



Submission: Queensland Parliament's inquiry into wage theft

The IEUA-QNT welcomes the opportunity to provide a submission to the Education, Employment and Small Business Committee inquiry into the problem of wage theft in Queensland.

The IEUA-QNT represents ~17,000 teachers, support staff and ancillary staff in non-government education institutions in Queensland and the Northern Territory and consistently engages in industrial and education debate at both state and national levels through its Education and Industrial Committees and through its national counterpart, the Independent Education Union of Australia, which receives input from teachers in all States and Territories. Within the membership of the IEUA-QNT there are three distinct groups of teachers – those employed by independent, Catholic, denominational and other non-government schools; teachers in community kindergartens; and those employed by private training and education organisations.

In relation to employment conditions experienced by teachers in the three sectors, it is important to note that teachers in primary schools, secondary schools and kindergartens are generally covered by Collective Agreements with specified hours of duty which includes time for preparation, correction, attending meetings and undertaking professional development. Due to increasing workloads, these teachers often work beyond their specified hours of duty to get the job done, but they have the protection of their Collective Agreement, which generally includes clear specifications around hours of duty and tasks they can be directed to complete.

In contrast, practitioners in the Vocational Education and Training (VET) and English Language Intensive Courses for Overseas Students (ELICOS) sectors are generally employed on a casual basis, on minimum conditions under the *Educational Services (Post-Secondary Education) Award* (the Award). This Award, amongst all the Awards that cover teachers, is deficient due to the lack of specific provisions for teachers, in particular casual teachers. The shortcomings in the Award, together with privatisation of the two sectors, continue to erode workplace conditions.

According to the Australian Government training.gov.au website [1], there are over 900 private Registered Training Organisations (RTOs) delivering VET with a head office in Queensland. Additional RTOs, with head offices in other states, also deliver VET in Queensland. Some of these RTOs also operate as private language schools delivering ELICOS. According to the National Centre for Vocational Education Research (NCVER), in 2016 there were an estimated 687,200 VET students studying with private training providers in Queensland, compared to an estimated 88,300 VET students studying with TAFE [2]. As at July 2018, there were over 20 ELICOS providers endorsed by quality assurance body NEAS, in Queensland [3].

The combination of privatisation and reliance on the Award means that teachers, trainers and tutors working in VET and ELICOS sectors, despite their status as education professionals, are vulnerable to exploitation by unethical employers, evidenced by the widespread practice of wage theft. This submission will: (1) identify practices in these sectors which directly and indirectly

constitute wage theft and; (2) make recommendations to reduce or eliminate wage theft in the two sectors.

Practice 1: Reliance on unpaid and insecure work

Casual teachers, trainers and tutors in VET and ELICOS are paid on the basis of contact time in the classroom. Contact hours in ELICOS are generally 20 hours per week (in accordance with ELICOS Standards [4]) while contact hours for VET courses are variable depending on the course load for each teacher. In addition to these hours, teachers and trainers are expected to undertake lesson preparation, assessment preparation and marking, report writing and class administration, and attend staff meetings and professional development. They are also often expected to arrive at least 30 minutes before the start of class. Schools and RTOs close for public holidays, but otherwise operate year-round and many offer classes in the evenings. Under the Award, teachers, trainers and tutors only receive penalty rates for classes after 7pm.

Clause 14.5(a) of the Award outlines the calculation of the hourly, casual wage rate, while clause 21.3(c) indicates that, ‘each contact hour of teaching delivery by a teacher will count as 1.5 hours of work, including administration, assessment and consultation’. However, it is common for teachers, trainers and tutors to need to work in excess of these hours in order to complete the work required, including attending unpaid staff meetings and professional development. This is despite professional development being a requirement of ELICOS schools registered with NEAS [5] and similar requirements applying to VET professionals who must maintain currency of industry knowledge [6]. Acceptance that professionals in these sectors will work unpaid hours is widespread and forms part of the business model for organisations hiring casual teachers, trainers and tutors under the Award.

