing; yet, as the evidence to this inquiry made clear, the label is routinely applied to conduct involving no such intent. The committee considers that applying a single, pejorative term across conduct of such different character is inaccurate and unhelpful. It obscures the distinction, central to this inquiry, between the small number of employers who deliberately underpay their workers and the much larger number who are endeavouring to comply with a complex and shifting set of obligations. It also bears directly on the question the committee was asked to consider: the incidence of 'wage theft' cannot be measured with any precision while the term itself has no settled meaning.
- 3.2 The criminal offence introduced by subsection 327A(1) has been in force since January 2025. Seventeen months later, experts, professionals and unions are unable to agree on whether it has effectively reduced the rate of wage theft.
- 3.3 As noted in Chapter Two, the committee heard that rather than criminal sanctions, compliance decisions are more likely to be shaped by the belief that duty-holders have regarding how likely and how severely they will be punished.¹ More effective methods to encourage deterrence may involve modest sanctions, such as small fines, so long as these are associated with a greater perceived risk from wrongdoers that the sanction will be imposed.²
- 3.4 The committee is not convinced that the criminal offence is having the impact that it was anticipated to have on a small number of businesses who deliberately and persistently underpay their employees. This raises the question of whether the criminal offence is well-targeted and proportionate in its present form, given the significant impact that compliance with the amended law is having on employers who want to do the right thing—particularly small businesses that have limited resources to understand complex, confusing and constantly changing regulatory requirements in the industrial relations space.
- 3.5 The committee accepts the Fair Work Ombudsman's explanation that there has not been sufficient time for criminal proceedings to commence. However,

¹ Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, pp. 3–4, 5.

² Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 29.

evidence from unions, community legal centres and others conflicted on whether the criminal provision has had a deterrence effect, leading to reduced instances of intentional and persistent wage underpayment.

- 3.6 The committee heard from submitters and witnesses that there are concerns that the legislation does not appropriately distinguish between intentional versus unintentional conduct. Further, questions were raised about whether late payments due to unforeseen circumstances (such as software failures) would meet the criminal threshold for wage underpayment, and about whether fault would apply in instances where a corporation has a corporate culture that directs, encourages, tolerates or leads to non-compliance, or fails to create or maintain a culture that requires compliance. In the case of the latter, there is a lack of clarity about potential inconsistencies between the Revised Explanatory Memorandum for the bill that introduced the criminal offence and the Criminal Code, about whether corporations could be prosecuted under the criminal offence because of their corporate culture, rather than direct, intentional conduct. The committee considers that further clarity could be provided on the intention threshold, corporate culture and the interaction between the criminal wage theft offence and the Criminal Code. The committee does not suggest that the corporate-culture provisions of the Criminal Code should be removed. They are long-standing, apply to corporate criminal liability generally, and serve an important purpose in ensuring that large and structurally complex employers cannot escape liability for intentional wrongdoing by keeping those who make the relevant decisions formally removed from the conduct in question. The committee's concern is narrower. It considers that the due-diligence defence should apply consistently to all the bases on which intention is attributed to a corporate employer, so that a corporation that has genuinely invested in building and maintaining a compliance culture is not exposed to an offence premised on intentional conduct. This would ensure that corporations genuinely trying to build and maintain proper systems are not penalised.
- 3.7 The committee learned that the complexity of the industrial relations system is a significant factor contributing to wage underpayment (and overpayment), with large employers such as the Australian Broadcasting Corporation, leading global charities, the Department of Employment and Workplace Relations and even courts struggling to interpret particular entitlements. Small businesses may be particularly at risk of underpaying their employees because of the administrative burden and cost difficulties involved in navigating award complexities. The committee concurs with the assertion of the Australian Industry Group that laws 'which cannot reliably be navigated and complied with where an organisation genuinely endeavours to do so need to be urgently reviewed'.³

³ Australian Industry Group, *Submission 18*, p. 3.

- 3.8 In light of the above, the committee is not convinced that the almost \$50 million provided to the Fair Work Ombudsman to administer the criminal offence is an effective use of taxpayer dollars.
- 3.9 This is particularly true in light of evidence suggesting that many employees alleging wage underpayment are unable to launch court proceedings because of the costs involved, and the lengthy wait times for some individuals calling the Fair Work Ombudsman, only to be told that there is little that the Fair Work Ombudsman can do to assist with their allegations. Particular cohorts, such as migrants and international students, remain especially vulnerable to deliberate wage underpayment, despite the existence of criminal sanctions.
- 3.10 To that end, the committee notes Associate Professor Tess Hardy's evidence that the compliance notice regime could be strengthened; for example, by empowering Fair Work inspectors to attach penalties where an employer fails to rectify an underpayment or to respond to a notice, as a means of addressing non-compliance efficiently and without recourse to litigation.
- 3.11 The committee's concern is not confined to the absence of demonstrated effect. On the evidence, the offence is directed at a narrow category of deliberate conduct, while the structural driver of most underpayment, being the complexity of the modern award and enterprise agreement system, remains unaddressed. At the same time, the breadth of the provision, and the way intention may be attributed to corporate employers, impose a significant compliance burden, and a corresponding chilling effect, on the majority of employers who are endeavouring to comply. In the committee's view, the more proportionate course is to refine how the offence operates and to direct the resources presently committed to criminal investigation toward civil enforcement, through which most underpayment is identified and addressed in practice.
- 3.12 On the matter of superannuation and concerns raised in evidence about the Australian Taxation Office's effectiveness in ensuring employees are paid their superannuation entitlements under the Superannuation Guarantee, the committee notes that the Payday Super legislation will take effect from 1 July 2026. The committee will maintain a watching brief on the question of whether the requirement for employers to pay superannuation on payday, at the same time as employees receive their salary and wages, will lead to better outcomes for employees in terms of the superannuation they are entitled to.

Recommendation 1

- 3.13 The committee recommends that the Australian Government make modern awards clearer and easier to apply through clearer classification structures, plain-language drafting and more accessible guidance on coverage, to reduce inadvertent underpayment, and lower the prohibitive cost of compliance for smaller businesses.**

Recommendation 2

3.14 The committee recommends that the Australian Government provide further clarity on the interaction of the criminal wage underpayment offence with the Criminal Code, specifically the availability of a due diligence defence where intention is attributed to a corporate employer through its culture.

Recommendation 3

3.15 The committee recommends that the Australian Government, as part of the targeted early review of the wage underpayment offence recommended by the review of the Closing Loopholes Acts, assess whether the balance of the Fair Work Ombudsman's resourcing across its criminal and civil enforcement functions is delivering the fastest possible repayment for underpaid workers and the most effective response to employers who deliberately underpay.

Senator Maria Kovacic

Chair

Senator for New South Wales

Labor Senators' dissenting report

Introduction

- 1.1 Labor Senators acknowledge the evidence provided to the committee, including personal stories and experiences of wage theft. Labor Senators thank all individuals and stakeholders for their submissions and for providing evidence at the public hearing.
- 1.2 In 2022, the Senate Economics References Committee inquired into the unlawful underpayment of employees' remuneration. Submitters to the inquiry, including unions, community legal centres, and academics called on the Australian Government to criminalise intentional wage theft.¹ The inquiry found that women, migrant workers, young workers, First Nations people and regional, rural and remote workers are particularly vulnerable to wage theft. As a result, Labor Senators recommended that the Australian Government amend the *Fair Work Act 2009* (Fair Work Act) to criminalise intentional wage theft.²
- 1.3 This followed the Final Report of the Migrant Worker Taskforce which found that 'criminal sanctions to tackle serious and systemic underpayment of workers, would usefully form part of the regulatory toolkit'.³ The Migrant Worker Taskforce noted that stakeholders argued criminal penalties would 'act as an additional deterrent for employers'.⁴
- 1.4 In September 2023, the Albanese Labor Government introduced legislation to implement it's 2022 federal election commitment to criminalise intentional wage theft and protect Australian workers from being ripped off and exploited.⁵
- 1.5 On 14 December 2023, the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023* (Closing the Loopholes Act) received royal assent, introducing a criminal offence for intentional underpayment of employee wages and certain entitlements. The new offence commenced on 1 January 2025 delivering on the Albanese Labor Government's promise to criminalise intentional wage theft and stand up for Australian workers.

¹ Senate Economics References Committee, *Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*, March 2022, p. 121.

² Senate Economics References Committee, *Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*, March 2022, p. 138.

³ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 87.

⁴ Australian Government, *Report of the Migrant Workers' Taskforce*, March 2019, p. 87.

⁵ The Hon Anthony Albanese MP, Prime Minister of Australia, and the Hon Tony Burke MP, former Minister for Employment and Workplace Relations, 'Labor will criminalise wage theft', *Media Release*, 13 May 2021.

- 1.6 Many stakeholders supported the new offence, with the Australian Council of Trade Unions stating, '[a]fter a decade of inaction on wage theft and national scandals ... this action is welcome'.⁶
- 1.7 Labor Senators note the intention of section 327A of the Fair Work Act is to promote a stronger culture of compliance by establishing a stronger deterrent for intentional wage theft.⁷
- 1.8 In assessing the effectiveness of section 327A of the Fair Work Act against this inquiry's terms of reference, the committee's report fails to engage with evidence before the inquiry about the purpose of the offence, its emerging impact on employer behaviour, and the strong support for the offence from unions, community legal centres, and academics.
- 1.9 Labor Senators note this inquiry duplicates the current independent statutory review of the Closing the Loopholes Act and *Fair Work Legislation Amendment (Closing the Loopholes No.2) Act 2024* (Closing the Loopholes Review).⁸

Wage theft

- 1.10 Submissions to this inquiry noted the difficulty in quantifying the scale and cost of wage theft in Australia.⁹ The Fair Work Ombudsman (FWO) was clear that this 'reinforces the need for a proportionate regulatory response from the FWO that can address non-compliance across the continuum'.¹⁰
- 1.11 Labor Senators note that the Senate Economics References Committee's 2022 inquiry into the unlawful underpayment of employees' remuneration found that unlawful underpayment of wages and superannuation costs the Australian economy an estimated \$12 billion annually.¹¹

⁶ Australian Council of Trade Unions, 'New year, new powers to tackle wage theft affecting one million workers', *Media Release*, 1 January 2025.