On the basis of the Award, a first year casual ELICOS teacher with a three year degree and recognised TESOL certificate can expect to earn \$47.67 per hour from 1 July 2018. Accounting for clause 21.3(c) of the Award which provides 0.5 hour ‘administration, assessment and consultation’, for each hour of teaching, the effective hourly rate of pay is \$31.78 including 25% casual loading in lieu of sick leave, annual leave, public holidays and other benefits received by an employee on an ongoing contract of employment. Before loading, the base rate equates to \$25.43. The starting wage for a VET professional is likely to be the same, depending on qualifications. For casual employees, these wages and the widespread practice of working unpaid hours means they often need to work two or more jobs to earn a living wage without any long-term job security.

The norm of casualisation has become so pervasive that employers have been known to advertise for ‘permanent casuals’. Under these conditions, professionals can expect to work for years on a casual basis for the same employer with no job security or leave benefits associated with ongoing contracts of employment. Yet, for these ‘permanent casuals’, fear of losing their job prevents many from taking time off if they are sick, need to care for a family member or simply to take a break from teaching. Some of them work months on end, without time off. Not being able to take leave for illness, caring responsibilities or recreation, detracts from individual, family and societal well-being. Insecure work means that these education professionals can’t plan for the future, take a holiday or ever hope to own their own home.

Practice 2: Exploitation of complex classification structure

Teacher, trainer and tutor classifications under Schedule C2 of the Award are difficult to interpret, meaning teachers may not be aware of their appropriate rate of pay. Contracts of employment often state a wage rate, but not a classification level, nor how this wage rate was calculated. Tracking teaching contact hours is also a complicated process, exacerbated by inconsistency across schools and RTOs and employers failing to provide statements of service on request. Issues surrounding classification, contract details and wages are three of the top five reasons why members call the IEUA-QNT for advice.

According to the Award, experience as a casual TESOL teacher is based on the number of hours ‘normally required of a full-time teacher at the same institution. Provided that for every 110 days during which a casual teacher is engaged they will be deemed to have not less than six months’ service’ (clause C.2.3). This ambiguity means that different schools may apply different thresholds for progression. The Award is more specific for teachers other than TESOL teachers stating that, ‘casual experience will be credited on the basis that 800 face-to-face teaching hours is equivalent to one year of full-time experience’ (clause C.3.3).

As previously stated, many teachers, trainers and tutors work across more than one school or RTO or move between schools when student numbers shift. This high level of workforce mobility makes it difficult for teachers to maintain accurate records of teaching hours, particularly when employers frequently fail to provide statements of service despite repeated requests. These factors lead to teachers’ wages being stolen through incorrect classification, an opaque classification and recording system, and pervasive employer non-compliance.

Practice 3: Reliance on sham contracting

When RTOs do hire VET teachers, trainers and tutors on full-time, permanent contracts it is not uncommon for them to require workers to have an ABN. Examples of advertisements obtained from job website seek.com.au in June 2018 are attached in the Appendix of this submission and demonstrate this point. When this practice is questioned, workers are at risk of losing their job as shown in case study 1.

Case study 1

An IEUA-QNT member was originally employed by an RTO as a casual Teacher under the Award. After a year of employment, during which no superannuation was paid, the member was instructed to sign an agreement as an independent contractor. When the member declined to sign the agreement, they were summoned to a meeting and their employment terminated immediately.

Even when teachers or trainers are legitimately employed as contractors, an imbalance in bargaining power often means they are forced to accept below-Award conditions as demonstrated by case study 2.

Case study 2

An IEUA-QNT member was employed by an ELICOS provider on far less than the Award rate of pay and instructed to provide an ABN and invoice for hours taught. When the member became aware of the discrepancy between the Award rate and their own rate of pay, they endeavoured to raise these issues with school leadership, but received no response. After engaging the IEUA-QNT, the member received some back-pay, but their employment was terminated immediately. The member received no superannuation during their period of employment.