⁷ The Hon Tony Burke MP, former Minister for Employment and Workplace Relations, 'Albanese Labor Government to criminalise wage theft', *Media Release*, 3 September 2023.

⁸ Department of Employment and Workplace Relations, [Review of the Closing Loopholes Acts](#), June 2026.

⁹ See, for example, Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, p. 2.

¹⁰ Fair Work Ombudsman, *Submission 8*, p. 2.

¹¹ Senate Economics References Committee, *Systemic, sustained and shameful: Unlawful underpayment of employees' remuneration*, March 2022, p. 9.

1.12 Labor Senators highlight evidence from witnesses and submitters that sought to demonstrate the widespread occurrence of intentional wage theft¹² and the impact on workers, in particular young people, women, and migrants.¹³

Support for new criminal offence

1.13 Throughout this inquiry, there was strong support from unions, community legal centres and academics for the introduction of section 327A of the Fair Work Act,¹⁴ which provides another mechanism of enforcement within the existing graduated compliance framework under the Fair Work Act.¹⁵

1.14 Mr Gerard Dwyer, National Secretary-Treasurer of the Shop, Distributive and Allied Employees' Association (SDA), said that the laws 'have definitely been a very big step in the right direction'.¹⁶

1.15 Labor Senators acknowledge the support for the deterrent nature of the offence in combating intentional wage theft.¹⁷ For example, the Victorian Trades Hall Council and Young Workers Centre noted that 'the goal must be to prevent it from happening in the first place by making such practices intolerably risky for employers'.¹⁸

1.16 Working Women's Centre NSW submitted that 'the criminalisation of intentional wage theft sends an important policy message about how seriously this issue is being taken'.¹⁹

¹² See, for example, Australian Council of Trade Unions, *Submission 22*, pp. 4 and 5; Shop, Distributive and Allied Employees' Association, *Submission 12*, p. 2.

¹³ Australian Council of Trade Unions, *Submission 22*, p. 5; Working Women's Centre NSW, *Submission 24*, p. 3; Dr Anthony Forsyth, Senior Legal Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 4 May 2026, p. 7; Australian Council of Trade Unions, *Submission 12*, p. 2.

¹⁴ Victorian Trade Hall Council and the Young Workers Centre, *Submission 20*, p. 6; Ms Maria Rigas, Senior Workplace Relations Advisor, Australian Security Industry Association, *Proof Committee Hansard*, 4 May 2026; p. 4, Working Women's Centre Victoria, *Submission 23*, p. 7; Working Women's Centre NSW, *Submission 24*, p. 2; Australian Council of Trade Unions, *Submission 22*, p. 3; Mr Matthew Kunkel, Chief Executive Officer, Migrant Workers Centre, *Proof Committee Hansard*, 4 May 2026, p. 15; Associate Professor Tess Hardy, Director, Centre for Employment and Labor Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 32; Dr Jessica Harris, *Proof Committee Hansard*, 4 May 2026, p. 27.

¹⁵ Fair Work Ombudsman, *Submission 8*, p. 2.

¹⁶ Mr Gerard Dwyer, National Secretary-Treasurer, Shop, Distributive and Allied Employees' Association, *Proof Committee Hansard*, 4 May 2026, p. 9.

¹⁷ Ms Maria Rigas, Senior Workplace Relations Advisor, Australian Security Industry Association, *Proof Committee Hansard*, 4 May 2026; p. 4, Victorian Trade Hall Council and the Young Workers Centre, *Submission 20*, p. 6; National Tertiary Education Union, *Submission 10*, p. 5.

¹⁸ Victorian Trade Hall Council and the Young Workers Centre, *Submission 20*, p. 6.

¹⁹ Working Women's Centre NSW, *Submission 24*, p. 2.