Another failing of the current regularly framework derives from the inaccessibility of the claims process. Wage theft cases involving under-payment of wages and sham contracting, are firstly brought before the Federal Circuit Court, which is intended to allow for self-representation. However, conceptualising and proving a case of sham contracting is often a very complex matter, making it difficult and unlikely for workers to bring cases without legal representation.

Practice 4: Withholding superannuation

The expectation might be that non-payment of superannuation usually occurs in sectors such as hospitality or the evolving gig economy. However, case studies 1 and 2 demonstrate that even with legislation such as the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, employers in ‘professional’ education and training sectors continue to withhold superannuation payments. It is important to note, that non-payment and underpayment of superannuation is prevalent across all membership sectors within the IEUA-QNT. In our experience, at any point in time, as many as thirty employers may be in arrears for superannuation payments. These employers are predominately community kindergartens, but also include schools. An example of substantial underpayment and non-payment of superannuation is identified in case study 3.

Case study 3

An audit by the ATO identified over \$2 million in non-payment and underpayment of superannuation by a single-site, independent school south of Brisbane. The school regularly failed to issue staff with payslips and, when payslips were issued, the school neglected to stipulate superannuation payments.

The situation for teachers, trainers and tutors in VET and ELICOS sectors is made more precarious by the regularity of employers going insolvent. The *Fair Entitlements Guarantee (FEG)* protects unpaid wages for a limited period of time in the case of insolvency, but does not protect employees’ superannuation entitlements. This leaves VET and ELICOS employees particularly vulnerable to lost superannuation as shown in case study 4.

Case study 4

Ten IEUA-QNT members were employed by an RTO on the Sunshine Coast, when it went into liquidation. These members lost over \$38,000 in employer guaranteed superannuation between them. The members had little recourse as the FEG does not protect superannuation entitlements.

Eradicating wage theft

Media coverage of wage theft often suggests that the problem is confined to a small number of ‘vulnerable’ industries/workers, but examples and case studies presented in this submission indicate that unethical employers are also present in ‘professional’ sectors like education and training. The practices outlined above are ‘industry norms’, only made possible due to the erosion of workers’ rights and highlight significant short-comings in the current regulatory framework in dealing with wage theft.

Eradicating wage theft begins with improving workplace conditions for all workers. Under the current industrial relations framework, workplace awards were designed as a ‘safety-net’ for a small number of workers, but instead have become the norm in a ‘race to the bottom’ in minimising wages for workers. It is unacceptable that the vast majority of employers in VET and ELICOS now rely on the *Educational Services (Post-Secondary Education) Award* to determine pay and conditions for their workers. The Award makes no allowance for the extent of work regularly expected of teachers, nor time spent maintaining their skills and expertise. Reliance on the Award is simply insufficient to ensure workers receive a fair wage, which includes payment for all work undertaken. While collective bargaining can make a difference, the power of workers in VET and ELICOS sectors to act collectively, is limited by the often insecure nature of their engagement and the consequent vulnerability experienced by professionals in these workplaces. Further, the power of unions is restricted by laws that make it impossible to bargain across sectors. Laws need to be changed to allow sector-wide bargaining so that more workers have the opportunity to experience improved workplace conditions under collective agreements.

Beyond collective agreements, hourly rates of pay and correct classification levels are fundamental employment conditions and should be clearly stated in any contract of employment. Employers must be compelled to provide statements of service on request and where it is obvious that ongoing work exists through the appointment of ‘permanent causals’, teachers, trainers and tutors must be offered legitimate permanent employment, including sick leave and annual leave entitlements. Businesses should no longer be allowed to deny people basic rights by denying them permanent positions. Education professionals, their families, communities and the wider economy will all benefit from secure work and fair wages and conditions.

Given the pervasive nature of wage theft by private RTOs and ELICOS providers, stronger penalties are needed to ensure compliance. Repeated non-payment of superannuation and underpayment of wages makes it clear that current penalties do not act as a deterrent. It is unacceptable that workers lose their job for raising legitimate issues of wage theft, while unscrupulous employers continue to operate with impunity. Financial penalties need to be

increased and wage theft needs to be criminalised with a penalty of imprisonment, particularly for repeat offenders. Furthermore, details of employer misconduct should be recorded on a public register so that employees can make informed decisions regarding where they apply for employment.