- 1.17 Working Women's Centre Victoria reflected on how the introduction of the offence had reframed wage theft and signalled to employers that intentional underpayment had serious consequences.²⁰
- 1.18 As quoted in Chapter 2 of the committee's report, the National Tertiary Education Union (NTEU) said, 'we consider that section 327A serves the broader and important purpose of deterrence and has, inter alia, likely contributed to a reduction in the occurrence of wage theft, at least in the higher education sector'.²¹ The NTEU also noted that the Explanatory Memorandum to the Closing the Loopholes Act made clear that the purpose of the criminal offence was to deter intentional underpayments.²²
- 1.19 The Department of Employment and Workplace Relations similarly stated that the intention behind the new offence was 'to provide a greater deterrent and response to employers who intentionally underpay their workers, with the potential for serious penalties, including imprisonment. The aim of the offence is to encourage compliance'.²³ Labor Senators acknowledge that the offence was intended to operate as a last resort within a broader framework designed to encourage compliance and deter intentional wage theft.
- 1.20 In 2024–25, before the offence commenced, there were 162 self-reports to the FWO, averaging 3.1 reports a week. In the first half of 2025–26, the number of businesses self-reporting increased to 91, or 3.5 per week. The FWO stated that the 'existence of the new criminal offence appears to be encouraging some businesses to take active steps to increase compliance (even in the absence of identified concerns), self-report underpayments to the FWO and put practices in place to prevent underpayments from reoccurring'.²⁴
- 1.21 Labor Senators reject the assertion that the laws capture businesses trying to do the right thing. As Mr Dwyer from the SDA noted, 'our experience is that businesses that do the right thing have got nothing to fear from these laws'.²⁵
- 1.22 As articulated by the Department of Employment and Workplace Relations, the Fair Work Act provides pathways to encourage employers to self-disclose

²⁰ Working Women's Centre Victoria, *Submission 23*, p. 4.

²¹ National Tertiary Education Union, *Submission 10*, p. 5.

²² National Tertiary Education Union, *Submission 10*, p. 5.

²³ Department of Employment and Workplace Relations, *Submission 11*, p. 2.

²⁴ Fair Work Ombudsman, *Submission 8*, p. 8.

²⁵ Mr Gerard Dwyer, National Secretary-Treasurer, Shop, Distributive and Allied Employees' Association, *Proof Committee Hansard*, 4 May 2026, p. 10.

underpayments to the FWO. If certain requirements are met, the Fair Work Ombudsman must not refer employers for criminal prosecution for wage theft.²⁶

Role of the Fair Work Ombudsman

- 1.23 Labor Senators note the Albanese Labor Government's funding to address the intentional underpayment of workers through an investment of \$49.5 million to the FWO to undertake the 'investigatory functions for the Offence and operate technology systems to undertake investigations to a criminal standard'.²⁷
- 1.24 Labor Senators support this funding and highlight evidence from the Fair Work Ombudsman that the funding assists:
- (a) specially trained Fair Work Inspectors who undertake criminal investigations, which must be segregated from civil investigations
 - (b) evidence management staff to manage the collection, chain of custody and analysis of physical and digital evidence, and prosecution disclosure requirements
 - (c) legal support
 - (d) expert forensic technology and data analysis
 - (e) calculations support to determine underpayment amounts
 - (f) investigation costs related to witnesses (for example, transcription and translation), evidence gathering and execution of search warrants, including travel
 - (g) technology operating costs associated with a secure protected environment to host case management, handling, processing, analysis and storage of evidence in accordance with criminal investigation standards, and
 - (h) ongoing costs associated with staffing, equipment and property.²⁸
- 1.25 Labor Senators note that implementing a new criminal jurisdiction requires a significant uplift in systems, processes and capability.
- 1.26 Associate Professor Tess Hardy, Director of the Centre for Employment and Labor Relations Law from the University of Melbourne, noted that in shifting to a dual track system whereby the FWO now has responsibility for a civil and criminal jurisdiction, investigations now have higher privileges and burdens of proof.²⁹ Associate Professor Hardy was clear that the staffing arrangements of the FWO were appropriate to undertake this work:

²⁶ Department of Employment and Workplace Relations, *Submission 11*, p. 3.

²⁷ Fair Work Ombudsman, *Submission 8*, p. 5.

²⁸ Fair Work Ombudsman, *Submission 8*, p. 5.

²⁹ Associate Professor Tess Hardy, Director, Centre for Employment and Labor Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 28.

I don't think it's unexpected that you would have a dedicated team of 16.7 staff to try and ensure that you've got sufficient expertise on the ground to undertake those investigations with due care and skill.³⁰

- 1.27 Labor Senators note that while no referrals have been made to the Commonwealth Director of Public Prosecutions or the Australian Federal Police at the time of submissions, evidence from the FWO noted that complexity, available evidence and legal considerations are all influencing factors on the duration of an investigation³¹ and that the FWO is 'ensuring that factors are appropriately handled through careful and thorough investigations underpinned by robust investigative processes'.³²

Conclusion

- 1.28 Witnesses and submitters overwhelmingly stated that it was too soon to assess the effectiveness of the offence.³³ At the public hearing, Acting Fair Work Ombudsman, Ms Rachel Volzke stated that 'it's probably too soon to make an objective assessment as to whether or not the introduction of the offence itself has led to a decrease in the incidence of wage theft'.³⁴
- 1.29 Associate Professor Hardy and Professor John Howe noted that 'amending the elements of the offence (prior to any judicial consideration of the offence and its application to wage theft) is premature and unjustified'.³⁵
- 1.30 Labor Senators note that during the committee's inquiry, the Closing Loopholes Review was being undertaken by former Fair Work Commissioner Ms Susan Booth.
- 1.31 Ms Booth's draft findings reflect evidence before this inquiry, that it is too early to assess the effectiveness of the offence, and an absence of criminal prosecution does not mean the offence is ineffective but rather reflects the early stages of implementation and complexity of criminal investigation and enforcement.³⁶

³⁰ Associate Professor Tess Hardy, Director, Centre for Employment and Labor Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 28.

³¹ Fair Work Ombudsman, *Submission 8*, p. 7.

³² Fair Work Ombudsman, *Submission 8*, p. 8.

³³ See, for example, Associate Professor Tess Hardy, Director, Centre for Employment and Labor Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 28; Dr Kathleen Smithers, *Proof Committee Hansard*, 4 May 2026, p. 27; Dr Anthony Forsyth, Senior Legal Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 4 May 2026, p. 7.

³⁴ Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, p. 35.

³⁵ Associate Professor Tess Hardy and Professor John Howe, *Submission 17*, p. 6.

³⁶ Department of Employment and Workplace Relations, *Closing Loopholes: An independent statutory review, Draft report*, 15 May 2026, p. 249.

1.32 Labor Senators believe that Australian workers deserve protection from intentional wage theft and therefore support the continued implementation of section 327A of the Fair Work Act. The evidence before this inquiry demonstrates that the offence forms an important part of a broader compliance framework, is already encouraging improved employer behaviour, and should be assessed through the independent Closing Loopholes Review.

Senator Marielle Smith
Deputy Chair
Senator for South Australia

Senator Josh Dolega
Member
Senator for Tasmania

Australian Greens' dissenting report

- 1.1 The Australian Greens thank all those who provided evidence to this inquiry through submissions and hearings.
- 1.2 The Greens do not support the claim in the Chair's report that the 'structural driver' of most wage underpayments is the supposed complexity of the modern award system and enterprise agreement system.
- 1.3 Evidence to this inquiry clearly showed that wage theft continues to be a widespread, systemic and entrenched problem in Australia. Wage theft is worth billions of dollars in the Australian economy. Stealing wages from workers, especially workers with low bargaining power, like young people, women, and migrants, causes serious harm, and it is the most powerless who are most affected by wage theft.
- 1.4 The Greens were proud to support the criminalisation of wage and superannuation theft during the Closing Loopholes reforms.
- 1.5 While valid questions have been raised about the lack of prosecutions to date, multiple stakeholders noted it was too early to determine the effectiveness of the operation of the wage theft provisions, given that they have only been in operation since early last year. This is an issue that warrants further review.

Recommendation 1

- 1.6 **In line with Recommendation 25 from the Draft Closing Loopholes review, the Australian Government should undertake a targeted early review of the operation of the wage theft offence and changes to the civil penalties framework within 1 year of the publication of that report.**

Recommendation 2

- 1.7 **That the Australian Government should consider increased funding and staffing for the Fair Work Ombudsman to reduce barriers to reporting and improve response times.**

**Senator Barbara Pocock
Substitute Member
Senator for South Australia**

Senator Fatima Payman's additional comments

- 1.1 I begin by thanking the individuals and organisations who made submissions to the inquiry or gave evidence at the hearing. I would also like to thank the secretariat for their work in supporting the committee.
- 1.2 The terms of reference that the Senate, on my motion, set for this inquiry were thus:

The extent to which the wage theft framework under the *Fair Work Act 2009*, and the operation of subsection 327A(1), has led to a decrease in the incidence of wage theft in Australia, and any other related matter.¹
- 1.3 The committee was posed a single question to answer: Has the incidence of wage theft in Australia been reduced in any significant way as a result of the introduction of the wage theft framework?
- 1.4 Some submissions said the answer to that question was no.² Some proposed that the answer was no, but that the introduction of the offence has had an unquantifiable deterrent effect.³ Others suggested it was too early to judge the effectiveness of the framework but declined to offer the committee a point in time at which it would be appropriate to evaluate the effectiveness of the framework.⁴
- 1.5 It was also noted that, in fields like higher education, which are amongst the most prone to wage theft, stakeholders 'aren't confident' that the framework will effectively capture the institutionalised practices which result in wage theft in the medium to long-term.⁵
- 1.6 No submission was made which contended, without qualification, that the framework had materially reduced wage theft in Australia. That is to say, no submission was made which said the answer to the question of the inquiry was unequivocally yes.
- 1.7 Central to my raising of this issue for inquiry was the funding of the Fair Work Ombudsman's (FWO) criminal wage theft office. As mentioned in my submission, \$49.5 million over 4 years has been allocated to the FWO for this

¹ *Senate Hansard*, 24 March 2026, pp. 45–46.

² Shop, Distributive and Allied Employees' Association, *Submission 12*, p. 2.

³ Australian Nursing and Midwifery Federation, *Submission 13*, p. 6.

⁴ Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, pp. 36, 40.