Stronger penalties should also be accompanied by simplified processes and procedures for claiming entitlements following wage theft. The simplest mechanism for recompense, is to ensure that employees are engaged under industrial instruments more robust than the current Award. The *Fair Entitlements Guarantee* also needs to be expanded to include protection of superannuation and the Australian Skills Quality Authority (ASQA), which registers VET and ELICOS providers, should have the power to hold providers accountable for meeting industrial relations provisions. Providers receiving government funding for training delivery, should be required to demonstrate that they operate in accordance with industrial laws and instruments as a condition of funding and lose this funding in the event of non-compliance.

Concluding Statement

Wage theft is often considered a problem that is confined to a small number of ‘vulnerable’ industries and workers. Examples and case studies from the education sector indicate that unethical employment practices are also common in the professions. The emergence and proliferation of unethical employment practices in VET and ELICOS sectors is closely connected to increased privatisation of vocational education and training. In a ‘race to the bottom’, employers adopt business models favouring short-term financial savings over long-term investment in providing quality education that delivers greater gains to individuals and communities. A persistent overreliance on short-term and/or casual contracts of employment for education professionals, not only creates difficulties for individual teachers, trainers and tutors, but seriously impedes their ability to provide quality learning experiences for students and detracts from wider community well-being.

Restoring the balance and recognising the professionalism of VET and ELICOS teachers, trainers and tutors requires robust and effective industrial instruments that reduce reliance on unpaid work, overly complex classification structures, sham contracting and withholding of superannuation. This would most effectively be achieved through reduced reliance on the current Award, premised on the revision of outmoded and ineffective industrial relations frameworks.

We thank the Education, Employment and Small Business Committee for the invitation to engage in consultation through this submission and welcome the opportunity to participate in further discussion.



Terry Burke
Branch Secretary
Independent Education Union of Australia
Queensland and Northern Territory Branch
24 July 2018

Appendix: Examples of job advertisements from VET and ELICOS sectors, June 2018

Trainer Assessor

Our client, a well-known RTO, is seeking a suitably qualified Trainer Assessor with appropriate industry experience to deliver a Certificate III in Business Administration. This role is based on Brisbane's north side with travel to the Logan area. **This position is a fulltime, ongoing contract with an ABN essential.**

You will be responsible for engaging students and ensuring a high rate of course completion. Our client works with candidates wishing to enter the workforce or those looking to upskill.

The Role:

- Facilitate training in a small group environment
- Communicate with key stake holders and business managers
- Manage and assess students
- Provide and implement training updates

About You:

- A certificate IV in Training and Assessment
- Certificate III in Business Administration or higher
- Previous training and assessment experience
- Own reliable transport and valid driver's licence
- Dynamic and able to engage all learner types and levels
- Excellent time management skills and presentation

This is a great opportunity to join a passionate team but still maintain a level of training independence. This contract role is offered under an extremely attractive day rate plus super.

If you feel you could be our next trainer, do not hesitate and **APPLY NOW![7]**

VET Contract trainers (Brisbane)

Do you have what it takes to join a vibrant team of professionals in the education industry? We are looking for enthusiastic trainers that have the unique blend of training, teaching and current industry experience to deliver our courses.

is a market leader in the provision of VET courses. Due to ongoing and sustained growth in our student numbers we are seeking to appoint new trainers at our Brisbane campus for:

Diploma of Social Media Marketing (10118NAT)

For more information about this course. see

- Project Management (BSB41515, BSB51415 , BSB61215)
- Marketing and Communication (BSB42415, BSB52415 , BSB61315)
- Accounting (FNS40615 , FNS50215, FNS60215)
- Leadership and Management (BSB42015, BSB51915, BSB61015)
- Certificate IV in Communicative TESOL (10298NAT) For more information about this course, see

We are a multi-campus educational provider across Sydney (Manly, City, Bondi Junction), Brisbane and Melbourne. Given the diverse nature of our student cohort we are looking for trainers who understand the importance of building rapport with international students. The ability to deliver content in an engaging way that keeps students hungry for more knowledge is a must! Therefore if 'death by power-point' is NOT your mantra and you are an entertainer at heart, keen to demonstrate your penchant for audience engagement, this may be the role for you.

offers a diverse and friendly work culture where you feel like you are part of a family. In addition to your ability to captivate and inspire your students, you will need to demonstrate that you:

- Hold a TAE40110 or TAE40116 Certificate IV in Training and Assessment (with LLN)
- Have relevant qualifications, equivalent to or higher than the level and field of subjects to be taught
- Have current industry experience (obtained in Australia) in the field of subjects to be taught which you can draw on in the classroom to bring the content to life
- **Hold an ABN and be engaged under a current ASIC Registered Proprietary Limited Company (Pty Ltd) with an ACN along with the relevant business insurances (Public Liability, WorkCover)**
- Have an innovative approach to delivering unit content
- Are a team player

NOTE: Engagements are for up to 20 hours per week per trainer depending on the College's timetable requirements.

Starting hourly rates are \$45.50 per hour plus superannuation, depending on the trainer's qualifications and experience.

We invite interested contractors to send a covering letter addressing the criteria (training specialty and current industry experience) along with their educational credentials and a current resume together with their availability to [REDACTED]
Only permanent residents and citizens of Australia and New Zealand need apply.[8]

Food Processing Trainer/Assessor

We are seeking a suitably qualified Trainer/Assessor with appropriate industry experience and competency in the Process Manufacturing or Food Processing fields to deliver a Certificate III across Brisbane. You will be working across two locations, from Brisbane's East to the Western suburbs. **This position is a full time contract position, working under an ABN.**

The Role:

- Deliver theory training and refer students to practical experience
- Facilitate training in a group environment
- Operation of all machinery
- Communicating with key stake holders and business managers

About You:

- A certificate IV in Training and Assessment
- Certificate III in Food Processing or higher
- Previous training and assessment experience
- High level of scheduling and organisational skills
- Manage assessment challenges and provide appropriate support
- Exceptional communication skills
- Own reliable transport and valid driver's licence
- **Must have own ABN**

This is a fantastic opportunity to join a supportive team but still maintain a level of autonomy. This is a contract role with an extremely attractive day rate plus super.

If you are looking to kick start a new job now, do not hesitate and **APPLY NOW!![9]**

References

1. Australian_Government. *RTO Report*. n.d. [cited 2018 2 July]; Available from: <https://training.gov.au/Reporting/ReportInfo?reportName=RtoReport>.
2. NCVER, *Australian vocational education and training statistics: total VET students and courses 2016*. 2017.
3. NEAS. *NEAS Endorsed Centres*. n.d. [cited 2018 2 July]; Available from: <https://www.neas.org.au/neas-endorsed-centres/>.
4. Department_of_Education_and_Training, *ELICOS Standards 2018*. 2017.
5. NEAS, *NEAS Quality Assurance Framework: Quality Practice Guide*. 2018.
6. ASQA. *Meeting trainer and assessor requirements*. n.d. [cited 2018 2 July]; Available from: <https://www.asqa.gov.au/news-publications/publications/fact-sheets/meeting-trainer-and-assessor-requirements>.
7. SEEK. *Trainer Assessor*. 2018 [cited 2018 28 June]; Available from: www.seek.com.au/job/36430056?type=standard.
8. SEEK. *VET Contract trainers (Brisbane)*. 2018 [cited 2018 28 June]; Available from: www.seek.com.au/job/36388595?type=standard
9. SEEK. *Food Processing Trainer/Assessor*. 2018 [cited 2018 28 June]; Available from: www.seek.com.au/job/36360247?type=standard.