⁵ Dr Kathleen Smithers, Private capacity, *Proof Committee Hansard*, 4 May 2026, p. 24.

purpose. An office of 16.7 ASL has yet to produce a single referral to the authorities.

- 1.8 The committee heard that it was 'quite possible' that it could be years until a single referral occurs.⁶ As such, the millions of taxpayer dollars that are flowing into the FWO's criminal wage theft office are not guaranteed to generate a return.
- 1.9 This is compounded by the fact that the FWO has more work than it can handle. As one submission put it, '[the] FWO's enforcement model is...limited by resourcing'.⁷ Further doubt was cast on a criminal wage theft conviction acting as an effective deterrent by unions who told the committee that the FWO had a 'history of taking a light touch approach to enforcement'⁸ or that 'there [have been] instances where [...] the Ombudsman may have taken a tougher line'.⁹
- 1.10 Additionally, officials from the FWO were unable to indicate to the committee when or how a review of this funding might take place.¹⁰ With this context in mind, it is understandable that some witnesses believe that these resources may provide greater value if deployed elsewhere.¹¹ The committee itself was 'not convinced that the almost \$50 million provided to the Fair Work Ombudsman to administer the criminal offence is an effective use of taxpayer dollars'.¹²
- 1.11 Despite all of this, the Australian Government (the government) has contended that their 'strong new laws are having the intended effect'.¹³ This would seem to imply that no references of wage theft matters have occurred because there has been a decline in conduct constituting wage theft that can be referred. Data from the FWO, set out below in **Table 1.1**, would seem, if anything, to support the contention that the opposite is true.

⁶ Associate Professor Tess Hardy, Director, Centre for Employment and Labour Relations Law, University of Melbourne, *Proof Committee Hansard*, 4 May 2026, p. 28.

⁷ Shop, Distributive and Allied Employees' Association, *Submission 12*, p. 2.

⁸ Victorian Trades Hall Council and the Young Workers Centre, *Submission 20*, p. 6.

⁹ Mr Anthony Forsyth, Senior Legal Officer, Australian Council of Trade Unions, *Proof Committee Hansard*, 4 May 2026, p. 12.

¹⁰ Ms Rachel Volzke, Acting Fair Work Ombudsman, Fair Work Ombudsman, *Proof Committee Hansard*, 4 May 2026, p. 40.

¹¹ Shop, Distributive & Allied Employees' Association—answers to written questions on notice from Senator Payman (received 20 May 2026), pp. 4-5; and Mr Shaun Schmitke, Head, Workplace Relations Policy, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 4 May 2026, p. 20.

¹² See paragraph 3.8 in Chapter 3 of the Committee's report.

¹³ *The Australian*, ['Business blasts Labor's 'zero return' \\$49m wage theft laws funded by taxpayers'](#), 13 February 2026 (accessed 22 June 2026).

Table 1.1 Wage theft complaints received by the FWO

Financial Year	Number of disputes relating to allegations of monetary underpayments received by the Fair Work Ombudsman
2022–23	12,059
2023–24	13,994
2024–25	15,435
2025–26 (to 31 March)	12,570

Source: Department of Employment and Workplace Relations and Fair Work Ombudsman—answers to written questions on notice from Senator Payman (received 8 June 2026), p. 18.

- 1.12 Further to this point, the FWO also provided, in response to a question on notice, a breakdown of returned wages by sector. As would be expected, sectors like education and retail are areas where a large proportion of recoveries occur. I was concerned to see such a high figure for the mining industry for 2024–25. As a Senator for Western Australia, a state which supports itself and the national economy on the backs of hard-working miners, it is essential that these workers are paid what they are entitled to.

Table 1.2 Wages recovered by the FWO by sector

FWO recoveries by Industry A-Z (ANZSIC Division)	2024-25	2025-26 (to 31 March 2026)
Accommodation and Food Services	\$19,304,067	\$25,223,175
Administrative and Support Services	\$5,786,712	\$11,536,251
Agriculture, Forestry and Fishing	\$617,845	\$291,450
Arts and Recreation Services	\$3,897,214	\$3,073,598
Construction	\$9,821,768	\$4,833,708
Education and Training	\$68,796,211	\$50,581,148
Electricity, Gas, Water and Waste Services	\$1,751,220	\$3,913,501
Financial and Insurance Services	\$21,765,457	\$28,085,062
Health Care and Social Assistance	\$36,120,453	\$44,595,194
Information Media and Telecommunications	\$657,491	\$368,178
Manufacturing	\$5,952,878	\$2,989,139
Mining	\$54,859,759	\$18,082,233
Other Services	\$14,124,840	\$14,472,311

Professional, Scientific and Technical Services	\$27,401,117	\$3,154,770
Public Administration and Safety	\$5,892,056	\$26,080,805
Rental, Hiring and Real Estate Services	\$1,467,170	\$744,021
Retail Trade	\$59,884,819	\$45,356,147
Transport, Postal and Warehousing	\$3,920,838	\$2,634,554
Wholesale Trade	\$12,548,040	\$10,093,843
Monies recovered but unable to be attributed to an ANZSIC Division	\$3,444,537	\$1,825,648

Source: Department of Employment and Workplace Relations and Fair Work Ombudsman—answers to written questions on notice from Senator Payman (received 8 June 2026), p. 19.

- 1.13 One issue that was raised was the fear held by some businesses that accidentally underpaying their employees would result in them being prosecuted under the wage theft framework.¹⁴ As outlined by paragraph 327A(3)(b) of the *Fair Work Act 2009*, the offence of failure to pay a required amount requires the conduct which results in underpayment to be proven to have been intentional. The FWO has said that it has 'undertaken significant work to educate the community about the [wage theft offence]. This has included a multichannel communications campaign, website content, presentations and the development of tailored guidance materials'.¹⁵ Business organisations should clarify to their members that these laws are only intended to operate in circumstances where an employer has knowingly chosen to fail to pay an employee, rather than accidentally failing to do so.¹⁶ In saying this, I do not dismiss the legitimate concerns raised about the possibility of corporate culture being used to impute fault and concur with the committee in its recommendation that the government offer clarification on this matter.¹⁷

¹⁴ Auctioneers and Valuers Association of Australia, *Submission 2*, p. 3; Australian Chamber of Commerce and Industry, *Submission 21*, p. 3.

¹⁵ Fair Work Ombudsman, *Question on Notice SQ26-000005*, Senate Education and Employment Legislation Committee Additional Estimates 2025-26, p. 2.

¹⁶ See paragraph 2.35 in Chapter 2 of the Committee's report.

¹⁷ See paragraphs 2.41–2.43 in Chapter 2 and Recommendation 2 in Chapter 3 of the Committee's report.

- 1.14 In Australia, wage theft disproportionately affects women, international students, young people and migrants.¹⁸ The committee heard from witnesses that many factors affect migrants' willingness to come forward, including 'one of the ultimate vulnerabilities of many migrant workers: their temporary visa and their unwillingness to jeopardise some of those pathways'.¹⁹ There was some overlap with the experience of young people, who, the committee learned, were less likely to seek legal redress due to '[l]ow awareness of legal entitlements[, h]igh levels of job insecurity (particularly in retail and fast food)[, f]ear of retaliation (loss of shifts, termination) [and n]ormalisation of underpayment or poor practices at entry-level jobs'.²⁰ As these groups are more vulnerable to underpayment or wage theft, the government must ensure that proportionate resources are being deployed to support them.
- 1.15 Every Australian deserves to be paid what they have earned. As was noted at the time of the passage of the Closing Loopholes Acts, an employee who steals from their employer commits a crime. The reverse situation must be treated with the same seriousness.

Recommendation 1

- 1.16 That the recommendations of the draft report of the statutory review of the Closing Loopholes Acts relating to the wage theft offence be adopted and implemented by the Australian Government, particularly recommendation 25.**

Recommendation 2

- 1.17 That the Australian Government investigate ways in which it can improve data collection, bearing in mind the difficulties inherent in collecting such data, on wage theft and underpayment of employees in Australia which provide granularity on victims' gender, nationality, disability status, English language ability and any other factors which increase vulnerability to wage theft.**

Recommendation 3

- 1.18 That the Australian Government consider whether the funding of the Fair Work Ombudsman's criminal wage theft office might be more effective at**

¹⁸ See paragraph 1.1 in Chapter 1 of the Committee's report.

¹⁹ Mr Mathew Kunkel, Chief Executive Officer, Migrant Workers Centre, *Proof Committee Hansard*, 4 May 2026, p. 18.

²⁰ Shop, Distributive & Allied Employees' Association—answers to written questions on notice from Senator Payman (received 20 May 2026), p. 2.

returning wages to workers if it were partially or entirely directed towards civil wage theft investigations.

Recommendation 4

1.19 That the Australian Government empower registered organisations to inspect time and wages records and conduct spot checks.

Recommendation 5

1.20 That the *Fair Work Act 2009* be amended to expand the wage theft framework to include the underpayment of superannuation.

Recommendation 6

1.21 That the Australian Government make it easier for employees who have experienced underpayments to seek remedy in the courts, including the consideration of the establishment of a small claims jurisdiction where unions can initiate proceedings on behalf of their members.

Recommendation 7

1.22 That the Australian Government consider allocating greater resources to reducing the incidence of underpayment and wage theft against workers who are particularly vulnerable to wage theft.

Recommendation 8

1.23 That the Australian Government consider, following a targeted early review of the operation of the wage theft offence, in line with Recommendation 25 of the draft report of the statutory review of the Closing Loopholes Acts, whether changes to the fault elements of section 327A of the Fair Work Act might enable the wage theft framework to act as a more effective deterrent against wage theft.

Recommendation 9

1.24 That the Fair Work Ombudsman be empowered to, where an individual has been convicted under subsection 327A(1), seek a court order disqualifying the individual from being able to manage corporations for a period of time.

Recommendation 10

1.25 That the *Fair Work Act 2009* be amended to further increase civil penalties for underpayment of wages and entitlements.

Recommendation 11

- 1.26 That the compliance notice regime under the *Fair Work Act 2009* be amended to introduce penalties for employers who fail to respond to or deliberately delay in responding to compliance notices.**

**Senator Fatima Payman
Independent Senator for Western Australia**

Appendix 1

Submissions and additional information

Submissions

- 1 Mr Michael Sanderson
- 2 Auctioneers & Valuers Association of Australia
- 3 Senator Fatima Payman
- 4 Western NSW Community Legal Centre
- 5 Mr Andrew Bourke
 - Attachment 1
- 6 Dr Kathleen Smithers, Associate Professor Jess Harris, Professor Troy Heffernan, Dr Sarah Gurr and Mr Sean Groth
- 7 Portable
- 8 Fair Work Ombudsman
- 9 United Firefighters Union of Australia
- 10 National Tertiary Education Union
- 11 Department of Employment and Workplace Relations
- 12 Shop, Distributive and Allied Employees' Association
- 13 Australian Nursing and Midwifery Federation
- 14 Association for Good Government
 - Attachment 1
- 15 Law Council of Australia
- 16 Australian National Audit Office
- 17 Associate Professor Tess Hardy and Professor John Howe
- 18 Australian Industry Group
- 19 Australian Retail Council
- 20 Victorian Trade Hall Council and the Young Workers Centre
- 21 Australian Chamber of Commerce and Industry
- 22 Australian Council of Trade Unions
- 23 Working Women's Centre Victoria
- 24 Working Women's Centre NSW
- 25 Victorian Women Lawyers
- 26 Australian Higher Education Industrial Association
- 27 Confidential
- 28 Confidential
- 29 Mr Aksheye Suddhoo

Additional Information

- 1 Department of Employment and Workplace Relations—Corrections to evidence provided at a public hearing in Canberra on 4 May 2026

Answers to Question on Notice

- 1 Australian Security Industry Association Limited—answers to written questions on notice from Senator David Pocock (received 12 May 2026)
- 2 Migrant Workers Centre—answers to written questions on notice from Senator David Pocock (received 19 May 2026)
- 3 Shop, Distributive & Allied Employees' Association—answers to written questions on notice from Senator Payman (received 20 May 2026)
- 4 Associate Professor Tess Hardy—answer to a written question on notice from Senator Payman (received 20 May 2026)
- 5 Australian Council of Trade Unions—answers to written questions on notice from Senator Payman (received 20 May 2026)
- 6 Dr Kathleen Smithers and Dr Jess Harris—answer to a written question on notice from Senator Payman (received 21 May 2026)
- 7 Australian Chamber of Commerce and Industry—answers to written questions on notice from Senator Payman (received 25 May 2026)
- 8 Department of Employment and Workplace Relations and Fair Work Ombudsman—answers to written questions on notice from Senator Payman (received 8 June 2026)
- 9 Fair Work Ombudsman—answer to a question taken on notice at a public hearing in Canberra on 4 May 2026 (received 8 June 2026)

Appendix 2

Public hearings and witnesses

Monday 4 May 2026
Parliament House
Committee Room 2R1
Canberra

Australian Security Industry Association Limited (via videoconference)

- Mr Bryan de Caires, Chief Executive Officer
- Ms Maria Rigas, Senior Workplace Relations Advisor

Shop, Distributive and Allied Employees' Association (via videoconference)

- Mr Gerard Dwyer, National Secretary-Treasurer
- Mr Robert Tonkli, Chief of Staff

Australian Council of Trade Unions (via videoconference)

- Dr Anthony Forsyth

Australian Chamber of Commerce and Industry (via videoconference)

- Mr Shaun Schmitke, Director, Workplace Relations

Migrant Workers Centre (via videoconference)

- Mr Matt Kunkel, Chief Executive Officer

Dr Kathleen Smithers and Associate Professor Jess Harris (via videoconference)

*Associate Professor Tess Hardy, Centre for Employment and Labour Relations Law,
University of Melbourne (via videoconference)*

Fair Work Ombudsman (via videoconference)

- Ms Rachel Volzke, Acting Fair Work Ombudsman
- Ms Michelle Carey, Group Manager, Regulatory Transformation
- Mr Anthony Fogarty, Executive Director, Policy
- Ms Megan Cooper, Executive Director, Criminal Investigations
- Ms Phoebe Nicholas, Executive Director, Legal Compliance and Enforcement

Department of Employment and Workplace Relations

- Ms Elizabeth Brayshaw, First Assistant Secretary, Entitlements Safeguards Division
- Ms Lavinia Gracik-Anczewska, Assistant Secretary, Workplace Exploitation Branch, Entitlements Safeguards Division

- Ms Emma Hallas, Assistant Secretary, Employment Standards and Institutions, Workplace Relations Legal Division